

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

In re:

HOPEMAN BROTHERS, INC.,  
Debtor.

Chapter 11

Case No. 24-32428 (KLP)

OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS,

Appellant,

Civil Action No. 3:24cv00717

v.

HOPEMAN BROTHERS, INC.,  
Appellee.

**MOTION OF THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS FOR LEAVE TO APPEAL FROM  
SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY**

Appellant, the Official Committee of Unsecured Creditors (“**Committee**”) of Hopeman Brothers, Inc., by and through its undersigned counsel, hereby moves this Court (by this “**Motion**”) for leave to appeal from the *Second Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants* (No. 24-32428-KLP, ECF No. 245) (“**Stay Order**”),<sup>1</sup> entered by the United States Bankruptcy Court for the Eastern District of Virginia (Phillips, J.) on September 25, 2024.

<sup>1</sup> A copy of the Stay Order is annexed hereto as **Exhibit A**. A copy of the partially redacted September 10, 2024 hearing transcript is annexed hereto as **Exhibit B**. Liberty Mutual Insurance Company designated as confidential certain portions of the September 10, 2024 hearing transcript in accordance with the Section III of the Confidentiality Agreement and Protective Order entered in the above-captioned bankruptcy case (No. 24-32428-KLP, ECF No. 206).



The Committee believes that the Stay Order is a final order that gives the Committee an appeal of right under 28 U.S.C. § 158(a)(1), or, in the alternative, that the Stay Order is immediately appealable under the collateral order doctrine. In either case, the Committee can present for appellate review all factual and legal issues connected with the Stay Order. Nevertheless, in an abundance of caution, the Committee makes this Motion, in accordance with 28 U.S.C. § 158(a)(3) and Rule 8004 of the Federal Rules of Bankruptcy Procedure, requesting leave of this Court to pursue interlocutory review of the questions of law described in the accompanying *Memorandum of Points and Authorities in Support of Motion of the Official Committee of Unsecured Creditors for Leave to Appeal from Second Interim Order Extending the Automatic Stay* (“**Memorandum**”).

For the reasons explained in the Memorandum, the Committee requests that this Court (1) determine that the Stay Order is final and appealable as of right, or alternatively, (2) determine that the Stay Order is immediately appealable under the collateral order doctrine, or alternatively, (3) grant the Committee leave to pursue an interlocutory appeal from the Stay Order on the questions of law described in the Memorandum, and in all events (4) grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

**CAPLIN & DRYSDALE, CHARTERED**

/s/ Jeffrey A. Liesemer

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*Special Insurance Counsel for the Official  
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## **EXHIBIT A**

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*Counsel for Debtor and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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**In re:**

**HOPEMAN BROTHERS, INC.,**

**Debtor.**

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**Chapter 11**

**Case No. 24-32428 (KLP)**

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**SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY TO  
ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS**

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Upon the Motion of the above-captioned debtor (the “Debtor”) for Entry of an Interim and Final Order Extending the Automatic Stay to Stay Asbestos-Related Actions against Non-Debtor Defendants (the “Motion”)<sup>1</sup> [Docket No. 7]; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a second interim order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having entered a first interim order, on July 3, 2024 [Docket No. 35], approving the Motion on an interim basis; and the Court having held a second hearing to consider the relief requested in the Motion on September 10, 2024 (the “Hearing”); and upon the record herein; and after due deliberation thereon; and, for the reasons stated by the Court on the record at the Hearing, all objections to the relief sought in the Motion are overruled and the Court having determined there is good and sufficient cause for the relief granted in this Second Interim Order extending the stay to the Protected Parties, as set forth herein, for an additional six month period, under sections 105(a), 362(a)(1) and 362(a)(3) of the Bankruptcy Code, it is hereby

**ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted on a second interim basis, as set forth herein, for a period of six months (the “Stay Period”) from the date of the Hearing until March 10, 2025 (the “Stay Expiration Date”).
2. The Protected Parties are identified on **Exhibit 1** annexed hereto.
3. This Second Interim Order shall operate as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of any action against a Protected Party related to any asbestos-related claim against the Debtor, Wayne Manufacturing Company, Inc. (“Wayne”) and/or a current or former director or officer (“Debtor/Wayne Asbestos Claim”) of either during the Stay Period, including but not limited to the Direct Action Lawsuits identified on **Exhibit 2**.
4. All acts in violation of the stay are prohibited. This prohibition includes, without limitation: (a) the pursuit of discovery from the Protected Parties or their officers, directors,

employees or agents in any action stayed by this Second Interim Order, (b) the enforcement of any discovery order against the Protected Parties in any action stayed by this Second Interim Order; (c) further motions practice related to the foregoing; and (d) any collection activity on account of

an asbestos-related claim involving the Debtor, Wayne and/or a Former D&O. For purposes of clarity, nothing in this paragraph 4 shall prohibit claimants from (i) continuing or commencing actions, including the Direct Action Lawsuits, against any defendant who is not a Protected Party and from pursuing discovery and motions practice in those non-stayed actions, as long as such discovery and motions practice is not undertaken in pursuit of asbestos-related claims against the Protected Parties; or (ii) continuing or commencing actions against any insurer listed on **Exhibit 1** hereto on account of any claim unrelated to a Debtor/Wayne Asbestos Claim, including from pursuing discovery or motions practice in such non-stayed actions .

5. Notwithstanding anything to the contrary in this Second Interim Order, any party asserting any asbestos-related claim related to or against the Debtor, Wayne and/or a current or former director or officer of either, including, without limitation, against any of the Protected Parties, may take reasonable steps during the Stay Period, without leave of the Court, to perpetuate the testimony of any person subject to this Second Interim Order who is not expected to survive the Stay Period or who otherwise is expected to be unable to provide testimony if it is not perpetuated during the Stay Period. If such a need arises, notice shall be provided to the Debtor, the Official Committee of Unsecured Creditors (“Committee”), and each of the other parties below that endorsed this Second Interim Order (collectively, the “Notice Parties”) by notifying counsel for each Notice Party of the need for perpetuation of such testimony. The Notice Parties shall have the right to object to the notice on any grounds they would have had if they were parties to the underlying proceeding and not subject to the terms of this Second Interim Order, and the Notice

Parties may raise any such objection with this Court. The use of such testimony in any appropriate jurisdiction shall be subject to the applicable procedural and evidentiary rules of such jurisdiction.

All parties reserve and do not waive any and all objections with respect to such testimony.

6. To the extent the Debtor requests that the Court extend the relief granted in this Second Interim Order beyond the Stay Period, the Debtor must file a motion with this Court to be considered by the Court on or before the Stay Expiration Date or by such other date as the Court may order.

7. Entry of this Order is without prejudice to the rights of any party to oppose any extension of the Stay Period that the Debtor may seek or to seek to appeal the granting of any such extension without having appealed this Second Interim Order.

8. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

9. The Debtor is authorized to take all actions necessary or appropriate to implement the relief granted in this Order in accordance with the Motion, including without limitation seeking additional relief from this Court to enforce the terms of this Second Interim Order.

10. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Sep 20 2024

Dated: \_\_\_\_\_, 2024  
Richmond, Virginia

/s/ Keith L Phillips

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UNITED STATES BANKRUPTCY JUDGE

Entered On Docket: Sep 25 2024



WE ASK FOR THIS:

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)

Henry P. (Toby) Long, III (VSB No. 75134)

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SEEN AND NO OBJECTION AS TO FORM OF ORDER, WITH ALL OTHER RIGHTS RESERVED:

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*Counsel for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valeria Anne Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza, and Monica Dandry Hallner*

**CERTIFICATION OF ENDORSEMENT  
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

**Exhibit 1**

**Protected Parties**

**1. Insurers Who Provide (or in the case of Liberty Mutual Insurance Company provided) Shared Insurance Coverage to the Debtor, Wayne and Former D&Os:**

- a. Liberty Mutual Insurance Company
- b. Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North American)
- c. Westchester Fire Insurance Company
- d. Continental Casualty Company
- e. Fidelity & Casualty Company
- f. Lexington Insurance Company
- g. Granite State Insurance Company
- h. Insurance Company of the State of Pennsylvania
- i. National Union Fire Insurance Company of Pittsburgh, PA
- j. General Reinsurance Corporation

**2. Former D&Os of the Debtor and Wayne Who Are Also Covered Under the Debtor's Insurance Policies. The following Former D&Os are named in pending Direct Action Lawsuits with the Debtor and Wayne and, with the exception of Bertram C. Hopeman, are each deceased:**

- a. Albert Arendt Hopeman, Jr. (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))
- b. Bertram C. Hopeman (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))
- c. Charles Johnson (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))
- d. Kenneth Wood (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

**3. Current D&Os of the Debtor Who Have the Same Indemnification Rights as Former D&Os:**

- a. Christopher Lascell
- b. Daniel Lascell
- c. Carrie Lascell Brown

**Exhibit 2**

**Direct Action Lawsuits**

Exhibit 2

Case Name	Case Number	Court	Claimant	Claimant's Counsel	Counsel to Avondale (Huntington)
1 Allo, III v. Huntington Ingalls, Inc., et. al.	2:23-cv-06006	USDC Eastern District of Louisiana	Charles Allo, III	David Melancon Irwin Fritchie Urquhart & Moore, LLC 400 Poydras St., Suite 2700 New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
2 Becker v. Huntington Ingalls Incorporated, et. al.	2:23-cv-06900	USDC Eastern District of Louisiana	Patricia Becker	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
3 Becnel v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-01124	USDC Eastern District of Louisiana	Darwin Kraemer, Rosanne Pierron, Cheryl Becnel and Wendy Vonlienen	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

Exhibit 2

4	Bourgeois v. Pennsylvania General Insurance Co., et. al.	2:24-cv-00337	USDC Eastern District of Louisiana	David and Emelda Bourgeois	Erin Bruce Saucier Didriksen, Saucier and Woods, PLC 3114 Canal Street New Orleans, LA 70119	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
5	Boutte, Sr. v. Huntington Ingalls Incorporated, et. al.	2:22-cv-03321	USDC Eastern District of Louisiana	Shelton A. Boutte, Sr. and Arlene Boutte	Madeline M. Dixon The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
6	Bracy v. ABB, Inc., et. al.	2:23-cv-06937	USDC Eastern District of Louisiana	Horace L. Bracy	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
7	Brignac v. Anco Insulations, Inc., et. al.	2:23-cv-03124	USDC Eastern District of Louisiana	Percy Brignac	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
8	Chalker v. Taylor-Seidenbach, Inc., et. al.	2023-13770	Civil District Court for the Parish of Orleans, State of Louisiana	Pamela Chalker	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	N/A



Exhibit 2

9	Constanza et al v. Huntington Ingalls Inc.	2:24-cv-00871	USDC Eastern District of Louisiana	Erica Dandry Constanza	Roussel & Clement 1714 Cannes Drive La Place, LA 70068	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
10	Daigle, III v. Anco Insolutions, Inc., et. al.	2:23-cv-01414	USDC Eastern District of Louisiana	Dennis Daigle, III, Kim Lombas, Michelle Trouilliet, Eric Daigle, and Patrick Daigle	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
11	Ditcharo v. Union Pacific Railroad Company, et. al.	2022-10935	Civil District Court for the Parish of Orleans, State of Louisiana	Anthony J. Ditcharo	Jeremiah Boling Caroline Boling Benjamin Rumph LaCrisha McAllister Boling Law Firm, LLC 541 Julia Street, Suite 300 New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
12	Duran, Jr. v. Taylor-Seidenbach, Inc., et. al.	2023-13741	Civil District Court for the Parish of Orleans, State of Louisiana	Gilbert Duran, Jr.	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

Exhibit 2

13	Evans v. Taylor-Seidenbach, Inc., et. al.	2:23-cv-04241	USDC Eastern District of Louisiana	Marvin Evans	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002 N/A
14	Gistarve, Sr. v. Huntington Ingalls Industries, et. al.	2016-05797	Civil District Court for the Parish of Orleans, State of Louisiana	Joseph Gistarve, Sr.	Ron A. Austin Austin & Associates, L.L.C. 400 Manhattan Boulevard Harvey, LA 70058	N/A
15	Gomez v. Lamons Gasket Company, et. al.	2:23-cv-02850	USDC Eastern District of Louisiana	David Gomez	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
16	Hoffman, Jr. v. Huntington Ingalls Inc., et. al.	2022-07111	Civil District Court for the Parish of Orleans, State of Louisiana	Donald M. Hoffman, Jr., Charles S. Somes, and Kathleen Whited	Stephen J. Austin Stephen J. Austin, LLC 1 Galleria Boulevard, Suite 1900 Metairie, LA 70001	N/A
17	Lagrange v. Eagle, Inc., et. al.	2:23-cv-00628	USDC Eastern District of Louisiana	Irma Lee Lagrange	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

Exhibit 2

18	Leboeuf, Jr. et al v. Huntington Ingalls Inc.	2024-04032	Civil District Court for the Parish of Orleans, State of Louisiana	Nolan J. Leboeuf, Jr.	Landry & Swarr 1100 Poydras St. Energy Centre – Suite 2000 New Orleans, LA 70163  -and- The Cheek Law Firm 650 Poydras Street, Ste 2310 New Orleans, LA 70130	N/A
19	Lewis v. Tayler-Seidenbach, Inc., et. al.	2:23-cv-06764	USDC Eastern District of Louisiana	Brouney Lewis and Monica Kelly-Lewis	Kevin B. Milano Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
20	Marcella, et. al. v. Huntington Ingalls, Incorporated et. al.	2:24-cv-00780	USDC Eastern District of Louisiana	Norma Marcella, Scott Marcella, Troy Marcella, and Toni Herbert, Individually and as Statutory Heirs of Decedent Ronald Marcella	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
21	McElwee v. Anco Insulations, Inc. et. al.	2:23-cv-03137	USDC Eastern District of Louisiana	Robert J. McElwee	Frank J. Swarr Mickey P. Landry Matthew Clark Landry & Swarr, LLC 1100 Poydras Street, Suite 2000 New Orleans, LA 70163  -and- Jeffery A. O'Connell The Nemeroff Law Firm Douglas Plaza 8226 Douglas Avenue, Suite 740 Dallas, Texas 75225	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

Exhibit 2

22	McIntyre v. Huntington Ingalls Incorporated, et. al.	2:23-cv-05048	USDC Eastern District of Louisiana	William McIntyre	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
23	Plaisance, Sr. v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-05426	USDC Eastern District of Louisiana	Corbet J. Plaisance, Sr.	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
24	Prude v. Fidelity and Casualty Insurance Company of New York, et. al.	2:23-cv-07197	USDC Eastern District of Louisiana	William "Buddy" Prude	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809  -and-  Scott M. Galante Stephanie M. Hartman The Galante Litigation Group, LLC 816 Cadiz Street New Orleans, LA 70115	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
25	Ragusa, Jr., v. Louisiana Insurance Guaranty Association, et. al.	2:21-cv-01971	USDC Eastern District of Louisiana	Frank P. Ragusa, Jr.	Gerolyn P. Roussel Perry J. Roussel, Jr. Jonathan B. Clement Lauren R. Clement Benjamin P. Dinehart Roussel & Clement 1550 West Causeway Approach Mandeville, LA 70471	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002

Exhibit 2

26	Rivet v. Huntington Ingalls Incorporated, et. al.	2:22-cv-02584	USDC Eastern District of Louisiana	Tommy Rivet	Gerolyn P. Roussel Roussel & Clement 1550 West Causeway Approach Mandeville, LA 70471	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130 N/A
27	Robinson v. Anco Insulations, Inc., et. al.	2020-04867	Civil District Court for the Parish of Orleans, State of Louisiana	Melvin L. Robinson	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	
28	Rogers v. Taylor-Seidenbach, Inc., et. al.	2:24-cv-01268	USDC Eastern District of Louisiana	John Rogers	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
29	Rudolph, et. al. v. Huntington Ingalls, Inc., et. al.	2019-04164	Civil District Court for the Parish of Orleans, State of Louisiana	Renee LaNasa Rudolph, Michael Anthony LaNasa, and Giles Paul LaNasa; on behalf of Wallace LaNasa, Jr.	Lewis O. Unglesby, Esq. Lance C. Unglesby, Esq. Jordan L. Bollinger, Esq. UNGLESBY LAW FIRM 246 Napoleon St. Baton Rouge, LA 70802  Timothy J. Falcon, Esq. FALCON LAW FIRM 5044 Lapalco Blvd. Marrero, LA 70072  J. Patrick Connick, Esq. 5201 Westbank Expressway, Ste. 100 Marrero, LA 70072  Wells T. Watson, Esq. Jeffrey T. Gaughan, Esq. B AGGETT, MCCALL, BURGESS, WATSON & GAUGHAN 3006 Country Club Rd. Lake Charles, LA 70605	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002

Exhibit 2

30	Sandifer v. Anco Insulations, Inc., et. al.	2023-10585	Civil District Court for the Parish of Orleans, State of Louisiana	Booker Sandifer	Damon R. Pourciau Pourciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002 N/A
31	Sewire v. Anco Insulations, Inc., et. al.	2022-00676	Civil District Court for the Parish of Orleans, State of Louisiana	Patrick Sewire	Damon R. Pourciau Pourciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	N/A
32	Simoneaux v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-04263	USDC Eastern District of Louisiana	Michael Simoneaux	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
33	Thibodeaux et al v. General Electric Company, et al	2:24-cv-01111	USDC Eastern District of Louisiana	Reed Thibodeaux and Cynthia Thibodeaux	Ivan David Cason, Jr. Gori Law Firm 3647 McDonald Ave St. Louis, MO 63116 450 Laurel Street, Suite 1150 Baton Rouge, LA 70801	Timothy Farrow Daniels Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130 N/A
34	Thomas v. American Automobile Insurance Company, et. al.	2022-00352	Civil District Court for the Parish of Orleans, State of Louisiana	Lisha Thomas, Samantha Thomas, and Shaundreika Shorty; wrongful death beneficiaries of Sam Thomas (aka Sam Carter Thomas)	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130 -and- Lindsey A. Cheek The Cheek Law Firm, LLC 650 Poydras Street, Suite 2310 New Orleans, LA 70130 -and- Spencer R. Doody Scott R. Bickford Larry J. Centola, III Martzell, Bickford & Centola 338 Lafayette Street New Orleans, LA 70130	N/A

Exhibit 2

35	Wilson v. Eagle, Inc., et al.	2024-03205	Civil District Court for the Parish of Orleans, State of Louisiana	Kenneth Wilson	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	N/A
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## **EXHIBIT B**



IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In Re: ) Case No. 24-32428-KLP  
HOPEMAN BROTHERS, INC., ) Richmond, Virginia  
Debtor. )  
September 10, 2024  
10:05 a.m.  
----- )

TRANSCRIPT OF HEARING ON

1. "CASH MANAGEMENT MOTION" - MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTOR TO USE EXISTING BANK ACCOUNTS AND BUSINESS FORMS; AND (II) GRANTING THE DEBTOR AN EXTENSION OF TIME TO COMPLY WITH SECTION 345(B) OF THE BANKRUPTCY CODE [DOCKET NO. 5].

2. "NON-ASBESTOS CLAIM BAR DATE MOTION" - MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) ESTABLISHING BAR DATES FOR SUBMITTING PROOFS OF NON-ASBESTOS CLAIM; (II) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF NON-ASBESTOS CLAIM; (III) APPROVING NOTICE THEREOF; (IV) APPROVING A TAILORED PROOF OF NON-ASBESTOS CLAIM FORM; AND (V) GRANTING RELATED RELIEF [DOCKET NO. 74].

3. "CAPLIN & DRYSDALE APPLICATION" - APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO RETAIN AND EMPLOY CAPLIN & DRYSDALE, CHARTED AS THE COMMITTEE'S COUNSEL, EFFECTIVE NUNC PRO TUNC AS OF JULY 22, 2024 [DOCKET NO. 112] FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS.

4. "CKSMM RETENTION APPLICATION" - APPLICATION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE APPOINTMENT OF COURINGTON, KIEFER, SOMMERS, MARULLO & MATHERNE, L.L.C. AS SPECIAL ASBESTOS COUNSEL EFFECTIVE AS OF THE PETITION DATE AND (II) GRANTING RELATED RELIEF [DOCKET NO. 72].

5. "SETTLEMENT PROCEDURES MOTION" - MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) ESTABLISHING PROCEDURES TO SCHEDULE HEARINGS TO CONSIDER THE INSURER SETTLEMENT MOTIONS; (II) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; AND (III) GRANTING RELATED RELIEF [DOCKET NO. 54].

6. "MOTION TO STAY" - MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS EXTENDING THE AUTOMATIC STAY TO STAY ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS [DOCKET NO. 7].

BEFORE THE HONORABLE KEITH L. PHILLIPS  
UNITED STATES BANKRUPTCY JUDGE

## 1 APPEARANCES:

2 For the Debtor:

TYLER P. BROWN, ESQ.  
 HENRY P. LONG, III, ESQ.  
 HUNTON ANDREWS KURTH LLP  
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4 Proposed Special Asbestos  
 5 Counsel for the Debtor:

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 MARULLO & MATHERNE L.L.C.  
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8 For Official Committee of  
 9 Unsecured Creditors:

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11 Proposed Special Insurance  
 12 Counsel for Official Committee  
 of Unsecured Creditors:

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14 For Huntington Ingalls  
 15 Industries, Inc.:

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 MCGUIREWOODS LLP  
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 Richmond, VA 23219

16 For Certain Asbestos Claimants  
 17 of the Debtor:

KOLLIN G. BENDER, ESQ.  
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18 For Louisiana Claimants:

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JONES WALKER LLP  
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Richmond, Virginia 23219

KEVIN J. FINNERTY, ESQ.  
CHOATE HALL & STEWART LLP  
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Boston, MA 02110

Also Present:

Christopher Lascell  
Debtor Designee

Ronald Van Epps  
Stout Risius Ross, LLC

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**Colloquy**

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1           THE CLERK: All rise. The United States Bankruptcy  
2 Court for the Eastern District of Virginia is now in session,  
3 the Honorable Keith L. Phillips presiding. Please be seated  
4 and come to order.

5           MR. BROWN: Good morning, Your Honor.

6           THE COURT: Good morning.

7           MR. BROWN: Tyler Brown of Hunton Andrews and Kurth,  
8 here on behalf of the debtor Hopeman Brothers, Inc. Your  
9 Honor, this morning with me at counsel table is my colleague  
10 Toby Long.

11           And I want to introduce the Court to two people you'll  
12 hear from today. The first on the very right in the back, is  
13 Mr. Christopher Lascell. He is the president of Copeland  
14 Brothers, Inc., and he's come down from the Boston area. And  
15 to his right is Ronald Van Epps. He is with Stout and has come  
16 in from Chicago today.

17           THE COURT: Good morning.

18           MR. BROWN: Your Honor, I want to thank the Court for  
19 addressing a number of the certificates of no objection that  
20 were filed. And we have a number of the orders now entered.  
21 So it cleared out the docket a bit, if you will. We do have a  
22 couple of uncontested matters, which I propose we take up  
23 first, and then three contested matters, the last of which I  
24 think will probably take the most time, which is the motion to  
25 stay. And then I should mention, as well, there's an emergency

## Colloquy

5

1 motion for a protective order, which we certainly ascended to  
2 being heard today, and that probably should slide in just  
3 before the motion to stay.

4 All right. So with that, Your Honor, I don't know if  
5 the Court maybe had some questions about the first two matters,  
6 but I'd ask Mr. Long, my colleague, to address the Court on  
7 those changes that were made.

8 THE COURT: All right. Very well.

9 MR. LONG: Morning, Your Honor.

10 THE COURT: Good morning.

11 MR. LONG: Toby Long from Hunton Andrews Kurth on  
12 behalf of the debtor. As Mr. Brown said, we thank Your Honor  
13 for entering a number of the orders. In the uncontested items,  
14 two of the orders were not entered, and I don't know if they're  
15 stuck in docketing limbo or if Your Honor has questions, but  
16 I'm here happy --

17 THE COURT: Well, I did have a question about the  
18 nonasbestos claim bar date motion. I don't recall the other  
19 order that I --

20 MR. LONG: Yes, sir. And I'll go ahead. So the first  
21 one was with respect to the cash management order. It was the  
22 final order that's been fully endorsed by the United States  
23 Trustee. We got a couple of limited comments --

24 THE COURT: I thought I had -- I thought I had signed  
25 that order.

Colloquy

6

1 MR. LONG: Okay.

2 THE COURT: It was my intention to sign it.

3 MR. LONG: Yes, sir. I will set that one aside and  
4 move on to the nonasbestos bar date. And Your Honor, by that  
5 motion, the debtor simply is seeking to set a bar date for  
6 nonasbestos claims. As we've indicated in our first day  
7 pleadings, the debtor's material obligations are its asbestos  
8 claims. As we move forward to confirmation, we need to be  
9 crystal clear on what our other liabilities are. We don't  
10 think they're a lot, but we need to know those so we can move  
11 forward with an orderly liquidation.

12 We got a couple limited comments from the committee on  
13 that order, and one was to further define the definition of  
14 asbestos claims. I have a blackline, if Your Honor would like  
15 that, to help the discussions.

16 THE COURT: Well, it wasn't so much that as the amount  
17 of time that's being provided in the proposed order where the  
18 deadline, I believe, was October --

19 MR. LONG: October 15th.

20 THE COURT: 15th.

21 MR. LONG: Yes, sir. When we initially filed the  
22 motion, we intended to have it heard on August 6th. And we'd  
23 set the deadline -- I think it was September 15th. And so the  
24 goal was to give people thirty days' notice, nine days more  
25 notice than what's required under the Rules. We --

## Colloquy

7

1 THE COURT: But don't the local rules typically  
2 require ninety days from the date of the first --

3 MR. LONG: From the petition date would put you to  
4 November 4th. But in this case, we'd also filed our plan and  
5 our disclosure statement. And our goal is to sort of jump  
6 ahead into other items is to get our settlement motion set.  
7 Get that set for November 12th. And then set our disclosure  
8 statement hearing shortly thereafter. And so by setting this  
9 bar date at October 4, October 15th, it allows us to know a  
10 complete picture of what our unsecured claims are so we can  
11 move forward, then, with our plan and disclosure statement.

12 THE COURT: Well, there's a complication. The clerk,  
13 for some reason, sent out a notice of commencement of case,  
14 which is typically what the clerk's supposed to do but in these  
15 types of cases, would not do if they had seen that I'd approved  
16 the debtor's noticing motion. And so that notice indicated  
17 that the bar date would be November 4th, which is typically  
18 what it would be in most cases.

19 And now, that notice wasn't served on many people. I  
20 think only several were served with it. But it's on the  
21 docket, and it does say November 4th. So there is some  
22 inconsistency there that some creditors may raise if they're  
23 late filing their claim. And so to me, the easiest solution  
24 would just be making it November 4th as the bar date, rather  
25 than the October 15th date. But tell me why that would be a

## Colloquy

8

1 problem.

2 MR. LONG: Your Honor, that would be fine if we set it  
3 for November 4th. We saw that the clerk sent out that notice.  
4 I think our new complex case procedures are new to all of us.  
5 And under those procedures, the clerk isn't supposed to do that  
6 in a complex case. And then they've done it in some of our  
7 other cases before. And the committee gave us language to put  
8 in the order that did say that that notice is null and void.

9 THE COURT: Oh, okay. Vacating the prior.

10 MR. LONG: Correct. So the order would then make that  
11 clear. But again, if Your Honor wants it set --

12 THE COURT: Well, I saw that in the revised order. So  
13 everybody else is fine with that date, apparently, but like I  
14 said, if for some particular reason why it needs to be  
15 accelerated, you've indicated you'd like to know what all the  
16 claims are before the confirmation.

17 MR. LONG: We just want -- as you're going to hear a  
18 number of times today, we just want to move this case forward.

19 THE COURT: Right.

20 MR. LONG: This is not a case to let languish in  
21 bankruptcy. But again, if Your Honor wants it on November 4th,  
22 we have no objection --

23 THE COURT: You're talking about three weeks longer?

24 MR. LONG: Yes, sir.

25 THE COURT: That might be better in terms of avoiding



## Colloquy

9

1 any potential complications further down the road. I know we  
2 could probably put something on the docket that notifies  
3 everyone that the original deadline is vacated. But if the  
4 debtor is -- unless somebody has a problem with it, I think  
5 going to November 4th might just make it easier.

6 MR. LONG: Again, Your Honor, that is just fine.

7 THE COURT: Okay.

8 MR. LONG: And if Your Honor doesn't object, what  
9 we'll do is we'll just amend the revised order to change the  
10 general bar date to November 4th and put the same in the  
11 notice --

12 THE COURT: All right.

13 MR. LONG: -- and resubmit that, if that's okay with  
14 Your Honor. Unless, of course, anybody else has any --

15 THE COURT: Well, and then you wouldn't need to vacate  
16 the original notice unless it's -- I mean, that's just a  
17 generic notice to all creditors, so I don't know if that  
18 creates --

19 MR. LONG: Well, the only thing difference is it  
20 doesn't tell where creditors where to file claims. And so the  
21 notice we submitted gives specific instructions about where to  
22 file claims. So if we take it up later where people aren't  
23 sending them to the right spot, that could just avoid  
24 confusion.

25 THE COURT: All right. Well, then let's make it

**Colloquy**

10

1 November 4th, unless somebody else has some comments they want  
2 to raise.

3 All right. November 4th. So if you'll revise that  
4 order --

5 MR. LONG: Yes, sir.

6 THE COURT: -- I'll enter that order. And then that  
7 takes care of -- you said there was one other that we cleared  
8 up and --

9 MR. LONG: There's one other. There's the Caplin &  
10 Drysdale retention application. And I'll pass the podium over  
11 to committee counsel.

