

High Court To Review Insurer's Asbestos Bankruptcy Row

By **Shane Dilworth**

Law360 (October 13, 2023, 2:55 PM EDT) -- The U.S. Supreme Court on Friday accepted Truck Insurance Exchange Co.'s request to review a Fourth Circuit ruling saying it lacked standing to object to Kaiser Gypsum's Chapter 11 reorganization plan, which included the establishment of a trust for asbestos injury plaintiffs.



The U.S. Supreme Court agreed to hear a case in which the Fourth Circuit held that Truck Insurance Exchange lacked grounds to object to policyholder Kaiser Gypsum's reorganization plan under the Bankruptcy Code and Article III. (AP Photo/Mariam Zuhaib)

In taking up the case, the nation's highest court will address the interplay of the Bankruptcy Code and standing under Article III of the U.S. Constitution when deciding if an objector can be heard and what issues can be raised in opposition to a reorganization plan.

Truck Insurance attorney Michael A. Rosenthal of Gibson Dunn & Crutcher LLP told Law360 in an emailed statement that the carrier is "very pleased that the court has agreed to take up this important issue" and looks forward to presenting the arguments on the merits.

Truck Insurance told the high court in a petition filed in May that it should take the case since there is a split among the federal appeals courts on that issue. According to the insurer, the Fourth Circuit incorrectly found that it lacked standing as a creditor to object to policyholder Kaiser Gypsum's

reorganization plan.

The companies said in an opposition brief filed in September that the Fourth Circuit correctly sustained Judge Mullen's decision since the plan does not affect the carrier's rights.

In a published ruling handed down in February, the Fourth Circuit sided with U.S. District Judge Graham C. Mullen of the Western District of North Carolina that Truck Insurance was not a "party in interest" to the bankruptcy proceedings. The appellate panel concluded that the carrier lacked grounds to object to the reorganization plan under Section 1109(b) of the Bankruptcy Code and Article III.

According to court records, Kaiser Gypsum and Hanson Permanente Cement Inc. made and sold asbestos-containing products. The companies were named as defendants in more than 38,000 asbestos injury suits since 1978. When Kaiser Gypsum and Hanson filed for Chapter 11 protection in 2016 in the Western District of North Carolina, only 14,000 cases remained.

Under the reorganization plan, the companies would establish both a trust under Section 524(g) of the Bankruptcy Code for present and future asbestos injury liabilities and a channeling injunction to protect them from future asbestos claims. The plan also calls for Kaiser Gypsum and Hanson to assign their rights under the Truck Insurance policies to the trust.

The policies issued by Truck Insurance have non-eroding coverage limits of \$500,000 per claim, court records say.

The trust is funded by the limits in policies Truck Insurance issued to the companies from the 1960s to the 1980s as well as a one-time \$49 million contribution from Lehigh Hanson Inc., the parent company of Kaiser Gypsum and Hanson.

U.S. Bankruptcy Court Judge J. Craig Whitley approved the plan in August 2021. Truck Insurance objected to the proposed plan in North Carolina federal court, arguing that it could potentially be exposed to millions of dollars in fraudulent claims, that the plan appeared to be collusive and violated assistance-and-cooperation provisions in its policies.

The parties and the remaining counsel did not immediately respond to requests for comment Friday.

Truck Insurance is represented by Michael A. Rosenthal, David W. Casazza, Addison W. Bennett, Allyson N. Ho, Russell H. Falconer, Elizabeth A. Kiernan and Michael A. Zarian of Gibson Dunn & Crutcher LLP.

Kaiser Gypsum and Hanson Permanente are represented by C. Kevin Marshall, Gregory M. Gordon, Amanda Rush, Daniel C. Villalba and Paul M. Green of Jones Day, and Ross R. Fulton and John R. Miller Jr. of Rayburn Cooper & Durham PA.

Lehigh Hanson is represented by Mark A. Nebrig of Moore & Van Allen PLLC.

The official committee of asbestos personal injury claimants is represented by Kevin C. Maclay, Todd E. Phillips and James P. Wehner of Caplin & Drysdale, and Sara "Sally" W. Higgins and Raymond E. Owens Jr. of Higgins & Owens PLLC.

The Future Claimants' Representative is represented by Edwin J. Harron, James L. Patton Jr., Sharon M. Zieg and Sara Beth A.R. Kohut of Young Conaway Stargatt & Taylor LLP, and Felton E. Parrish of Alexander Ricks PLLC.

Robert M. Horkovich of Anderson Kill PC is special counsel to the committee and the Future Claimants' Representative.

The case is Truck Insurance Exchange v. Kaiser Gypsum Co. Inc. et al., case number 22-1079, in the U.S. Supreme Court.

--Editing by Adam LoBelia.