View on our website.

GIBSON DUNN

Appellate and Constitutional Law Update June 6, 2024

Supreme Court Holds That Insurers With Financial Responsibility For Bankruptcy Claims May Be Heard In Reorganization Proceedings

***Truck Insurance Exchange v. Kaiser Gypsum Co.*, No. 22-1079** – Decided June 6, 2024

Today, the Supreme Court unanimously held that an insurer with financial responsibility for bankruptcy claims is a "party in interest" under the Bankruptcy Code that has a right to participate in bankruptcy reorganization proceedings.

"Section 1109(b) grants insurers neither a vote nor a veto; it simply provides them a voice in the proceedings."

JUSTICE SOTOMAYOR, WRITING FOR THE COURT

Background:

In 2016, facing significant asbestos-related liability, Kaiser Gypsum Co. and its parent company Hanson Permanente Cement, filed for Chapter 11 bankruptcy. The debtors proposed a reorganization plan under Section 524(g) of the Bankruptcy Code, which allows a Chapter 11 debtor with substantial asbestos-related liability to establish a trust that assumes that liability. Section 524(g) also channels all present and future asbestos claims into the trust by enjoining entities from taking legal action to collect on those claims.

The debtors proposed a plan that treated insured and uninsured claims differently. Under the plan, uninsured claims were submitted directly to the trust for resolution. To reduce fraudulent and duplicative claims, claimants with uninsured claims were required to identify all related claims and file a release authorizing the trust to obtain documentation from other asbestos trusts about their submitted claims. But the plan required insured claims to be filed in the tort system, without the disclosure requirements applicable to uninsured claims.

Under Section 1109(b) of the Bankruptcy Code, a "party in interest" may "appear and be heard on any issue" in a Chapter 11 proceeding, including on a reorganization plan. Asserting party-in-interest status, Truck Insurance Exchange—the debtors' primary insurer—objected to the plan. Truck argued, among other things, that the plan wasn't proposed in good faith because it didn't require the same disclosures and authorizations for insured and uninsured claims—disparate treatment that would expose Truck to millions of dollars in fraudulent tort claims.

The bankruptcy court concluded that Truck was not a party in interest—and so had no right to be heard on its objections—because the plan was "insurance neutral," meaning that it didn't alter Truck's pre-bankruptcy rights or obligations. The district court agreed and confirmed the plan. The Fourth Circuit affirmed.

Issue:

Whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may object to a reorganization plan under Chapter 11 of the Bankruptcy Code.

Court's Holding:

An insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may object to a reorganization plan under Chapter 11 of the Bankruptcy Code.

What It Means:

- In a unanimous 8-0 opinion by Justice Sotomayor (with Justice Alito recused), the Court held that "Section 1109(b)'s text, context, and history confirm that 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."
- The Court explained that the plain meaning of "party in interest" refers to "entities that are potentially concerned with or affected by a proceeding." The historical context and purpose of Section 1109(b) also support that interpretation, because "Congress consistently has acted to promote greater participation in reorganization proceedings," which promotes the fairness of the process.
- Applying those principles, the Court held that insurers such as Truck with financial responsibility for bankruptcy claims are parties in interest because they can be directly and adversely affected by the reorganization proceeding in numerous ways.
- The Court decisively rejected the insurance neutrality doctrine, saying that it "is conceptually wrong and makes little practical sense." The Court explained that the insurance neutrality doctrine conflates the merits of an insurer's objection with the threshold party-in-interest inquiry. It is also too limited in scope as a practical matter, "wrongly ignor[ing] all the other ways" bankruptcy proceedings "can alter and impose obligations on insurers."
- Going forward, insurers will no longer have to establish that plans change their pre-petition obligations to be heard in Chapter 11 proceedings, including with respect to reorganization plans. Instead, insurers will need to show only that they have financial responsibility for bankruptcy claims to participate. The decision will give insurers responsible for bankruptcy claims more opportunity to protect their interests and identify problems with reorganization plans.

Gibson Dunn represented Truck Insurance Exchange **as Petitioner.**

Gibson Dunn Appellate Honors

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

Appellate and Constitutional Law

Thomas H. Dupree Jr.
+1 202.955.8547
tdupree@gibsondunn.com

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Julian W. Poon
+1 213.229.7758
jpoon@gibsondunn.com

Lucas C. Townsend
+1 202.887.3731
ltownsend@gibsondunn.com

Bradley J. Hamburger
+1 213.229.7658
bhamburger@gibsondunn.com

Brad G. Hubbard
+1 214.698.3326
bhubbard@gibsondunn.com

Jonathan C. Bond
+1 202.887.3704
jbond@gibsondunn.com

Russ Falconer
+1 214.698.3170
rfalconer@gibsondunn.com

Related Practice: Business Restructuring and Reorganization

Jean-Pierre Farges
+33 1 56 43 13 00
jpfarges@gibsondunn.com

David M. Feldman
+1 212.351.2366
dfeldman@gibsondunn.com

Scott J. Greenberg
+1 212.351.5298
sgreenberg@gibsondunn.com

Robert Krakow
+1 214.698.3124
rkrakow@gibsondunn.com

Michael A. Rosenthal
+1 212.351.3969
mrosenthal@gibsondunn.com

This alert was prepared by associates Stephen Hammer and Jessica Lee.