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Introduction

Section 1109 of title 11 of the United States Code (the "Bankruptcy Code") allows any "party in interest" to raise, appear, and be heard on any issue in a chapter 11 bankruptcy case.[1] The term party in interest is not otherwise defined in the Bankruptcy Code.[2] The United States Supreme Court has interpreted the phrase to describe a party that has a sufficient stake in the outcome of the bankruptcy reorganization.[3] Importantly, Section 1128(b) of the Bankruptcy Code explicitly provides that a party in interest "may object to confirmation of a plan" in a chapter 11 case. [4]

The United States Supreme Court has held that an insurer with a significant financial stake is a party in interest with the right to object to a proposed chapter 11 reorganization plan.[5] The significance of the insurers' financial stake and thus bankruptcy standing to object to the plan are usually dependent on if the reorganization plan is defined as "insurance neutral."[6] A plan is insurance neutral if it does not increase the reorganizing debtor's insurance provider's financial

[1] 11 U.S.C. § 1109(b) (2018).
[2] *Id.*
[3] *See* Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 7 (2000).
[4] *In re* Global Indus. Techs., Inc., 645 F.3d 201, 204 (3d Cir. 2011); 11 U.S.C. § 1128(b) (2018).
[5] *See* Truck Ins. Exch. v. Kaiser Gypsum Co., Inc., 602 U.S. 268, 272 (2024).
[6] *See* In re Thorpe Insulation Co., 677 F.3d 869, 877 (9th Cir. 2012).

obligations or risks.[7] If a reorganization plan is insurance neutral, an insurer will not have bankruptcy standing; if it is not insurance neutral, the insurer will have bankruptcy standing.[8]

This article analyzes why insurers, in chapter 11 bankruptcy cases, have standing under the Bankruptcy Code as parties in interest, allowing for their objections to the confirmation of a chapter 11 debtor's plan. Part I will describe the traditional understanding of a legal party in interest. Part II will discuss the decision *In re Thorpe Insulation Co.*, highlighting the facts, reasoning and holding of what becomes almost a precursor to the holding in *Truck Ins. Exch.*, combining the previous definitions of a party in interest as well as an introduction to insurance neutral plans with asbestos liability claims specifically. Part III then explains Section 524(g) trusts created in response to asbestos liability claims, and finds, using case law, that in these specific cases, it is rare that insurers will be found lack standing. Next, in Part IV, the article will move to a detailed discussion of the analysis of *Truck Ins. Exch*. alone, providing an overview of the facts of the case, the influences for the Court's analysis in defining Section 1109(b), and the logic behind the conclusion that the insurers had standing. Finally, the article will conclude in Section V with a summary of the modern case law analyzed in the article, and a concise rule of law as it relates to the specific issues considered in the other sections.

Discussion

[7] *See id.* at 877-78.
[8] *See* In re Global Indus. Techs., Inc., 645 F.3d at 204.

I. "Party in Interest": Moving From a Rigid to a Fluid Definition

Some previous cases have considered what entities constitute a party in interest outside of bankruptcy settings.[9] These early definitions come mostly from cases against the construction and extension of railroads in the mid-20th Century.[10] In concluding that the petitioner was a party in interest under the Transportation Act, the Supreme Court in *W. Pac. Cal. R.R. Co.*, stated "[i]t will suffice, we think, if the bill discloses that some definite legal right possessed by complainant is *seriously threatened* . . . Here . . . [the petitioner's] own welfare was seriously threatened."[11] The Court's sentiment in *W. Pac. Cal. R.R. Co.*, that to be a party in interest, a party is required to show that their interest is seriously threatened, was echoed nine years later in *L. Singer & Sons*.[12] There, plaintiffs sought an injunction to prevent defendant Union Pacific Railroad from constructing an extension to their railroad through Kansas City without first obtaining a certificate of convenience and necessity from the Interstate Commerce Commission.[13]Kansas City sought to join suit as a plaintiff, and the Railroad argued that all plaintiffs did not have standing under the Transportation Act.[14] In the Supreme Court's opinion, the plaintiffs did not produce enough evidence to refute the Railroad's claim against them.[15] As a result of a showing of only incidental harm, the Supreme Court concluded that the plaintiffs did not have standing.[16]

