Supreme Court Agrees to Consider Standing of Insurers in Chapter 11 Cases

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The United States Supreme Court agreed today to review a Fourth Circuit decision that denied an insurer standing to object to an asbestos producer's Chapter 11 reorganization plan, on the basis that the insurer's interests were not affected by the plan. The case provides the high court with an opportunity to resolve a recurring issue in mass tort bankruptcies which has split the circuits.

The appeal arises out of the Chapter 11 case of *Kaiser Gypsum*, filed in North Carolina. Kaiser Gypsum's plan proposed that an asbestos claim trust would be assigned the debtor's rights under policies issued by Truck Insurance Co. ("Truck"). Although the plan required holders of uninsured asbestos claims to provide disclosures of claims made against other asbestos trusts, and authorizations to allow the trust to audit and investigate such other claims, to help prevent fraudulent or duplicative claims, holders of claims that triggered Truck's coverage were not mandated to make similar disclosures to Truck. Their claims were to be litigated in the tort system with recovery limited to available insurance.

Truck objected, arguing that the plan violated Kaiser Gypsum's duties under the cooperation clauses in the Truck policies and that Kaiser Gypsum did not act in good faith when it proposed a discriminatory, two-tier disclosure standard based on whether a claim was insured. The district court overruled Truck's objections, and the Fourth Circuit affirmed. In the Fourth Circuit's decision, issued in February 2023 [*In re Kaiser Gypsum Co.*, 60 F. 4th 73 (4th Cir. 2023)], the court ruled that the cooperation clause was inapplicable to the insured's conduct in proposing a bankruptcy plan, and further held that the plan was "insurance neutral" and therefore Truck lacked standing to object to confirmation of the plan.

In May 2023, Truck petitioned the Supreme Court for a writ of certiorari, arguing that Section 1109(b) of the Bankruptcy Code, which provides any "party in interest" an opportunity to be heard, does not impose a more restrictive standard for "bankruptcy standing" than Article III of the Constitution and does not permit bankruptcy courts, under the guise of "insurance neutrality," to deny standing to insurers alleged to have financial responsibility for claims against the debtor. The petition noted that there was a split in the circuits, with the Third Circuit generally allowing insurer standing, the Fourth and Seventh Circuits denying it, and the Ninth Circuit taking inconsistent positions. The Supreme Court's decision is expected to resolve this circuit split and clarify the extent of insurers' standing in Chapter 11 bankruptcies of their insureds.

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