PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1858

IN RE: KAISER GYPSUM COMPANY, INC.; HANSON PERMANENTE CEMENT, INC,

Debtors.

TRUCK INSURANCE EXCHANGE,

Plaintiff – Appellant,

v.

KAISER GYPSUM COMPANY, INC.; HANSON PERMANENTE CEMENT, INC,

Debtors – Appellees,

and

LEHIGH HANSON, INC.,

Defendant – Appellee,

and

OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS; FUTURE CLAIMANTS REPRESENTATIVE,

Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:20-cv-00537-GCM)

Argued: March 18, 2025 Decided: April 29, 2025

Before KING, AGEE, and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Agee wrote the opinion in which Judge King and Judge Quattlebaum joined. Judge Quattlebaum wrote a concurring opinion.

ARGUED: David Casazza, GIBSON, DUNN & CRUTCHER LLP, Washington, D.C., for Appellant. C. Kevin Marshall, JONES DAY, Washington, D.C.; Kevin C. Maclay, CAPLIN & DRYSDALE, CHARTERED, Washington, D.C.; Edwin J. Harron, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware, for Appellees. **ON BRIEF:** Michael A. Rosenthal, Michael K. Gocksch, New York, New York, Allyson N. Ho, Robert B. Krakow, Russell H. Falconer, Elizabeth A. Kiernan, Dallas, Texas, Addison W. Bennett, Tamara S. Skinner, Washington, D.C., Matthew G. Bouslog, GIBSON, DUNN & CRUTCHER LLP, Irvine, California; Michael L. Martinez, GRIER WRIGHT MARTINEZ, PA, Charlotte, North Carolina; Scott R. Hoyt, PIA ANDERSON MOSS HOYT, LLC, Salt Lake City, Utah, for Appellant. Todd E. Phillips, James P. Wehner, Katelin C. Zendeh, Lucas H. Self, CAPLIN & DRYSDALE, CHARTERED, Washington, D.C.; Sara (Sally) W. Higgins, Raymond E. Owens, Jr., HIGGINS & OWENS, PLLC, Charlotte, North Carolina; David C. Frederick, Joshua D. Branson, Collin R. White, Jordan R. G. González, KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C., Washington, D.C., for Appellee the Official Committee of Asbestos Personal Injury Claimants. James L. Patton, Jr., Sharon M. Zieg, Sara Beth A.R. Kohut, Travis G. Buchanan, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware; Felton E. Parrish, John M. "Jack" Spencer, ALEXANDER RICKS PLLC, Charlotte, North Carolina, for Appellee Lawrence Fitzpatrick, the Future Claimants' Representative. Robert M. Horkovich, ANDERSON KILL PC, New York, New York, for Appellees the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants' Representative. Gregory M. Gordon, Amanda Rush, Dallas, Texas, Daniel C. Villalba, Washington, D.C., Paul M. Green, JONES DAY, Houston, Texas; Ross R. Fulton, John R. Miller, Jr., RAYBURN COOPER & DURHAM, P.A., Charlotte, North Carolina, for Appellees Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. Mark A. Nebrig, MOORE & VAN ALLEN PLLC, Charlotte, North Carolina, for Appellee Leigh Hanson, Inc.

AGEE, Circuit Judge:

This case returns on remand from the Supreme Court following its holding that Truck Insurance Exchange is a party in interest as to the Chapter 11 reorganization plan (the "Plan") proposed by Kaiser Gypsum Co., Inc., and Hanson Permanente Cement, Inc. (the "Debtors"). *See Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 285 (2024).

In its original decision, the district court went beyond the party-in-interest issue and also considered Truck's substantive objections to the Plan. Ultimately, the court concluded that the Plan (1) was proposed in good faith, as required by 11 U.S.C. § 1129(a)(3), and (2) satisfied the various requirements for approval in 11 U.S.C. § 524(g). Since we previously held that Truck was not a party in interest, we had no occasion to consider the merits of these independent holdings. *See In re Kaiser Gypsum Co.*, 60 F.4th 73, 88 (4th Cir. 2023), *rev'd and remanded sub nom. Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268 (2024). Now that the Supreme Court has determined that Truck *is* a party in interest, we review the merits of the district court's independent holdings.

For the reasons discussed below, we find no reversible error in either of the district court's conclusions: that the Plan was proposed in good faith, and that it satisfies § 524(g)'s various requirements. We therefore affirm its decision.

I.

A.

The Debtors manufactured and sold various asbestos-containing products for decades.[1] Since 1978, they have been named in over 38,000 asbestos-related lawsuits nationwide. Despite maintaining liability insurance, the Debtors' outstanding asbestos liabilities, combined with the risk of unknown future asbestos claims, drove the Debtors to seek Chapter 11 bankruptcy relief in 2016. At that time, 14,000 asbestos-related lawsuits remained pending against them.

Following extensive negotiations with various stakeholders,[2] the Debtors proffered a proposed Plan of reorganization, which would establish a § 524(g) trust (the "Trust") to resolve the Debtors' present and future asbestos liabilities. That Plan also included a channeling injunction to protect the Debtors from future asbestos claims—including claims for punitive damages—in state and federal tort proceedings nationwide.