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[9] See W. Pac. Cal. R.R. Co. v. S. Pac. Co., 284 U.S. 47, 52 (1931); *see also* Alton R.R. Co. v. U.S., 315 U.S. 15, 25 (1942).
[10] *See* W. Pac. Cal. R.R. Co., 284 U.S. at 52.
[11] *Id.* at 51-52 (emphasis added).
[12] *See id.*; *see also* L. Singer & Sons v. Union Pac. R.R. Co., 311 U.S. 295, 304 (1940).
[13] *See* L. Singer & Sons, 311 U.S. at 298.
[14] *See id.*
[15] *See id.* at 301 ("We are of the opinion, however, that [the plaintiffs'] complaint discloses that their welfare cannot be directly, but only indirectly and consequentially, affected by the proposed [railroad] extension.").
[16] *See id.*

In *Truck Ins. Exch.*, there are still some remnants of these early definitions of a party in interest.[17] Section 1109(b) names a debtor, a trustee, a creditor's committee, equity security holders' committee, a creditor, an equity security holder, or any indenture trustee as a *party in interest* that has a right to raise, appear, and be heard in a chapter 11 case.[18] The Supreme Court's logic in *Truck Ins. Exch.* is strikingly similar to the 1930s and 1940s decisions about standing under the Transportation Act.[19] It is evident that some of the same factors that were evaluated in the 1930s and 1940s decisions, requiring the plaintiff seeking to be a party in interest to prove that its welfare would be more than just indirectly or consequentially affected, but rather "seriously threatened" by the outcome of the case, endured the test of time.[20]

II. *In re Thorpe Insulation:* The Precursor to *Truck Ins. Exch.*

Although the general question of which entities constitute a party in interest has been addressed in other types of cases, none appear to identically confront the specific problem presented in *Truck Ins. Exch.*. In *Truck Ins. Exch.*, the issue is if an insurance provider has a right to object to a debtor's proposed plan of reorganization when it creates a Section 524(g) trust for its asbestos-related liability.[21] That said, *In re Thorpe Insulation Co.* ("*Thorpe Insulation*") almost resolves this specific problem.[22] In *Thorpe Insulation*, after facing significant pending asbestos-related claims, the chapter 11 debtors, Thorpe Insulation Company and Pacific Insulation Company, filed their plans for reorganization, which were approved by the

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[17] *See* Truck Ins. Exch., 602 U.S. at 277; 11 U.S.C. § 1109(b) (2018).
[18] 11 U.S.C. § 1109(b) (2018) (emphasis added).
[19] *See* Truck Ins. Exch., 602 U.S. at 277 ("An insurer such as Truck with financial responsibility for a bankruptcy claim is a 'party in interest' because it may be directly and adversely affected by the reorganization plan."); *see* also W. Pac. Cal. R.R. Co., 284 U.S. at 51-52.
[20] *See* L. Singer & Sons, 311. U.S. at 301; *see also* W. Pac. Cal. R.R. Co., 284 U.S. at 51-52; *see also* Truck Ins. Exch., 602 U.S. at 277.
[21] *See* 602 U.S. at 268.
[22] *See* 677 F.3d at 876.

Bankruptcy Court for the Central District of California.[23] The debtors' insurers moved to challenge the proposed plan, and they were later denied on the grounds that they did not have standing to do so.[24] On appeal, the United States District Court for the Central District of California affirmed the bankruptcy court's ruling, again reasoning that the insurers lacked the required standing to object to the plan.[25] On the insurers' subsequent appeal, the Ninth Circuit reversed.[26]