12 THE COURT: Well, I thought I'd signed that too.  
13 Maybe there's some that the clerk just hadn't docketed yet.

14 MR. LIESEMER: Your Honor, Jeffrey Liesemer of Caplin  
15 & Drysdale, Chartered on behalf of the official committee of  
16 unsecured creditors. We submitted last night a certificate of  
17 no objection. And I understand that the proposed order was  
18 uploaded.

19 THE COURT: I'd already signed the order before you  
20 even --

21 MR. LIESEMER: Yeah.

22 THE COURT: -- submitted the certificate. So I don't  
23 think that's an issue either.

24 MR. LONG: With that, Your Honor, then we can jump  
25 into the contested item, and I'm going to hand the podium back

**Colloquy**

11

1 to Mr. Brown.

2 THE COURT: Very good.

3 MR. LONG: Thank you, Your Honor.

4 MR. BROWN: Thank you, Your Honor. Again, Tyler Brown  
5 for the debtor. The next matter on the docket, Your Honor,  
6 concerns, what I call, the Courington firm, rather than  
7 referring to CKSMM, which is what the papers --

8 THE COURT: I'm good with that.

9 MR. BROWN: That's what I thought you would think. We  
10 had, of course, noticed it up and did receive from the  
11 committee an objection. And the committee is still standing on  
12 that objection. I will point out that Ms. Kaye Courington is  
13 now visible to the Court and is online.

14 Your Honor, just say a couple of words, and then I  
15 would propose to put on a proffer from Mr. Lascell who could  
16 testify if necessary, but he's certainly subject to cross. The  
17 debtor firmly supports the Court approving the retention of the  
18 Courington firm under 327(e) of the Code. In support, as I  
19 said, we intend to offer just one witness, Mr. Lascell. And if  
20 the Court will allow, I'm glad to read a proffer and make him  
21 subject to cross.

22 THE COURT: Any objections to a proffer? The witness  
23 will be subject to cross.

24 MR. LIESEMER: No objection, Your Honor.

25 THE COURT: All right. Thank you.

**Colloquy**

12

1           You may proceed.

2           MR. BROWN: Yes, sir. Your Honor, Mr. Lascell is  
3 present in the courtroom. If called to testify on the subject  
4 of the application of the Courington firm would testify as  
5 follows.

6           He is the president of Hopeman Brothers, Inc. He  
7 began serving as president in 2016, after his father, David  
8 Lascell, then the sole officer of Hopeman and his prior general  
9 counsel passed away. Mr. Lascell would testify when he first  
10 became president, he quickly learned that Kaye Courington, a  
11 lawyer in New Orleans, was invaluable to him and helped him to  
12 manage the claims and the insurance process against the  
13 company. Ms. Courington and her firm had been serving as  
14 national litigation defense counsel for over twenty years, and  
15 Ms. Courington personally have been involved over thirty years  
16 in handling matters in Louisiana and the Gulf states and then  
17 managing matters across the country.

18           Mr. Lascell has had numerous interactions with Ms.  
19 Courington over the last eight years, and her advice and  
20 assistance has been instrumental to him in handling the  
21 company's affairs. Mr. Lascell would testify that Ms.  
22 Courington has also been invaluable to the company on a great  
23 many issues that arose pre-petition into preparing to file this  
24 bankruptcy case, and in fact, post-petition.

25           Mr. Lascell would testify that Ms. Courington's firm

**Colloquy**

13

1 was charged post-petition with coordinating the filing of  
2 suggestions of bankruptcy in all of the jurisdictions around  
3 the country in which we had matters pending. He would testify  
4 that since that time, she has handled numerous inquiries, not  
5 only from plaintiff's lawyers, but from defense counsel and  
6 others regarding the case. He would testify that she has  
7 managed the collection and maintenance of historical  
8 information for the debtor for years. Remember, the debtor has  
9 no employees. Mr. Lascell came into this late, long after the  
10 company no longer was in business.

11 Ms. Courington is the person with the most knowledge  
12 about the facts and where to find the facts and also has been  
13 involved in handling the claimants' information, collection,  
14 and then assessing, of course, the claimants' claims to decide  
15 whether or not to contest the claim or whether they appear to  
16 be valid.

17 Mr. Lascell would testify the result of her long-term  
18 role for Hopeman, Ms. Courington and members of her firm have  
19 gained invaluable knowledge of the law in Louisiana as it  
20 applies to asbestos claims, know most of the claimants'  
21 counsel, and know the intricacies and the facts needed to  
22 establish or defeat an asbestos bodily injury claim against  
23 Hopeman. Mr. Lascell can confirm that Ms. Courington continues  
24 to assist Hunton, its bankruptcy counsel, Blank Rome, its  
25 coverage counsel, and Stout, its insurance and financial

**Colloquy**

14

1 adviser by providing them with information and consulting with  
2 them about Hopeman and matters relating to the claims in the  
3 post-petition period.

4 As I mentioned, because Hopeman has no employees to  
5 rely on, it necessarily relies on the Courington firm for  
6 facts. And in fact, if the Hopeman was going to try to educate  
7 someone else about what she knows, what the firm knows, it  
8 would take the personal involvement of Ms. Courington to do  
9 that. It would be much more efficient to rely and have the  
10 ability to rely on the Courington firm than to educate someone  
11 new.

12 Certainly, Your Honor, if Louisiana lawsuits are  
13 allowed to be filed based on opposition to the motion to stay  
14 to be heard later today, Ms. Courington will be the one we  
15 would turn to to help deal with matters in the Louisiana  
16 courts. She has already been a source of Louisiana law  
17 expertise on matters that arose very early post-petition in  
18 this case by some of the objectors in the courtroom today.

19 Mr. Lascell would testify that Ms. Courington is well  
20 aware of the desire to establish through this Chapter 11 a fair  
21 and equitable process. And even though that may mean the end  
22 of much of her work, she has gladly cooperated and assisted us  
23 with formulating some of those plans.

24 Mr. Lascell would testify that he has reviewed the  
25 disclosures that her firm has made, and he's not aware of any

## Colloquy

15

1 conflict that causes him concern or concern to the debtor of  
2 the estate of an adversity. In addition, nothing in Mrs.  
3 Courington's disclosures give him any concern about working  
4 with her in the future to carry out the goals of the case.

5 And then finally, Mr. Lascell would testify that for  
6 all these reasons, he believes that the debtor retaining Ms.  
7 Courington's firm is the best -- is in the best interest of the  
8 estate.

9 Those are the -- that is the testimony from Mr.  
10 Lascell, and I'd offer him for cross at this point.

11 THE COURT: Does anyone wish to cross-examine Mr.  
12 Lascell?

13 MR. LIESEMER: No, Your Honor.

14 THE COURT: All right. Thank you.

15 Then I will accept that testimony. Is there any other  
16 evidence you'd like to offer?

17 MR. BROWN: No other evidence, Your Honor. The  
18 debtors rest.

19 THE COURT: All right. Thank you.

20 Does anyone else wish to offer any evidence in  
21 connection with this application?

22 MR. LIESEMER: No, Your Honor.

23 THE COURT: No? All right. Any arguments?

24 MR. BROWN: Yes, Your Honor. Your Honor, as the Court  
25 is well aware, debtor typically is given a wide latitude to

**Colloquy**

16

1 decide which professionals to employ to prosecute the case.  
2 And that particularly applies in a Chapter 11 case. And in  
3 this kind of case where the debtor has a long history of  
4 retaining a counsel, relying on a counsel, that's an important  
5 factor to consider whether or not to employ someone as special  
6 counsel. And as the evidence reflects, Hopeman has employed  
7 some of these lawyers for close to thirty years and used them  
8 as national counsel for twenty years.

9           There is significant institutional knowledge not only  
10 of the facts, but of, also, of course, the law and the nuances  
11 that apply in considering asbestos bodily injury claims that  
12 have been asserted against Hopeman. The firm knows Louisiana  
13 law, which has been raised by a number of the objectors. And  
14 of course, as I mentioned from Mr. Lascell, in the event we  
15 need Louisiana counsel, she is available.

16           The decision to retain the firm, to us, was obvious.  
17 She brings a world of knowledge, a world of great business  
18 acumen, and knows the facts like no one else. And without an  
19 employee to know the facts, she really is critical.

20           Your Honor, I'm not sure I appreciate fully why the  
21 committee opposes the retention. Perhaps it's merely because  
22 Ms. Courington for many years has been on the other side,  
23 representing someone against the claimants. But the guardrails  
24 of Section 327(e) are met here. The only restrictions, of  
25 course, are that the counsel must be retained for a specialized



## Colloquy

17

1 purpose, not to represent the debtor in conducting the case.  
2 We're restructuring counsel. She has her lane with respect to  
3 asbestos-related matters. We have Blank Rome, who has got  
4 their lane on insurance coverage issues. And we have Stout, of  
5 course, who has got their lane. We, as debtors' counsel, of  
6 course, will be in charge of monitoring and making sure  
7 everyone stays in their lane. But she satisfies that prong,  
8 Your Honor.

9 Then the firm also doesn't represent or hold an  
10 interest adverse to the matters on which they're going to  
11 represent the debtor. We see absolutely no adversity, nothing  
12 on the list that gives Mr. Lascell any cause, and nothing that  
13 the restructuring lawyers gives us any concern about.

14 So Your Honor, we think Ms. Courington's firm  
15 satisfies 327(e). She easily passes that test. And Your  
16 Honor, I think that the two issues that were really raised by  
17 the committee are that they don't think Ms. Courington's firm's  
18 services are necessary.

19 THE COURT: Yeah, that was what I understood. It was  
20 not so much who it is, but whether it's necessary.

21 MR. BROWN: Well, we certainly think she is necessary.  
22 We have relied on her, both pre-petition and post-petition.  
23 She has served a valuable role in dealing not only with  
24 suggestions of bankruptcy, in dealing with stay violations that  
25 have happened since we have filed. She has advised about

**Colloquy**

18

1 Louisiana law subjects that have been raised. She's advised  
2 about nuances that relate to how particular coverages are  
3 resolved in Louisiana courts. Lots of issues, and we expect  
4 many more. And her services have been very valuable.

5 I mentioned as well that she is the keeper of the  
6 facts, and what I mean by that is there is a warehouse in  
7 Waynesboro. I think I explained this on the first day. 6,000-  
8 square feet of historical records and employee records, records  
9 about construction projects, about the joiner packages, all of  
10 that stuff is stored, and her firm has helped access and knows  
11 where to find the information that they need to address  
12 particular claims. That is valuable information. That's going  
13 to be valuable information down the road, hopefully when we get  
14 to a trust and begin resolving some of these claims.

15 But secondly, the argument is that her role somehow is  
16 inconsistent with the role for a fiduciary of the estate, and  
17 we disagree. Just because Ms. Courington was defending claims  
18 and trying to identify which claims were valid versus which  
19 claims were not valid, that doesn't mean she was trying to  
20 minimize recoveries from the insurance policies we had. She  
21 was trying to resolve claims, and to the extent we had a  
22 settlement, her interests were to maximize recoveries from the  
23 insurance companies to save the estate money. So I see zero  
24 inconsistency with those roles, Your Honor.

25 I think that the arguments of the committee are

## Colloquy

19

1 fundamentally flawed, and I think there couldn't be a more  
2 obvious case that employing the Courington firm will be  
3 efficient, save the estate money, and is in its best interest.  
4 So I think the Court should find that the exercise of its  
5 discretion by the debtor to employ Ms. Courington's firm under  
6 327(e) should be approved, and it's in the best interest of the  
7 estate. Thank you.

8 THE COURT: Thank you.

9 MR. LIESEMER: Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. LIESEMER: Jeffrey Liesemer, on behalf of the  
12 committee. I think Your Honor said it right. Our concern  
13 pertains to the mission that the Courington firm is proposed to  
14 undertake. This is not about personal vendettas at all. We  
15 are reminded repeatedly -- this is also in the debtor's reply  
16 briefs filed yesterday -- that this is a case of finite amount  
17 of resources, limited resources in the estate to pay  
18 professionals. And this would be the debtor's fourth  
19 professional that it would be bringing on to be paid out of the  
20 estate.

21 As you heard, Your Honor, the Courington firm has been  
22 a long-time national coordinating defense counsel for the  
23 debtor. In this case, the debtor has set this Chapter 11 case  
24 on a trajectory in which it will monetize its remaining  
25 insurance coverage, it will put the settlement proceeds from

## Colloquy

20

1 those settlements into a Chapter 11 liquidating trust, and then  
2 claimants will be able to -- will have recourse against that  
3 trust. And whether they have claims eligible for payment will  
4 turn on whether the eligibility is found in the claims  
5 resolution procedures that have already been proposed in  
6 connection with the debtor's plan of liquidation.

7           So from the committee's perspective, our concern is,  
8 well, do we really need a long-time pre-petition asbestos  
9 defense lawyer here, when really the central issue in this case  
10 as it's been presented by the debtor, is monetizing the  
11 insurance and getting the debtor underway with a liquidation.  
12 Since the debtor doesn't have an operating business, it's not  
13 returning to the tort system. And so the mission and the  
14 proposal here seems mismatched for a case of limited resources.

15           THE COURT: Well, isn't the mission typically  
16 undertaken by general counsel for the debtor? That's their  
17 responsibility. But then in the meantime there are peripheral  
18 matters that require special counsel. I mean, I note proposed  
19 special insurance counsel for the official committee of  
20 unsecured creditors is on some of the pleadings, the Morgan  
21 Lewis firm. So it's not unusual for the professionals in the  
22 case to seek assistance from specialized practitioners. Right.

23           MR. LIESEMER: Right. And we found out yesterday --  
24 and this was in Mr. Brown's proffer, we found out yesterday  
25 that the Courington firm has been coordinating the filing of

## Colloquy

21

1 suggestions of bankruptcy around the country. Has been  
2 addressing stay violations. I have a feeling that these are  
3 inadvertent stay violations, but they need to be addressed,  
4 nevertheless.

5 And so we don't want to -- there is a role and some  
6 work that's already been undertaken post-petition that we don't  
7 feel that necessarily that the Courington firm should be cut  
8 off from and not receiving any sort of compensation.

9 We suggest, in light of the new evidence, that a  
10 balanced approach be taken, in which the Courington firm is  
11 allowed to proceed as an ordinary course professional, and we  
12 arrange some sort of fee cap, such as 25,000 dollars. And this  
13 is similar in other cases with ordinary course professionals.  
14 If the work of the Courington firm exceeds the fee cap, then  
15 the Court has discretion to raise the cap for cause. But we  
16 don't think it's necessary here to bring the Courington firm on  
17 as a full-time estate professional.

18 THE COURT: I understand.

19 Does anyone else wish to be heard in connection with  
20 the application for the Courington firm?

21 Mr. Brown, do you have something else you'd like to  
22 add?

23 MR. BROWN: Just very quick comments, Your Honor.  
24 First of all, we think the ordinary course is just ignoring the  
25 issue. Let's deal with the issue under 327(e), rather than

## Colloquy

22

1 push it into a category where nobody looks. This is an  
2 important issue.

3 I think it's also important to talk about limited  
4 resources. Ms. Courington's firm charges 200, 300-dollars an  
5 hour. Compare that with some of the retention applications  
6 you've just considered.

7 Ms. Courington's firm already has contributed post-  
8 petition to the claims procedures that we've talked about. And  
9 of course, you've heard that she has made other contributions.  
10 It's not a big role. We don't think it's going to be a big  
11 role. But if there are concerns about what the firm  
12 undertakes, that can be reviewed fee application time. That's  
13 a different issue than the retention of chosen counsel under  
14 327(e). Thank you, Your Honor.

15 THE COURT: Well, I don't really see this as a  
16 ordinary course situation myself. And I do think, as you point  
17 out, that there are mechanisms to -- or guardrails in place to  
18 monitor the fees. In fact, even a better guardrail, perhaps,  
19 because the fees would need to be approved on an ongoing basis.

20 Well, I have looked at the application and the  
21 declarations and the objection and the reply and note that  
22 there are no other objections, other than the committee. The  
23 U.S. Trustee has raised no objection. And case law does  
24 establish that the Court should give deference to the debtor  
25 and its right to choose its counsel. I don't know that the

## Colloquy

23

1 choice of counsel is the issue here.

2 But I do believe that the debtors have set forth a  
3 reasonable basis to employ special asbestos counsel. And I  
4 believe that the proposed retention of the Courington firm  
5 complies with the requirements of 327(e) of the Bankruptcy  
6 Code. It's consistent with the good faith judgment of the  
7 debtor. And I do find that the Courington firm is  
8 disinterested under Sections 101, 14, and 328(c). And I will  
9 approve its employment as special counsel if you'll submit that  
10 order.

11 MR. BROWN: We will. Thank you, Your Honor.

12 THE COURT: And please have the U.S. Trustee endorse  
13 the order for its form.

14 MR. BROWN: Yes. We will.

15 THE COURT: Okay. Thank you.

16 MR. BROWN: Thank you, Judge. The next step is the  
17 settlement procedures motion. I'd ask Mr. Long to take that as  
18 well.

19 MR. LONG: Morning, again, Your Honor. For the  
20 record, Toby Long on behalf of the debtor. The next item, as  
21 Mr. Brown indicated, is the settlement procedures motion.

22 Your Honor, by this motion, and as in the revised  
23 order that we filed with the Court attached to our reply, what  
24 we're asking this Court to do today is two things. Is, one, to  
25 set a hearing on the two pending insurance settlement motions.

## Colloquy

24

1 This is the Chubb insurance settlement motion that we filed way  
2 back on the petition date on, on June 30th at docket number 5.  
3 And it's what we call the certain settling insurers settlement  
4 motions. It's a mouthful, so I'm just going to call them the  
5 settlement motions. But that, we filed shortly after the  
6 petition date on July 10th at docket number 53.

7 We are asking this Court to schedule those for a  
8 hearing no earlier than sixty days. We have an omnibus hearing  
9 on November 12th. That is what we're going to ask the Court  
10 today.

11 Second, we're asking --

12 THE COURT: And I noticed that you have submitted a  
13 revised order. You're asking only that these two settlement  
14 motions be heard. So is there still opposition or a  
15 significant opposition in light of the revisions?

16 MR. LONG: I haven't heard that those revisions  
17 resolved any objections. And I think, when we jump ahead and  
18 talk about the opposition, what we saw from the -- three  
19 objections, Your Honor. And so to jump ahead, one was filed by  
20 Huntington, one was filed by the committee, and one was filed  
21 by a group of Louisiana claimants that are all represented  
22 there. Louisiana law firm is the Roussel firm. So in our  
23 papers, we call them the Roussel claimants.

24 We've resolved Huntington's objection. If you saw and  
25 I'm happy to pass forward the revised order of the blackline,



## Colloquy

25

1     Huntington was -- Huntington was easy, Your Honor. In  
2     paragraph 3, all Huntington asked us to do in the second  
3     sentence is delete "absent for this further notice and approval  
4     of the Court". So the second sentence of that paragraph is now  
5     going to be, "No other insurer settlement motions shall be  
6     considered at the approval hearing." It makes crystal clear  
7     that these settlement procedures only relate to the two  
8     insurance settlement motions that are pending.

9             There was some fear that maybe a third one would be  
10     filed and we would get limited notice out, but no, that is not  
11     the case. We filed those settlement procedures very early on  
12     in the case because, as Mr. Leissner was just indicating, the  
13     critical issue in this case is these insurance settlement  
14     motions. We could have just set those on twenty-one days'  
15     notice under the Bankruptcy Rules, under our local rules. But  
16     as is common in complex cases with significant relief, with  
17     sale motions, with settlement motions, we wanted the Court to  
18     approve those procedures early in this case so we could get  
19     notice out as quickly as possible and as soon as possible.

20             And with the revisions we now have in this order, I  
21     think the issue before this Court, no one's objected to the  
22     proposed procedures. It's just objected to when we schedule  
23     it. And the motion to continue is asked us to push out the  
24     settlement procedures motion to --

25             THE COURT: And there is a pending motion to continue,

**Colloquy**

26

1 which perhaps I should take up first? Does that make sense?

2 MR. LIESEMER: That is correct, Your Honor. There is  
3 actually two. Yes.

4 MR. LONG: What I think, Your Honor, is, is that the  
5 key point that we want to make and what I think is the issue  
6 today for all of these reliefs and why we filed the  
7 consolidated reply is, is sixty days sufficient notice to  
8 consider the relief in the settlement motions. I mean, as we  
9 discussed with Your Honor, you'll talk about the motion to  
10 stay.

11 THE COURT: Sure.

12 MR. LONG: But as we discussed with Your Honor, the  
13 first day motion on the motion to stay, it is critical in these  
14 cases to set these pleadings for a hearing. Once you set these  
15 for a hearings, people start to move quickly. They move  
16 quickly with their discovery. You have deadlines. You move  
17 this case. This is a case that needs to move forward. As Mr.  
18 Liesemer just said, this is a case with limited resources that  
19 we don't want to languish in bankruptcy.

20 And so I think the question before us is, is sixty day  
21 notice enough notice and before sort of hand the podium over to  
22 take over Mr. Liesemer's motion to continue, there were  
23 comments that were made in that motion to continue about the  
24 debtor obstructing discovery. And I want to be crystal clear,  
25 and I hope it was crystal clear in our reply, that we have not

## Colloquy

27

1 obstructed discovery in any way.

2           The biggest issue, as we pointed out in reply, as soon  
3 as the committee was pointed back on July 22nd, we gave them a  
4 confidentiality agreement. We said, sign this confidentiality  
5 agreement. We got a lot of confidential information. Somebody  
6 said, we need to get you, and we can't get you under the notice  
7 provisions, under the confidentiality provisions in those  
8 agreements. Sign this confidentiality agreement. It wasn't  
9 until yesterday that we got that signed confidentiality  
10 agreement back.

11           The only discovery that's been served on us by the  
12 committee was in connection with the motion to stay. They  
13 served that discovery on us. It involved eleven  
14 interrogatories. It involved twenty-seven document requests.  
15 They served that on us and asked for responses in nine days.

16           I didn't talk to my family. I didn't sleep. I was  
17 working to get them those responses. We got them 4,200 pages  
18 of documents. We answered all eleven of their interrogatories.  
19 We answered all twenty-seven of their document requests. And  
20 in those, we made crystal clear, there is one confidential  
21 document that's relevant to the motion to stay. Sign your  
22 confidentiality agreement, and we'll get it to you.

23           So I personally, for the effort I put in, take offense  
24 when they say we've obstructed effort. If there's any problem  
25 with them not getting responsive documents at this stage in the

## Colloquy

28

1 case, Your Honor, that's squarely on the committee.

2 But as we sit here, that's a problem that's easy to  
3 rectify. We set the sixty days out. That's a lot of time to  
4 do discovery. At this point, the motions have been pending for  
5 over two months. It is time. There's a lot more people out  
6 there in the committee that we need to see this very  
7 significant relief that we want to be involved.

8 If they want a discovery, let them have that  
9 opportunity. Let them know where these documents are. But we  
10 can't do this. We can't move this case forward unless we set  
11 it for a hearing. And we submit, Your Honor, that that sixty  
12 days is plenty of time.

13 THE COURT: Well, the motions were filed early on in  
14 the case, but the committee's counsel probably wasn't appointed  
15 until somewhat more recently --

16 MR. LONG: July 22nd.

17 THE COURT: Okay.

18 MR. LONG: So twelve days after the motion.

19 THE COURT: All right.

20 MR. LONG: And so almost two months ago.

21 THE COURT: Well, and as I perceive it, the real issue  
22 is whether there's sufficient time to conduct discovery  
23 because, as you indicated, these are significant issues in the  
24 case. And I'm sure that's what the committee's going to  
25 suggest is they need more time to prepare.

## Colloquy

29

1 And so have the parties discussed an accelerated  
2 discovery procedure or some type of discovery that would enable  
3 you to be able to conduct a hearing in November?

4 MR. LONG: Well, we'd encouraged them to give us  
5 document requests that relate to what we finally had, the  
6 confidentiality agreement so we can start to work on it. But  
7 at this point in time, other than the document request with  
8 related to the motion to stay, we haven't gotten any document  
9 requests beyond that.

10 THE COURT: Okay.

11 MR. LONG: And so yes, you're right, Your Honor. We  
12 need to move forward. And I think sixty days is more than  
13 sufficient time. And I would urge the committee to send us  
14 those document requests so we can absolutely move forward. But  
15 again, I think we'll all be helped if we set it for the hearing  
16 and to give other people the opportunity to participate as  
17 well.

18 THE COURT: All right. Very well. Well, the --  
19 I'm sorry. Yes, ma'am.

20 MS. SIEG: For the record, Your Honor, Beth Sieg  
21 representing Huntington Ingalls Industries. Very happy to be  
22 back in my home court.

23 THE COURT: Nice to see you.

24 MS. SIEG: Mr. Long is correct. We did resolve our  
25 objection to the procedures motion as he described.

**Colloquy**

30

1 I just wanted to note for the record that we don't  
2 take a position on when the procedures motion should be set for  
3 final hearing. I didn't want to suggest that we're opposed to  
4 what you're about to hear from the parties that want to set it  
5 at a later date. But we have resolved our objection to the  
6 order.

7 THE COURT: All right. Very good. Thank you.

8 MS. SIEG: Thank you, Judge.

9 MR. LIESEMER: Jeffrey Liesemer, again, on behalf of  
10 the committee. Your Honor, this is the first time that  
11 committee counsel has been before you. When we were before you  
12 last time, the committee had not been appointed yet. And so I  
13 think this would be a good time, although I tend to -- will  
14 speak to the issues, I think this would be a good time to give  
15 the Court the benefit of the committee's preliminary  
16 perspective of where this case is going and what is at stake  
17 here because that does inform what the timing should be.

18 So this case involves a debtor with a significant  
19 asset that is responsive to only one class of claims. And that  
20 asset, of course, is the liability insurance coverage. And the  
21 claims are those of the debtor's asbestos victims. The  
22 insurance asset is very valuable.

23 Oddly enough, the debtor in in in its settlement  
24 motions has not identified what it thinks the value of the  
25 coverage is, even in the range. We have preliminarily

## Colloquy

31

1 estimated that it could be as high as hundreds of millions of  
2 dollars. But the debtor and the insurers have nevertheless  
3 settled the coverage for fifty-million dollars. And then the  
4 committee is concerned that this could be a pennies-on-the-  
5 dollar settlement and compromising a very valuable source of  
6 compensation for the asbestos victims.

7 I'm not aware of any instance in which asbestos  
8 claimants and their representatives were consulted about the  
9 debtor's settlement efforts or participating in any  
10 negotiations. And the debtor spent as much as ten months pre-  
11 petition preparing for this bankruptcy and negotiating with the  
12 insurers. But the committee and its creditors are being left  
13 with a much shorter time.

14 And so we don't understand what this mad rush is about  
15 in terms of trying to get these settlements that we want to  
16 know more of. We want to understand the merits of those  
17 settlements better. But it's a difficult process, and we seem  
18 to be being squeezed.

19 The committee is asking for a modest extension, moving  
20 the hearing on this procedures motion to the October omnibus  
21 date with the committee's objection deadline set one week  
22 before. This modest extension would permit two things to be  
23 accomplished. One is to understand better the insurance  
24 situation and the basis for the settlements. And I will turn  
25 the podium very shortly over to our cocounsel, the proposed

**Colloquy**

32

1 special insurance counsel, Mr. David Sean Cox, to address that.

2 I think the modest extension would also enable the  
3 parties to negotiate a sensible pre-trial schedule. I mean,  
4 this is central to the case that the proposed procedures order  
5 right now is silent about. For example, why not put in a  
6 deadline for substantial compliance with document production?  
7 Why not build in time to resolve discovery disputes and perhaps  
8 even motions to compel? How about a time for fact and expert  
9 depositions? It's not in the current procedures order.

10 We understand, we found out through a deposition, that  
11 the debtors have engaged an expert to estimate the debtor's  
12 asbestos liabilities. And apparently, this is going to be in  
13 connection with the insurance settlement motions. How about a  
14 date in which that expert has to deliver his or her report?  
15 And obviously, the committee is going to want to depose that  
16 person. The committee is probably going to want to have a  
17 rebuttal expert engaged. And so we need to talk about timing,  
18 rather than just waiting for this report to drop at the  
19 eleventh hour.

20 And how about a sensible briefing schedule with a  
21 reply brief deadline that includes a reply brief deadline that  
22 is not at noon on the business day before the hearing, just  
23 like with respect to this hearing. Yesterday, before noon, the  
24 debtor filed a whole slew of papers. These were pleadings,  
25 obviously, and exhibits. It was in the hundreds of pages.



## Colloquy

33

1 This case is complex enough that that just doesn't give enough  
2 preparation time for the recipients of these documents.

3 And there are out-of-town counsel here that have to  
4 travel on the day before the hearing. And so that even limits  
5 their preparation time more. So we think a sensible briefing  
6 schedule, rather than the usual at-noon-the-day-before-the-  
7 hearing is appropriate.

8 Now, let me turn the podium to Mr. Cox, and then I  
9 would like to come back.

10 THE COURT: Let me just ask you a couple of questions  
11 before you --

12 MR. LIESEMER: Sure.

13 THE COURT: So originally, this was going to be heard  
14 in August. I thought August 6th, perhaps. So it was continued  
15 by agreement. The debtor agreed to give you about another  
16 month, a little over a month, to address all the issues that I  
17 assume you are raising now that you could have raised over the  
18 past month. Has there been any discussion about briefing or  
19 discovery or anything like that, experts for the past month?

20 MR. LIESEMER: We are still in those early stages.  
21 And the committee has been paying attention to the motions that  
22 are being heard today immediately. We served discovery, as Mr.  
23 Long referred to. We served interrogatories. We served  
24 document requests. These were in connection with the stay  
25 motion, but they were also directed to obtain foundational

## Colloquy

34

1 information about the insurance because we think that that's  
2 relevant to the stay motion.