Critical to the Trust's viability were the Debtors' rights under certain primary liability insurance policies issued by Truck from the 1960s through the 1980s. Under those policies, Truck must investigate and defend each covered asbestos personal-injury claim or suit asserted against the Debtors, "even if such claim or suit is groundless, false[,] or

[1] We previously outlined most of the pertinent facts in *In re Kaiser Gypsum Co.*, 60 F.4th 73 (4th Cir. 2023), *rev'd and remanded sub nom. Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268 (2024). We borrow much of that factual recitation here.

[2] These stakeholders included several insurance companies, creditors, government agencies, and court-appointed representatives of current and future asbestos claimants. The court-appointed representatives include Appellee Official Committee of Asbestos Personal Injury Claimants, as well as Appellee Future Claimants' Representative.

fraudulent." J.A. 792. Truck must also indemnify the Debtors for each such claim up to a per-claim limit, typically $500,000 per claim,[3] excluding punitive damages. Crucially, Truck's primary coverage applies on a per-claim basis without a maximum aggregate limit. This means that Truck's coverage is non-eroding, subject only to the $500,000 per claim limit. The policies further specify that "[b]ankruptcy or insolvency of the [Debtors] or of the [Debtors'] estate[s] shall not relieve [Truck] of any of its obligations hereunder." J.A. 804. As for the Debtors, the policies require them to pay a deductible—typically $5,000 per claim—and to assist and cooperate with Truck in defending against asbestos claims asserted against them.

As part of the proposed reorganization Plan, the Debtors would assign their rights under the Truck policies to the Trust. Those rights to non-eroding coverage, together with a one-time $49 million contribution by parent company Appellee Lehigh Hanson, Inc., and a secured five-year $1 million note issued by the Debtors, would provide the funding for the Trust.

A key feature of the Plan relates to its separate treatment of insured and uninsured asbestos personal injury claims. The Plan provides that holders of *insured* asbestos personal injury claims—i.e., claims that fall within the scope of the Truck policy—would continue to assert actions against the reorganized Debtors, in name only, in the tort system. These claims would still be subject to all the insurers' pre-petition coverage defense rights—

[3] The Debtors also maintained excess insurance coverage through other insurance carriers that would respond to amounts exceeding the per-claim limit of Truck's primary coverage.

including the right to deny coverage should the Debtors fail to honor their assistance and cooperation obligations. If a claimant were to obtain a favorable judgment, the Trust would pay the deductible, and Truck, pursuant to its coverage obligations under the policies, would pay up to the per-claim limit. At that point, the excess coverage policies would apply according to their respective terms.

Holders of *uninsured* asbestos personal injury claims—i.e., claims that fall outside the scope of the Truck policy—would submit their claims directly to the Trust for resolution through an administrative process. As part of that process, each claimant would have to provide certain disclosures and authorizations. The purpose of these disclosures and authorizations is to ensure that the Trust pays only valid, non-duplicative claims. In particular, uninsured claimants would have to provide specific information regarding all other claims that relate in any way to their alleged asbestos injuries. They would also be required to authorize the Trust to obtain their submissions, if any, to other asbestos trusts. After an individualized assessment of a particular uninsured claim, the Trust would respond with a settlement offer, which the claimant could then accept or reject.[4]

Aside from the asbestos personal injury claims, the Plan would resolve the Debtors' other outstanding liabilities. For example, the Plan would settle the Debtors' decades-old asbestos-related environmental liabilities, and fully satisfy all general unsecured creditor claims, including a claim held by Truck. Importantly, the Plan would also shield Debtors from future punitive damages awards.

[4] What happens after the acceptance or rejection of such a settlement offer is largely irrelevant for the purposes of this appeal.

B.

As a precondition for approval of the Plan, the Bankruptcy Code required the asbestos personal-injury claimants to vote on the proposed Plan. *See* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). One hundred percent of those claimants voted to approve the Plan, which also had unanimous support from all other parties involved in the bankruptcy, including the excess insurers, except for one—Truck.

While Truck argued that the Trust did not comply with certain aspects of § 524(g), its primary contention related to the lack of anti-fraud measures for claimants pursuing insured claims in the tort system. In its view, this setup potentially "expose[d] it to untold millions of dollars in fraudulent asbestos injury claims." *See In re Kaiser Gypsum Co.*, 60 F.4th at 80, *rev'd and remanded sub nom. Truck Ins. Exch.*, 602 U.S. 268. Despite Truck's insistence that the Debtors add these anti-fraud measures for insured claims to be litigated in the tort system, the Debtors declined to disturb the negotiated Plan, and asked the bankruptcy court to approve it. After extensive briefing on this issue, the bankruptcy court held a hearing on the proposed Plan.