The Ninth Circuit began its analysis considering the mootness of the appellants' (insurers') claim.[27] After determining that the appellants' claim was not equitably moot, the Ninth Circuit found that the various appellant insurers had both bankruptcy standing and appellate standing.[28] It therefore reversed the lower courts' findings, coming to the opposite conclusion using the same insurance neutrality test employed initially by the bankruptcy court.[29] The Ninth Circuit reasoned, "the [proposed reorganization] plan assigns Debtors' insurance rights to the [Section 524(g)] trust . . . in apparent contradiction of the [insurance] neutrality characterization, the plan includes four exceptions to the otherwise preserved defenses."[30] The court continued in its analysis of the plan, noting that the plan allows insurers to be sued directly.[31] Thus, the aspects of Thorpe Insulation's proposed reorganization plan that the Ninth

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[23] *See id.* at 877.
[24] *See id.*
[25] *See id.*
[26] *See id.*
[27] *See id.* at 883.
[28] *See id.* at 887 (concluding that Appellants (insurers) are parties in interest under § 1109(b) and that they have also satisfied the requirements of Article III standing).
[29] *See id.*
[30] *Id.* at 878.
[31] *See id.*

Circuit's conclusion turned on were the significant obligations and risks that the insurance providers would face, while the debtors were free from liability.[32]

III. "Insurance Neutral" Reorganization Plans May Be Difficult with Asbestos-Related Liability

As the Ninth Circuit determined in *Thorpe Insulation*, "a plan is not insurance neutral when it may have a substantial economic impact on insurers."[33] The Ninth Circuit thus accepted the insurers' argument that the reorganization plan at issue was not insurance neutral for a variety of reasons.[34] In other cases, courts have relied on similar financial criteria in analyzing if a reorganization plan is insurance neutral.[35] For instance, the Third Circuit broadly proclaimed in *In re Global Indus. Techs., Inc.* ("*Global Indus.*"), "when a federal court gives its approval to a plan that allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed. In short, they at least have bankruptcy standing."[36] *Global Indus.*, like *Truck Ins. Exch.* and *Thorpe Insulation*, also concerned asbestos-related liability and the creation of a Section 524(g) trust.[37]

The reason that the creation of a Section 524(g) trust will usually mean that insurers have standing is because of the nature of the trust itself as discussed in another case, *In re W.R. Grace & Co.*, where the debtors sought to relieve themselves of asbestos liability post-bankruptcy by

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[32] *See id.*
[33] 677 F.3d at 885.
[34] *See id.* ("[Insurers] argue the plan was not insurance neutral because of possible preclusive effects of the plan . . . they are responsible for claims channeled to the trust . . . [and] the trust permits direct file suits against [them].").
[35] *See In* re Global Indus. Techs., Inc., 645 F.3d at 204.
[36] *Id.*
[37] *See id.*; *see also* Truck Ins. Exch., 602 U.S. at 268; *see also In re* Thorpe Insulation Co., 677 F.3d at 877-78; 11 U.S.C. § 524(g) (2018).

creating a Section 524(g) Trust.[38] Further, a trust created under Section 524(g) must be "fair and equitable" to future claimants.[39] Consequently, a Section 524(g) trust will usually affect the insurance providers of chapter 11 debtors.[40] The fact that a Section 524(g) trust issues an injunction "permanently and forever stay[ing], restrain[ing] and enjoin[ing]" any action against the chapter 11 debtors and entities "'other than Asbestos Insurers,'" during and post-reorganization means the burden will likely fall on the insurers to handle all future claimants.[41] This is especially apparent in plans like Thorpe Insulation's, where the trust made the debtors' insurance providers responsible for handling all claims and allowed for direct suits against the insurers.[42] In *Truck Ins. Exch.*, a similar provision existed, described at length below.[43]

IV. *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*: Insurers Have Standing to Object to Confirmation of Chapter 11 Plans that are Not Insurance Neutral

Similar to the Ninth Circuit in *Thorpe Insulation*, the Supreme Court in *Truck Ins. Exch.* begins with accepted interpretations of Section 1109(b), noting the legislative history that resulted in its creation.[44] Importantly, the Supreme Court acknowledges Congress's consistent action to promote greater participation in reorganization proceedings.[45] Next, the Supreme Court notes "'the general theory behind [Section 1109(b)] is that anyone holding a direct financial stake in the outcome of the case should have an opportunity . . . to participate in the adjudication of