3 The debtor did produce some documents. We got  
4 policies. We got copies of complaints. But we didn't get  
5 everything. And in fact, the debtor decided in certain cases  
6 to stand on ceremony and say, well, this is not relevant to the  
7 stay motion or this is too burdensome to produce. They were on  
8 a short schedule to produce it. And we did get documents, of  
9 course, but we didn't get everything. It wasn't a full  
10 response, from our perspective. So I think we will have to do  
11 follow-up discovery.

12 In addition, we filed a motion for 2004 examination of  
13 the debtor, and a big part of that examination is obviously the  
14 insurance. Because of the way we read the complex case rules,  
15 we set an objection deadline on that motion before the October  
16 omnibus. So it's out there. It's pending. If Your Honor -- I  
17 would be thrilled if Your Honor -- if Your Honor wishes to take  
18 up the 2004 motion sooner than that, I would be thrilled  
19 because it will allow the case to move ahead.

20 So in response to Mr. Long's comment, I think there  
21 will be more discovery to be had here and will be sought.

22 THE COURT: Well, the Court is more than happy to  
23 accommodate the parties in arranging some type of scheduling on  
24 an expedited basis and is available for hearings on shortened  
25 notice to discovery disputes. There's always the prospect of

## Colloquy

35

1 filing a motion prior to November 10th --

2 MR. LIESEMER: November 12th, yeah.

3 THE COURT: -- November 12th, seeking continuance if  
4 there's delays in responding to discovery, if there's  
5 violations of the scheduling order, or if there's legitimate  
6 reasons to continue the hearing.

7 But it seems to me that if the issue today is whether  
8 or not these procedures are satisfactory, I'm not sure  
9 continuing this hearing to address the procedures at a later  
10 time makes sense so --

11 MR. LIESEMER: Well, Your Honor, I would like Mr. Cox  
12 to make a presentation because I think it's going to relate --

13 THE COURT: All right. That would be find.

14 MR. LIESEMER: -- more substantively to the insurance.

15 THE COURT: And I believe there was the other  
16 continuous motion. I'll give that party an opportunity to  
17 argue as well.

18 MR. LIESEMER: Right, right, right. I do want to  
19 address a couple of comments from Mr. Long that I thought were  
20 unfair. The committee in its motion did not use the word  
21 "obstruct". I don't know what the sensitivity of what comment  
22 the committee made that Mr. Long interpreted it that way.

23 And there were there was also comment in the reply  
24 brief filed yesterday in support of the procedures motion,  
25 saying that we haven't taken any meaningful action to initiate

## Colloquy

36

1 discovery. Well, I just went through what we've done in  
2 connection with the stay motion. The Rule 2004. So the  
3 committee is working diligently.

4 And as for the casting aspersions on the committee  
5 about the confidentiality agreement, Your Honor, the committee  
6 had some real concerns. I mean, this was not, from the  
7 committee's perspective, a clean document.

8 THE COURT: That doesn't really concern me. I haven't  
9 really heard any aspersions casted yet at this point --

10 MR. LIESEMER: Well, it was in their papers.

11 THE COURT: -- compared to some cases.

12 MR. LIESEMER: And I wanted to address it in case the  
13 Court had any concerns so --

14 THE COURT: Well, everybody hopefully will continue to  
15 get along in this case and work together because as we all  
16 know, the goal is to maximize the funds available for asbestos  
17 claimants.

18 MR. LIESEMER: Absolutely. Absolutely, Your Honor.

19 THE COURT: And we all share that goal, correct?

20 MR. LIESEMER: All right. Let me briefly turn the  
21 podium over to Mr. Cox, and then I'd like to come back with a  
22 couple more comments.

23 THE COURT: All right.

24 MR. COX: Good morning, Your Honor.

25 THE COURT: Good morning.

## Colloquy

37

1 MR. COX: David Cox of Morgan, Lewis & Bockius for the  
2 committee. Mr. Liesemer referred to me as David Sean Cox, but  
3 really, only my mother says that and only when I'm in trouble.  
4 So David Cox is just fine.

5 Your Honor, I want to start with what you just said is  
6 that our objective here is to maximize the funds that are  
7 available to compensate asbestos claimants. And I want to take  
8 the opportunity to talk to Your Honor about the claimants'  
9 unique interest in these settlements and in the insurance  
10 program of Hopeman as a whole.

11 Obviously, as we've discussed, the most meaningful  
12 asset the debtor has is that liability insurance coverage. We  
13 have received some policies, not all of them, and this is a  
14 work in progress, but this is a chart of the coverage that was  
15 issued to Hopeman over the years. And as Mr. Van Epps  
16 testified last week, it's literally hundreds of millions of  
17 dollars' worth of coverage, probably more than a billion  
18 because we have more than a hundred-million dollars in years  
19 from the late '70s to the early 1980s.

20 And uniquely, under statutes in New York and in  
21 Virginia, where these policies were apparently delivered, the  
22 victims of a tort have an interest in the liability insurance  
23 of a tortfeasor. And that right accrues, that interest accrues  
24 the time the person has been injured. And in the asbestos  
25 context, and this is a position Hopeman took itself, and it's

**Colloquy**

38

1 pretty widely understood, that the injury commences and it  
2 progresses thereafter at the time that the claimant, the  
3 victim, is exposed to asbestos. The first time that they're  
4 exposed, at or near that time.

5 And so the interest in the liability insurance of  
6 Hopeman under New York Insurance Law, Section 3420, under the  
7 similar statute of Virginia Code Annotated, Section 38.2-2200,  
8 that right to the insurance coverage accrues at the time of  
9 injury. And it can't be diminished. And it can't be diluted  
10 by subsequent agreements or settlements or compromises between  
11 the policyholder and the insurer.

12 The Virginia Supreme Court has referred to liability  
13 insurance contracts as a tri-party contract between the tort  
14 victim, the policyholder, the tortfeasor, and the insurer, and  
15 those rights can't be disturbed once accrued by a subsequent  
16 agreement between the insurer and policyholder. So what does  
17 that mean? What that means is if we were outside the  
18 bankruptcy court context and claimants were bringing their  
19 claims against Hopeman in the ordinary course and they received  
20 a judgment against Hopeman, Hopeman couldn't satisfy it under  
21 these statutes.

22 As a judgment creditor, the claimants could then  
23 proceed against all this liability insurance coverage, hundreds  
24 of millions of dollars of liability insurance coverage to  
25 satisfy the claims. That's if we were proceeding in the

**Colloquy**

39

1 ordinary sense, and that's if we were trying to maximize the  
2 amount of money that's available to these insurance carriers.

3 But now, what brings us to this settlement that we're  
4 concerned about -- these two settlements that we're concerned  
5 about, right, and these settlements are described in the  
6 debtors motion as the linchpin to their plan to maximize the  
7 recoveries paid to valid asbestos claimants. But really, our  
8 concern is that the real motivation for the settlement is for  
9 the insurers to minimize their exposure to these claimants  
10 because under the statute I've just described, their exposure  
11 is bound by their policy limits.

12 And what we have here is, as Mr. Liesemer already  
13 said, we have hundreds of millions of dollars of insurance  
14 coverage that's being compromised for literally pennies on the  
15 dollar. The Chubb settlement, we're talking about somewhere in  
16 the neighborhood of 300-million dollars of coverage. And  
17 that's any way you calculate the coverage, whether it's subject  
18 to an aggregate limit or not. And that's a separate issue. A  
19 thirty-one-million-dollars settlement for several hundred  
20 million dollars in coverage.

21 The Chubb settlement, again, not -- or rather the  
22 other settlement, the other insurers' settlement. The mouthful  
23 that we were just referring to, that's less-than-nineteen-  
24 million dollars for somewhere in the neighborhood of a hundred-  
25 million dollars in coverage. So we're very, very concerned

**Colloquy**

40

1 about these settlements and whether they actually are valid  
2 effort to maximize the recovery for the claimants.

3 And there's another problem with these settlements,  
4 Your Honor. These settlements involve insurance. This is an  
5 illustration of the Chubb settlement. So the highlighted  
6 policies are the ones that would be subject to the settlement.  
7 And as I said, it's several hundred million dollars in limits  
8 here.

9 But by taking less than that several hundred million  
10 dollars in limits, you potentially put a ceiling on the entire  
11 program, and you've forfeited the ability to access the  
12 coverage above it. So not only are we potentially selling out  
13 hundreds of millions of dollars of coverage for pennies on the  
14 dollars, you might be forfeiting your right to go higher than  
15 that, to access coverage above that.

16 So there are a lot of concerns. I don't think these  
17 can all be addressed in sixty days, which is our concern here,  
18 because there's a lot that we need to ask for. And we asked  
19 for insurance policies. And they were produced, but not all of  
20 them. We haven't gotten all of them. We haven't gotten an  
21 explanation for why we don't have all of them, including the  
22 insurance policies that are subject to this motion.

23 We've asked for the debtor's previous settlements and  
24 compromises with its other insurers. And actually, they've had  
25 previous compromises with the insurers of the subject of this



## Colloquy

41

1 motion, which we haven't seen. These are listed on the  
2 schedule of assets, and they haven't been produced to us, but  
3 we've asked for them, because they're "confidential". And we  
4 have a confidentiality agreement. So hopefully, they will now  
5 start flowing in.

6 We have an understanding of the extent to which the  
7 limits underneath this coverage, or the subtle coverage itself,  
8 has been impaired by the payment of claims. Mr. Liesemer  
9 alluded to this, the debtor's valuation of its liability. How  
10 much are these claims worth? Maybe if the claims are worth  
11 five-million dollars, a fifty-million-dollar settlement's  
12 reasonable.

13 But I think the claims are worth a lot more than that.  
14 And that's still a month away, according to Mr. Van Epps'  
15 testimony. So we don't have that now, and we won't have it for  
16 a while, just how the settlement amounts were reached, and  
17 that's not going to be just a discovery of claimant. We're  
18 going to be dealing with insurance companies as well.

19 So this is a lot of work to do. And of course, we are  
20 cognizant of the need for expediency here. But this is a  
21 massive asset. It is the only real asset of the debtor. And  
22 we are trying to maximize recoveries and very, very concerned  
23 that a rush-to-judgment's going to impair our ability to allow  
24 you, Your Honor, to make the informed and thorough decision  
25 that you need to make in order to determine that these

## Colloquy

42

1 settlements are fair and equitable and in the best interests of  
2 the estate. Thank you, Your Honor.

3 THE COURT: All right. Thank you.

4 MR. LIESEMER: Just one brief last comment. This was  
5 in our papers. We raised the concern that in the motion there  
6 was a statement that, under the proposed procedures,  
7 nonobjecting affected claimants would be treated as consenting  
8 to the settlements and the sales free and clear. The debtor in  
9 reply yesterday said that we raised this issue prematurely  
10 since it is a substantive objection related to the settlement  
11 motions themselves. Your Honor, I'm happy not to press that  
12 issue today with the understanding that our rights are  
13 preserved to raise those arguments, again, if necessary, in the  
14 future.

15 And for all those reasons, we ask that you grant our  
16 modest extension of continuance.

17 THE COURT: All right. Thank you.

18 MR. BENDER: Morning, Your Honor.

19 THE COURT: Morning.

20 MR. BENDER: Kollin Bender on behalf of certain  
21 asbestos claimants of the debtor. Here with me today is Mr.  
22 Jonathan Clement. He has been admitted pro hac vice as of  
23 August 7th. I'm going to go ahead and cede the podium to him.

24 THE COURT: Thank you.

25 Mr. Clement.

## Colloquy

43

1 MR. CLEMENT: Good morning, Your Honor.

2 THE COURT: Good morning.

3 MR. CLEMENT: Jonathan Clement on behalf of the  
4 creditors from the Roussel & Clement law firm. I believe our  
5 firm was brought up in some of the arguments already. We  
6 represent certain Louisiana claimants. We also filed a motion  
7 to continue, as well as an objection to the settlement  
8 procedures motion. I don't want to duplicate anything that he  
9 said. I'll rely on the comments that counsel for the committee  
10 stated.

11 The only thing I do want to add, he did cite some of  
12 the Virginia and I believe New York law, which indicates that  
13 the rights that third-party victim has under the policies  
14 attaches at the time of the exposure. And it's the same thing  
15 under Louisiana law. So that would apply to the Louisiana  
16 claimants as well. And that's the Cole v. Celotex case, which  
17 is a Louisiana Supreme Court case.

18 And also the fact that there may be settlements that  
19 occurred between the insurer and the insured subsequent to the  
20 policies being issued, those settlement agreements don't affect  
21 the rights of third-party victims. He cited the law for that  
22 for Virginia and New York. The same is true in Louisiana. And  
23 we fought that issue in the Coralville (ph.) case. And there  
24 is also a Supreme Court precedent on that in Louisiana.

25 So I just wanted to bring those additional things up

**Colloquy**

44

1 as it applies to Louisiana claimants. And I'll just rely on  
2 what the counsel for the committee said.

3 THE COURT: And you're asking for the same thing, a  
4 month extension on the procedures?

5 MR. CLEMENT: Yeah. Part of our concern is because  
6 they are seeking this injunction, underneath, as part of the  
7 settlement motion, they're seeking to enjoin future claims, we  
8 have the same concerns that the amount of money which they're  
9 seeking to put in is so little compared to what the actual  
10 liability is. So when they're coming in and seeking an  
11 injunction and not doing it pursuant to an adversarial  
12 proceeding, which we believe is required under Section 105 to  
13 get an injunction, you're preventing the ability to have those  
14 same rights that you would have under an adversary proceeding,  
15 which would be to conduct a full discovery to determine whether  
16 the settlement is appropriate in this instance.

17 THE COURT: Why can't you do discovery as a contested  
18 matter? What more benefit would you have for it an adversary  
19 proceeding?

20 MR. CLEMENT: I just think you have the protections in  
21 place to have the complaint filed. Being able to answer the  
22 complaint. I feel like they're trying to do this on an  
23 expedited basis, whereas if it's an adversary proceeding, you  
24 wouldn't be able to do it on an expedited basis. You'd have to  
25 go through the full procedure of discovery and responding to

## Colloquy

45

1 discovery.

2 If you try to do it in sixty days on same issues that  
3 he brought up, having to take depositions of insurers,  
4 determining the policy limits, whether they're exhausted or not  
5 exhausted, whether there's aggregate limits, I'm not sure  
6 that's something that could be done. And that --

7 THE COURT: Well, if I were to order this motion to be  
8 converted to an adversary proceeding, why wouldn't we just pick  
9 up with the motion and the responses and the discovery that's  
10 already been initiated? How would it change under if it were  
11 designated an adversary proceeding?

12 MR. CLEMENT: If it's designated, I don't know that it  
13 changes the discovery. I just, what my impression, he's trying  
14 to get the hearing in November. I'm not sure that it can be  
15 completed in November. And I figured the adversary proceeding  
16 gives you the safeguards that we were able to conduct a full  
17 discovery that is necessary.

18 THE COURT: All right. Thank you.

19 MR. MINTZ: Your Honor, Mark Mintz. I'm admitted pro  
20 hac vice on behalf of, I think, as the debtors have called it,  
21 the Hoffman claimants. We did not file anything with regards  
22 to this motion, but we did want to be heard briefly to say,  
23 while we certainly agree and support what the committee has  
24 been saying regarding the insurance settlement motion, the  
25 merits of it, and we do not oppose a continuance to as the

## Colloquy

46

1 result claimants have suggested and as the committee has  
2 suggested, we do take no position on the continuance itself.  
3 And the reason I'm going to explain this is it's a little hard,  
4 honestly, because we want it moving faster. And we're going to  
5 be in front of you immediately saying that the stay motion  
6 needs to be denied, and we need to be able to proceed.

7 I fully recognize that these are all part and parcel  
8 with each other. But I do support the concept that we are  
9 trying to move quickly towards an injunction-type world. And  
10 that's a difficult position, I think, for the claimants who are  
11 being put in. I do think it's a modest extension that they  
12 are -- that the committee is asking for to allow the parties to  
13 at least sit down and do a real briefing schedule that is going  
14 to be required.

15 If that can be done in sixty days, I'm not above  
16 working. I doubt that Caplin is above working and trying to do  
17 that and get it done. I just have every belief, Your Honor,  
18 from seeing this in other cases and other mass tort situations  
19 that I've been involved in, that the high hopes of everybody  
20 moving in sixty days tends not to work. But with that said,  
21 Your Honor, we just wanted to make those comments.

22 THE COURT: All right. Thank you.

23 Does anyone else wish to be heard in connection with  
24 the continuance motion?

25 Mr. Long.

**Colloquy**

47

1 MR. LONG: Thank you, Your Honor. Again, for the  
2 record, Toby Long on behalf of the debtor.

3 Your Honor, unless Your Honor has more questions, I'm  
4 going to respond very, very brief. There was one comment made  
5 about whether or not the settlement motion should be brought  
6 through an adversary proceeding. I think Your Honor would  
7 agree with me that I think that's not appropriate. These are  
8 settlement motions under 9019 and a motion to sell free and  
9 clear under 363(f). And there's no support for that being  
10 brought through an adversary proceeding.

11 THE COURT: Well, I'm not inclined to convert it at  
12 this point. I think it's been set up as a contested matter.  
13 And it may be, when you get to the substance of this motion,  
14 there'll be a lot of roadblocks for you, which you'll have to  
15 contend with. And they're all being signaled now.

16 MR. LONG: Yes, sir. And I'm sorry, not to interrupt,  
17 Your Honor, but I think you were taking my point. We heard a  
18 lot about the substance of these motions, and we need to move  
19 forward with the substance of these motions.

20 THE COURT: And as I understand it, the reason you  
21 need to move forward quickly is because of limited resources?

22 MR. LONG: Yes, Your Honor.

23 THE COURT: And what else is there, other than we  
24 always like to get these cases to move along quickly?

25 MR. LONG: Your Honor, yes, sir. This isn't an

## Colloquy

48

1 operational business. We have limited resources. Let's move  
2 this case forward.

3 The first, Your Honor asked committee counsel if we  
4 had a discussion about the procedures. We heard a lot about  
5 the settlement. We heard very little about the procedures in  
6 those discussions from the opposition.

7 THE COURT: I really haven't heard a complaint about  
8 the actual procedures. It's more about --

9 MR. LONG: No.

10 THE COURT: -- when are you going to have this  
11 hearing.

12 MR. LONG: Correct, Your Honor. And I think -- and I  
13 think the question is, is, as Your Honor, as I presented Your  
14 Honor before, is, is sixty days appropriate. What we would  
15 propose, as we do customarily in these cases, is we set the  
16 settlement motions for a hearing. And then I think we and all  
17 the opposing parties can then work out discovery briefing  
18 schedules. But the key thing we need is to set it for a  
19 hearing.

20 And if Your Honor can set it for a hearing, again, we  
21 propose to set it in sixty days. That's forty days more than  
22 is required under the Bankruptcy Rules for a settlement motion,  
23 for a sale and use of estate property. And then we can then  
24 work out with committee and the other objecting parties  
25 discovery schedule.



## Colloquy

49

1           In all these cases, Your Honor has worked in these  
2 cases. Mr. Brown and I have appeared before Your Honor. Give  
3 us discovery requests. Give us informal requests. We want to  
4 move this case forward. We believe our settlement is  
5 appropriate. We want to show that to you. Give us a request,  
6 and we'll work with you. And again, as Your Honor pointed out,  
7 if we have issues there are mechanisms to come back before Your  
8 Honor. But the key is setting these settlement motions for a  
9 hearing.

10           THE COURT: All right. And has the debtor engaged  
11 expert witnesses in connection with this hearing in November?

12           MR. LONG: We have Mr. Van Epp but --

13           MR. BROWN: I can respond to that, Your Honor. Stout  
14 is, of course, our financial advisor and insurance consultant.  
15 And one of Mr. Van Epps' colleagues is working on some  
16 modeling. We have not technically directed him exactly what he  
17 is to do, but I know they're working on modeling, and that is  
18 what the question was about in the in the examination of Mr.  
19 Van Epps that happened last week. So we submitted to a  
20 deposition last week, too, Your Honor.

21           So anyway, we would certainly agree to sit down with  
22 any party who wants to sketch out expert discovery to sketch  
23 out all the discovery, the briefing schedule, and as Mr. Long  
24 has said, give us a date. We'll work backwards with them. And  
25 if we can't have a settlement conference with Your Honor -- a

## Colloquy

50

1 scheduling conference with Your Honor, we'll figure it out.  
2 But the theme, of course, is set the date, and then we can all  
3 work toward that. Thank you.

4 THE COURT: All right. Thank you.

5 Does anyone else wish to be heard in connection with  
6 the settlement procedures motion or the motion to continue that  
7 motion?

8 All right. Well, I think that the real issue here is  
9 whether or not the hearing should be continued, not whether  
10 there is an issue with the procedures motion itself, in the  
11 sense that nobody has really raised any concerns about the  
12 procedures and the noticing and that type of thing. Really  
13 just about it's premature to have the hearing because there's a  
14 lot of preparation and discovery to finish. And it's a very  
15 significant issue in the case, even though it's been limited to  
16 these two settlement motions.

17 So I will again indicate that I don't consider denying  
18 a motion to continue the settlement procedures motion precludes  
19 the Court from continuing the hearing, if that becomes  
20 necessary. And I've already indicated why that could become  
21 necessary. And as Mr. Long has indicated, getting it on the  
22 books means things start happening. And I will be available to  
23 entertain issues about scheduling, discovery, expert witness  
24 depositions, and reports and will certainly be interested in  
25 whether the parties are prepared to go forward on November

## Colloquy

51

1 10th.

2 I think that it is a good idea to get this moving. I  
3 don't see any problems with the actual procedures that have  
4 been indicated so -- and I do see that there has been a  
5 revision so that it's only these two settlement motions that  
6 will be heard that day, which have been on the books for quite  
7 some time.

8 So the question is whether sixty days is sufficient.  
9 And it may be that it's not, but I don't think that that's  
10 going to preclude me from approving the settlement motion  
11 itself and setting that date, at least initially.

12 I do find that the proposed procedures comply with the  
13 applicable Bankruptcy Rules and law. And the settlement  
14 procedures motion has been filed for quite some time. The  
15 parties could have or perhaps should have been more fully  
16 involved at this point. But that being said, again, I will  
17 reiterate that this is a very important matter that will be  
18 taking place in November. And if the parties need assistance  
19 in getting to that date or even a subsequent date, I'm  
20 certainly available to offer that assistance.

21 But the purpose of this hearing is not to address  
22 these substantive issues, but whether the form and procedures  
23 for giving notice are adequate. And the Court does find that  
24 the proposed notice is adequate. And so for that reason, I  
25 will overrule the -- well, I'll deny the motion to continue and

## Colloquy

52

1 overrule the objections to the settlement procedures motion.  
2 And I will enter the revised order that's been submitted,  
3 unless there's some other issues with respect to the order.

4 MR. LONG: No, Your Honor, not from the debtor.

5 THE COURT: All right. All right. Well, thank you.  
6 The last thing is the motion for the stay?

7 MR. LONG: The motion to stay, Your Honor. I'm going  
8 to hand the podium back to Mr. Brown.

9 MR. BROWN: Thank you. Thank you. Tyler Brown on  
10 behalf of the debtor.

11 Your Honor, there actually was an emergency motion  
12 that has been filed, and we've agreed to have that heard. And  
13 I think it's appropriate to hear it in advance of the motion to  
14 the stay. Certainly, one of the issues that we raised with  
15 Liberty Mutual's counsel is there may be discussion about the  
16 Liberty Mutual settlement during this hearing today. I don't  
17 think I need to introduce the agreements themselves. And so  
18 I've put it on the list if we need to, but I would ask that  
19 counsel for Liberty be heard on their protective order motion.  
20 And they resolved that.

21 THE COURT: Makes sense. Go ahead.

22 MR. BROWN: Thank you.

23 MR. FOLEY: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. FOLEY: Doug Foley with Kaufman & Canoles for

## Colloquy

53

1 Liberty Mutual Insurance Company.

2 First of all, I would like to thank the Court for  
3 scheduling the hearing for today. We did file a motion  
4 yesterday. There was a lot of activity over the weekend  
5 regarding certain confidentiality agreements and the like, and  
6 we weren't sure what was going to be disclosed today at the  
7 hearing. So we filed that motion.

8 The only correction that we filed later in the day  
9 yesterday was to correct some communications between us and  
10 counsel for the debtor. There was no substantive changes to  
11 the motion. No substantive changes to the requested protective  
12 order.

13 With me today is Kevin Finnerty from the Choate Hall &  
14 Stewart firm in Boston. And I filed a motion for admittance  
15 pro hac vice yesterday at docket number 172. Mr. Finnerty is  
16 admitted in good standing in the Commonwealth of Massachusetts.  
17 And I would ask the Court to admit him for purposes of today's  
18 hearing to address the substance of our motion for protective  
19 order.

20 THE COURT: Very good.

21 MR. FOLEY: Thank you, Your Honor.

22 THE COURT: You are so admitted.

23 MR. FINNERTY: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MR. FINNERTY: I appreciate the opportunity to be

**Colloquy**

54

1 here. Like my cocounsel said, Kevin Finnerty, Choate Hall &  
2 Stewart, on behalf of Liberty Mutual.

3 So Your Honor, Liberty as straightforward asked today  
4 that the debtors have assented to. There's three agreements  
5 that are confidential settlement agreements entered into  
6 between the debtor and Liberty, one executed in 1990, two  
7 executed in 2003, which are sensitive commercial information  
8 and are protected by confidentiality restrictions. So we're  
9 asking the Court enter a protective order that maintains the  
10 confidentiality of those documents while allowing for their use  
11 in these proceedings.

12 So as I mentioned, there are three nonpublic and  
13 commercially sensitive agreements hammered out between debtor  
14 and Liberty. The confidentiality provisions were negotiated  
15 extensively. Those are material parts of the agreements, and  
16 there are strict confidentiality provisions. We cite them in  
17 our motion. I don't know if Your Honor has had a chance to see  
18 that.

19 THE COURT: When you say they were negotiated, you  
20 mean with the debtor?

21 MR. FINNERTY: Correct, Your Honor, between liberty  
22 and the debtor. And they effectively preclude the disclosure  
23 of these agreements absent specific circumstances. Now, at the  
24 same time, the debtor indicated that it's received discovery  
25 requests from three different parties, and it believes that

## Colloquy

55

1 these agreements are responsive to those discovery requests.

2 It also advised Liberty that the agreements might be discussed  
3 during the hearing today.

4 So in the Fourth Circuit and elsewhere, when you have  
5 confidential, sensitive, commercial information that might be  
6 relevant or is ostensibly relevant to proceedings, courts  
7 generally enter a protective order that strikes the balance  
8 between allowing the use of those documents in the proceedings  
9 while protecting their confidentiality. And this is exactly  
10 what we tried to do with our proposed protective order that we  
11 attached to our motion. It effectively maintains the  
12 confidentiality of the three Liberty agreements, allows their  
13 use in these proceedings reasonably, but ensures that they  
14 won't be entered in the public docket, to be discuss publicly,  
15 or otherwise be disseminated by parties that received them in  
16 these proceedings.

17 Now, again, as I mentioned, courts inside and outside  
18 the Fourth Circuit generally take this approach with respect to  
19 settlement agreements. They're sort of the prototypical  
20 example of a sensitive, commercial, confidential document.  
21 Therapia (ph.), which is a case we cite in our motion, is an  
22 Eastern District -- or is a District of South Carolina case  
23 from 2021. And that's a pretty instructive decision. That's  
24 about a settlement agreement between a party and its  
25 administrator of workers' compensation claims.

**Colloquy**

56

1 Court decided that it should be protected by a  
2 protective order because it was sensitive, commercial  
3 information because it was a confidential settlement agreement.  
4 The court decided, with respect to a motion to seal, that there  
5 was no less drastic alternative than sealing it. The court  
6 decided that the public's interest in seeing the document was  
7 substantially outweighed by the fact that it was a sensitive,  
8 confidential agreement. And the court protected that document  
9 and ordered it sealed.

10 And that's basically exactly the treatment that we're  
11 asking for here for the Liberty agreements. Not disseminated  
12 to other parties outside of these proceedings. If they're  
13 filed, they should be filed under seal. And to the extent  
14 they're discussed in open court, that should be protected in  
15 some way.

16 Now, there's some flexibility in our proposed  
17 protective order. The parties are supposed to meet-and-confer  
18 when they will be discussed in court to try to figure out the  
19 best way to redact it. I would say, in the context of today,  
20 when there's twenty people on the line and everything, the best  
21 approach wouldn't be to discuss them or at least discuss them  
22 at a high level without discussing the substance of the terms.  
23 But at a minimum, keep the transcript confidential for a period  
24 of time until the parties have an opportunity to discuss  
25 redactions, I think, would be a pretty good approach.



**Colloquy**

57

1           Now, as was mentioned earlier, the debtor is has  
2     negotiated confidentiality agreements with the UCC and  
3     Huntington. Those don't just apply to the Liberty agreements.  
4     They apply more generally to the debtor's materials. But I  
5     think the point is important for two reasons. And as part of  
6     that, they haven't negotiated a confidentiality agreement with  
7     the Hoffman law firm claimants.

8           So the two reasons that's important is, one, parties  
9     generally agree with the premise here that there should be some  
10    confidential material that's maintained as confidential. And  
11    that's exactly what we're asking for is the Liberty agreements  
12    are confidential.

13          And two, the fact that not every party has agreed to  
14    one of these confidentiality agreements demonstrates that doing  
15    this piecemeal or on an ad hoc basis isn't going to work.  
16    Having an omnibus order that applies to everybody, fairly  
17    allows for the use of these agreements, but maintains their  
18    confidentiality now, since they're going to be discussed  
19    perhaps today and have already been disclosed or are subject to  
20    discovery requests, would make more sense and just be the  
21    easiest, cleanest way to make sure these documents stay  
22    confidential while being used in these proceedings.