Both in the briefing and at the hearing, Truck raised several objections to confirmation. Two of those objections remain relevant. First, Truck maintained that the Plan was not proposed in good faith, as required for all plans of reorganization under 11 U.S.C. § 1129(a)(3). In its view, the Plan's failure to include anti-fraud measures for insured claims was indicative of a collusive, bad-faith agreement between the Debtors and the claimant representatives to perpetuate fraudulently inflated recoveries in the tort system. Second, Truck contended that the proposed Trust did not comply with several of

11 U.S.C. § 524(g)'s requirements for asbestos-driven reorganization plans. Namely, Truck argued that: (1) the Trust did not assume Kaiser's liabilities, as required by § 524(g)(2)(B)(i)(I); (2) the Trust will not "own" or control Kaiser, as required by § 524(g)(2)(B)(i)(III); (3) the Trust is not funded "in whole or in part" by future payments from Kaiser, as required by § 524(g)(2)(B)(i)(II); and (4) the Plan is not structured in such a way as to deal equitably with claims and demands, as required by § 524(g)(2)(B)(ii)(III).

After a two-day confirmation hearing, the bankruptcy court concluded as a threshold matter that Truck could not challenge the Plan because it was "insurance neutral" and therefore not a party in interest. J.A. 1619. In the alternative, it rejected Truck's objections on the merits. In doing so, it found that the Debtors' bankruptcy conduct, and specifically, their refusal to add anti-fraud measures for insured asbestos claims in the tort system, was not evidence of bad faith. The bankruptcy court also found that the Plan complied with § 524(g)'s requirements, including the four identified above as the targets of Truck's specific challenges. Finding no infirmities with the Plan or resulting Trust, the bankruptcy court recommended that the district court confirm the Plan. The district court did so over Truck's continuing objections, explicitly adopting the bankruptcy court's findings. *In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), 2021 WL 3215102, at *26–27 (W.D.N.C. July 28, 2021)

C.

Truck timely appealed the district court's decision to this Court, arguing that (1) it was a party in interest entitled to challenge the Plan because the Plan's terms impermissibly compromised its rights under the insurance policies; (2) the Plan wasn't proposed in good

faith, as required by 11 U.S.C. § 1129(a)(3); and (3) the Plan failed to satisfy 11 U.S.C. § 524(g)'s requirements. Both the district court and this Court denied Truck's request for a stay pending the appeal. The Debtors, joined by Lehigh Hanson, Inc. (the Debtors' parent company) moved to dismiss the appeal on the grounds that Truck lacked "appellate standing" to challenge Plan confirmation, and that the appeal was equitably moot. The Debtors alternatively argued for affirmance on the grounds that the plan was proposed in good faith and satisfied § 524(g)'s requirements.

Following argument, we held that Truck was not a "party in interest" and thus could not make objections to the Plan in view of its insurance neutrality. *See In re Kaiser Gypsum Co.*, 60 F.4th at 88 ("Truck fails to show that the Plan impairs its contractual rights or otherwise expands its potential liability under the subject insurance policies, so it is not a party in interest under § 1109(b) with standing to challenge the Plan."). Based on that finding, we affirmed the district court's decision and dismissed the appeal. Given that holding, we did not consider any substantive arguments (i.e., those concerning good faith and the Plan's compliance with § 524(g)'s requirements).

Truck subsequently sought and was granted certiorari in the Supreme Court of the United States, which reversed this Court's decision. The Supreme Court first made clear the limited scope of its inquiry: "The Bankruptcy Code allows any 'party in interest' to 'raise' and 'be heard on any issue' in a Chapter 11 bankruptcy. The question in this case is whether an insurer with financial responsibility for a bankruptcy claim is a 'party in interest' under [the Code]." *Truck Ins. Exch.*, 602 U.S. at 271 (internal citations omitted). It then answered that question in the affirmative, concluding that "Truck is a 'party in

interest' under [11 U.S.C.] § 1109(b)." *Id.* at 272; *see id.* ("An insurer [such as Truck] with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a 'party in interest' that can raise objections to a reorganization plan. Section 1109(b) grants insurers neither a vote nor a veto; it simply provides them a voice in the proceedings."). Having reversed this Court's narrow holding on dismissal, the Supreme Court "remanded [the case] for further proceedings consistent with [its] opinion." *Id.* at 285. Those "further proceedings" necessarily involve consideration of the merits challenges previously raised—and presently renewed—by Truck.

As noted in the prior opinion, "[b]ecause the district court's order confirming the Plan is a final order, we have jurisdiction over this appeal under 28 U.S.C. § 1291." *In re Kaiser Gypsum Co.*, 60 F.4th at 81.

II.

Truck advances two main arguments on appeal. First, it contends that the Plan was not proposed in good faith, as is required by 11 U.S.C. § 1129(a)(3). And second, it argues that the Plan fails to satisfy four of 11 U.S.C. § 524(g)'s requirements.

In undertaking our review, we consider de novo the legal conclusions of the bankruptcy and district courts, and assess their factual findings for clear error. *Nat'l Heritage Found., Inc. v. Highbourne Found.*, 760 F.3d 344, 347 (4th Cir. 2014). Relevant here, a court's finding with respect to the good faith requirement under 11 U.S.C. § 1129(a)(3) is a factual one subject only to clear error review. *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704, 709 (4th Cir. 2011). Conversely, whether a reorganization plan

complies with § 524(g)'s requirements is a mixed question of law and fact. *In re Morton*, 410 B.R. 556, 559 (B.A.P. 6th Cir. 2009). The Court must therefore "break" the appeal "down into its constituent parts and apply the appropriate standard of review for each part." *In re Batie*, 995 F.2d 85, 88 (6th Cir. 1993) (citing *In re Brown*, 951 F.2d 564, 567 (3d Cir. 1991)).