[38] *See In re* W.R. Grace & Co., 729 F.3d 311, 315 (3d Cir. 2013) ("[Section 524(g)] allows a company like Grace [chapter 11 debtor] to set up a trust that will assume its asbestos liabilities . . . [the Section] authorizes an injunction to channel all asbestos-related claims into the trust.").
[39] *Id.*; 11 U.S.C. § 524(g) (2018).
[40] *See In re* W.R. Grace & Co., 729 F.3d at 315; *see also* Truck Ins. Exch., 602 U.S. at 277.
[41] Truck Ins. Exch., 602 U.S. at 281 (quoting Br. for Am. Prop. Cas. Ins. Ass'n et al. as *Amici Curiae* 16-17); 11 U.S.C. § 524(g) (2018).
[42] *See In re* Thorpe Insulation Co., 677 F.3d at 885.
[43] *See* 602 U.S. at 277.
[44] *See* Truck Ins. Exch., 602 U.S. at 279; *see also In re* Thorpe Insulation Co., 677 F.3d at 884; 11 U.S.C. § 1109(b) (2018).
[45] *See* Truck Ins. Exch., 602 U.S. at 279.

any issue that may ultimately shape the disposition of his or her interest.'"[46] Past Supreme Court decisions support this conclusion that the term party in interest, when used in bankruptcy settings, is intended to apply "'broadly.'"[47]

Further support for this point comes from the Seventh Circuit, which determined that Section 1109(b) was not intended to provide standing exclusively for the listed examples but was to give a voice to "'anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.'"[48] In *Hartford*, the Court qualifies the expansive power available in Section 1109(b), "we do not read § 1109(b)'s general provision of right to be heard as broadly allowing a creditor to pursue substantive remedies that other Code provisions make available only to other specific parties."[49] Taken together, the Supreme Court appears hesitant to confer unlimited bounds to the parties that might fall under the meaning of Section 1109(b), but its consistent wide definition leaves a range of possibilities for diverse entities to be categorized as parties in interest.[50]

The Supreme Court recognizes in *Truck Ins. Exch.* that "bankruptcy proceedings can affect an insurer's interests in myriad ways."[51] In analyzing Truck Insurance's allegation that the debtors' plan, a Section 524(g) trust ("the Trust"), was collusive and invited fraudulent claims, the Supreme Court found that Truck Insurance would have to pay the vast majority of the Trust's liability, as Truck Insurance would be required to indemnify the debtors for up to $500,000 per

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[46] *Id.* at 277 (citing 7 COLLIER ON BANKRUPTCY ¶1109.01 (16th ed. 2023)).
[47] *Id.* (citing Hartford Underwriters Ins. Co., 530 U.S. at 7 (quoting 11 U.S.C. § 502(a) (2021))).
[48] *In re* Thorpe Insulation Co., 677 F.3d at 884 (quoting *In re* James Wilson Assocs., 965 F.2d 160, 169 (7th Cir. 1992)).
[49] 530 U.S. at 8-9 (citing 7 L. KING, COLLIER ON BANKRUPTCY, ¶ 1109.05 (rev. 15th ed. 1999)).
[50] *See id.*
[51] 602 U.S. at 281.

claim.[52] In concluding its analysis, the Supreme Court found: first, the plan was not insurance neutral because of the indemnification requirement, and a variety of other risk factors to the insurance providers; and second, therefore, Truck Insurance is a party in interest and may object to the confirmation of the Kaiser Gypsum (chapter 11 debtor) reorganization plan. [53]

V. Conclusion

Considering the summary of case law and definitions of a party in interest, the list of entities that have a right to be heard in Section 1109(b) is far from complete.[54] Importantly, insurers with a significant financial obligation or risk in the chapter 11 debtors' bankruptcy may be heard, raise, and object to any issue.[55]

[52] *See id.* at 268, 281.
[53] *See id.* at 285 (reversing the Fourth Circuit's decision which held that Truck Insurance did not have bankruptcy standing).
[54] 11 U.S.C. § 1109(b) (2018).
[55] *Id.*; *see* Truck Ins. Exch., 602 U.S. at 272.