23          I understand that the UCC is going to object to this  
24    motion. Again, we filed it on short notice, but we briefly  
25    spoke today. My understanding is that the two main sources for

**Colloquy**

58

1 that objection are, A, the portion of the protective order that  
2 discusses the fact that documents should be filed under seal,  
3 and B, there is a provision in the protective order that states  
4 that to the extent documents will be used in open court, the  
5 parties will attempt to meet and confer in good faith at least  
6 seventy-two hours beforehand to discuss the best way to redact  
7 the material.

8           On the first point, again, when it comes to  
9 confidential, sensitive commercial information, courts  
10 routinely seal that type of information in court. I referenced  
11 that Therapia decision for 2021, the District of South  
12 Carolina. The court said, "The interest in maintaining  
13 confidentiality substantially outweighed the public interest in  
14 accessing these documents." That's a typical approach to take.  
15 It happens in mass tort proceedings. It happens in bankruptcy  
16 proceedings. It happens in settlement agreements all the time.  
17 That's the approach we're asking for here.

18           And second, I just want to note that the  
19 confidentiality agreement that the UCC agreed to has a  
20 provision saying that confidential information that falls  
21 within Bankruptcy Section 107, which is confidential research,  
22 development, or commercial information will be filed under  
23 seal. So the UCC agrees with the premise that some documents  
24 here should be filed under seal.

25           The basis for their objection, that these very

## Colloquy

59

1 specifically confidential Liberty agreements shouldn't be filed  
2 under seal isn't clear to me. Again, this is commercial  
3 transactions that have been nonpublic for thirty and twenty  
4 years. The confidentiality was a material part of those  
5 agreements. And it's a significant impact of Liberty.

6 I don't know why it makes sense that the UCC would be  
7 okay with some portion of confidential materials filed under  
8 seal, but they have an issue with the Liberty agreements being  
9 filed under seal. It makes much more sense, since they're  
10 confidential, to protect those via sealing process.

11 And as I mentioned, the UCC also has an issue with the  
12 proposed requirement that the parties confer seventy-two hours  
13 before using documents in court. The provision we propose,  
14 again, there's some flexibility there. It just says the  
15 parties will attempt to confer in good faith to figure out the  
16 best ways or discuss the best ways to redact the information.

17 Whether it's seventy-two hours or forty-eight hours,  
18 we understand it's hard. We understand that bankruptcy moves  
19 quickly. We're not trying to jam anyone up or prevent anyone  
20 from using the materials as they see fit. We just want there  
21 to be some process for, again, discussing whether it makes  
22 sense to redact a transcript or designate a transcript  
23 confidential or take some other approach to ensure that when  
24 these are discussed in court, the confidentiality of the  
25 agreements are maintained.

## Colloquy

60

1           Again, and that's the fundamental point here, is we're  
2 not trying to disrupt these proceedings. We're trying to  
3 facilitate fair flow of information in these proceedings and  
4 the use by the parties of the information. But at the same  
5 time, Liberty is just trying to protect its legitimate  
6 confidentiality interests in these agreements and related  
7 documents.

8           So for those reasons, Your Honor, it's squarely within  
9 the protections afforded by Rule 26, and we'd ask that the  
10 Court adopt Liberty's proposed protective order or a similar  
11 order that effectively accomplishes the same thing. Thank you.

12           THE COURT: All right.

13           MR. FINNERTY: And thanks again for letting us present  
14 this today.

15           THE COURT: All right. Thank you.

16           MR. BROWN: Your Honor, Tyler Brown on behalf of the  
17 debtor. I'm going to give the Court our perspective. Our  
18 perspective is we have a number of agreements that all say they  
19 are confidential, including the Liberty Mutual one. But we  
20 need to deliver to the committee and any others who ask for it  
21 the other agreements as well. And guess what? Not all of the  
22 confidentiality provisions read the same.

23           Quite frankly, Liberty's is fairly straightforward.  
24 We reached out to Liberty upon getting a request, and we shared  
25 with them the request so that we could show them we've been

**Colloquy**

61

1 asked to give the document. And rather than go run in and seek  
2 our own protective order, we thought, as in most cases, we'd be  
3 able to work out a confidentiality agreement with the committee  
4 and we'd be able to then deliver it and then not have to have,  
5 I don't know, what's a dozen or fifteen different agreements.  
6 Have different negotiations about protective orders with each  
7 one of the other side of those confidentiality agreements.

8 So the mission one was to deal with liberty. We  
9 thought we could handle that with confidentiality agreement.  
10 It turns out we now have, but we have the broader issue of how  
11 do we use it in court. As I mentioned at the outset today, I  
12 don't think I need to get into the specifics or introduce the  
13 exhibit, but it is helpful to the debtor to have a road map for  
14 how we would if we need to.

15 We, the debtor, will be coming back to you with a  
16 protective order process with respect to all of the other  
17 agreements. We think it makes sense to do it in an omnibus  
18 manner. We can have Liberty stand alone, but we have a lot  
19 more information that's deemed confidential.

20 And what the debtor doesn't want to do -- this is  
21 important -- you saw the map that was laid out, and I'll have a  
22 witness talk about the coverage map. We don't want to  
23 jeopardize any of our coverage by violating agreements with our  
24 insurers. That's really important. Maybe a little less with  
25 Liberty, but we're still honoring our pre-petition agreement

## Colloquy

62

1 with Liberty to keep it confidential.

2 So our perspective is whatever will solve the problem,  
3 we're happy to sign on. We provided some comments there. They  
4 weren't major. It was a pretty commercial protective order in  
5 our experience, so we're okay with it. We certainly understand  
6 the committee might have concerns, but I think we can work  
7 through those issues in terms of sealing, in terms of releasing  
8 information under the proposed process as it's laid out. Thank  
9 you, Judge.

10 THE COURT: All right. Well, thank you. And so  
11 you've looked at the order. You've made comments.

12 MR. BROWN: Yes, sir.

13 THE COURT: You're okay with this --

14 MR. BROWN: Yes, sir.

15 THE COURT: -- form of the order?

16 MR. BROWN: Yes, sir.

17 THE COURT: All right. Thank you.

18 Does anyone wish to be heard in connection with the  
19 motion for a protective order?

20 MR. COX: Yes, Your Honor. Thank you. David Cox,  
21 again, of Morgan Lewis for the committee.

22 Your Honor, as you just heard, this is an issue that's  
23 likely to recur, and it's one of the reasons that the flow of  
24 information hasn't been forthcoming, is the need to address  
25 confidentiality agreements -- confidentiality provisions in

## Colloquy

63

1 these agreements. And frankly, the thing that delayed  
2 finalization of the confidentiality agreement that we now have  
3 with the committee is our strong belief that this process needs  
4 to be transparent, it needs to be open, and it has to be  
5 consistent with the presumptions in 11 U.S.C. 107, that  
6 documents filed in a bankruptcy proceeding are presumptively  
7 open to the public and that sealing is an extraordinary remedy,  
8 and it shouldn't be lightly undertaken.

9 And it's incumbent upon the -- so and let me stress,  
10 we've agreed to keep the settlement agreements confidential,  
11 including the Liberty settlement agreement. There is a  
12 confidentiality agreement. We understand we're not intending  
13 to post this to the internet. We're not going to send it to  
14 the Washington Post, not that anybody reads newspapers anymore.  
15 That's not what we're talking about.

16 But we don't want to be fettered in our ability to  
17 present our case to you. And we don't want to have our hands  
18 tied talking in open court about these agreements if we need  
19 to. And we don't want to find out a day before a hearing, you  
20 know what, I think I want to talk about this, this document,  
21 but actually, there was a seventy-two-hour window that I was  
22 supposed to comply with. So we agree that it's confidential,  
23 but our concern is -- we agree to maintain the confidentiality  
24 of these of these agreements, if Hopeman designates them as  
25 such and if the insurers believe that they are sensitive. But

## Colloquy

64

1 we are really reluctant to agree to, as a wholesale, filing  
2 them under seal or restraining from talking about them in open  
3 court.

4 11 U.S.C. enumerates certain categories of protected  
5 information. And there's no personal identifying information.  
6 It's not defamatory content. There's no trade secrets  
7 involved. The sliver of the statute that Liberty is clinging  
8 to and then I anticipate other insurers will claim to is that,  
9 well, this is private, confidential "commercial information".  
10 But just labeling it as such doesn't entitle you to a  
11 protective order. An agreement to confidentiality doesn't  
12 entitle you to a protective order or filing under seal.

13 It's incumbent upon Liberty and any other insurer that  
14 wants to impose these burdens on litigants in this court to  
15 show good cause, which means an evidentiary showing of -- and  
16 I'll quote from U.S. IBM from the Southern District of New York  
17 in 1975, 67 F.R.D 40, 46, "a clearly defined and very serious  
18 injury to his business". There has to be a specific showing of  
19 injury here. There hasn't been any in the papers. You didn't  
20 hear any here at all, other than to say this is a prototypical  
21 document that is entitled to some protection.

22 But what's the injury? What is the injury here --

23 THE COURT: Mr. Brown articulated that the possibility  
24 of the insurance companies could deny coverage if the  
25 confidentiality provisions are breached. Do you not share that



## Colloquy

65

1 concern?

2 MR. COX: It's not a breach of the confidentiality  
3 provision, Your Honor, if they are produced and they're filed  
4 under court -- referred to in court. And it's not -- and Mr.  
5 Brown's not the proponent here of this motion either. It's  
6 Liberty Mutual. It's Liberty Mutual that has to claim and show  
7 the injury to it. And what I can submit --

8 THE COURT: But you started off by saying that you  
9 agree to maintain confidentiality of this agreement so --

10 MR. COX: We do, Your Honor.

11 THE COURT: And this motion only refers to this  
12 agreement. Right. Mr. Brown indicated that there'll be an  
13 omnibus motion or something to deal with the other potential  
14 agreements. And so a lot of what you've raised seems like  
15 something you could raise at that time if that motion is  
16 brought.

17 But with respect to this particular Liberty Mutual  
18 agreement, which you've already indicated you'll agree to  
19 maintain confidentiality, tell me what's wrong with the order  
20 that's been circulated.

21 MR. COX: What's wrong with the order that's been  
22 circulated is it requires it to be filed under seal. From what  
23 I can tell, it precludes parties from talking about it in  
24 court, or we're going to have to -- I guess we'll have to  
25 redact the transcript. I mean, I just got this yesterday, Your

**Colloquy**

66

1 Honor. I haven't fully digested it.

2 THE COURT: Well, I understand. You haven't had a lot  
3 of time to look at it.

4 MR. COX: But that is concerning to me. And it is  
5 true, Your Honor, that -- this is the first time this issue has  
6 been raised, and so I am bringing it up almost prophylactically  
7 because I am more worried about it with the other settlement  
8 agreements because actually, the Liberty -- I mean, the irony  
9 here is that the Liberty policies are not even listed as an  
10 asset of the estate. The policies have been released by virtue  
11 of the settlement agreement.

12 And so it's not -- I am much more concerned about what  
13 actually is an asset of the estate, which is the other  
14 agreements that have these confidentiality provisions. And one  
15 of the things that we've agreed to do in our confidentiality  
16 agreement with the debtor is to, together, go into the court  
17 and say we need relief or instruction as to how we're going to  
18 deal with these confidentiality provisions and so --

19 But I do want to signal to you that I'm very  
20 skeptical, Your Honor, of any real injury that Liberty or any  
21 other insurance company can show from the disclosure of a  
22 settlement agreement that, in the case of Liberty, one is  
23 thirty-four-years old. The other the other two documents are  
24 twenty-one, I think, years old. And whatever commercial  
25 sensitivity they might have had in 2003 surely has evaporated

## Colloquy

67

1 by now.

2 And the cases cited by counsel, the courts have  
3 entered settlement agreements -- or entered protective orders  
4 with respect to settlement agreements. Of course, that's based  
5 on a showing of good cause, a showing of particularized injury,  
6 that warrants and merits that level of protection. Here,  
7 again, the presumption is that, really, a First Amendment right  
8 to access to court filings. And I think that it's even more  
9 pronounced in a bankruptcy setting that this should all be  
10 transparent.

11 And so for that reason, Your Honor, we do object to  
12 the proposed protective order asked for by liberty.

13 THE COURT: So what order would you suggest be entered  
14 in connection with this motion, since you've already said  
15 you'll protect the confidentiality of this agreement?

16 MR. COX: Your Honor, if it doesn't -- if the document  
17 isn't going to be discussed or entered into evidence, then I  
18 don't think anything needs to happen today. My concern is,  
19 again, if it becomes -- if it becomes relevant to some issue in  
20 the case and it needs to be submitted, I don't think it needs  
21 to be submitted under seal. I think it's entitled to -- it  
22 needs to be open and transparent.

23 THE COURT: So you don't think it should be  
24 confidential at all? So you're backtracking on what you said?

25 MR. COX: Your Honor, I respectfully, I don't think

## Colloquy

68

1 I'm backtracking. I think I am -- what I am saying is anything  
2 that's given to me that is designated as confidential is, of  
3 course, I'm willing to maintain the confidentiality, except to  
4 the extent that if we are -- if we need to use it in open  
5 court, there's a presumption that -- there's a presumption that  
6 court proceedings are open and should be transparent and that  
7 documents or items should not be filed under seal except under  
8 extraordinary circumstances.

9 And what we've agreed to do is say, well, look, there  
10 are -- certainly, I would imagine there are going to be  
11 documents that come in that are entitled to that level of  
12 protection, extra level of protection to be filed under seal  
13 and not to be available to the public despite being in a court  
14 proceeding, despite the presumptions in favor of openness. And  
15 under those circumstances, we agree that -- we've agreed in our  
16 protective order. We'll file those under seal.

17 My quarrel here is whether this document, these three  
18 documents, rise to that level of protection thirty-four and  
19 twenty-one years later after they were executed -- after they  
20 were executed without any showing what the harm would be --  
21 what the harm would be to Liberty Mutual. We don't even know  
22 what provisions Liberty Mutual believes are sensitive. They  
23 just waved the document -- and haven't waved the document. But  
24 they alluded to the document and said the entire thing needs to  
25 be filed under seal. And we don't even know what's sensitive

## Colloquy

69

1 from their perspective.

2 But I am skeptical that the terms of a release or the  
3 amount paid, which has been, if not discussed specifically, has  
4 certainly -- the amount has been already been discussed in  
5 filings in this court, the total, the aggregate amount, I don't  
6 know why that would be entitled to that level of protection  
7 today.

8 THE COURT: You don't think Liberty Mutual is still  
9 Insuring asbestos defendants?

10 MR. COX: I'm sure Liberty Mutual is still insuring  
11 asbestos defendants. Yes.

12 THE COURT: So you don't think a settlement of their  
13 insurance coverage is relevant for today -- a previous  
14 settlement would still be relevant?

15 MR. COX: I don't think so, Your Honor, but that's my  
16 take on it. Yeah.

17 THE COURT: All right. Thank you.

18 MR. COX: Thank you, Your Honor.

19 THE COURT: Does anyone else wish to be heard in  
20 connection with the motion for a protective order?

21 MR. FINNERTY: Your Honor, I'd be happy to respond  
22 briefly to the harm to Liberty Mutual, if you'd like to hear  
23 it, and specifically on that point.

24 So, yes, the agreements were negotiated thirty-one and  
25 twenty-one years ago, but as Your Honor referred to, Liberty

**Colloquy**

70

1 Mutual continues to insure thousands of policyholders with this  
2 type of insurance policy. It's CGL coverage. It's not like  
3 these settlements were a moment in time that happened to  
4 Liberty and nobody else could use those and argue that their  
5 own circumstances are similar or something else, right?  
6 Liberty is an ongoing insurer. It's a massive insurer. It has  
7 a lot of policyholders with a lot of different claims. What  
8 happened in one particular settlement, which was incredibly  
9 complex with decades of coverage and huge liabilities, could  
10 obviously be attempted to be used by other people in other  
11 situations against Liberty. It's not like this was a discreet  
12 thing that happened. Liberty continues to have these policies,  
13 again with thousands of policyholders. So of course it's an  
14 ongoing thing. It's not stale at all.

15 The only other point I want to respond to is you heard  
16 from Mr. Cox that we need to show good cause here. First of  
17 all, we have shown good cause here. Second of all, under  
18 Section 107, we don't. It's mandatory. Courts have said that.  
19 We cited a few in our motion. If it falls within categories  
20 enumerated by Section 107, including commercial information,  
21 it's entitled to protection.

22 So I think we have shown good cause. But under the  
23 bankruptcy rules, we don't even need to. Thank you, Your  
24 Honor.

25 THE COURT: Thank you. Does anyone else wish to be

## Colloquy

71

1 heard in connection with the protective order motion?

2 All right. Well, I do think this falls within the  
3 parameters of Section 107. And I note that the only objective  
4 party, that UCC, has already executed a confidentiality  
5 agreement which would recognize that there is some confidential  
6 information. Nevertheless, I do think there's commercially, at  
7 least based on the pleadings, commercially sensitive  
8 information that should be protected. And so I do intend to  
9 enter a protective order. And I have not had time to really  
10 review the terms of that order. I do think it should specify  
11 that it only applies to this one instance. And to the extent  
12 that there'll be future motions, similar motions, if there can  
13 be some type of omnibus motion that would be applicable, I  
14 would like everyone to work together to come up with something  
15 that hopefully is satisfactory to everyone.

16 But with respect to this particular motion, I'm  
17 prepared to entertain competing orders. If the parties wish to  
18 submit competing orders. I'll look for the order that's  
19 submitted by Liberty. And if I don't receive any other orders  
20 by tomorrow, I'll assume that's the only order I'm going to  
21 receive. All right. But I will grant the motion.

22 MR. FINNERTY: Thank you, Your Honor.

23 MR. BROWN: Your Honor, Tyler Brown for the debtor.

24 And I certainly will represent the Court we will  
25 endeavor to work with other parties on the protective order

## Colloquy

72

1 that we will be seeking on an ominous basis. We hope to be  
2 prepared to circulate that later this week.

3 Your Honor, the final matter on the docket concerns  
4 the -- what we call the motion to stay. The Court did, of  
5 course, enter an interim order on July 3. So this is  
6 technically our request for a final order, but I would  
7 certainly want to clarify that. There isn't anything permanent  
8 we're seeking in this final order. We're not seeking permanent  
9 injunctions of claims against the debtor. We're seeking  
10 temporary relief during the case with all parties --

11 THE COURT: You just want it for the pendency of the  
12 case.

13 MR. BROWN: Absolutely, Your Honor. So I just -- I  
14 didn't want to throw anybody off on that. We're not seeking  
15 anything but a pause in the litigation. We're not seeking, as  
16 was recited by someone, a nonconsensual release. That's not  
17 provided in our motion or plan.

18 The list of the parties that we are seeking protection  
19 for has now been made in exhibit, so that's real clear. It's  
20 Exhibit A. And, Your Honor, as I mentioned earlier, we can  
21 just very briefly touch on Liberty. And without getting into  
22 the specifics, I think -- we will have one witness, and that's  
23 Mr. Ron Van Epps. But before I call him, Your Honor, it might  
24 make sense if we could go through the exhibit list that we  
25 filed, because I don't think there's dispute about much of



**Colloquy**

73

1 these. And I provide some clarity on the front end. And maybe  
2 we could straighten that out and make sure we can streamline  
3 this.

4 THE COURT: All right. Well, that would be helpful.  
5 But before we start this --

6 MR. BROWN: Yes, Judge.

7 THE COURT: -- session of the hearing, I'm going to  
8 take a short break.

9 MR. BROWN: Yes, sir.

10 THE COURT: Maybe that will give the parties an  
11 opportunity to address the evidence.

12 MR. BROWN: Great.

13 THE COURT: And then we can admit by agreement the  
14 exhibits that you wish. But in the meantime, I'll take a short  
15 recess. And we'll reconvene at about ten, fifteen.

16 MR. BROWN: Thank you, Your Honor.

17 THE CLERK: All rise. Court is now in recess.

18 (Recess from 11:37 a.m. until 11:54 a.m.)

19 THE CLERK: Court is now in session. Please be seated  
20 and come to order.

21 MR. BROWN: Tyler Brown, again, Your Honor, on the  
22 motion to stay. Thank you for the time as well during the  
23 break to work through the exhibit issues.

24 Your Honor, I think we have reached agreement on the  
25 ones we need to reach agreement. Your Honor, if I may, I do

## Colloquy

74

1 have a notebook the court and for the witness. If I may  
2 approach.

3 THE COURT: You may.

4 MR. BROWN: Opposing counsel has one as well.

5 THE COURT: Thank you.

6 MR. BROWN: Your Honor, with respect to exhibits,  
7 Exhibit 1 is really just the first-day declaration, already  
8 came in and first-day hearing. No need to redo that.

9 The Exhibit 2 here is just our request that was  
10 attached to our motion as to who we wanted to protect, so I  
11 don't think that needs to come into evidence either.

12 But Exhibits 3 through 8, the committee counsel has  
13 agreed with us they can come in as exhibits.

14 3, 4, and 5 are just examples of these direct-action  
15 complaints. We just picked one from each of the firms that  
16 were involved. And then included within Exhibit 4 is one of  
17 the third-party complaints that Huntington has filed against  
18 Liberty, insurer for Wayne. That's in that -- that's in that  
19 document.

20 6 are just the bylaws of the company. And certainly  
21 Mr. Lascell could verify those. But no one has disputed what  
22 the bylaws say.

23 Exhibit 7 is one of our insurance policies that just  
24 reflects that there's shared insurance.

25 And then Exhibit 8 is just a list of the Louisiana

## Colloquy

75

1 direct action lawsuits that were out there when we filed for  
2 bankruptcy.

3 9 and 10 I'll address with our witness. And 11 is the  
4 Liberty settlement agreements, which we're not offering up. So  
5 they're not in your notebook. We took them out from you, Your  
6 Honor, because they're private at the moment.

7 THE COURT: Let me just recap. So --

8 MR. BROWN: 3 through 8.

9 THE COURT: I'm sorry, the --

10 MR. BROWN: 3 through 8 are the exhibits we ask you to  
11 enter.

12 THE COURT: Okay, so 3 through 8. Does anybody object  
13 to the admission of Exhibits 3 through 8? All right. You're  
14 okay with that? Committee is okay with that?

15 MR. LIESEMER: Yes, Your Honor.

16 THE COURT: All right. So Exhibits 3 through 8 are  
17 admitted.

18 (Agreed-upon exhibits were hereby received into evidence as  
19 Debtor's Exhibit 3 through 8, as of this date)

20 THE COURT: And then those are the only ones you're  
21 asking right now. But then you're going to also ask for 9 and  
22 10 when you get to the witness.

23 MR. BROWN: Yeah. I may not ask for 9 to be admitted,  
24 Your Honor, but I'm going to examine the witness on it.

25 THE COURT: All right. Very good.

**Colloquy**

76

1 MR. BROWN: Okay. With that, Your Honor, I'd call Mr.  
2 Ron Van Epps, Ron Van Epps to the stand.

3 THE COURT: Mr. Van Epps, would you please approach  
4 the clerk right over here and raise your right hand so you can  
5 be sworn in? Right here.

6 (Witness sworn)

7 THE COURT: Thank you.

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q. You comfortable? I am.

11 Q. Great. Would you please tell the Court your name?

12 A. Ron van Epps.

13 Q. And are you employed?

14 A. I am.

15 Q. By whom?

16 A. Stout.

17 Q. What is Stout?

18 A. Stout is a global advisory firm that specializes in  
19 corporate finance, valuation, and disputes.

20 Q. Do you have a title in Stout?

21 A. I do.

22 Q. What is it?

23 A. I'm a managing director.

24 Q. What do you do for Stout?

25 A. What do I do for Stout? So my primary role is working with

**Ron Van Epps - Direct**

77

1 clients in the insurance recovery industry. So my specialty is  
2 working with policyholders, pursuing insurance coverage on  
3 large, complex insurance matters.

4 Q. And where are you based?

5 A. In Chicago.

6 Q. And do you have clients all over the country?

7 A. I do.

8 Q. All right. And how long have you provided services in the  
9 insurance industry?

10 A. Just short of thirty years.

11 Q. Prior to joining Stout, were you with another firm?

12 A. I was.

13 Q. What was that called?

14 A. It was called the Claro Group.

15 Q. What happened to the Claro Group?

16 A. We formed the Claro Group in 2005, shortly after leaving  
17 Anderson. I was one of the founding members from '05 till  
18 2017. We -- or I'm sorry, until 2022. We operated the Claro  
19 Group, sold it to Stout two years ago in September.

20 Q. And when you said Anderson, is that Arthur Anderson?

21 A. Arthur Anderson. I'm sorry.

22 Q. Okay. And did you have a stop between Arthur Andersen and  
23 the Claro Group?

24 A. Yes. I was at a firm called LECG doing the same type of  
25 work for three years between Anderson and -- and the formation

**Ron Van Epps - Direct**

78

1 of the Claro Group.

2 Q. Do you have a present role in working with Hopeman  
3 Brothers, the debtor in this case?

4 A. I do.

5 Q. What is present role?

6 A. I think my present role is financial advisor and insurance  
7 consultant to the bankruptcy process.

8 Q. When did you first become involved in assisting Hopeman?

9 A. In late 2004.

10 Q. And what were you doing or asked to do at that time?

11 A. At that time, Liberty had just ended their participation in  
12 the program. Hopeman was scrambling to find funds. They were  
13 not an operating company. So my job was to come in and work  
14 with the excess carriers that were -- that had refused to pay  
15 at the time.

16 Q. Okay. So is it fair to say you were trying to get the  
17 excess carriers to start paying?

18 A. That was the objective, yes.

19 Q. Okay. All right. Now, what was one of your first tasks  
20 then at Hopeman related to insurance?

21 A. Well, so the first task is we had to understand the  
22 exhaustion, up until that point, what policies had been  
23 exhausted. We had to understand the entire coverage program,  
24 which we'll get into later, in terms of how they would operate  
25 and how they would respond to the damages. And then in

**Ron Van Epps - Direct**

79

1 discussions with the excess carriers, at least one of them, the  
2 London Market made it clear that they were interested in a  
3 policy buyback. And so we were required to start to look at  
4 future forecasts and what could the liability look like over  
5 the coverage program.

6 Q. Okay. So as part of that work -- and you're familiar with  
7 the insurance portfolio that Hopeman has with respect to  
8 liability insurance?

9 A. Yes, I am.

10 Q. Okay. Let me get a document in front of you so we can talk  
11 for a little bit more about that. Exhibit 9 in your notebook.

12 A. Okay.

13 Q. It's fairly small print in here. But tell the Court what  
14 this is.

15 A. So this is a graphic representation of Hopeman Brothers  
16 liability coverage program from 1959 to 1985.

17 Q. Do you know who created this coverage map originally?

18 A. This was created by Dickstein Shapiro who was the law firm  
19 that hired us.

20 Q. All right. And Dickstein Shapiro is now known as Blank  
21 Rome?

22 A. The folks that were at Dickstein Shapiro are now at Blank  
23 Rome. Yes.

24 Q. That's a better way to say it. Thank you. And have you  
25 seen other versions of this document?

**Ron Van Epps - Direct**

80

1 A. Yes, I have.

2 Q. And what do the other versions sometimes look like?

3 A. You -- we would shade the different carriers to -- to show  
4 which ones are insolvent. We would shade the certain carriers  
5 if we were talking to them to show where they were. We've -  
6 we've drawn this to show where the exhaustions, the current  
7 exhaustions lie, so you overlay that on the map. So we've used  
8 this for a number of purposes.

9 Q. Okay. And this particular version, can you tell when this  
10 one was last edited or created?

11 A. I believe this one would have been edited in 2017.

12 Q. Do you work with a form of this document on a regular  
13 basis?

14 A. Yes, I do.

15 Q. What do you use it for?

16 A. Well, you use it to understand where the coverage sits,  
17 what will be next up in the program. As you work your way up  
18 the program, they have lots of limits. You can see that from  
19 this map. But the point is, even though I have limits, some of  
20 them are way up here. You can't access them. There's a --  
21 there's a method to how you're going to get to those limits.  
22 So it's important to understand what the map looks like and  
23 understand which plaintiffs will be hitting what part of the  
24 map. So yes, it's very important.

25 Q. Is it fair to say then that this is an overview of what the



**Ron Van Epps - Direct**

81

1 debtor's liability portfolio looks like?

2 A. Yes. If I didn't say that, that -- I should have. This is  
3 just an overview. You have to go to the specific policies,  
4 because all the policies have different language unique to  
5 those, different treatment of the occurrences, of the defense.  
6 So this is very much just an overview.

7 Q. The Court is seeing this for the first time. Can you help  
8 walk the Court through how you read this?

9 A. Yes. So along the X axis here are the years, as I said,  
10 start from '59, go to '85 when the policies then had asbestos  
11 exclusions after that point in time. Along the Y axis are the  
12 dollars, so the size of the limits and then where the next  
13 limit attaches so you can kind of see that where the higher  
14 level excess policies come into play.

15 Along the bottom, you'll see Liberty Mutual is noted on  
16 every one of the first boxes along the bottom of the map. That  
17 is because they were the primary carrier from, well, earlier  
18 than 1959, as early as 1937 up until 1989. You see Liberty all  
19 the way through that entire -- through the entire map at that  
20 first level. And that first level is called primary insurance.  
21 So when we're talking about primary insurance, we're talking  
22 about that first level related to Liberty.

23 Now, as you go across the map, you'll see other of the  
24 insurance companies, Travelers. You see INA, which is now  
25 known as Chubb. You see the London Market up there at the top

**Ron Van Epps - Direct**

82

1 of this first page. So you'll see that you have carriers all  
2 throughout this.