III.

With these standards in mind, we turn to the issue of whether the district court[5] clearly erred in determining that the Plan was "proposed in good faith." 11 U.S.C. § 1129(a)(3). Having thoroughly reviewed the record before us, we find no such error.

Before confirming a plan of reorganization, the court must find that the plan was "proposed in good faith." 11 U.S.C. § 1129(a)(3). What constitutes "good faith" in this context is neither defined by statute nor our prior case law. A number of our sister circuits have held that a plan is proposed in good faith where it "fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code." *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 158 (3d Cir. 2012) (quoting *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 247 (3d Cir. 2004)); *see In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1074 (9th Cir. 2002) (same); *Hanson v. First Bank of S.D., N.A.*, 828 F.2d 1310, 1315 (8th Cir. 1987), *partially*

[5] For the sake of clarity, we will refer primarily to the district court's decision. After all, it adopted the bankruptcy court's findings of fact and conclusions of law largely without change. *See In re Kaiser Gypsum Co.*, 2021 WL 3215102, at *1–35 (district court's findings of facts and conclusions of law); J.A. 6217–90 (bankruptcy court's proposed findings of facts and conclusions of law). Where necessary, we will specify when we are instead referring to the bankruptcy court.

abrogated on other grounds by Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507 U.S. 380, 387 n.3 (1993) ("In the context of a Chapter 11 reorganization, . . . a plan is considered proposed in good faith if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Code." (cleaned up)). The two "recognized" objectives of the Code, in turn, are "preserving going concerns and maximizing property available to satisfy creditors." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999) (citing *Toibb v. Radloff*, 501 U.S. 157, 163 (1991)).[6] And while we do not go so far as to say compliance with the objectives of

[6] We note also that a fundamental tenet of bankruptcy law is fairness. *See In re Am. Cap. Equip., LLC*, 688 F.3d at 157 ("[T]he good-faith confirmation requirement . . . focuses primarily on the plan itself and on whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") (cleaned up). The concept of fairness, particularly as it relates to creditors, is embedded throughout Chapter 11. *See, e.g.,* 11 U.S.C. § 507 (establishing expense and claim priority in a Chapter 11 proceeding); 11 U.S.C. § 547(b) (permitting a trustee in a Chapter 11 proceeding to avoid preferential transfers to creditors or transfers made while the debtor was insolvent); 11 U.S.C. § 1123(a)(4) (requiring a plan treat each claim or interest of a class the same absent class agreement). Simply put, the Bankruptcy Code does not permit a debtor to favor some creditors of the same class over others.

Truck's objections to the Plan go this point. It argues that the Plan is not proposed in good faith because it lacks anti-fraud related disclosures and authorizations for insured claims—yet requires uninsured claimants provide this same information directly to the Trust. Truck claims it needs this information to avoid liability for fraudulent claims and insists that, contrary to the district court's conclusion, it cannot get the same information through discovery in civil litigation for two reasons. First, claimants could wait long periods of time before submitting claims to an 11 U.S.C. § 524(g) trust. That means that if they are asked in discovery requests whether they have made other claims for asbestos-related injuries, claimants can truthfully say no, but nevertheless submit another claim for the same injuries later. Oral Argument at 13:00–14:22; 21:47–22:21. Second, Truck claims that § 524(g) trusts generally contain provisions that do not permit a trust to respond to requests for information about claimants absent an authorization for release. Oral Argument at 16:45–17:55. And Truck argues it cannot compel an authorization for release from claimants in the tort system. *Id*. Thus, Truck contends that it cannot investigate (Continued)

the Code conclusively establishes good faith, we agree it provides strong evidence of that standard being met. Still, in determining whether a plan is consistent with these objectives and purposes, courts must consider the totality of the circumstances. *In re Sylmar Plaza, L.P.*, 314 F.3d at 1074; *In re McCormick*, 49 F.3d at 1526; *see also Behrmann*, 663 F.3d at 709–10 (assessing totality of the circumstances and affirming the district court's good faith determination).

Applying these principles here, we hold that the district court did not clearly err in concluding that the Plan was "proposed in good faith." § 1129(a)(3); *see Behrmann*, 663 F.3d at 709. The court began by carefully "examin[ing] the totality of the circumstances surrounding the formulation of the [P]lan." *Behrmann*, 663 F.3d at 709. Consequently, it observed that the Plan was the "product of extensive arms'-length negotiations among [interested parties], reflect[ed] a consensual resolution of the Debtors' . . . liabilities[,] and maximize[d] the value of assets available to satisfy claims." *In re Kaiser Gypsum Co.*, 2021 WL 3215102, at *13; *see id.* ("That the Plan maximizes the value of assets is demonstrated

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whether a plaintiff in one case has filed claims for those same asbestos-related injuries with other trusts.