3 What you'll also see then is you have Liberty Mutual, in  
4 addition to being a primary carrier starting in 1974, also  
5 picks up an excess piece. So they've got five million dollars  
6 of excess insurance coverage right above their primary layer  
7 starting there. So that's also instructive. And then those  
8 are the limits that were in play with Liberty. And then --

9 Q. How about within the box? Each of the particular boxes has  
10 some other information. What is that all about?

11 A. Right. So a good example -- pick one that you can see.  
12 Look at the London one that sits up at the top of page 1.

13 Your Honor, if you see.

14 So that London, right below it, London is the -- and mine  
15 is a little complicated because there are multiple participants  
16 to this program. But there's a policy number right below it,  
17 then the dates. It starts March 2nd of '67, runs through April  
18 4th of 1970. And then what you see below that is twenty  
19 million excess -- twenty million, excess .3 million. So what  
20 that means is that this layer is a twenty-million-dollar layer.  
21 That's the first twenty. It sits excess of a twenty-million-  
22 dollar layer, which you see below that. And it sits excess of  
23 a 300,000-dollar layer, which is the primary Liberty layer. So  
24 as you go up the map, you can see at any of those boxes, okay,  
25 this is where it sits, and this is what's below it.

**Ron Van Epps - Direct**

83

1 Q. Okay, great. Why does this chart start in 1959?

2 A. Because that was the first known where they had the actual  
3 copy of the policy and the policy numbers. There's strong  
4 secondary evidence that there were a policies issued going back  
5 to 1937, but the policy numbers were not available. And the  
6 policies in many cases couldn't be located.

7 Q. And so the details about those policies may not be  
8 available either?

9 A. Correct.

10 Q. How about -- and then I think you mentioned it, but so the  
11 Court understands, why does it stop with 1985 or at the end of  
12 1984?

13 A. So, beginning at that point in time, it was -- for Hopeman,  
14 asbestos coverage was commercially unavailable for them. They  
15 weren't able to get that coverage. And in and around that  
16 time, the insurance market in general stopped covering asbestos  
17 exposures in and around 1984. Some got longer, some shorter.  
18 For Hopeman, it ended in '84.

19 Q. So except for the policies that couldn't be found pre-1959,  
20 is this a fair depiction or overview of the policies that are  
21 in play with Hopeman with respect to asbestos claims?

22 A. I think it's a graphic representation, yes.

23 Q. Okay. Is there any significance to the year 1977 with  
24 respect to the portfolio?

25 A. Yeah. '77 is important because after that time, asbestos

**Ron Van Epps - Direct**

84

1 was not used by Hopeman in their operations. And so later in  
2 this discussion, we're going to talk about the nature of  
3 certain claims and whether they are a completed operations  
4 claim or what would be deemed an operational claim. And  
5 operational claims are loosely defined as happening during the  
6 operation, in Hopeman's case, the cutting, the sawing of the --  
7 of the boards. After that point in time, they -- they no  
8 longer used asbestos in their contracts. So that -- that's an  
9 important date.

10 Q. Okay. So if you look at this, and you were in the  
11 courtroom for counsel's argument earlier about the coverage map  
12 and there being apparently a lot of coverage, I think the term  
13 was hundreds of millions of dollars. Is that correct?

14 A. Yeah. There are hundreds of millions of dollars of limits,  
15 yes.

16 Q. Then why did Hopeman have to file for bankruptcy?

17 A. Well, let's go back to when we first got retained in 2004.  
18 Liberty had paid all their limits that they -- that they said  
19 related to their property -- to their completed operations.  
20 And at that point, Hopeman is a nonoperating company. They  
21 don't have money to -- to make any additional payments. And so  
22 the only carriers that were willing to start paying were  
23 Travelers at the beginning of this program right there in the  
24 1965 timeframe, they had three years, and international the  
25 last two years. The other carriers weren't willing to pay.

**Ron Van Epps - Direct**

85

1 And so you've got a gap if you assume over a twenty or a  
2 thirty-year period and you only have five years of that willing  
3 to make payments, you have to get access to the rest of those  
4 limits. And the carriers going back to early 1980s often  
5 fought about who of the insurance industry was responsible for  
6 covering the plaintiffs. Was it when they were exposed? Was  
7 it when they got diagnosed? When did that happen? And so  
8 because of those disputes, no one was paying. Hopeman was  
9 forced to do deals to generate an ability to satisfy the  
10 plaintiffs' claims. And so we started working through the  
11 program.

12 And so it is true that you have hundreds of millions of  
13 dollars of coverage, but you can't just go to the top of the  
14 map and say, you wrote coverage, you have to pay me. You have  
15 to exhaust all of the layers below those. And in some cases,  
16 those insurers are long gone. They're insolvent. You have to  
17 figure out a way to fill that insolvent hole. If you look at  
18 the map, on page 2 of the map, there's a -- and it's actually  
19 shaded, Home Insurance wrote a five-million-dollar layer for  
20 three years and a very important time for this coverage  
21 program. Home has been insolvent since the early 2000s, so  
22 they were not paying. So when you have a hole like that in the  
23 program, you have to figure out how to fill that. And you have  
24 to work your way up the program either horizontally or  
25 vertically, and it's not clear which way. That's another

**Ron Van Epps - Direct**

86

1 dispute that comes up.

2 So while there's a lot of insurance, you can't access all  
3 the insurance. And the carriers aren't going to run to write  
4 you a check. So it's about --

5 Q. Yeah. Were the carriers articulating to you in the  
6 argument about why they weren't paying?

7 A. Yes. There were multiple arguments. The biggest one was,  
8 you know, which of the cares is responsible, when does the  
9 damages attached, does it attach at the date of first exposure,  
10 does it attach at a later point, but also arguing about whether  
11 it's a completed operations claim or an operational claim. And  
12 so the carriers that sat right above Liberty weren't convinced  
13 that Liberty had paid for -- had fully exhausted all of their  
14 limits, and there was an operational component to the claims.  
15 And that was a big issue that we were dealing with as well.

16 Q. So how did you address that issue then?

17 A. Well, we met with the carriers, and we presented a series  
18 of projections on what the future could look like and a series  
19 of allocations under multiple allocation scenarios, some  
20 directed by them, some directed by us. We looked at scenarios  
21 where there was a certain percentage of the claims that were  
22 deemed to be operational and not subject to go up the map.

23 So we ran a lot of different scenarios in the settlement  
24 context to try to arrive at settlements that worked for both  
25 Hopeman and the carriers.

**Ron Van Epps - Direct**

87

1 Q. Okay. Well, then why then if you reach the settlements did  
2 that not solve Hopeman's problems forever more?

3 A. Well, it got us from 2004 to 2024. And now we find  
4 ourselves with less than four million dollars of cash. And  
5 because of the settlements that we've done in the past to try  
6 to be able to fill the holes, Hopeman is responsible for  
7 somewhere in the neighborhood of thirty-five to forty percent  
8 of any of the dollars that come in today. That has to come  
9 from previous settlements because they don't have any  
10 additional funds. And so if you're spending ten or fifteen  
11 million a year, thirty-five percent of ten million, you know,  
12 is three and a half million dollars. So that would eat up  
13 anything that's remaining of their cash. So they have a hole  
14 in their program, and they don't have enough cash to be able to  
15 continue to -- continue to go down the path that we've been  
16 doing for twenty years.

17 Q. When you were talking about thirty, thirty-five percent,  
18 when you talk about in indemnity claims, were you talking about  
19 defense costs as well or what were you --

20 A. There's slightly different numbers, but it's pretty similar  
21 in terms of their share, both indemnity and defense. It's a  
22 little different.

23 Q. All right. When you mention indemnity in this context,  
24 describe to the Court what you mean.

25 A. I think in the insurance context, it is that the insurance

**Ron Van Epps - Direct**

88

1 company will indemnify their policyholder for the tort that was  
2 alleged under the policy. So that, I think, is the basis for  
3 the indemnification language.

4 Q. Okay. So if Hopeman settles a claim and pays it, the  
5 insurance company paying Hopeman, is that what you would term  
6 an indemnity claim payment?

7 A. Right.

8 Q. Okay.

9 A. That's --

10 Q. And tell the Court then what defense costs includes.

11 A. So the defense costs are all the costs associated with  
12 defending the claim in the underlying matter. So looking at  
13 product ID, looking at the exposure dates, looking at the  
14 medicals, looking at all of the things relevant to defending  
15 that underlying matter and tracking the open cases and  
16 everything that goes along with that.

17 Q. Okay. Do some carriers in Hopeman policies -- some cover  
18 defense costs and some not?

19 A. Yes.

20 Q. You have to look at every policy to determine that?

21 A. Correct.

22 Q. Okay. Is there anything about the nature of asbestos  
23 claims that complicates the coverage analysis? You mentioned  
24 earlier about when they accrue. Are these typically involving  
25 multiple years of policies in the analysis?



**Ron Van Epps - Direct**

89

1 A. Yeah. I mean, that's one of the things that complicates it  
2 because it is an ongoing -- it is an ongoing disease. And so  
3 there are questions about when you were first exposed and then  
4 how that disease develops and when it manifests itself. And so  
5 there are questions in different venues about how the policies  
6 then respond to those -- those injuries.

7 Q. So as an example, just picking out something here, if you  
8 had a date of first exposure in maybe 1974 and the disease  
9 didn't manifest itself until 2020, which policies on this chart  
10 might be involved?

11 A. Well, depending on what venue you're in, you could pick any  
12 of those within that '74 to -- in this case, you can't go past  
13 '85 because you don't have coverage that's responsive to  
14 asbestos. But there are some venues that will say you have to  
15 spread that evenly. So it's just not an easy answer.

16 Q. It's complicated?

17 A. It's complicated.

18 Q. And you have to go through that process to figure out which  
19 stack you can reach, how high up the stack you can reach; is  
20 that fair?

21 A. Yes.

22 Q. Okay. All right. Going back to the coverage map, you  
23 mentioned Liberty is across the bottom, correct?

24 A. Yes.

25 Q. And are you aware at the time you arrived, working with

**Ron Van Epps - Direct**

90

1 Hopeman -- through LEFG? Is that the name of the --

2 A. LECG.

3 Q. LECG at the time, what was the Status of Liberty at the  
4 time you arrived, the policies?

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

10 Q. Okay. So your testimony is that Liberty had been paying on  
11 their primary policy, correct?

12 A. Correct.

13 Q. Any sense of how much they paid under their primary  
14 policies?

■ ■ [REDACTED]

■ [REDACTED]

17 Q. Okay. And then were you made aware that there was an  
18 actual agreement with Liberty reached, settlement agreement  
19 reached?

20 A. Then you're talking about the 2003 settlement agreement or  
21 the 1990?

22 Q. Well, let's start with the 1990. When you first arrived,  
23 did someone inform you about the fact that Liberty had  
24 agreements in place?

25 A. Yes.

## Ron Van Epps - Direct

91

1 Q. And I'm not going to go into the particular terms of any of  
2 those agreements, but what was your understanding of the  
3 substance of the agreement?

■ ■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

12 Q. So let's talk particularly about what were the issues being  
13 resolved that you're aware of in your agreement? Again, not  
14 telling me how particular the agreement resolves all of them,  
15 but what were the issues being resolved?

16 A. Okay. So understand that I didn't participate in that  
17 agreement.

18 Q. Understood.

19 A. I was not part of it. So anything that I'll tell you is  
20 based on our conversations. [REDACTED]

■ [REDACTED] [REDACTED]  
■ [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED]  
■ [REDACTED]

Ron Van Epps - Direct

92

[REDACTED]

[REDACTED]

3 Q. But do you understand that those issues were settled?

4 A. Those were settled.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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## Ron Van Epps - Direct

93

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13 Q. And are indemnity provisions in your experience pretty  
14 typical in a settlement agreement with an insurer?

15 A. Very common.

16 Q. And what would typically be an indemnity agreement? What  
17 would it cover?

18 A. Well, the settling carrier would want indemnity from the  
19 policyholder for anybody else that comes in to make a claim.  
20 So another affiliate, another subsidiary that they don't  
21 necessarily control that would come in and make a claim and try  
22 to break up whatever agreement they had, they want protection  
23 from that. They also want protection against contribution  
24 rights from other insurance carriers. So you work hard to  
25 get -- they release their contribution rights and get the

**Ron Van Epps - Direct**

94

1 release of contribution rights from other settling insurers.

2 So what they're looking for when they -- in my experience,  
3 what the insurers are looking for is some level of finality.  
4 And if they -- if they don't have the indemnity back, they may  
5 make payments and then have other people coming, making claims  
6 on the same limits. And that's not part of their business  
7 model.

8 Q. Are you aware of whether Liberty has suggested they will  
9 bring an indemnity claim against Hopeman if they are not  
10 protected by the motion of stay

11 A. Yes.

12 Q. Does that surprise you?

13 A. No.

14 Q. Why not?

15 A. I would fully expect them to make an indemnity claim.

16 Q. Okay. Are you familiar with the Louisiana direct action  
17 lawsuits that have been brought against some of the former  
18 directors and officers?

19 A. I am familiar that they've been brought, yes.

20 Q. Okay. And do you know whether Liberty has been sued in  
21 those direct action lawsuits as insurer for Wayne?

22 A. Yes, that's my understanding.

23 Q. And to date do you know whether they have been named as  
24 defendants as insurer for Hopeman?

25 A. I -- unless they were named recently, and I don't think

**Ron Van Epps - Direct**

95

1 they could have named them until they -- we were in bankruptcy.

2 So I'm not -- my answer is no.

3 Q. Yeah. Are you aware of who defended Liberty in the  
4 litigation when they were named as an insurer for Wayne?

5 A. Kaye Courington would have been defending.

6 Q. Would that have been at Hopeman's cost?

7 A. Yes. Hopeman would have paid her bills.

8 Q. And would Hopeman have presented those bills to excess  
9 carriers for payment?

10 A. Yes, those would have been part of the bill sent to the  
11 carriers.

12 Q. And if those lawsuits were settled in which Liberty was  
13 named as an insurer for Wayne, who paid the money to pay the  
14 settlements?

15 A. Well, it got paid out of either the Liberty trust fund or  
16 from the money we received from the excess carriers that we  
17 settled with.

18 Q. Now, after Liberty Mutual had made the payments required by  
19 the agreement that you testified about before, did you take on  
20 any role with Hopeman respect to tracking issues?

21 A. Yes. We began tracking the payments that were made and the  
22 exhaustions across the coverage block in 2009.

23 Q. What's the difference between tracking payments that were  
24 made and tracking exhaustion?

25 A. Well, the payments, I'm talking about payments that are

**Ron Van Epps - Direct**

96

1 made to the underlying plaintiff. So the defense and indemnity  
2 payments, so keeping track of those and understanding that. On  
3 the exhaustion is then taking those indemnity and defense  
4 payments and allocating those over the coverage block according  
5 to the CIP agreements that we have with the various carriers.  
6 So you have to follow the terms of the coverage-in-place  
7 agreements to determine what the exhaustion looks like.

8 Q. Let's break that down a little bit. You mentioned the  
9 coverage block. Tell me what that is with respect to kind of  
10 looking at this map. What's the coverage block you're talking  
11 about?

12 A. So the coverage block is 1965 to 1985.

13 Q. Or a shorter period?

14 A. Or a shorter period, if -- so the allocation -- and it  
15 depends on the coverage-in-place agreement, right? So -- but  
16 if you're -- most of the coverage in place agreements we have,  
17 the allocation would start with the data first exposure. So in  
18 the underlying case, you have to identify were you at our  
19 shipyard, when we were at that shipyard. If you were, payroll  
20 records prove you were there. Get the date when were they  
21 first there. And then you would allocate the damages evenly  
22 from that date until the end of the coverage program, 1984 to  
23 the end of the asbestos coverage.

24 Q. Okay. You said CIP and then later said coverage-in-place  
25 agreement. Can you explain conceptually what those involve as



**Ron Van Epps - Direct**

97

1 opposed to a settlement agreement?

2 A. Right. Well, coverage-in-place I would also deem as a  
3 settlement agreement, but it differs as opposed to a  
4 commutation or buyback where the carrier says here's twenty  
5 million dollars, we're done, go away, spend it on asbestos  
6 claims. That's a commutation. The coverage-in-place agreement  
7 is an agreement that says we will agree to pay when you present  
8 these claims to us under this criteria. So, you know, it has  
9 to meet a list of things to make sure there's product ID and to  
10 make sure its medical diagnosis is proper. There's generally  
11 going to be guardrails on approvals above certain levels for  
12 settlements, those type of things, and that they will pay  
13 within thirty days or sixty days, whatever it is, based upon  
14 the formula. And that agreement will tell you exactly how that  
15 exhaustion formula will work.

16 Q. Okay. And then how do this coverage-in-place agreements  
17 you're talking about, how do they interact with -- or how do  
18 they relate at all to the Liberty settlement or buyback that  
19 you talked about? Do they -- are they somehow interlaced?

20 A. They interrelate because they all come on top of the  
21 Liberty exhaustion. And so in arriving at those agreements, we  
22 still have to deal with the underlying issue of exhaustion by  
23 Liberty and the operational nature of certain of the claims.  
24 So it was very much an issue throughout the whole thing.

25 Q. Okay. You mentioned some of the excess carriers raising

**Ron Van Epps - Direct**

98

1 the issue of exhaustion, correct? Which ones?

2 A. All of the excess carriers that I negotiated with and dealt  
3 with raised the issue of proper exhaustion of the Liberty  
4 policies. That would include London. That would include INA.  
5 That would include MMO. That would include Lexington. That  
6 would include CAN. That would include Gentry, all of those.

7 Q. So discussing those issues with all of them and trying to  
8 reach agreements with all of them, that's what you were doing?

9 A. That was part of what we were doing, yes.

10 Q. Did you reach agreements, put agreements in place with each  
11 one of them?

12 A. We were able to get agreements in place with each one of  
13 them.

14 Q. Okay. Now, you mentioned you were tracking exhaustion.  
15 How did you get the information you needed to do that?

16 A. So SES maintains the database of the -- they pay the  
17 plaintiff firms on the defense side. They make the indemnity  
18 payments. They track that in a database. They send that to  
19 us. And then we utilize that to then allocate the damages over  
20 the coverage program and track the exhaustions.

21 Q. Who is SES?

22 A. SES is a claims administrator that Hopeman hired after  
23 Liberty Mutual was done administering their claims.

24 Q. Okay. Hired somebody actually used to be at Liberty,  
25 correct?

**Ron Van Epps - Direct**

99

1 A. Don Ward who started SES was the claims handler for Hopeman  
2 on behalf of Liberty. Yes.

3 Q. So tell me how they do their work. They would collect  
4 information about which claims to pay? Is that how it -- tell  
5 me how it works.

6 A. Well, it starts with the claim gets submitted. So, you  
7 know, they get the notice that they have a claim. They have to  
8 enter that into the database. They have to work with, then  
9 assign local counsel and then gather the information on the  
10 complaint and track all of the lead-ups to the case and the  
11 discovery and track all of that in their database. They're  
12 paying local counsel bills and accumulating those. And then  
13 they then will transmit those database with the defense and the  
14 indemnity to us so that we've got a record of that. If we have  
15 questions, then we interact with them on certain open items.

16 Q. And do you then -- does Stout then convert that database  
17 into a different format?

18 A. Yes, because SES operates with a database called FileMaker  
19 Pro. It's very old. Nobody can operate with it. And so we  
20 simply convert FileMaker Pro into Microsoft Access so that --  
21 because we have turned this database over to the insurers as  
22 we've been going through negotiations and make it available to  
23 them. And they can utilize access much easier. So we do  
24 nothing to it other than convert it from FileMaker Pro to  
25 Access.

**Ron Van Epps - Direct**

100

1 Q. And did you get a copy of that database effective as of the  
2 petition date from SES?

3 A. I did.

4 Q. And did you convert it to a usable format?

5 A. We did.

6 Q. And after the confidentiality agreement was received from  
7 the committee yesterday, have you orchestrated transferring a  
8 copy of the database to the committee?

9 A. I believe we have, yes.

10 Q. Now, as part of its tracking, did Stout track both  
11 indemnity payments and defense costs separately?

12 A. When you say track, I would say, you know, we monitor it.  
13 SES I think is tracking. But yes, we were monitoring both the  
14 indemnity and the defense.

15 Q. Okay. This document's already in evidence, Exhibit 7. If  
16 you return to that policy that's behind that tab. I've got a  
17 question for you about that.

18 A. Tab 7?

19 Q. Yes, sir.

20 A. Okay.

21 Q. Is that representative of one of the policies that were on  
22 the coverage map?

23 A. Yes, it is.

24 Q. All right. And does this indicate in any way that Hopeman  
25 shares the insurance coverage with any other party?

**Ron Van Epps - Direct**

101

1 A. Yes, it does.

2 Q. Who does it share it with?

3 A. It shares it with the other -- the directors and officers.  
4 It shares it with Wayne and other subsidiaries.

5 Q. All right. And if a claim against one of this shared  
6 insureds under the policy is paid, does that reduce the policy  
7 for the benefit of the others?

8 A. Yes.

9 Q. All right. Let me get you to turn to Exhibit 10 in the  
10 notebook, designated as Exhibit 10. It's a two-page documents  
11 printed on both sides. What does that document represent?

12 A. So this document was prepared by Stout using the databases  
13 that we just talked about. So on the first page, this is  
14 looking at the indemnity dollars. And this first column, you  
15 can see down the left hand side, you see the years. So it's  
16 last five years. You can see the settlement, counsel. These  
17 are indemnity settlements in the first column in Louisiana, and  
18 in the second column, settlements for all the state settlements  
19 over that point in time. So what you see is that over the last  
20 five years, about eleven percent of the claims have been  
21 settled in Louisiana as compared to all of the states.

22 Then if you slide to the right side of this chart, you're  
23 looking at indemnity dollars. So these are the dollars  
24 associated with the indemnity settlements that are represented  
25 on the left-hand side. So you see that over the last five

**Ron Van Epps - Direct**

102

1 years, seventy-one percent -- almost seventy-one percent of the  
2 indemnity dollars from settlements have come out of Louisiana  
3 related indemnity settlements.

4 Q. Compared to the total of the claims, were about ten percent  
5 related to Louisiana, correct?

6 A. Yes.

7 Q. So disproportionate payments?

8 A. It is disproportionate.

9 Q. Okay. Let's flip to the second page. And tell me what --  
10 explain what this is all about, and walk the Court through this  
11 page.

12 A. So the second page is the similar look, but it's just  
13 looking at defense dollars. So these are the defense dollars  
14 associated with on the left all of Hopeman's defense during  
15 those times of the asbestos matters. And in the second column,  
16 the 18.8 million is the defense associated with the Louisiana  
17 cases during that time. And you see that the percentage of the  
18 defense dollars are similar to the indemnity in that they're  
19 about seventy-three percent of the total spend relates to  
20 Louisiana.

21 Q. In the top two columns on the very right, it's got LA  
22 and -- sorry. Maybe I missed you explaining that. Did you  
23 explain that?

24 A. No. I was going to. Thank you. So Kaye Courington, who  
25 does the majority of the work in Louisiana, was also covering

**Ron Van Epps - Direct**

103

1 the Mississippi cases and had not broken it out separately. So  
2 a portion of the 2019 and 2020 relate to Mississippi matters in  
3 addition to Louisiana.

4 MR. BROWN: Your Honor, I'd offer that as Exhibit 10.

5 THE COURT: Any objections?

6 MR. COX: No objection, Your Honor.

7 THE COURT: Exhibit 10 is admitted.

8 (Stout document was hereby received into evidence as  
9 Exhibit 10, as of this date)

10 Q. But based on that information and your working with the  
11 company for a lot of years, if multiple plaintiffs are allowed  
12 to pursue litigation post-petition against Liberty Mutual, are  
13 you concerned about the defense costs then?

14 A. Yes.

15 Q. Why?

16 A. We have less than four million dollars of cash available.  
17 And in my experience, these issues are very messy and would be  
18 very complicated. And it's going to cost a lot of money.

19 Q. What would the defense cost be spent on if this litigation  
20 were to continue?

21 A. Well, I think specific to Liberty, if Liberty gets sued, I  
22 believe they'll make an indemnity claim back to Hopeman.  
23 That's going to require Hopeman to spend a lot of money. I  
24 also think they will make an indemnity claim to Chubb and to  
25 Resolute and those carriers as well which will then funnel back

**Ron Van Epps - Direct**

104

1 to -- I believe those claims will funnel back to Hopeman as  
2 well. So I think there'll be a number of parties making claims  
3 back to them if this goes forward.

4 Q. Okay. In addition to claims, are you anticipating that the  
5 debtor will incur fees to deal with these issues?

6 A. Well, yeah. I mean, that was -- the point is when it comes  
7 back, I think they're going to have to spend money to then deal  
8 with the issues that are raised by the carriers.

9 Q. It would have to deal with discovery issues?

10 A. Right, yes.

11 Q. It would have to deal with coverage fights?

12 A. I believe they would, yes.

13 Q. Where would you expect coverage fights to break out?

14 A. Where?

15 Q. Where?

16 A. All those carriers are going to be looking at each other  
17 for why it's not their responsibility and why they're already  
18 out of it. So that's been the common theme. From the time  
19 that we started, it was, you know, it's not our responsibility,  
20 it's someone else's. I mean, if you look at that map, you had  
21 three years of London coverage in the middle of this program  
22 right above Liberty that refused to pay for more than ten  
23 years. And a company that doesn't have excess money has to try  
24 to figure out a way to fill that hole in. And so the fights --  
25 it would be surprising if there were not significant fights



**Ron Van Epps - Direct**

105

1 amongst the carriers that will involve Hopeman on who should be  
2 responsible for these claims.

3 Q. Do you have concerns that those expenses would be more than  
4 nominal?

5 A. Yes.

6 Q. Are you familiar with the motion to stay that's before the  
7 Court today?

8 A. I am.

9 Q. And if the relief sought is denied, do you have any concern  
10 about any impact on Hopeman's insurance coverage?

11 A. I do.

12 Q. What would that concern be?

13 A. Well, the concern is that it'll quickly exhaust the limited  
14 funds that we have to be able to continue the matter. And it  
15 could also impact the other assets within the coverage block.

16 Q. If litigation is filed or continues against of former  
17 directors and officers who have been named as defendants, are  
18 you concerned that may have an impact on the estate?

19 A. Yes.

20 Q. What would be the impact?

21 A. Well, again, it's the limited funds that -- I believe  
22 Hopeman would have to -- Hopeman has indemnified the D&Os. So  
23 Hopeman is going to have to step up to defend them, and it's  
24 going to cost money to do that.

25 Q. And let me get you to turn to Exhibit 6 which has been

**Ron Van Epps - Direct**

106

1 admitted into evidence. Are you there?

2 A. Yes.

3 Q. Okay. What does that document?

4 A. These are the bylaws of Hopeman brothers.

5 Q. All right. And do the bylaws include obligations to  
6 indemnify directors and officers?

7 A. It does.

8 Q. Okay. And you testified earlier that directors and  
9 officers shared coverage. We looked at a policy together,  
10 correct?

11 A. Correct.

12 Q. So could there be two impacts then, of them having to  
13 defend themselves, making bylaw claims, indemnity claims, and  
14 making claims on the policy?

15 A. Yes.

16 Q. All right. Do you believe the relief sought in the motion  
17 to stay is important to the debtor?

18 A. I do.

19 Q. Do you think it's critical to the success of this case?

20 A. I do.

21 MR. BROWN: Those are all the questions I have, Your  
22 Honor.

23 THE COURT: Cross-examine.

24 MR. COX: Very limited, Your Honor, as it relates to  
25 point of clarification.

**Ron Van Epps - Direct**

107

1 CROSS-EXAMINATION

2 BY MR. COX:

3 Q. Good afternoon, Mr. Van Epis. My name is David Cox. I  
4 think you were in the courtroom when I was speaking earlier. I  
5 think you testified that Hopeman might have a duty to identify  
6 Liberty under one of the settlement agreements. Do I have that  
7 correct?

8 A. You do.

9 Q. Do you have in mind which agreement would impose that duty  
10 to indemnify?

11 A. Well, there was -- there -- there is -- which of the two  
12 agreements?

13 Q. Let me clarify my thinking. So we were provided with two  
14 documents from 2003. One was a settlement agreement. Another  
15 was a hold-harmless and indemnity agreement. Is your concern  
16 based -- does your belief that Hopeman would have an obligation  
17 to indemnify flow from the hold-harmless and indemnity  
18 agreement?

19 A. Wait, let me clarify.

20 Q. Sure.

21 A. I didn't say they'd have an obligation to indemnify. I  
22 said they're going to get an indemnity claim that would be  
23 lodged against them and they would have to fight it.

24 Q. Okay. And what's the basis of that belief?

25 A. Liberty has already told them if they get sued, they're

**Ron Van Epps - Cross**

108

1 going to make an indemnity claim.

2 Q. Liberty told who?

3 A. Liberty told counsel.

4 Q. And what was the basis for Liberty's indemnity?

5 A. I wasn't part of the discussion. The question posed to me  
6 was, do you expect Liberty to make an indemnity claim against  
7 Hopeman. My answer is yes.

8 Q. Is there any -- again, I'm just trying to separate the two  
9 agreements. Is there any obligation within the --  
10 distinguished between the settlement agreement and the hold-  
11 harmless agreement -- do you have the two agreements in mind?

12 A. I do.

13 Q. Okay. To your knowledge, is there any obligation within  
14 the settlement agreement that would impose upon Hopeman to  
15 indemnify?

16 MR. BROWN: Your Honor, let me object to the extended  
17 calls for legal conclusion about the terms of the settlement  
18 agreement. Mr. Van Epps testified generally about his  
19 expectation, not specifically the terms of the agreement. So I  
20 simply think it calls for a legal question.

21 THE COURT: Response?

22 MR. COX: Your Honor, I'm trying to understand what  
23 forms the basis for the belief that there will be an indemnity  
24 claim and what the indemnity claim would stem from.

25 THE COURT: Well, to the extent that calls for a legal

**Ron Van Epps - Cross**

109

1 conclusion, I'm going to sustain the objection.

2 Q. Mr. Van Epps, I think you testified that didn't believe  
3 that an indemnity claim would be valid. What's the basis for  
4 that belief?

5 A. Wait. Can you say that again?

6 Q. I think you distinguished between Hopeman's receipt of an  
7 indemnity claim versus whether it was a valid claim or not.

8 A. No, I didn't try to distinguish that. All I said is I'm  
9 not trying to say whether it's valid or not valid. The  
10 question posed to me was, do -- would you expect Liberty to  
11 file an indemnity claim. And my answer was yes. I didn't get  
12 into whether it's a good claim, a valid claim, whether it'll  
13 stand up. That's not really for me.

14 Q. Do you have any familiarity with the hold-harmless  
15 agreement?

16 A. I've read it.

17 MR. COX: Your Honor, this goes back to the motion to  
18 seal. I have a question to pose about the hold-harmless  
19 agreement that is subject to Your Honor's order. And so I  
20 don't know if I need to clear the courtroom. I need to seek  
21 guidance from you as to how to examine the witness on this  
22 document.

23 THE COURT: Well, to the extent that you would be  
24 disclosing any confidential information, then we've already --  
25 I've already indicated that I'm not going to allow that. So

**Ron Van Epps - Cross**

110

1 parties could tell me -- maybe you can confer with Mr. Brown  
2 and indicate what it is you intend to get into. And then I can  
3 hear from Mr. Brown what he believes is appropriate.

4 MR. COX: Okay. Thank you, Your Honor.

5 Your Honor, I'll withdraw the question. And no  
6 further questions. Thank you.

7 THE COURT: Anyone else wish to cross-examine the  
8 witness?

9 MR. MINTZ: Your Honor, again, for the record, Mark  
10 Mintz on behalf of the Hopeman claimants.

11 CROSS-EXAMINATION

12 BY MR. MINTZ:

13 Q. Mr. Van Epps, I wanted to clarify for the record and make  
14 sure I was understanding a little bit of what I heard. You are  
15 not an attorney; is that correct?

16 A. That's correct.

17 Q. Did you help put together the plan of reorganization that's  
18 involved in this case?

19 A. I participated in that.

20 Q. Okay. Do you understand generally its terms?

21 A. I do.

22 Q. You understand that the terms of that plan of  
23 reorganization do include injunctions, permanent injunctions  
24 against the debtor and against settling insurers?

25 A. You're getting into legal questions. I'm not really

**Ron Van Epps - Cross**

111

1 comfortable --

2 Q. I'm just asking if you understand that those provisions are  
3 in play. If the answer is you don't understand that, that's  
4 fine.

5 A. I don't understand that.

6 Q. Okay. You did discuss the indemnity claims. And I think  
7 you clarified with the counsel's questions earlier that you  
8 believe Liberty would make a claim for indemnity; is that  
9 correct?

10 A. That is correct.

11 Q. However, you are expressing no opinion as to whether or not  
12 the claim is valid, has a defense, or anything like that; is  
13 that correct?

14 A. That's correct.

15 Q. You also are expressing no opinion as to whether or not the  
16 claim would be subject to any objection by the debtor or any  
17 other party-in-interest; is that correct?

18 A. Well, that question wasn't posed to me. Why don't you  
19 restate what you --

20 Q. Well, isn't it true that such a claim that would be filed  
21 for indemnity would be subject to objection in this Court by  
22 the debtor?

23 MR. BROWN: Objection. Calls for legal conclusion.  
24 He's not an attorney.

25 THE COURT: Sustained.

**Ron Van Epps - Cross**

112

1 Q. So you are not expressing an opinion as to whether or not  
2 there would be an objection; is that correct?

3 A. That's correct.

4 MR. COX: Wow, I managed to break that. I apologize,  
5 Your Honor. I'm going to leave that there.

6 THE COURT: It seems to be working. You can leave  
7 that there.

8 MR. COX: Thank you.

9 Q. So the other question that I had I wanted to understand, we  
10 went through Exhibit 1- in your book, which was the database  
11 you put together, the number of claims versus in Louisiana  
12 versus the total states. I believe you testified that it was  
13 eleven percent of the total claims were in Louisiana; is that  
14 correct?

15 A. No. I testified that those were the settled claims. So  
16 during those five years, that was the percentage of claims that  
17 were settled in Louisiana versus those settled in other states.

18 Q. Okay. And then you said but seventy percent of the dollars  
19 were settled dollars, I guess, for the Louisiana claims; is  
20 that correct?

21 A. Yeah. The indemnity dollars paid for seventy percent of  
22 the total indemnity dollars paid during that period.

23 Q. And then the second chart -- that's what I don't  
24 understand. What is the difference between this first chart  
25 talking about indemnity dollars and the second chart was



**Ron Van Epps - Cross**

113

1 seventy-three percent of the total spent was in Louisiana?

2 A. Defense dollars. So the second chart is defense only. The  
3 first chart are indemnity payments made to the claimants. The  
4 second chart are defense fees paid to local counsel and NCC.

5 Q. And though according to your chart, those are paid by  
6 Hopeman; is that correct?

7 A. Well, those are paid out of the funds from Hopeman, from  
8 the funds from one of those excess carriers or paid as part of  
9 the CIP.

10 Q. Okay. And so is the point of the chart to show that the  
11 Louisiana costs are disproportionate to everyone else?

12 A. The point is just to present the information that there are  
13 very large -- that it's -- a very significant portion of our  
14 spend relates to Louisiana matters.

15 Q. But you're not making any commentary I assume -- I will ask  
16 it this way. Are you making a commentary on the quality of  
17 claims or the severity of claims that would come out of  
18 Louisiana versus anywhere else?

19 A. I'm making no judgment or comment on that at all.

20 Q. Right. And that's not what -- that's not what that chart  
21 is about. It is simply stating in a vacuum what the dollars  
22 were in Louisiana versus other states; is that correct?

23 A. It's just stating the facts. This is what happened.

24 Q. Okay. But you're not giving -- you're not giving an  
25 opinion as to why that happened?

**Ron Van Epps - Cross**

114

1 A. I'm not giving an opinion as to why that happened.

2 MR. COX: No further questions, Your Honor.

3 MS. SIEG: Good afternoon. For the record, Beth Sieg  
4 of McGuireWoods for Huntington Ingalls Industries.

5 CROSS-EXAMINATION

6 BY MS. SIEG:

7 Q. Just a couple questions for you, sir. How long did it take  
8 you to prepare Exhibit 9, which is the -- I believe the  
9 coverage map? I have a copy at the podium.

10 A. We -- to be clear, we didn't prepare a coverage -- we  
11 didn't prepare the coverage map. It was prepared by the law  
12 firm before we joined.

13 Q. Have you ever prepared a similar coverage map like that?

14 A. Yes.

15 Q. How long would that typically take you.

16 A. For a coverage map like this, it would take a long time to  
17 read all of the policies and get all the appropriate language.  
18 It would take a considerable amount of time.

19 Q. And when you spoke about the indemnity claim that Liberty  
20 might file, were you referring to the proof of claim process in  
21 the bankruptcy case or something else?

22 A. No, I was referring to something else.

23 Q. What would that be?

24 A. If they get sued, I would expect them to file a claim as a  
25 result of being sued.

**Ron Van Epps - Cross**

115

1 Q. Where would that be?

2 A. Where would what be?

3 Q. Where would they file that claim?

4 MR. BROWN: I'm going to simply object. Again, legal  
5 conclusion. He's not a lawyer to prosecute claims. He doesn't  
6 know where they'd be filed.

7 MS. SIEG: I don't want a legal conclusion. I'm  
8 exploring what his understanding is of the potential claim by  
9 Liberty. And you may say you don't know where they would file  
10 it. But I'm trying to understand what the debtor's expectation  
11 is.

12 They've explained to Your Honor they're very concerned  
13 about defense costs being paid, but we know that Liberty would  
14 have an unsecured proof of claim for those costs, and they  
15 would not be payable immediately by the estate. So I'm trying  
16 to ask the debtor's financial advisor if he has an  
17 understanding about how Liberty would allege and recover on  
18 that claim, separate from whether it's in the enforceable or  
19 eventually payable or not.

20 MR. BROWN: Same objection, Your Honor, legal  
21 conclusion.

22 THE COURT: Well, I do think it verges on legal  
23 conclusion, but I also think he did testify to some extent  
24 about the debtor having to contribute costs. So I'm going to  
25 allow the question.

**Ron Van Epps - Cross**

116

1 A. I'm okay answering that part of it. It's going to -- I'm  
2 not talking about the proof of claim form that Liberty, if  
3 they're successful gets that. What I was talking about is, if  
4 they make the claim, we are going to -- Hopeman will have to  
5 defend against that claim. They will have to spend money. And  
6 we have -- they have less than four million dollars. It will  
7 quickly exhaust the funds that they have available for the  
8 plaintiffs. That's the concern.

9 BY MS. SIEG:

10 Q. And as the debtor's financial advisor, is it your  
11 understanding that Liberty would have the ability to file and  
12 prosecute that claim and require the debtor to pay those  
13 defense costs immediately in the bankruptcy case?

14 MR. COX: Again, calls for legal conclusion, Your  
15 Honor. Objection.

16 THE COURT: Yeah. I'm going to sustain that. I don't  
17 think the mechanism for how or when that debtor would pay is  
18 part of what he did testify or that -- I do think that involves  
19 legal opinion.

20 MS. SIEG: Thank you, Judge. That is all I -- oh,  
21 actually, no, let me, let me correct that.

22 Q. Exhibit 10, I believe, is the historicals or payouts. Did  
23 you prepare that document or compile it from information the  
24 debtors already have?

25 A. Yes.

**Ron Van Epps - Cross**

117

1 Q. How long did that take?

2 A. Less than a day.

3 Q. Okay. And that's with access to all of the supporting  
4 documents that have the underlying information that populates  
5 that document?

6 A. Yes.

7 MS. SIEG: Thank you. That's all, Your Honor.

8 THE COURT: Does anyone else wish to cross-examine?  
9 Redirect?

10 MR. BROWN: None, Your Honor.

11 THE COURT: All right. Was it your intention to move  
12 for admission of Exhibit 9?

13 MR. BROWN: It was not, Your Honor. I offered that  
14 for demonstrative purposes only.

15 THE COURT: All right. Very well. Thank you.

16 All right. Mr. Van Epps, you may step down.

17 MS. SIEG: And with that, Your Honor, we rest on our  
18 motion.

19 THE COURT: Does anyone else wish to offer evidence in  
20 connection with this motion? All right. Apparently not.

21 Wish to make arguments?

22 MR. BROWN: We would, Your Honor.

23 Your Honor, we did file an extensive reply yesterday  
24 with a lot of case law in it. I'm sorry to have hit you with  
25 that yesterday. It was filed when it was supposed to be filed,

**Colloquy**

118

1 at least by the time it was supposed to be filed. And there's  
2 a lot of law. But I'm not going to go into all the law. I  
3 think you need it, it's there.

4 But what I do want to say is really the theme that was  
5 in the reply which is the motion really seeks to accomplish  
6 exactly what the automatic stay is supposed to accomplish in a  
7 case like this. It's to preserve estate assets. It's to avoid  
8 the depletion of its policies, to address only a subset of  
9 claimants. It's to avoid the occurrence of attorneys' fees to  
10 deal with claims, to deal with discovery. It's to avoid the  
11 triggering of potential indemnity claims and fights about  
12 indemnity claims, whether they're valid or not.

13 We need to avoid unnecessary incurrences, fees and  
14 unnecessary interference with this Court's administration of  
15 this case. The only asbestos claimants that are opposing our  
16 motion to stay are Louisiana claimants and a subset of them who  
17 want to prosecute their own direct action claims against the  
18 debtor's insurers and the former directors and officers. They  
19 want to substitute for Hopeman in existing litigation our  
20 insurance companies. That's what they want to do.

21 So talk about identity interests, debtor got sued,  
22 stay comes in. They want to substitute someone else who has  
23 the exact same interest as the debtor. Your Honor, there are  
24 thirty-five of those lawsuits pending, and each of them names  
25 the debtor. Some of them name Liberty directly as an insurer

## Colloquy

119

1 for Wayne, and some of them involve third party complaints that  
2 Huntington has brought in. Either way, Liberty is in there  
3 currently as insurer for Wayne but not currently in those  
4 lawsuits as insurer for the debtor. That's a different move.  
5 So these plaintiffs aren't ready to go to trial on claims they  
6 haven't filed yet. So we're not interfering with litigation to  
7 put a pause in addition to the automatic stay pause that  
8 happened upon Hopeman's filing.

9 Your Honor, what I think they want is they want  
10 somebody else in a settlement chair so they can negotiate with  
11 them. Well, Hopeman filed. And no one should be in that chair  
12 in substitution of Hopeman, especially when they are  
13 negotiating with the assets of this estate which you heard are  
14 the primary assets are -- the liability insurance proceeds that  
15 are available. The coverage that's available is the central  
16 asset in this case. And it needs to be doled out fairly and  
17 not have a subset jump ahead of others, win the race to the  
18 courthouse. That's why we filed, to stop it. And we filed it  
19 because of the cash burn to fill the hole that Mr. Van Epps  
20 talked about in our insurance program. We have to pony up  
21 money to get the excess carriers to pay. We are running out of  
22 money. And so what you're causing by a run-around or an end  
23 run-around the automobile is the debtor to have to protect its  
24 interest, to incur costs at a time when it can't afford to do  
25 it, and to risk losing coverage that otherwise would be

## Colloquy

120

1 available to other claimants.

2 As Mr. Van Epps testified, it would be a mess. You'd  
3 have carriers making claims against each other left and right  
4 and making arguments about Liberty and whether that  
5 exhausted -- the settlement exhausted their policies. And that  
6 affects everybody.

7 You look at the stack of insurers and insurance  
8 policies. It's not a stack of cards, a house of cards, Judge,  
9 but it's also not a skyscraper that's built solidly. You pull  
10 one string on what is a fabric of deals, and you pull it all  
11 out. It all crumbles. And so we've got an impact that will be  
12 caused by a small subset of claimants to the detriment of the  
13 rest. That's what we're trying to avoid in addition to the  
14 stem. That --

15 THE COURT: How would it work if they -- a direct  
16 action against, say, Liberty, and Liberty has a right to ask  
17 the debtor to contribute but can't because the debtor is in --  
18 how would that work?

19 MR. BROWN: Right. So it would make claims,  
20 presumably against the other excess insurers as well to say  
21 this is your coverage that's actually a stay, I'm out.

22 THE COURT: But the debtor would still be involved in  
23 the outcome?

24 MR. BROWN: Of course. And be involved in the outcome  
25 and be involved in discovery because the fights about, well,



## Colloquy

121

1 what happened in the Liberty deal would all come back to debtor  
2 discovery. The fights between what were the settlements with  
3 all the other excess carriers would come back to the debtor.  
4 And the debtor have to protect its interests because its  
5 interests are the policies, and we wouldn't want collateral  
6 estoppel or other issues decided that would necessarily impact  
7 our estate.

8 Again, Judge, I like to say they know it's going to be  
9 a mess. It would be a mess. You heard from the only testimony  
10 that's been offered. It would be a mess. That's the evidence  
11 we stand on.

12 In terms of the legal grounds, how we get there,  
13 Judge, to get protection, 362(a)(3), of course, which protects  
14 interest of property of the estate, we think the case law is  
15 very clear in this circuit where a debtor is facing mass torts  
16 like they are in this case. Thinking about the A.H. Robins  
17 case that came out when I first started practicing law. We  
18 know the takeaway from that is in unusual circumstances where a  
19 debtor is facing massive tort claims, and they have limited  
20 policies to answer for that. We're going to make sure we  
21 contain that and we don't let piecemeal actions take away from  
22 what would be the best of the collective good. We're not going  
23 to let those parties interfere with the administration and the  
24 setting up of a trust in a way that makes sense. So there is  
25 authority --

Colloquy

122

1 THE COURT: Well, the Robbins case applied 362(a)(3).

2 MR. BROWN: It did.

3 THE COURT: Without an adversary proceeding.

4 MR. BROWN: That's correct. That's correct, Your  
5 Honor.

6 THE COURT: Under very similar circumstances to what  
7 we have here.

8 MR. BROWN: That's correct, Your Honor. We're talking  
9 about in that case, Louisiana direct action claims as well.  
10 Same party, same kind of --

11 THE COURT: So I don't have any choice other than the  
12 follow the Robins case?

13 MR. BROWN: I don't think you do under 362(a)(3) with  
14 respect to the policies, Your Honor. I think also 362(a)(1)  
15 gives you help. And I always pronounce this wrong, probably  
16 Piccinin case. A.H. Robins-Piccinin --

17 THE COURT: That's why I said Robbins.

18 MR. BROWN: Robins. The Robins case, the court said  
19 there are really four ways that you as a judge can consider  
20 granting relief. You can look at 362(a)(1) and say, well, the  
21 parties suing here, are they really -- really have an identity  
22 of interest with the debtor. And we would say yes. You're  
23 substituting Liberty on the same claim against the debtor.  
24 Liberty has threatened to make an indemnity claim. We would  
25 fight it. But the fight itself, according to the case law

## Colloquy

123

1 we've cited to you, is enough to implement the identity of  
2 interest concern. So that's 362(a)(1). 362(a)(3) is the  
3 concerns assets at BSA. T

4 he two other ways the Fourth Circuit said in Piccinin  
5 you might think about dealing with this is to use those  
6 statutes themselves to extend additional coverage to other  
7 players. And you can also do that under 105(a) in combination  
8 with 362(a). And that circumstance is when the court decided  
9 to look at the preliminary injunction standard and go through  
10 each of the four typical Blackwelder test or standard and did  
11 apply in that case.

12 And the fourth was in the Court's equitable power as a  
13 court to control its docket and control interference with the  
14 administration of these estate.

15 So they said there were really four ways to do it.  
16 And again, they were talking in that case like we are here  
17 about cases against nondebtors, protecting officers, protecting  
18 insurers, protecting the assets, avoiding the unnecessary  
19 interference with the case. Same facts. That's what we have  
20 here. And we've cited lots of other case law in support as  
21 well, Judge.

22 But the real problem here is we've got a small set  
23 claimants that really want to restart the burn, which is what  
24 would happen and potentially sabotage this case, this  
25 bankruptcy case. And this case is much -- is very unlike the

**Colloquy**

124

1 cases that have been in bankruptcy involving asbestos claims,  
2 Bestwall and some of the other ones. We don't have a Texas Two  
3 Step in this case, nor do we have a case that lingers for a  
4 couple of years trying to get to a plan. We followed our plan  
5 the first week. Why did we do that? Because the path here is  
6 clear. These assets, the insurance and whatever cash is left  
7 needs to go to a trust. It needs to be a fair process. Nobody  
8 should win a race. And it should get doled out fairly. And  
9 we're done with it. We're not trying to protect the business  
10 on the side. We're trying to push this money effectively over  
11 to claimants. That's all we have. So we can't get bogged  
12 down. We can't spend all of our money on other fights. We  
13 need to get down to how we convey these assets over.

14 And if the debtor ends up conveying the assets as  
15 policies as opposed to settlements, okay, then they didn't like  
16 our settlement we worked on very hard. If they don't like  
17 them, then the Court might decide that they're not the best  
18 deal. We think they are the best deal. But if not, then the  
19 rights will go to the trust.

20 The problem is, how do we pay for the trust? How do  
21 we pay for all of these attorneys? How do we pay for all these  
22 consultants if we don't have money? And Mr. Van Epps made it  
23 very clear the reason we filed bankruptcy is because there's a  
24 gap and there's a cash burn. We can't afford to stay in  
25 bankruptcy to do it. And we couldn't afford outside of

**Colloquy**

125

1 bankruptcy to do it.

2 So when you -- Judge, when you come down to it, I  
3 think both 362(a)(1) and (a)(3) do it. But then if you apply  
4 the four-part standard using 105, clearly there is --

5 THE COURT: Did your evidence support the four-part  
6 standard?

7 MR. BROWN: Yes, sir, I think it does. 1, we've got a  
8 plan on file. And we've got an opportunity to pursue a plan in  
9 the bankruptcy. And so the chances of success are that we have  
10 an opportunity to pursue a plan that is realistic.

11 Second is that the harms to the estate are harmful.  
12 You heard the testimony on that. And it outweighs the harm to  
13 the other side. What's the harm to the other side? Sitting  
14 tight and waiting for a little while. They can sever their  
15 claims. They can go settle with the other ten defendants  
16 they've sued or however many they have. These things can sit  
17 there. And nothing in our plan says that they're taking  
18 nonconsensual discharges or injunctions against claimants who  
19 might have claims against delivery. The settling insurers  
20 that's being talked about by Mr. Mintz, we're talking about if  
21 Chubb, if the other settlers get this Court's approval, then we  
22 would seek protection for them permanently like we did, like  
23 we're seeking in the settlement itself.

24 We're not talking about protecting Liberty Mutual.  
25 They have their deal from 20 years ago. We're not going

## Colloquy

126

1 seeking additional protection from them. Either their deal is  
2 subject to being blown up or it's not. They're on their own.  
3 But what we don't want to do is have -- while we're in  
4 bankruptcy pursuing this plan, have all those fights erupt and  
5 disrupt our ability to get to the finish line in this case.

6 So that's why we need your help. We think we satisfy  
7 the four-part standard, the last part being the public  
8 interest. Certainly, the public interest supports trying to  
9 get a company through a process that puts in place something  
10 for the benefit of the creditors.

11 Your Honor, I'm happy to answer any questions you  
12 have.

13 Oh, let me address two last issues, which is an issue  
14 was raised I think maybe by Mr. Mintz and his clients about the  
15 Purdue Pharma case. That doesn't apply in this case. We're  
16 not seeking permanent relief. We're seeking a temporary  
17 protection during the case. Judge Goldblatt answered that  
18 question very recently. It's cited in our materials. That is  
19 different than the Herrington and Purdue Pharma case.

20 And then finally, back to the issue they've also  
21 raised, which is adversary proceeding versus a motion, the  
22 Court in the Fourth Circuit made it clear as well. You can ant  
23 the relief we're talking about under 362. Judge Humrickhouse  
24 in the case we've cited made it clear. Just extending the stay  
25 that's already there, that's -- a motion is fine by that. But

## Colloquy

127

1 think about the practicalities here. What we're seeking in  
2 this case is to stop not only these thirty-five plaintiffs but  
3 anybody from trying to sue our directors and officers and to  
4 sue our insurers while we're in case. Who do we name as  
5 defendants in that lawsuit besides the thirty-five? I don't  
6 know who to name. So we brought it by way of motion so that  
7 the Court could grant the relief and grant as broad relief as  
8 possible.

9 But as we said in our brief, I don't think there's a  
10 practical reason to apply to convert it. We have the people  
11 who have been filing those claims to date noticed. Some  
12 decided to respond. They've all gotten our motion. It's all  
13 been served on the plaintiffs in those cases. So what's the  
14 benefit from that? And so I don't think there's a practical  
15 reason. But certainly to the extent the Court concludes  
16 practically we should do that, we're happy to convert it, happy  
17 to file an AP if that's what you need. But I think we've got  
18 before you what we need to have before. Thank you.

19 THE COURT: Response.

20 MR. LIESEMER: Jeffrey Liesemer on behalf of the  
21 committee.

22 Your Honor, our particular objection is a limited  
23 objection. It's very limited. We are only objecting to the  
24 stay to the extent that it applies to direct actions against  
25 Liberty because we see Liberty as separately situated from the

## Colloquy

128

1 other insurers. But one thing the debtor hasn't --

2 THE COURT: So you're in agreement that the stay  
3 should be extended to all the other parties named in the  
4 exhibit?

5 MR. LIESEMER: Correct. But we included at the end of  
6 our limited objection the reservation of rights to seek a  
7 lifting of the stay if information comes to light during  
8 discovery that the stay is inappropriately imposed.

9 So apart from worker's compensation coverage, which is  
10 not relevant here, there's no Liberty Insurance on the debtor's  
11 schedules. And the debtor's witness, Mr. Lascell, in his  
12 declaration, which is Exhibit 1, says that the Liberty coverage  
13 is exhausted and released. So there's no reported interest in  
14 Liberty insurance coverage from the debtor standpoint, and so  
15 there's no property of the estate that's implicated under  
16 362(a)(3).

17 By contrast, the direct action claimants do have an  
18 interest in the Liberty coverage. Liberty couldn't cut off the  
19 vested interests of the claimants. This is part of what Your  
20 Honor heard earlier. When there's exposure, the claimants get  
21 a vested interest in the insurance coverage. And that's not  
22 something that the -- at that point that the insurer and the  
23 insured tortfeasor can cut off.

24 And we cite the relevant authorities in paragraphs 2,  
25 7, and 8 of the limited objection. In there you heard



**Colloquy**

129

1 principles this morning. And with respect to the Comardele  
2 (ph.) case, which is the district court of Eastern District of  
3 Louisiana in 2014, that's cited in paragraph 40 of the debtor's  
4 reply, they contend that if -- there's no interest if the  
5 debtor at the time bought back -- I'm sorry, the insurer bought  
6 back the policy, that there's an interest if the debtor or the  
7 insurer didn't know about -- didn't know about the claims. But  
8 we don't think that case remains good law, particularly in  
9 light of the Courville case which was decided about six years  
10 later out of the Louisiana Court of Appeals. And we've cited  
11 and discussed that case in paragraph eight of our limited  
12 objection, so I will not dwell on that.

13 The debtor contends that the stay can be extended  
14 under 362(a)(1) based on unusual circumstances and identity of  
15 interest. They've mentioned in the reply, that they think that  
16 without the stay, direct actions against Liberty, they would be  
17 forced to respond to discovery on underlying claims and  
18 coverage disputes. I don't think forced is really the outcome  
19 here because they can't take discovery of the debtor without  
20 Your Honor lifting the stay. And Your Honor would have to find  
21 cause under those circumstances.

22 They express concern that if the direct actions were  
23 allowed to continue, the debtor couldn't avoid collateral  
24 estoppel and would have to monitor its interests. Well, the  
25 debtor is protected in Chapter 11. I can't see how a final

## Colloquy

130

1 judgment that's entered against different defendants, nondebtor  
2 defendants, can have nonmutual offensive collateral stoppable  
3 effect on a debtor that's protected by the automatic stay.

4 And this debtor is not an operating business. It's  
5 going to be liquidating in Chapter 11 and has proposed a  
6 liquidation Chapter 11 plan. So whatever decisions, adverse  
7 decisions affect Liberty are not going to affect the debtor  
8 here in bankruptcy. The debtor really should be indifferent  
9 about what happens down in Louisiana at this stage.

10 THE COURT: Despite the indemnification obligation?

11 MR. LIESEMER: I'm turning to that.

12 With respect to the identification litigation, we see  
13 it as a post hoc rationalization. It's very convenient for  
14 Liberty to threaten indemnification in order to get stay  
15 protection. We think the debtor's actions speak to the  
16 contrary. The debtor didn't list Liberty as a contingent  
17 creditor in its schedules. The debtor didn't mention the risk  
18 of an indemnity claim from Liberty in its original motion. And  
19 Mr. Van Epps, who testified, acknowledged that he thought there  
20 would be a claim, but he's not an attorney, and he said he  
21 didn't say that there was an obligation.

22 So I think the debtor's burden has not been met here  
23 in terms of a risk has been identified, but is the risk real.  
24 We think based on the circumstantial evidence that the answer  
25 is no.

## Colloquy

131

1           As for the traditional PI factors, which the debtor  
2       had raised for the first time on reply, the debtor cites the  
3       standard from the (indiscernible) case, the traditional four  
4       factors. But the very first factor is there must be a  
5       reasonable likelihood of a successful reorganization. And as  
6       we all know, the debtor is not seeking a reorganization here.

7           The debtor suggests in its papers, nevertheless, that  
8       it can apply in liquidations when the actions to be enjoined  
9       would interfere with the rehabilitative process, and they're  
10      citing apparently Buchanan (ph.) at page 1003 in that case.  
11      But again, there's nothing to rehabilitate here. There's no  
12      operating business, no going concern to preserve, no jobs to  
13      save. This is a liquidating debtor.

14           And at the end of the day, Liberty is not entitled to  
15      permanent injunctive relief. That's -- the debtor is not  
16      seeking 524(g) channeling injunction protection for any non-  
17      debtors. It can't because it's not pursuing a reorganization.  
18      This is liquidation. So under --

19           THE COURT: I mean, didn't the -- the debtor cited the  
20      Briar Creek Corporation, which in turn quoted the Robbins case  
21      to say that ample power under Section 105 to enjoin actions  
22      excepted from the automatic stay which might interfere in the  
23      rehabilitative process, whether in a liquidation or in a  
24      reorganization case.

25           MR. LIESEMER: Right, right. The key language there

## Colloquy

132

1 is rehabilitative process. There's nothing to rehabilitate.  
2 There's no operating business. There's no going concern.  
3 There's no --

4 THE COURT: So what did they have in Robbins that was  
5 necessary to rehabilitate that we don't have here?

6 MR. LIESEMER: Robbins was, as we all know, a  
7 reorganization.

8 THE COURT: But it still resulted in a trust in order  
9 to or still resulted in a stay to enable the debtor to fund the  
10 trust.

11 MR. LIESEMER: Right. And there was a channeling  
12 injunction, as there would be. That's analogous to 524(g)  
13 relief and channeling injunction. But --

14 THE COURT: So isn't that the import of the decision  
15 that -- why would they say whether reorganization or  
16 liquidation?