If Truck is right—that it is effectively required to pay fraudulent claims while other creditors are not—its arguments would present a better case for impermissible unfair treatment. The problem for Truck, though, is that it did not provide any evidence to support this argument. For example, Truck did not point to a single claimant that had sued Kaiser for asbestos-related injuries and then later filed claims for those same injuries with other trusts or private parties. Similarly, it cited no example where it had sought to subpoena information about a particular claimant from another § 524(g) trust or a private party and been denied that information. Oral Argument at 17:55–21:35. That lack of evidence might be understandable if we were at the beginning of Kaiser's bankruptcy. But this case has been going on for years. And still Truck offers no evidence of the fraud it complains about. Nothing. Zilch. Without such evidence, there is no basis to find clear error in the district court's conclusion that Truck has not shown the Plan was not proposed in good faith.

by the fact that creditor recoveries are greater than could be realized if the Debtors were to liquidate."); *id.* ("The Debtors' good faith in proposing the Plan is evidenced by these negotiations and agreement and further by the unanimous support of [those] entitled to vote on the Plan."); *see also id.* (outlining the process that led to the formation of the Plan).[7] In other words, the court found as a factual matter that the Plan comports with the objectives of the Bankruptcy Code. *See Bank of Am. Nat'l Tr. & Sav. Ass'n*, 526 U.S. at 453 (stating that the "two recognized policies underlying Chapter 11" are "preserving going concerns and maximizing property available to satisfy creditors"). These factual findings—which remain unchallenged—led the district court to conclude that the Plan satisfies § 1129(a)(3)'s good faith requirement. We discern no clear error in the court's conclusion that the Plan will "fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code." *See In re Am. Cap. Equip., LLC*, 688 F.3d at 158 (quoting *In re Combustion Eng'g, Inc.*, 391 F.3d at 247).

Truck seeks to avoid this conclusion, but its arguments lack merit. For instance, it bristles at the fact that insured asbestos claims—but not uninsured asbestos claims—are to be litigated in the tort system under the Plan. But a desire to maximize the relevant asset (here, the Debtors' non-eroding asbestos insurance provided through Truck) does not constitute bad faith. To the contrary—bankruptcy courts routinely allow claimants to pursue insured claims through the tort system, a fact that Truck does not contest. The

[7] These findings mirror those made by the bankruptcy court. *See* J.A. 6244–45.

district court observed as much on its way to rejecting the same argument. *See In re Kaiser Gypsum Co.*, 2021 WL 3215102, at *14 n.13 (collecting cases).

And contrary to what Truck suggests, the Debtors' refusal to add anti-fraud measures for the insured claims in the tort system, without more, does not signify bad faith. To begin, given Truck's non-eroding insurance coverage, which applies to even *fraudulent* claims, the Debtors had little need to include such anti-fraud measures. That the Debtors wanted to ensure the Plan's passage by remaining committed to the originally negotiated deal with all parties is a far cry from Truck's assertion that the Debtors colluded with future claimants and their representatives to *purposefully facilitate* fraudulent claims. The bankruptcy court summarized the issue well at the hearing:

> Truck asked . . . at the outset, "Why are we here," and suggested that the only reason was collusion. I would posit a different reason. We are here . . . because decades ago Truck improvidently wrote an unlimited insurance policy . . . and since then, having paid out huge sums of money based on that decision, Truck would like to . . . improve that deal and use this case to limit its financial exposure. . . . I don't think that the failure to accede to that is either collusive or bad faith or fraud or anything else.

J.A. 6210–11. Simply put, the Debtors are merely utilizing the contractual insurance rights to which they are entitled. Truck's dissatisfaction with this state of affairs does not give it a cognizable basis to rewrite the policy it freely entered under the guise of the Debtors' purported "bad faith."

Moreover, Truck's argument on this point implicitly rests on the premise that state and federal courts across the country are helpless to guard against fraudulent claims. Yet the evidence it has presented simply does not support that claim—a claim that not only ignores the ability of courts and legislatures to promulgate rules and procedures to prevent

perceived risks, *see, e.g.*, J.A. 6246 (noting that some states have "taken steps to "address" allegations of fraud in similar proceedings), but also underestimates the ability of courts to effectively supervise their cases and "protect the integrity of the judicial process," *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001). We, like the bankruptcy court, are "not inclined to [so] indict [our] colleagues on the state benches," nor do we believe that the measures Truck seeks are inherently "necessary to protect state courts from fraud." J.A. 6246. The adversarial and discovery processes in state and federal courts are more than enough to protect Truck from the fraudulent claims that it fears will occur. Opting to lean on those processes rather than funneling insured claims through the Trust alongside their uninsured counterparts is not evidence of bad faith.

Relatedly, we also agree with the bankruptcy court that "Truck's arguments [] hinge[] on speculation as to future events, such as what would happen in state courts." J.A. 6246. This speculation is twofold. First, Truck speculates as to the existence of and likelihood that fraudulent claims will be lodged against them. Indeed, much of their purported evidence of fraud comes from another case: *In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014). But the fact that there was fraud in that case does not lead to the conclusion that there will be fraud in this one. And second, Truck speculates that federal and state court systems are unequipped to help Truck shield itself from such fraudulent claims. Unless and until Truck provides concrete evidence to support its position, its concerns will remain purely speculative and thus cannot support its bad faith argument.

At bottom, Truck has not established that the district court's § 1129(a)(3) good faith determination was clearly erroneous. In so finding, we do not mean to suggest that failing to include the sort of fraud protection measures that Truck seeks here will *always* be permissible. Instead, the necessity of such measures will inevitably vary on the facts of any given case. We also recognize that Truck has an *equitable* argument on this issue, insofar as it not prohibited by statute for the Debtors to have included the requested measures as part of the Plan. But there is nothing in the Bankruptcy Code that *legally* requires them to do so. Likewise, there is nothing in the record to suggest that their decision in this regard was rooted in anything remotely resembling bad faith. Quite the opposite—the record reflects that their decision was driven by pragmatic concerns and an understanding that they were clearly entitled to the full scope of coverage Truck had agreed to decades ago. Thus, finding no clear error in the district court's good faith holding, we affirm that decision.

IV.

The second issue before the Court relates to the Plan's compliance with the statutory requirements laid out in 11 U.S.C. § 524(g). Truck maintains that the Plan fails to satisfy four of these requirements and therefore cannot stand. We disagree.

11 U.S.C. § 524(g) enumerates various requirements that a trust—such as that proposed by the Plan—must satisfy to be confirmed. *See* § 524(g)(2)(B). Three of these requirements are particularly relevant here. First, the trust must "assume the liabilities of a debtor" for current and future asbestos-related claims. § 524(g)(2)(B)(i)(I). Second, the

trust must "be funded in whole or in part by the securities of [one] or more [involved] debtors . . . and by the obligation of such debtor or debtors to make future payments, including dividends." § 524(g)(2)(B)(i)(II). And third, the trust must "own, or by the exercise of rights granted under [the] plan . . . be entitled to own if specified contingencies occur, a majority of the voting shares" of each debtor, each debtor's parent, or each debtor's subsidiary. § 524(g)(2)(B)(i)(III).

In addition to the above, the reviewing court(s) must make several separate findings before confirming a plan of reorganization. Among these additional required findings is that the "pursuit of [future asbestos] demands outside the procedures prescribed by [the] plan," i.e., in the tort system, "is likely to threaten the plan's purpose to deal equitably with claims and future demands." § 524(g)(2)(B)(ii)(III).

The district court made the requisite findings and concluded that the Trust satisfied § 524(g), including the four requirements Truck specifically challenges on appeal. For the reasons explained below, we find no error in those conclusions and therefore affirm.

A.

We begin with § 524(g)'s assumption-of-liabilities requirement. *See* § 524(g)(2)(B)(i)(I). As noted above, the principal question with respect to this requirement is whether the trust in question "assume[s] the liabilities of a debtor" for current and future asbestos-related claims. *Id.* The Trust here does exactly that.

To begin, there is no real dispute that the Trust assumes the Debtors' liabilities as to *uninsured* claims. And rightly so—those claims are directly submitted to the Trust for resolution. Truck nevertheless makes much ado about the fact that *insured* claims—

virtually all asbestos claims against the Debtors—are not submitted directly to the Trust for resolution. Instead, they must be pursued in the tort system, with the reorganized Debtors, not the Trust, as the named defendants. But Truck's argument overlooks a key (and unique) fact of this case: under the Plan, the Trust receives the Debtors' rights to non-eroding insurance coverage from Truck. If a judgment is reached in the tort system, the Truck policy kicks in to cover the damages up to the policy limit, at which point the excess insurance coverage would apply.[8] So, as a practical matter, the Trust—by way of its coverage *through* Truck—"assumes" the Debtors' asbestos-related liabilities. *See Assume*, Black's Law Dictionary (6th Ed. 1990) (defining "assume" as to "put oneself in place of another as to an obligation or liabilities"). It thus makes no functional difference that the Debtors, rather than the Trust, are nominally liable in the insured cases. This setup, combined with the fact that the Trust explicitly assumes responsibility for paying any deductibles on the Truck policy, ensures that § 524(g)'s assumption-of-liabilities requirement is satisfied.

In short, the Trust effectively assumes the Debtors' liabilities, either by directly resolving *uninsured* claims through the Trust's administrative process, or by indirectly resolving insured claims through a combination of tort system litigation, coverage under the Truck policy, and the Trust's other assets. That is sufficient for the purposes of § 524(g)(2)(B)(i)(I). Accordingly, we affirm the district court's findings on this point.

[8] The excess insurance providers unanimously voted to adopt the Plan.

B.

We turn next to § 524(g)'s funding requirement, which mandates that the trust (1) "be funded in whole or in part by the securities of [one] or more [involved] debtors," *and* (2) "by the obligation of such debtor or debtors to make future payments, including dividends." § 524(g)(2)(B)(i)(II). The district court held that the Trust satisfied both prongs of this requirement. We agree.

Here, the Trust will be funded by three main sources: the rights to non-eroding coverage under the Truck policy; a one-time $49 million contribution from the Debtors' parent company; and a secured five-year, $1 million note issued by the Debtors. The Debtors maintain that their $ 1 million note satisfies both facets of § 524(g)(2)(B)(i)(II) because (1) "security" under the Bankruptcy Code includes notes, and (2) the reorganized Debtors have an "obligation" to make future payments to the Trust—a $1 million payment on the note within five years. Truck disagrees, arguing primarily that the single $1 million note doesn't provide what it terms an "evergreen" source of funding for the Trust and is therefore pretextual. *See In re Combustion Eng'g, Inc.*, 391 F.3d at 248 ("The implication of this requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants."). In our view, the Debtors' reading of § 524(g)(2)(B)(i)(II) is the correct one.