17 MR. LIESEMER: Because there might be some sort of  
18 liquidations that have a rehabilitative effect, such as selling  
19 off, for example, maybe departments -- underperforming  
20 department stores. So at least the profitable department  
21 stores in the business can move on and reorganize. That would  
22 have some sort of rehabilitative effect. But I don't see  
23 rehabilitative effect here because there's no operating  
24 business.

25 THE COURT: All right. Well, I suppose it depends on

## Colloquy

133

1 how you define rehabilitative, but all right. Anything else?

2 MR. LIESEMER: Well, as I was getting into, Liberty is  
3 not entitled to any permanent injunctive relief or non-debtor  
4 releases. As I said, this is not a 524(g) case. Purdue  
5 Pharma, I think, forecloses that kind of permanent relief.

6 The Supreme Court has held in a case long ago that if  
7 an entity is not subject to permanent injunctive relief, then  
8 it can't get preliminary injunctive relief, either. And that's  
9 the De Beers Consolidated Mines v. the United States at 325  
10 U.S. --

11 THE COURT: Is that what it meant in the context that  
12 it -- a temporary injunction -- I mean, the permanent  
13 injunction in that case is not the same as what we're talking  
14 about here. We're talking about a temporary stay during the  
15 pendency of the case.

16 MR. LIESEMER: Well, if I remember De Beers correctly,  
17 the United States sought an asset freeze order against the  
18 defendants on a preliminary basis. And the Supreme Court found  
19 that that preliminary asset freeze order was not acceptable  
20 because the United States, at the end of the day, couldn't get  
21 a permanent asset freeze order. And that's the import of that  
22 whole thing.

23 THE COURT: I don't know if that's the same context,  
24 but you -- continue.

25 MR. LIESEMER: All right. Well, Your Honor, as I

## Colloquy

134

1 said, for these reasons, we think that the objection to staying  
2 the direct actions against Liberty should be sustained.

3 I do want to add one other thought that's more broader  
4 than that, because as you pointed out, we're not opposing the  
5 stay as to other insured parties. The debtor has listed the  
6 protected parties by name in Exhibit A of its reply brief.  
7 This is the first time on the public record that the debtor has  
8 identified the protected parties by name.

9 We think in the final stay order, these protected  
10 parties should be listed by name as well. And we think that's  
11 consistent with Federal Rule of Civil Procedure 65(d), which  
12 requires specificity in reasonable detail. And the purpose of  
13 that is to avoid confusion, because what I have been told is  
14 that there has been -- the interim stay order because it didn't  
15 identify the protected parties by name, has caused confusion in  
16 at least one Louisiana proceeding -- and so because they  
17 couldn't interpret Your Honor's order. And so I think they did  
18 a very overprotective application of that order. And we think  
19 in order for the stay to be properly tailored, that the  
20 protected party should be identified by name.

21 THE COURT: All right. Well, I assume Mr. Brown  
22 wouldn't have listed him if he didn't intend to include him in  
23 the order, but --

24 MR. BROWN: Happy to have him attached. I think that  
25 would be helpful.

## Colloquy

135

1 THE COURT: All right.

2 MR. LIESEMER: Very well, Your Honor. Thank you.

3 THE COURT: Thank you. Anyone else wish to argue the  
4 motion?

5 MR. CLEMENT: Again, Jonathan Clement on behalf of  
6 Janet Rivet, Kayla Rivet, Maxine Ragusa, Valerie Ann Ragusa  
7 Primeaux, Stephanie Ragusa Connors, Erica Dandry Constanza, and  
8 Monica Dandry Hallner. Those are the list of claimants that we  
9 represent in a total of three Louisiana cases. And the cases,  
10 I'll refer to them as Dandry, Rivet, and Ragusa, because those  
11 were the individuals who sustained the disease and who are now  
12 deceased.

13 Similar to what counsel for the committee said, we are  
14 seeking a very limited objection to the extension of the stay.  
15 And what we are seeking is an objection to the stay, as it  
16 applies to Liberty Mutual as the insurer of Hopeman. And what  
17 becomes important there, we are not seeking any objection to  
18 the stay as it may apply to Liberty insuring Wayne  
19 Manufacturing or any directors and officers.

20 You heard counsel for the debtor get up and talk about  
21 how there was a bylaws agreement. And under the directors and  
22 officers, officers get indemnity under that. We don't have any  
23 claims against the directors and officers from my three cases.  
24 We don't have claims against Wayne. We're solely looking to go  
25 against Liberty Mutual as the insurer of Hopeman.

## Colloquy

136

1           The debtor argues that unusual circumstances exist in  
2 this case, warranty and an extension of the stay to a non-  
3 debtor Liberty, because the claims could potentially deplete  
4 the estate. And like the counsel for the committee argued,  
5 number one, there is no more interest in the policies because  
6 they've been released. But even if there was, even if Hopeman  
7 had listed those Liberty Mutual policies as part of the  
8 schedule of assets, we believe these sort of cases that are at  
9 issue for my three groups of clients are the types that would  
10 not deplete the estate, and that's what distinguishes it from  
11 H.A. Robbins, which was cited already, the In re: Johns  
12 Manville case, which H.A. Robbins relied upon it. And this is  
13 why.

14           And I think the -- Mr. Van Epps who got up, kind of  
15 alluded to this is you have operations claims versus products  
16 slash completed operation claims. H.A. Robbins, Johns  
17 Manville, those are more of the product type claims. And  
18 historically, when you're looking at general liability policies  
19 for those type of claims, there are aggregate things. And so  
20 when the courts in H.A. Robbins and In re: Johns Manville talk  
21 about trying to prevent a race to the courthouse, trying to  
22 prevent one group of creditors getting a benefit by going after  
23 the insurers to the detriment of other creditors, that's not  
24 going to happen in this instance. And that's because the type  
25 of claims that my three cases have are solely operations



## Colloquy

137

1 claims.

2 When you look at Hopeman's activities at Avondale  
3 Shipyards, where my clients work, it was all operations or  
4 exposures during the actual cutting of the wallboard aboard  
5 ship. That's not disputed. So those would fall -- those are  
6 not completed operations or product hazard claims. Those are  
7 operations claims. There are no policy limits. So there's  
8 nothing for -- to be depleted in the in the estate.

9 And so we would argue that actually by allowing these  
10 three Louisiana claimants, these cases to go forward against  
11 Liberty Mutual, who the debtor has indicated they're not even  
12 going to be seeking money from Liberty Mutual in the future,  
13 that it actually benefits the estate and benefits the other  
14 creditors, because if we're allowed to seek our claims against  
15 Liberty Mutual and we'll be able to resolve those against  
16 Liberty Mutual, essentially you're removing three cases and  
17 seven creditors from the list of creditors that would go after  
18 Hopeman. So we think in this instance, and that's why it's  
19 different from H.A. Robbins and In re: Johns Manville, because  
20 the policy limits are uncapped as to operations claims, and  
21 therefore it would benefit the estate to allow Louisiana  
22 claimants like my clients to go after Liberty Mutual.

23 I know there were some things brought up about a fight  
24 between the excess carriers and whether Chubb or some of these  
25 insurers that sought to file a settlement motion. But my

## Colloquy

138

1 objection does not seek to interfere with that. We're not  
2 seeking to go after these excess insurers in the -- in the tort  
3 actions of the three cases that I have pending in Louisiana.  
4 We're solely seeking to go after Liberty on behalf of Hopeman.

5 The only potential, I think, thing that was brought up  
6 is these threatened indemnity claims that counsel for Liberty  
7 could potentially bring against Hopeman. I'm in agreement with  
8 the counsel for the committee. I don't think that the basis  
9 for that has been submitted. The only thing that was talked  
10 about was a potential threat from Liberty. There's nothing  
11 indicating that there actually is an indemnity claim or that an  
12 indemnity claim was found. I don't think that should be  
13 something that should prevent my clients from getting to  
14 proceed against Liberty Mutual in the tort action.

15 One of the things that they brought up in the reply  
16 brief, I think talking about having to expend money because the  
17 claimants might seek discovery against Hopeman Brothers in  
18 those tort actions, or they may need Hopman's involvement to  
19 challenge the validity of the Hopeman settlement agreement. We  
20 disagree with that.

21 We litigate these cases all the time against insurers  
22 where insurers are bankrupt. Insurers have not been around for  
23 twenty years. We can solely seek our discovery against Liberty  
24 Mutual. In fact, that Coralville case that was talked about,  
25 that was a situation where we were litigating against Liberty

**Colloquy**

139

1 Mutual. The insurer insured in that case was Riley Benton, who  
2 was bankrupt. They weren't involved in that case. And we  
3 litigated that all the way up to the appellate court in  
4 Coralville, strictly against Liberty Mutual.

5 So these cases can be handled against the insurer  
6 only. And they're routinely done that way when you don't have  
7 the insured involved. And there's a stay against Hopeman. So  
8 they wouldn't be involved in the cases.

9 So we believe, or at least I believe, as to my three  
10 group of cases, Dandry, Rivet, and Ragusa, that we should be  
11 allowed to go against Liberty Mutual for Hopeman.

12 And I don't think that violates what the Court said in  
13 H.A. Robbins, because in footnote ten of that decision, the  
14 Court actually alluded to or talked about the In re: White  
15 Motor Credit case, where in that case there was an agreement,  
16 even though it was a product liability case, there was an  
17 agreement between both sides that the claims at issue would not  
18 exceed the amount of policy limits. So they were allowed to go  
19 forward in that instance. And that's why I think our case is  
20 more akin to that case that's cited in the footnote, because  
21 for our claims, the operations claims, there are no aggregate  
22 limits. So it's not something where the claims can exceed any  
23 policy limits or any proceeds of the estate.

24 So we believe that the objection on our behalf should  
25 be sustained for my three clients.

**Colloquy**

140

1 THE COURT: Is Liberty currently a defendant in your  
2 action?

3 MR. CLEMENT: They're not. We have Hopeman. We did  
4 not bring Liberty in because we didn't need to because we had  
5 Hopeman. I would have to amend to bring Liberty in solely for  
6 Hopeman.

7 THE COURT: Right. So -- in none of your none of your  
8 cases.

9 MR. CLEMENT: All three cases. Liberty --

10 THE COURT: Liberty is currently not a -- you're  
11 seeking permission to institute or to add to the litigation.

12 MR. CLEMENT: Exactly. Now, they may -- I think there  
13 is one where Huntington Ingalls, Avondale's Shipyard may have  
14 them in as a third-party for -- Liberty, for maybe for Wayne.  
15 I'm not seeking to add that. I'm asking -- I'm seeking to add  
16 Liberty for Hopeman. But no, I did not or my clients did not  
17 bring against Liberty for Hopeman.

18 THE COURT: All right. Thank you. Anyone else?

19 MS. SIEG: Thank you, Judge. Again for the record,  
20 Beth Sieg for Huntington Ingalls Industry.

21 Our objection is a little bit different and hopefully  
22 more practical. I've already forgiven him for doing this this  
23 morning, but Mr. Long called me easy. And I think I've already  
24 forgiven him because I know he didn't mean it that way. I'd  
25 like to propose what I think of as an easy solution here.

## Colloquy

141

1           What we've asked the Court to do is set the motion to  
2 stay for a final hearing on the November omnibus date. And the  
3 reason we've asked Your Honor to do that is you've heard a lot  
4 of testimony on the motion to stay today that was from the  
5 debtor's perspective.

6           The insurance policies that are subject to the motion  
7 to stay were produced. Most of them at least were produced to  
8 us only a couple of weeks ago. And yesterday, we got the  
9 Liberty agreement that is the basis for the assertion that  
10 there's an identity of interest related to the indemnity claim.

11           The parties just have not had enough time to conduct  
12 discovery. And Your Honor doesn't have a complete factual  
13 record. And I think given the scrutiny that has been given by  
14 our district court when it comes to impact on third-party  
15 claims in bankruptcy cases, and also, that's a big subject in  
16 in the Supreme Court lately, I think it behooves all of us  
17 lawyers to make sure that you have an adequate factual record  
18 before you enter this injunction on a quasi-permanent basis  
19 that would last the duration of the bankruptcy case.

20           We think it makes much more sense because the legal  
21 issues, while their context is different, the determinations  
22 you're being asked to make are very similar to what you'll be  
23 asked to make in the 9019 context. Here, it's whether you  
24 should extend the stay to -- for the benefit of non-debtors.  
25 But to make that determination, you have to decide which

## Colloquy

142

1 policies are property of the estate. The issue of exhaustion  
2 impacts that decision because there's obviously case law that  
3 suggests where there's no aggregate limits, as some have  
4 alleged, those policies aren't property of the estate.

5 So -- and in addition, Your Honor, you have the issue  
6 with Wayne. It's entirely unclear. And there's no evidence in  
7 the record right now to support why an insurer for Wayne, who  
8 is a non-debtor, would get the benefit of any stay. So we  
9 think there are significant factual questions that the parties  
10 haven't had time to fully vet and explore.

11 And we think again, as I said, it's the same thing  
12 that you'll be asked to decide in the 9019 motions: what is the  
13 extent of the coverage, and how does that compare with what the  
14 debtors have proposed as their settlement amount? The context  
15 is different, but the legal issues are the same. And you heard  
16 this morning about all of the complexities and understanding  
17 the scope of the coverage, what's been exhausted. All of those  
18 things are very complex. And the debtor's witness even  
19 admitted that it would take him a considerable amount of time  
20 to understand and digest the information that's in that  
21 coverage map, for which we don't even have the complete set of  
22 policies yet.

23 And that's not a dig on debtor's counsel. We've  
24 actually had productive discussions. They've been giving us  
25 documents on a rolling basis. These things just take more time

## Colloquy

143

1 than we've had. And we have not yet had an opportunity to  
2 depose the debtor's witnesses on this issue.

3 And so that's why we're asking Your Honor to set this  
4 for a final hearing on the November omni. And there's no harm  
5 to the debtors. They have the benefit of the stay in the  
6 interim. That would simply allow parties opposing the stay  
7 enough time to develop the record to come to Your Honor and  
8 say, you know, maybe it makes sense for these parties. Maybe  
9 it doesn't make sense for that policy, but you just don't have  
10 the record in front of you today to approve that on a final  
11 basis for the duration of the bankruptcy case.

12 And I think doing so would only add to the expense  
13 because a preliminary injunction like this is, is immediately  
14 appealable. So we don't need to get into a situation where  
15 we're having to appeal on a less than complete factual record  
16 that doesn't serve anyone's interest. And I do appreciate -- a  
17 final note in the debtor's reply in response to our objection,  
18 asking for this to be set over for a final hearing, they said.  
19 Well, just go ahead and enter it now, and then if you have a  
20 problem with it, you can come back later and ask for relief.

21 And the reason that doesn't work here, and I  
22 appreciate the offer and the concept. We do that all the time  
23 in bankruptcy cases as a way to try to get past an impasse. It  
24 doesn't work to do it that way here, because it's the debtor's  
25 burden to establish the factual record necessary to obtain a

## Colloquy

144

1 preliminary injunction. So the burden shouldn't be put on my  
2 client to develop the evidence, to come back in, and ask for a  
3 relief. We think that the best solution, since they already  
4 have their interim order, we think the best solution is to  
5 continue the final hearing to the November date.

6 THE COURT: So your -- Huntington Ingalls third-party  
7 Liberty in the Louisiana litigation, what other defendant or  
8 what other party that's being sought to be protected, might  
9 your client want to go after?

10 MS. SIEG: It could be the other settling insurers.  
11 And to be honest, Your Honor, when the motion was first filed,  
12 it wasn't abundantly clear to us who was the subject of the  
13 potential stay. We -- Huntington obviously knew it related to  
14 the Liberty causes of action because they were the Huntington  
15 Liberty cases, because they were an exhibit to the motion.  
16 Those obviously impact us. The protected parties are also the  
17 other potential settling insurers. And our clients have  
18 contingent contribution claims that may be asserted under a  
19 direct action statute as well, but those haven't actually been  
20 filed yet.

21 So to the extent the stay applies to those entities,  
22 it would also impact us. But the only pending claims are the  
23 ones that were listed on the debtor's exhibit to the motion.

24 THE COURT: So the possibility exists that you may  
25 want to pursue other insurance companies, but at this point



## Colloquy

145

1 you're not doing that?

2 MS. SIEG: That's correct. Yeah. And part of the  
3 reason for the discovery is we need to understand what the --  
4 what the picture is of the debtor's insurance coverage. And  
5 you've heard their testimony about why they think the -- why  
6 they think it's been exhausted as to Liberty. And you're -- we  
7 anticipate that they will give you a record as to why their  
8 proposed settlements are fair in comparison to what coverage is  
9 potentially available. But those are the discovery issues that  
10 have to be addressed. And that's why I say the issues are so  
11 similar with respect to the two motions.

12 And if it takes us at least sixty days, as everyone  
13 now agrees to evaluate that in the context of the 9019 that  
14 would involve a permanent bar to asserting those claims against  
15 the protected parties, why isn't it necessary and appropriate  
16 to give our clients the same amount of time to evaluate a  
17 temporary injunction, while there's no harm to the estate  
18 because they already have an existing one for the interim? So  
19 that's our position.

20 THE COURT: All right. Thank you.

21 MS. SIEG: Thank you, Judge.

22 THE COURT: Does anyone else wish to address this  
23 motion?

24 MR. CLARK: Your Honor, this is Matt Clark from  
25 Louisiana. May I have just two or three moments?

**Colloquy**

146

1 THE COURT: Yes, sir.

2 MR. CLARK: Thank you very much. And I'm sorry. I'm  
3 hearing an echo. I don't really know what to do about that.  
4 Do y'all hear it, too?

5 THE COURT: I can hear you.

6 MR. CLARK: Okay. Good.

7 So I want to address the notion that there's an  
8 indemnity (indiscernible) or writ the bankruptcy to Hopeman.  
9 That was addressed during the examination of Mr. Van Epps, and  
10 it did address a couple points in argument today.

11 And I think the way that it's been addressed,  
12 particularly by debtor's counsel, is as though the debtor could  
13 not be in the bankruptcy proceeding, protected by the stay  
14 order that's already in place if Louisiana litigants continued  
15 to prosecute their claims or made claims against the Liberty  
16 Mutual. Liberty Mutual shouldn't have any exalted status over  
17 people like my clients or Mr. Jonathan Clement's clients.

18 What he said today, I thought, was to the point and to  
19 me, very well taken. I don't want to rehash anything that -- I  
20 just want to make sure that everybody understands. Liberty  
21 could be stayed from making any indemnity claim, any discovery  
22 motion against the debtor while in the tort system. Just like  
23 my client can't make a discovery motion or claim against the  
24 debtor. Liberty is a non-debtor, just like my client. And it  
25 shouldn't have any exalted status over my clients.

**Colloquy**

147

1           If my clients are successful in litigating the tort  
2     system against Liberty, then Liberty wants to exercise whatever  
3     indemnity right it may have, and we don't even know yet that it  
4     does. But we're just speculating it does have one and that it  
5     might exercise one. Then it can go into the bankruptcy  
6     proceeding that the debtor is setting up with adequate funds,  
7     get in line, just like the debtor is asking my clients to get  
8     in line in a bankruptcy proceeding. Thank you.

9           THE COURT: All right. Thank you. Mr. Mintz?

10          MR. MINTZ: Thank you, Your Honor. Mark Mintz, again,  
11     for the record, on behalf of the Hoffman claimants, as  
12     identified in the debtor's papers.

13          Your Honor, and again, it's always hard going towards  
14     the end because you don't want to rehash, but I want to go  
15     through just a couple of points. We did adopt Mr. Clement's  
16     original objection, as if in full. We do agree with his  
17     arguments and will adopt his argument as well.

18          You know, I want to refocus this, I think, back on the  
19     automatic stay itself and what we're actually trying to get to  
20     here. 362, the debtor has proceeded to say, really, this isn't  
21     an extension of the stay. It's an asking a motion to confirm  
22     the stay. That was really, I think, the basis of the reply, at  
23     least the way that I understood it.

24          And they explained under 362(a)(1), this is really an  
25     action against the debtor. Well, 362(a)(1) tells us that it

## Colloquy

148

1 means against the debtor. So we're talking about Liberty  
2 Mutual. As we're talking about them, that's not the debtor.  
3 And you can say, well, in other states, and this is why the  
4 Louisiana direct action makes sense or is important here is  
5 because in other states, that is the way the indemnity works  
6 from an insurance company. You sue the debtor, the tortfeasor,  
7 and then they make a claim against insurance. And maybe you  
8 can third-party them in, or maybe there'll be an additional  
9 direct claim.

10 In Louisiana, it is a direct claim against the  
11 insurer, and that is a substantive right that is conferred by  
12 Louisiana law. Now, we can all agree. We can all disagree.  
13 Unfortunately, that is the decision of the Louisiana  
14 legislature for those rights for Louisiana citizens.

15 So it's not a claim against the debtor as to the  
16 claims against Liberty Mutual. And then we heard, well,  
17 let's -- exercising control of property of the estate. Now,  
18 that's a really interesting statement, really, to make. The  
19 first issue here is the Supreme Court has already told us in  
20 City of Chicago that 362(a)(3) really should not be read nearly  
21 as broad as it used to be. Now, that was completely about a  
22 different issue. I completely am conceding that it's about a  
23 different issue, but it does talk about how far we go in  
24 reading 362(a)(3).

25 What the Fifth Circuit has said, and the Sixth Circuit

## Colloquy

149

1 has said as well, and I'm sure the Fourth Circuit has said it,  
2 I just wasn't able to find it immediately, is that the mere  
3 fact that the debtor may have to exhibit or spend funds or  
4 expend funds, the mere fact that the debtor might be subject to  
5 discovery, that is not implicated by the automatic stay.

6 Commonwealth Oil, 805 F.2d 1175, that's a Fifth  
7 Circuit case from 1986, that is exactly what it says. So the  
8 mere fact that there could be claims against the debtor, claims  
9 that would be -- have to be filed in this Court. Mr. Van Epps  
10 was very clear that he is not a legal expert. Your Honor was  
11 very clear that he's not a legal expert. He does not know  
12 where the claims will be filed. We are legal, at least  
13 lawyers. We do know where they're going to be filed. They're  
14 going to need to be filed and litigated in this Court, which is  
15 where they should be.

16 Liberty can have a claim if it thinks it has one.  
17 Whether 502(e) allows that claim to be allowed against the  
18 estate or not is something this Court will figure out. It is  
19 something this Court is fully equipped to figure out. But  
20 that's not today's issue.

21 The issue is does 362(a)(3) prohibit or, you know,  
22 extend the stay despite the terms of saying it only applies to  
23 the debtor, does it extend it -- and property to the debtor,  
24 does it extend it to Liberty Mutual?

25 And it's also interesting because as counsel said for

## Colloquy

150

1 the committee, Liberty Mutual is not listed as property of the  
2 estate, the Liberty Mutual policies at issue. So if there's a  
3 claim against them, they're about as far removed as you could  
4 be.

5 So that leaves only the preliminary injunction  
6 standard that we've been talking about. And I adopt again what  
7 everyone has said. But I do want to talk about something  
8 because I went different in my papers and, you know, decided to  
9 bring up the case that nobody wants to talk about, which is  
10 Purdue. But I did it for an important reason. And it's what  
11 the debtor just said or what the debtor argued at the  
12 beginning, and then it was put out here.

13 You go through the four factors. And the first one  
14 was opportunity of success. And the debtor keeps talking about  
15 this is not a permanent injunction. It's just very temporary.  
16 Yeah, it's a final order, but it's just very temporary. We're  
17 not trying to do any permanent injunctions. This is their  
18 plan.

19 But the record that's filed at docket 56, Section 10.4  
20 policy injunctions, in fact all the Article 10, as most of them  
21 are (indiscernible) injunctions, releases, and settlements for  
22 insurers for third parties.

23 Now, could it be consensual? It could be. We could  
24 get there. But let's not pretend for a second that this is not  
25 an injunction-type case, that we're not seeking types of third-

## Colloquy

151

1 party releases. It's a hundred percent what we're seeking. If  
2 it isn't what we were seeking, they want it settled. I'm not  
3 saying you can't enter into settlements. Of course you can.  
4 But let's call a spade a spade and talk about what we're  
5 actually talking about.

6 And so let's talk about the case that debtor cited and  
7 that actually we cited. We brought it up first, the first  
8 Goldblatt case out of Delaware -- Parliament. What's it  
9 called? Parliament. And in the Parliament case what Judge  
10 Goldblatt said is a hundred percent Purdue Pharma does not  
11 mean, and I'm not arguing that it means, that you cannot extend  
12 the stay. I'm a big believer that in exactly what Judge  
13 Goldblatt said and exactly what the Supreme Court said. Purdue  
14 Pharma says what it says and is limited to what it says.

15 But it does mean, and this is what Parliament says,  
16 that you cannot base the opportunity of success criterion on  
17 the possibility of these third-party releases. That's what  
18 Parliament stands for.

19 Insofar as A.H. Robin (sic) says that, and I recognize  
20 that is the law of the circuit. And I'm not here to tell you  
21 that it isn't. But I am here to tell you that to the extent  
22 that it says that you can base the opportunity of success  
23 criterion on third-party releases, like the ones we were seeing  
24 in this plan at the moment, then that has been overruled by  
25 Purdue Pharma. And that's the unfortunate truth about where we

## Colloquy

152

1 are today.

2 So that was the point of adding this in. It wasn't to  
3 say this is so far, you know, beyond and Purdue Pharma, it  
4 should be extended beyond what the arguments are. It is this  
5 narrow point of where they were basing for their preliminary  
6 injunction.

7 So this opportunity of success area or the likelihood  
8 of success or whatever you want to call it, criterion, if they  
9 can't meet that, the rest of the balance of harms, it really  
10 falls by the wayside. And so where I'm getting at, Your Honor,  
11 is especially with regards to Liberty Mutual, where we have  
12 direct actions, where you've had briefing on the  
13 (indiscernible) arguments that happen under Louisiana law, as  
14 Huntington Ingalls has pointed out.

15 It is not as simple as saying, oh, this small part can  
16 be stayed and that won't affect everything else. It actually  
17 does affect everything else.

18 The final point that I raised that was slightly  
19 different than others is I do not believe the debtor has met  
20 its burden with regards to the directors and officers. At the  
21 time that I raised the issue, we had not seen nearly as much as  
22 we have seen now that came in the reply and was presented to  
23 the Court.

24 I want to withdraw my objection on the director and  
25 officer portion in the interest of making this whole thing



## Colloquy

153

1 easier. So we are going to withdraw our objection on extending  
2 the stay as to the directors and officers. We maintain it as  
3 to Liberty Mutual, and I think that is important that we're  
4 really all arguing the same thing. And I think that's an  
5 important point that Your Honor can use in deciding.

6 Finally, I think -- then as you talk about this effect  
7 on the estate concept, the debtor really bears a heavy burden  
8 of putting that forward. And what we heard from the debtor's  
9 witness was not this is the heavy burden. What we heard from  
10 the debtors witness was, I think there might be a claim. He  
11 has expressed no opinion. I asked him these questions, no  
12 opinion whatsoever on the amount of claim, what was a valid  
13 claim, how and where it could be filed. What that claim from  
14 Liberty Mutual would even look like. Expressed no opinion on  
15 the event. All he has stated is there have been defense costs.

16 Well, they were litigating claims beforehand. We  
17 don't know if these were the quote unquote, and I hate using  
18 this term, but the bad claims. We don't know anything about  
19 the claims that when he gave us this listing, all he said was  
20 and he confirmed for us, it was just the simple math of how  
21 much was spent.

22 And based on some agreement, maybe, there might be a  
23 claim, we think possibly to repay that. Well, that's going to  
24 be part of a settlement that apparently is occurring or not  
25 occurring, but it doesn't change the fact that the Louisiana

## Colloquy

154

1 clients or the Louisiana claimants do have direct actions  
2 against Liberty Mutual, that that policy is not property of the  
3 estate, and that any preliminary injunction to proceed, the  
4 debtor has not met what is admittedly a higher burden of doing  
5 so.

6 So for those reasons, Your Honor, we do urge you to  
7 deny the motion to extend as to Liberty Mutual. We withdraw  
8 our objections as to the others. And I appreciate your time.

9 THE COURT: All right. Thank you.

10 Does anyone else wish to address this motion? Mr.  
11 Brown?

12 MR. BROWN: Tyler Brown for the debtor. Your Honor, I  
13 won't belabor it. We've been going a long time.

14 I do appreciate the concession by Mr. Mintz that his  
15 clients won't sue D's and O's. That's great. Like protection  
16 for everybody else. So they won't sue D's and O's. So that  
17 doesn't solve our problem.

18 THE COURT: Yeah. I've heard really just it's all  
19 focused on Liberty Mutual, other than Ms. Sieg saying she  
20 thinks it should, that you shouldn't have to step -- as to any  
21 of the insurance companies.

22 MR. BROWN: Yeah, that's right. So the Ms. Sieg  
23 points out --

24 THE COURT: Although, she offered to allow an  
25 extension through November.

## Colloquy

155

1 MR. BROWN: Right. And it seems to me, Judge, that's  
2 a kind offer, but we have an evidentiary hearing today. It was  
3 noticed up long ago for August. We filed this, you know, in  
4 late June. It was heard the first time July 2nd. Court  
5 entered an interim order. People have had all this time to  
6 look at it. And today was the day.

7 We have evidence from one party, and that's the  
8 debtor. And you heard Mr. Van Epps testify very carefully and  
9 artfully concerning the harms that he thinks will come to this  
10 estate by the continuation or commencement, more precisely, of  
11 new litigation. And I do want to focus on that point for a  
12 minute, which is no one, not a single arguer here today said to  
13 you why they can't sit tight. Nothing. There's no reason they  
14 can't sit tight.