To reiterate, § 524(g)(2)(B)(i)(II) sets forth two funding-related requirements: that the trust be funded—in whole or in part—by the "securities" of one or more involved debtors, *and* that such funding stems from "the obligation of such debtor or debtors to make

future payments, including dividends." The Trust plainly comports with the text of this provision. It is funded in part by the Debtors' security: the $1 million note. And by its very nature, that $1 million note obliges the Debtors to make a future payment(s). While Truck raises several arguments to the contrary, none compel a different conclusion.

For instance, Truck argues that the note is pretextual because it does little to *actually fund* the Trust. That may be true on a percentage basis, but it's not particularly troubling here because most of the funds that will be used to pay asbestos claims will come from insurance proceeds. And those proceeds will be contributed by Truck—not the Trust.[9] These insurance proceeds (including excess coverage proceeds) will thus provide the "evergreen" source of funding for the asbestos liabilities that Truck contends is necessary. Moreover, the statute doesn't expressly require *indefinite* future payments or a minimum payment amount. And as both courts below observed, other courts have confirmed plans with similar note-repayment funding features, "particularly, where, as here, the note is only a minor part of the funding to pay claims and/or where none of the affected parties object." *In re Kaiser Gypsum Co.*, 2021 WL 3215102, at *17 n.15 (collecting cases); *see* J.A. 6253 n.15 (same).

Truck also urges that the note facially fails to satisfy § 524(g)(2)(B)(i)(II)'s "future payments" requirement. In its view, the use of the plural "payments" in that provision means that the Plan must require the $ 1 million note to be paid back in *multiple*

[9] The Trust will also still be liable for deductibles and any uninsured claims, but there's no suggestion that the $50 million Trust corpus is insufficient to cover those obligations.

payments/installments over the five-year period. Because there is no requirement that the note here be paid back in such a manner, Truck maintains that the Plan fails to satisfy this requirement. Yet, Congress has made clear that "words importing the plural include the singular" in federal statutes "unless the context indicates otherwise." 1 U.S.C. § 1; *see also Bruce v. Samuels*, 577 U.S. 82, 90 n.4 (2016) (applying 1 U.S.C. § 1 to the term "fees"). Truck has failed to point to any such context here. *See* 1 U.S.C. § 1. To the contrary—requiring multiple payments on a note would not always be apt and certainly makes little sense under these circumstances. As already discussed, the Truck policy will provide the main funding source for the insured asbestos claims that are to be resolved under the Plan. So, whether the note is paid back in installments or as a lump sum is unlikely to make any practical difference to the Trust (or asbestos claimants, for that matter). The result is the same either way: the Trust receives $1 million by the fifth anniversary, and in the meantime, remains funded by way of its insurance through Truck.

In sum, the Trust—by way of the $1 million note—satisfies the funding requirements enumerated in § 524(g)(2)(B)(i)(II). We therefore affirm the district court's findings on this issue.

C.

We next consider whether the Trust complies with § 524(g)(2)(B)(i)(III). That subsection provides that the trust in question "is to own, or by the exercise of rights granted under [the plan of reorganization] would be entitled to own if specified contingencies occur, a majority of the voting shares of" each debtor, each debtor's parent, or each debtor's

subsidiary. § 524(g)(2)(B)(i)(III). We agree with the district court that the Trust complies with this provision.

As summarized by the bankruptcy court, "[t]he Plan provides that, upon the Effective Date, the [Trust] will receive a Payment Note in the principal amount of $1 million secured by a Pledge of 100% of the equity in the Reorganized Debtors." J.A. 6255. The Plan goes on to specify that if the "[r]eorganized Debtors" default on that note, the Trust "can foreclose on the Pledge of the [r]eorganized Debtors' equity and become the 100% owner of the [r]eorganized Debtors." *Id.* In other words, the Trust is "entitled to own" the reorganized Debtors if a "specified contingenc[y] occur[s]"—the Debtors defaulting on the $ 1 million note. This arrangement plainly satisfies § 524(g)(2)(B)(i)(III).

Truck doesn't really argue otherwise. Instead, it complains that the contingency provided is a sham because there is no realistic possibility that the reorganized Debtors will default. In support of this argument, it relies on out of circuit cases which hold that control of the reorganized debtor must be a "realistic possibility." *In re Plant Insulation Co.*, 734 F.3d 900, 916 (9th Cir. 2013); *see In re Congoleum Corp.*, 362 B.R. 167, 177 (Bankr. D.N.J. 2007) ("It is not intellectually defensible to interpret § 524(g)(2)(B)(i)(III) to mean that any contingency will suffice."). There are two main problems with this approach.

First, and most importantly, there is no "realistic possibility" language in § 524(g)(2)(B)(i)(III). Rather, it simply requires what happened here—a contingency that entitles the Trust to receive the reorganized Debtors' equity upon default of the note. Truck has given us no good reason to ignore the plain language of the statute.

Even setting aside this critical point, there is another flaw in Truck's reasoning: while the cases it cites suggest that control of the reorganized debtor must be a realistic possibility, they simultaneously acknowledge that the § 524(g)(2)(B)(i)(III) inquiry will turn "on the unique facts presented" by a given case. *In re Congoleum Corp.*, 362 B.R. at 178; *cf. In re Plant Insulation Co.*, 734 F.3d at 916 ("To the extent Congress has provided an exception to the general rule that the trust should control the reorganized debtor, the overarching goal—that asbestos claimants get paid to the full possible extent—informs that exception."). And the "unique facts" of this case establish that the contingency here satisfies § 524(g)(2)(B)(i)(III). In that regard, most of the funding for the asbestos claims will come from insurance proceeds—not money directly in the Trust. So, there is less need for the Trust to control the Reorganized Debtors. That's because such control would not impact the ability of insured-claim holders—who are the vast majority of claimants—to receive payment on their claims. *Cf.* 4 Collier on Bankruptcy ¶ 524.07 (16th ed. 2025) ("This provision is to ensure that, if there are not sufficient funds in the trust otherwise, the trust may obtain control of the debtor company.").[10]

In the end, all roads lead to affirmance on this issue. The Plan specifies a contingency—the reorganized Debtors' default on the note payment—that would permit the Trust to own "a majority of the voting shares" of the reorganized Debtors. § 524(g)(2)(B)(i)(III). Alternatively, even if we accepted Truck's invitation to conduct a

[10] A note-default contingency has been approved in at least one other case, *In re ABB Lummus Glob. Inc.*, No. 06-10401-JKF, 2006 WL 2052409, at *19 (Bankr. D. Del. June 29, 2006), where, as here, the note was "only a small part of the overall funding package," *In re Congoleum Corp.*, 362 B.R. at 177.

more atextual inquiry, we would still find that the contingency is satisfactory based on the unique facts of this case.

D.

Finally, we turn to § 524(g)'s equitable necessity requirement. For a plan to satisfy this requirement, the reviewing court must find that the "pursuit of [future asbestos] demands outside the procedures prescribed by [the] plan," i.e., in the tort system, "is likely to threaten the plan's purpose to deal equitably with claims and future demands." § 524(g)(2)(B)(ii)(III). The district court made precisely such a finding, and we see no reason to disturb it on appeal.

The district court provided the following rationale for its finding on this point: "Without the Plan, there is a risk that present claimants will be treated more favorably than future claimants because the potential for uninsured judgments, including punitive damages, could leave the Debtors without sufficient assets to make equivalent payments to future claimants." *In re Kaiser Gypsum Co.*, 2021 WL 3215102, at *19; J.A. 6258. This rationale appears well founded—in at least three pre-petition cases against the Debtors, juries awarded punitive damages against the Debtors in amounts ranging from $100,000 to $20,000,000. The Debtors therefore demonstrated a genuine risk that their assets would be consumed by uninsured punitive damages awards, which would impact both current and future claimants' ability to collect on their claims. That is, the risk of substantial punitive damages awards means that current claimants could receive preferable treatment to later claimants, because the size of their recoveries could dwindle the Debtors' funds, and, consequently, their ability to pay future claimants.

Truck resists this conclusion by emphasizing that its insurance policies are unlimited, which means that there is no risk to future claimants that funding for their claims will run dry. But this ignores the fact that, without Chapter 11 relief, the Debtors would still face *uninsured* judgments and claims, including punitive damages awards. The district court was therefore correct to identify this potential risk and hold that the Plan was necessary to ensure equitable treatment between present and future claimants.

* * *

In all, Truck has failed to identify any reversible error in the district court's assessment of the relevant § 524(g) requirements. Accordingly, we affirm its judgment on this issue.

V.

For the foregoing reasons, the district court's judgment is

AFFIRMED.

QUATTLEBAUM, Circuit Judge, concurring:

While I join the majority opinion, I write separately to point out that Truck has company in failing to point to evidence to support its position about good faith. Rather than affirmatively explain why providing Truck with the anti-fraud disclosures and authorizations for insured claimants is a bad idea, Kaiser and the claimant representatives primarily rely on the standard of review. They insist that the district court's good faith finding was not clear error. And I agree with them, and the majority, on this point.

Even so, Kaiser and the claimant representatives' arguments make me a bit queasy. When pressed at oral argument about why they would not require or provide anti-fraud related disclosures and authorizations to Truck, neither gave much of a response. First, they answered that no authority compels it. But that is hardly surprising given the novel structure for insured and uninsured claims proposed here. Second, they said that providing the information would be burdensome. Yet neither gave any specific reason why it would be difficult.

Making these answers even less satisfying, the information Truck seeks is so basic that any asbestos plaintiff would be required to provide it in discovery. So, I do not understand why Kaiser would not agree to require claimants, at the outset, to provide the information Truck seeks. Likewise, I don't see why the claimants would not readily agree either. Usually, parties do not put up this big of a fight on something that is inevitable. The fact that neither Kaiser nor the claimants will relent makes me wonder if there is not something to Truck's argument. But even if there is, we review the district court's § 1129(a)(3) good faith determination for clear error. And as the majority points out, Truck

did not point to specific evidence of actual claimants committing fraud in this case. So, applying our standard of review, I concur in the majority's decision.