15 Mr. -- I'm sorry, Jonathan. Jonathan was very frank  
16 in responding to the Court, I haven't added them yet. I  
17 haven't amended yet. He's not ready to go to trial. He's not  
18 even ready to start getting ready to go to trial. So why can't  
19 they sit tight? Two months isn't long enough, Judge. You  
20 know, if the Court decides that it wants to enter a six month  
21 order and then see where we are four or five months into it,  
22 we're fine with that. We want to get down the road with this  
23 bankruptcy.

24 We -- you can also, you know, specifically  
25 acknowledge, what I think is already baked in essentially to

## Colloquy

156

1 the Code, which is if someone needs relief for a particular  
2 reason, circumstances have changed, come back and seek relief.  
3 That's fine too. We have no problem with that concept.

4 But I don't want to go through this drill hours again  
5 to two months from now, when today was the day and there's no  
6 other evidence that there will be harm to the estate. The only  
7 harm not just from directors and officers, but from suing  
8 Liberty itself, is what we talked about with Mr. Van Epps. All  
9 of the other policies stack up above it, are baked based on how  
10 Liberty was worked out. And that means there are gaps in our  
11 coverage there. There are holes that need to be filled. We  
12 don't have the cash to fill them. And if you pull the string  
13 of Liberty, that causes ripple effects all through the excess  
14 policies.

15 It's naive. And again, it's not as simple as they'd  
16 like to say. Well, I just want to sue Liberty, so leave me  
17 alone and I'll be fine. It's not isolated. The coverage goes  
18 across coverage blocks. There are coverage defenses. There  
19 are exhaustion. There are allocation issues that apply across  
20 the board.

21 And so we have a risk to the very asset that's going  
22 to support this case, which is our entire portfolio depends on  
23 it being cohesive and sticking together. And what we risk is a  
24 bleeding of all of our remaining cash to fight all these side  
25 issues when no one has said they really need to address that

## Colloquy

157

1 right today. And you can control your docket, this case, and  
2 allow us to proceed with protection.

3 That's why we're here. We think you have plenty of  
4 authority as laid out to do that. And whether you craft it on  
5 a, again, a six month basis or during the -- during the case,  
6 you know, happy to consider, you know, whatever the Court  
7 thinks is the best way to handle this, but we shouldn't be back  
8 in here in two months and doing this again. Today was the day.

9 Thank you.

10 THE COURT: All right. The argument that the Liberty  
11 policy is no longer property of the estate. What -- how does  
12 that affect (a)(3)?

13 MR. BROWN: Right. So Your Honor, if in fact, they're  
14 going to try to blow up that settlement, they blow it up.  
15 Guess what? We're back. Party to policies. They're the  
16 debtor's policies.

17 THE COURT: Well, how could they blow it up, though?

18 MR. BROWN: I don't know how they're going to blow it  
19 up. I don't know how they're going to succeed on their claims  
20 to start with, but I know that they're going to have fights  
21 about whether they can. And I know Liberty is going to make  
22 fights with everyone they can about whether they can access  
23 that coverage.

24 But if that coverage exists, it's the debtor's  
25 coverage. It always was the debtor's coverage. They don't

## Colloquy

158

1 have their own coverage. We have cited and mention was made  
2 about the fact that the buyback can be done under Louisiana  
3 law. That's without -- free and clear of claims that were not  
4 known. That's a Eastern District of Louisiana district court  
5 opinion that we cited in our brief that says those policies can  
6 be sold free and clear.

7 Now again, that's Liberty's fight. But that's the way  
8 it is currently. And if they are set aside somehow, then I'm  
9 saying that the debtor has rights in those policies too. But  
10 what we're here to talk about today is not that because you  
11 don't have to decide that. You can decide today that the  
12 collateral harm that comes from those lawsuits that Mr. Van  
13 Epps testified about will harm this estate, whether it's a loss  
14 of coverage, that's just one of the four pieces I talked about.  
15 Maybe we don't lose coverage because maybe it's not subject to  
16 an aggregate limit, but we are going to then face indemnity  
17 claims. We are going to then incur costs to deal with  
18 discovery. Discovery is not stayed by the automatic stay. I  
19 don't know why they think it is. If it is, great, but we are  
20 going to face discovery about those fights. I am confident.  
21 And more importantly, Mr. Van Epps is confident about it, and  
22 that we are going to spend money that we don't have to deal  
23 with this.

24 And so we're seeking protection to keep the money we  
25 have to be able to get through this process without

## Colloquy

159

1 interference. And that's why we seek the relief --

2 THE COURT: Well, I understand the reason, the  
3 rationale and the -- certainly (a)(3) could apply to the other  
4 insurance policies.

5 MR. BROWN: That's right. (a)(1) can apply to the  
6 first because the interest of this estate are harmed by the  
7 prosecution against Liberty. And if it's not in (a)(1), if you  
8 conclude it's not in (a)(1), you can extend the stay under 105  
9 to carry out the purposes of 362(a) and that's where the four-  
10 part preliminary injunction standard comes in.

11 And even with respect to Liberty, I think we satisfied  
12 that test today. Restructuring does not have to be a  
13 reorganization, it can be a liquidation. The Court can provide  
14 protection for that process to play out. Why? Because it's  
15 the interest -- in the interest of creditors as a whole to have  
16 a process approved by this Court which lays out the rules and  
17 allows the fair game. That's step one.

18 THE COURT: Well, we're likely to end up being  
19 successful. And the argument is, is that it would be -- only  
20 have to apply to a reorganization, which this is not.

21 MR. BROWN: Successful cases aren't always  
22 reorganizations, Your Honor. Successful cases are cases that  
23 successfully move the assets of the estate for the benefit of  
24 creditors. It can be through a trust. I would view this case  
25 if we confirm a liquidating plan as a success. It looks like

## Colloquy

160

1 we've got some obstacles.

2 THE COURT: I think in the context of this case, you  
3 certainly could argue that would be a success. What about the  
4 other three tests?

5 MR. BROWN: Yes, sir.

6 The other three tests are harm to the estate, the harm  
7 we've talked about, the evidence that come in. There is harm  
8 to the estate about the loss in -- not in Liberty, necessarily,  
9 the loss of coverage, but the effects on our excess carrier  
10 coverage. There are effects. Mr. Van Epps talked about the  
11 effects. There are discovery expenses. There are indemnity  
12 fights with Liberty that will happen. There are subrogation  
13 and cross claims that may come from excess carriers under state  
14 law. That's covered in our brief as well, Your Honor.

15 There are side impacts. But the debtor is the only  
16 one here who's come in with any harm. You didn't hear anything  
17 about harm to the other parties. Why? Because we're not  
18 seeking to change their rights. We're not seeking to take away  
19 the substantive rights.

20 The plan, contrary to what Mr. Mintz says, does not  
21 contain any nonconsensual releases at all. It's proposed to be  
22 a consensual release with certain insurers. You heard Mr. Van  
23 Epps testify. There's no nonconsensual release being sought.  
24 We're not seeking to get a nonconsensual release like Purdue  
25 Pharma. That's not in our plan.



## Colloquy

161

1           So what's the downside to them? They have to sit  
2 tight for a little while and nobody explained to you why that's  
3 a problem.

4           And then finally, the fourth prong is the public  
5 interest. Public interest is supportive of having a successful  
6 case that then allows the assets to be used for the benefit of  
7 legitimate creditors. We meet the test.

8           THE COURT: All right. So with respect to all of non-  
9 Liberty defendants, apparently there's been some concessions  
10 with respect to the officers and directors. So I'm really --

11           MR. BROWN: Well, Mr. Mintz. Yes, sir. Well, his  
12 client.

13           THE COURT: Well, and the committee doesn't object to  
14 the officers and directors.

15           MR. BROWN: Well, the committee doesn't have a dog in  
16 that fight. So they haven't sued anybody. But the other  
17 ones --

18           THE COURT: Well, they're focusing on Liberty as well.

19           MR. BROWN: Understood, Your Honor, but I -- the only  
20 testimony that's come in today is that the Liberty fights, the  
21 Liberty lawsuits will harm this estate. It will cause a mess.  
22 That's what the testimony was. That's the only testimony  
23 today.

24           And so based on that testimony, Your Honor, I think  
25 there's only one conclusion you can draw, which is that it will

## Colloquy

162

1 be a mess. And from Exhibit 9, what you heard was it'll be an  
2 expensive mess, which is that the -- at least the facts suggest  
3 that the cost of dealing with Louisiana litigation is  
4 disproportionately high. It will cost the estate a lot of  
5 money. And we start with Mr. Van Epps saying early on, less  
6 than 4 dollars million. I don't know where we are after  
7 today's hearing, but we're draining the bucket very quickly and  
8 we can't afford the sideshow. And there's no reason for the  
9 sideshow that you heard today that can't wait. The sideshow  
10 can wait. And they can be dealt with by the --

11 THE COURT: Well, if an administrative claim were made  
12 against the debtor, the debtor doesn't have to pay it and it  
13 can hold off or oppose it.

14 MR. BROWN: It didn't say -- you're right, Your Honor.  
15 But what we're talking about is it harms other creditors of the  
16 estate, whose distribution then might be diluted by another  
17 claim in the estate. There's no reason an indemnity claim  
18 wouldn't be at a minimum pro rata with all the other claimants.

19 So what you're doing is bringing more claims to the  
20 estate, diluting recoveries. At the same time, you're draining  
21 the cash that's available that would be available to go to the  
22 trust or would be available to prosecute our Chapter 11 plan.  
23 So those are the circumstances in which this Court has the  
24 power to say, I need to get control of this and not have these  
25 sideshows while we decide whether we're going to have a plan or

## Colloquy

163

1 not. Let's march down that path. And if you decide at some  
2 point it doesn't look like we're on the path anymore, then you  
3 can lift it.

4 But right now, all the focus should be on this  
5 bankruptcy court talking about the settlements, talking about  
6 the plan, and see whether we can get out the other side. And  
7 if you decide along the way it's not going to happen, then you  
8 can lift the stay.

9 THE COURT: So currently you're seeking the stay  
10 through November. Is that what -- November?

11 MR. BROWN: No, Your Honor, we were seeking the  
12 stay --

13 THE COURT: Through the pendency of the case.

14 MR. BROWN: -- through the pendency of the case. And  
15 I was just throwing out an idea for you, you know, if you  
16 instead want -- because we don't know how long the case is  
17 going to last. Instead, say, let's take a gut check in six  
18 months, you know, we could do that, you know?

19 But let's -- because I hope we're going to get to the  
20 plan by then. I hope we're going to get to the settlements  
21 within three, four months of filing our case. I hope we'll get  
22 to the plan within six months of the case. So you could do  
23 that and then we could see where we are. But I'm confident if  
24 we are allowed to proceed, we'll have a lot to talk about in  
25 terms of a confirmable plan.

## Colloquy

164

1           And again, as I talked about earlier, even if you  
2   don't like some of these settlements, we do, but we can still  
3   have a plan discussion about contributing, you know, policy  
4   rights. But -- or a combination, you know, some settlement and  
5   policy rights. But we've got to continue down the path and not  
6   waste our time on these extraneous fights. And that's what the  
7   evidence suggests is going to happen.

8           THE COURT: All right. Thank you.

9           MS. SIEG: For the record, Judge, Beth Sieg again for  
10   Huntington Ingalls.

11           This is why I love bankruptcy, because things change  
12   on the record. I had not heard before a proposal for a six  
13   month check in. We had proposed that it be extended at a  
14   maximum only to the November date. But if we're -- I think we  
15   would be willing to work with the debtors on a six month. We'd  
16   probably prefer it to be five months so that the check in would  
17   occur before the end of the year, but I think that's -- from  
18   our perspective, that's progress. And that would accommodate  
19   the concerns that we've had. So that by the time that check in  
20   period comes, we'll know whether we still have any problem with  
21   what they're proposing on a more lengthy basis.

22           Thank you, Judge.

23           THE COURT: Thank you.

24           MR. BROWN: Thank you. But just to be clear, Judge, I  
25   was talking about six months from today. I wasn't talking

## Colloquy

165

1 about six months from way back at the filing time. I just want  
2 to be clear.

3 THE COURT: Yeah. I understood that.

4 All right. Well, thank you. Has everybody said  
5 everything they wish?

6 Well, what concerns the Court is what would logically  
7 concern the Court at this point and that is a race to the  
8 courthouse to certain claimants recovering something that other  
9 claimants have to wait their turn and potentially diminish the  
10 pot that's available for all claimants. And I would think that  
11 the goal of the debtor here to establish a fund as quickly as  
12 it can, with the maximum amount of resources, is a noble goal.  
13 And I would like to think all the parties can work towards that  
14 goal, particularly the creditors committee.

15 But the -- there are attorneys who certainly want to  
16 protect their clients that are seeking to protect their  
17 particular clients. And it appears that a number of them  
18 believe that they have direct causes of action against Liberty  
19 Mutual that are viable, that could be asserted without harm to  
20 the debtor, or if the harm to the debtor occurs, it is not  
21 significant enough that it should justify extending the stay to  
22 Liberty Mutual.

23 I believe at this point what I'm hearing is that the  
24 most parties are not objecting to the extension of the stay to  
25 the parties other than Liberty, with the possible exception of

## Colloquy

166

1     Huntington. Although Huntington is willing to acquiesce to a  
2     temporary extension of the stay, something that the debtor  
3     appears to be willing to accept.

4             Now I look at the Fourth Circuit case and Robbins as  
5     being very on point in this case. And that case also involved  
6     a torts -- massive tort claims against the debtor and numerous  
7     insurance policies that were available to pay and causes of  
8     action being asserted against officers and directors. And the  
9     Court in that case determined that a stay should apply and that  
10    the parties should be protected, that the officers and  
11    directors and the insurance company should all be protected  
12    during the pendency of the case so that funds that could be  
13    made available for the trust would be -- it would find their  
14    way to that trust. And the trust administered all of the  
15    claims. And my recollection is it was a successful case. It  
16    worked out well under those circumstances.

17            Here, the debtor is seeking to extend the stay as to  
18    the insurance companies and to the officers and directors that  
19    they've listed in the exhibit, I believe, to -- that was  
20    included in the list of exhibits. But -- and I believe that  
21    Section 362(a)(1) and (a)(3), in conjunction with the Robbins  
22    decision, enable the Court to extend or to find that the stay  
23    extends to the insurance companies and to the officers and  
24    directors, with the possible exception of Liberty Mutual.

25            The argument there being that the debtor had

## Colloquy

167

1 previously settled with Liberty Mutual and that its rights to  
2 the policy are no longer property of the estate by virtue of  
3 that settlement. However, the evidence and the only evidence  
4 that I've heard today is the testimony of the debtor's  
5 representative in the exhibits submitted by the debtor.

6 Other parties were given adequate notice of this  
7 hearing. The hearing was continued so that they had additional  
8 time to prepare, yet nobody offered any evidence aside from the  
9 debtor.

10 And the debtor's testimony from Mr. Van Epps was  
11 pretty much on point that were parties allowed to proceed  
12 against Liberty Mutual, that that would result in a claim by  
13 Liberty Mutual for indemnification. It would be a post-  
14 petition claim, potentially an administrative claim. It would  
15 affect the -- not only the potential distribution that might be  
16 available to all the creditors of the estate if a plan is  
17 confirmed, but it would also cause the debtor to incur  
18 potential expenses during the pendency of the case and while it  
19 is attempting to pursue confirmation of a plan.

20 I believe that with respect to Liberty Mutual, if  
21 Sections 362(a)(1) and (a)(3) were not to apply, and I'm not  
22 saying that they don't, I believe that the debtor has, through  
23 the testimony and exhibits offered today, satisfied the four-  
24 part test that would be applicable in the event that the debtor  
25 is seeking a preliminary injunction, and the first being that

## Colloquy

168

1 the likelihood of success.

2 In my mind, a success in this case would be  
3 confirmation of a plan that creates the trust -- the  
4 liquidating trust that will enable all of the claimants to have  
5 recourse against the debtor in one location and in one  
6 manageable trust, that is -- that includes all of the insurance  
7 proceeds that are available to the debtor. I think that would  
8 be good for the debtor. It's what's contemplated by the  
9 Bankruptcy Code. And to me, that would be successful even if  
10 the debtor is no longer in business.

11 The harm to the estate, I think, has been established  
12 by the evidence that in the event that the stay is not  
13 applicable to the officers, directors, and insurance companies,  
14 and in this case, Liberty Mutual, that the harm to the estate  
15 would involve what I've already described and that is indemnity  
16 actions. There's no evidence that there is no indemnity on the  
17 part of Liberty Mutual.

18 And I think that the debtor has demonstrated second  
19 and third parts of the test. The -- it does appear to me that  
20 it is a very complicated situation with the insurance companies  
21 and who has what excess coverage. If one company pays, what  
22 are the rights for contribution? To have that sorted out in  
23 Louisiana District Court at the same time that the debtor is  
24 trying to sort it out here doesn't seem to make sense. The  
25 debtor is way ahead of reaching those types of decisions. When



## Colloquy

169

1 they bring the motions to approve settlements with the  
2 insurance companies, all of that should be sorted out. And I  
3 expect that will happen fairly quickly.

4 So I see the harm to the debtor by enabling the  
5 Liberty Mutual litigation to continue to outweigh the harm that  
6 the parties, who at this point I don't believe have even  
7 included -- or at least the some of the plaintiffs have not  
8 even brought Liberty Mutual into their causes of action. And a  
9 delay, I don't think, will be very harmful to those parties.

10 But in light of the suggestion that the Court can  
11 revisit whether a stay should remain applicable, I do believe  
12 that it would be appropriate to only extend the stay for a  
13 period of time, or to recognize that the stay extends for a  
14 period of time, rather than to invite parties to file motions  
15 for relief from the stay so that the Court can reassess where  
16 this case is.

17 And so I do intend to impose a six month period of  
18 time from today, where the stay will be applicable for the  
19 reasons that I've stated. And at the conclusion of that six  
20 month period, the stays will no longer be in place unless the  
21 debtor has filed a motion to extend the ruling further, at  
22 which point all of the parties who wish to oppose that will  
23 be -- will have the rights to oppose that. So all of the  
24 current arguments are preserved at that time.

25 Have I missed anything in connection with this? Any

Colloquy

170

1 parties need any clarification?

2 MR. BROWN: No, Your Honor.

3 THE COURT: Great.

4 MR. LIESEMER: No, Your Honor.

5 THE COURT: All right. Well, very good. I will look  
6 for an order to that effect, Mr. Brown, and if anyone who has  
7 filed opposition wishes to review and endorse the order, as  
8 proposed, I certainly give -- please give those parties an  
9 opportunity to do that.

10 MR. BROWN: Certainly will, Your Honor. And I think  
11 to level set, the interim order continues in place until the  
12 new order is in place.

13 THE COURT: Correct.

14 MR. BROWN: Thank you, Your Honor. With that, that is  
15 all the agenda we have for today.

16 THE COURT: All right. Did anyone else have anything  
17 they wish to bring up at this time?

18 All right. Well, I will look for the orders that have  
19 not yet been submitted, and I appreciate everyone's good  
20 effort. I heard some good arguments today. It was very well  
21 lawyered, and I appreciate that. It makes my job easier. So  
22 we will adjourn.

23 THE COURT: All rise. Court is now adjourned.

24 (Whereupon these proceedings were concluded at 2:17 PM)

25

## I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
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FOR THE DEBTOR:

Ron Van Epps	76	107,110,114			
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EXHIBITS:	DESCRIPTION	MARK	ADMIT
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FOR THE DEBTOR:

3-8	Hearing exhibits		75
-----	------------------	--	----

10	Stout document		103
----	----------------	--	-----

RULINGS:		PAGE	LINE
----------	--	------	------

CKSMM retention application is approved		23	8
---	--	----	---

Motion for settlement procedures is granted		51	24
---	--	----	----

Motion for protective order is granted		71	17
--	--	----	----

Motion for automatic stay is granted		165	15
--------------------------------------	--	-----	----

C E R T I F I C A T I O N

I, River Wolfe, the court-approved transcriber, do  
hereby certify the foregoing is a true and correct transcript  
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in the above-entitled matter.



September 18, 2024

RIVER WOLFE

DATE

TTA-Certified Digital Legal Transcriber CDLT-265

September 10, 2024

A				
	<b>acknowledge (1)</b> 155:25	156:25	12:21	125:25;133:6;141:8; 155:3
	<b>acknowledged (1)</b> 130:19	<b>addressed (5)</b> 21:3;40:17;145:10; 146:9,11	<b>affect (7)</b> 43:20;130:7,7; 152:16,17;157:12; 167:15	<b>agree (13)</b> 45:23;47:7;49:21; 57:9;63:22,23;64:1; 65:9,18;68:15;97:7; 147:16;148:12
<b>a1 (3)</b> 159:5,7,8	<b>acquiesce (1)</b> 166:1	<b>addressing (2)</b> 4:19;21:2	<b>affected (1)</b> 42:7	<b>agreed (9)</b> 33:15;52:12;57:13; 58:19;63:10;66:15; 68:9,15;74:13
<b>a3 (5)</b> 125:3;157:12; 159:3;166:21;167:21	<b>across (6)</b> 12:17;81:23;89:23; 95:22;156:18,19	<b>adequate (5)</b> 51:23,24;141:17; 147:6;167:6	<b>affects (1)</b> 120:6	<b>Agreed-upon (1)</b> 75:18
<b>ability (8)</b> 14:10;40:11;41:23; 44:13;63:16;85:9; 116:11;126:5	<b>action (17)</b> 35:25;75:1;94:16, 21;118:17;120:16; 122:9;128:17;138:14; 140:2;144:14,19; 147:25;148:4;165:18; 166:8;169:8	<b>adjourn (1)</b> 170:22	<b>affiliate (1)</b> 93:20	<b>agreement (76)</b> 27:4,5,8,10,22; 29:6;33:15;36:5; 38:16;41:4;55:24; 56:3,8;57:6;58:19; 61:3,9,25;63:2,11,12; 64:11;65:9,12,18; 66:11,16,22;67:15; 71:5;73:13,24,25; 90:18,18,20;91:3,13, 14,17;92:6,13,22,24; 93:8,14,16,22;95:19; 96:15,25;97:1,3,6,7, 14;100:6;107:9,14,15, 18;108:10,11,14,18, 19;109:15,19;128:2; 135:21;138:7,19; 139:15,17;141:9; 153:22
<b>able (16)</b> 20:2;29:3;44:21,24; 45:16;46:6;61:3,4; 83:15;87:6,14;98:12; 105:14;137:15;149:2; 158:25	<b>actions (13)</b> 121:21;127:24; 129:16,22;130:15; 131:8,21;134:2; 138:3,18;152:12; 154:1;168:16	<b>administered (1)</b> 166:14	<b>afford (4)</b> 119:24;124:24,25; 162:8	<b>agreements (59)</b> 27:8;38:10;43:20; 52:17;53:5;54:4,5,13, 15,23;55:1,2,12,19; 56:11;57:2,3,11,14, 17;58:16;59:1,5,8,25; 60:6,18,21;61:5,7,17, 23;62:25;63:1,10,18, 24;65:14;66:8,14; 67:3,4;69:24;75:4; 90:24;91:2;96:5,7,16; 97:16,21;98:8,10,10, 12;107:6,12;108:9,11
<b>aboard (1)</b> 137:4	<b>activities (1)</b> 137:2	<b>administering (1)</b> 98:23	<b>afforded (1)</b> 60:9	<b>agrees (2)</b> 58:23;145:13
<b>above (10)</b> 40:12,15;46:15,16; 82:6;86:12;90:9; 97:11;104:22;156:9	<b>activity (1)</b> 53:4	<b>administration (3)</b> 118:14;121:23; 123:14	<b>afternoon (2)</b> 107:3;114:3	<b>AH (3)</b> 121:16;122:16; 151:19
<b>absent (2)</b> 25:3;54:23	<b>actual (6)</b> 44:9;48:8;51:3; 83:2;90:18;137:4	<b>administrative (2)</b> 162:11;167:14	<b>again (50)</b> 8:11,21;9:6;11:4; 23:19;29:15;30:9; 39:21;42:13;47:1; 48:20;49:6;50:17; 51:16;55:17;57:24; 58:8;59:2,14,21;60:1, 13;62:21;67:7,19; 70:13;73:21;91:13; 105:21;108:8;109:5; 110:9;115:4;116:14; 121:8;123:16;131:11; 135:5;140:19;142:11; 147:10,13;150:6; 156:4,15;157:5,8; 158:7;164:1,9	<b>ahead (10)</b> 5:20;7:6;24:17,19; 34:19;42:23;52:21; 119:17;143:19; 168:25
<b>absolutely (5)</b> 17:11;29:14;36:18, 18;72:13	<b>activities (1)</b> 137:2	<b>admission (2)</b> 75:13;117:12	<b>against (74)</b> 12:12;13:22;16:12, 23;20:2;38:19,20,23; 70:11;72:9;74:17; 93:23;94:9,17;101:5; 103:12;105:16; 107:23;108:6;110:24, 24;116:5;118:17; 120:3,16,20;122:23; 123:17;125:18,19; 127:24;129:16;130:1; 133:17;134:2;135:23, 24,25;137:10,14,15; 138:7,14,17,21,23,25; 139:4,5,7,11;140:17; 145:14;146:15,22,23; 147:2,25;148:1,7,10, 15,16;149:8,17; 150:3;154:2;159:7; 162:12;165:18;166:6, 8;167:12;168:5	<b>akin (1)</b> 139:20
<b>abundantly (1)</b> 144:12	<b>actually (21)</b> 26:3;40:1,24;52:11; 63:21;66:8,13;85:18; 98:24;116:21;120:21; 137:9,13;138:11; 139:14;142:24; 144:19;147:19;151:5, 7;152:16	<b>admit (2)</b> 53:17;73:13	<b>agenda (1)</b> 170:15	<b>allege (1)</b> 115:17
<b>accelerated (2)</b> 8:15;29:1	<b>acumen (1)</b> 16:18	<b>admittance (1)</b> 53:14	<b>aggregate (8)</b> 39:18;45:5;69:5; 91:22;136:19;139:21; 142:3;158:16	<b>alleged (2)</b> 88:2;142:4
<b>accept (2)</b> 15:15;166:3	<b>ad (1)</b> 57:15	<b>admitted (9)</b> 42:22;45:19;53:16, 22;75:17,23;103:7; 106:1;142:19	<b>ago (7)</b> 28:20;69:25;77:19;	<b>allocate (2)</b> 96:21;98:19
<b>acceptable (1)</b> 133:19	<b>add (7)</b> 21:22;43:11;134:3; 140:11,15,15;143:12	<b>admittedly (1)</b> 154:4		
<b>access (12)</b> 18:10;40:11,15; 67:8;80:20;85:3;86:2; 99:20,23,25;117:3; 157:22	<b>adding (1)</b> 152:2	<b>adopt (4)</b> 60:10;147:15,17; 150:6		
<b>accessing (1)</b> 58:14	<b>addition (8)</b> 15:2;34:12;82:4; 103:3;104:4;119:7; 120:13;142:5	<b>advance (1)</b> 52:13		
<b>accommodate (2)</b> 34:23;164:18	<b>additional (7)</b> 43:25;84:21;87:10; 123:6;126:1;148:8; 167:7	<b>adversarial (1)</b> 44:11		
<b>accomplish (2)</b> 118:5,6	<b>address (20)</b> 5:6;18:11;32:1; 33:16;35:9,19;36:12; 51:21;53:18;62:24; 73:11;75:3;86:16; 118:8;126:13;145:22; 146:7,10;154:10;	<b>adversary (10)</b> 44:14,18,23;45:8, 11,15;47:6,10;122:3; 126:21		
<b>accomplished (1)</b> 31:23		<b>adverse (2)</b> 17:10;130:6		
<b>accomplishes (1)</b> 60:11		<b>adversity (2)</b> 15:2;17:11		
<b>according (4)</b> 41:14;96:4;113:5; 122:25		<b>advice (1)</b> 12:19		
<b>accrue (1)</b> 88:24		<b>advised (3)</b> 17:25;18:1;55:2		
<b>accrued (1)</b> 38:15		<b>adviser (1)</b> 14:1		
<b>accrues (3)</b> 37:23,23;38:8		<b>advisor (4)</b> 49:14;78:6;115:16; 116:10		
<b>accumulating (1)</b> 99:12		<b>advisory (1)</b> 76:18		
		<b>affairs (1)</b>		

September 10, 2024

<b>allocating (1)</b> 96:4	<b>Andersen (1)</b> 77:22	123:11;125:3;126:15; 127:10;131:8;135:18; 156:19;159:3,5,20; 166:9;167:21	<b>arranging (1)</b> 34:23	20
<b>allocation (4)</b> 86:19;96:14,17; 156:19	<b>Anderson (5)</b> 77:17,20,20,21,25		<b>arrive (1)</b> 86:24	<b>assisted (1)</b> 14:22
<b>allocations (1)</b> 86:19	<b>Andrews (2)</b> 4:7;5:11	<b>appointed (2)</b> 28:14;30:12	<b>arrived (3)</b> 89:25;90:4,22	<b>assisting (1)</b> 78:8
<b>allow (10)</b> 11:20;34:19;41:23; 46:12;109:25;115:25; 137:21;143:6;154:24; 157:2	<b>Ann (1)</b> 135:6	<b>appreciate (8)</b> 16:20;53:25; 143:16,22;154:8,14; 170:19,21	<b>arriving (1)</b> 97:21	<b>associated (4)</b> 88:11;101:24; 102:14,16
<b>allowed (10)</b> 14:13;21:11; 103:11;129:23; 137:14;139:11,18; 149:17;163:24; 167:11	<b>Annotated (1)</b> 38:7	<b>approach (9)</b> 21:10;55:18;56:21, 25;58:14,17;59:23; 74:2;76:3	<b>artfully (1)</b> 155:9	<b>assume (5)</b> 33:17;71:20;85:1; 113:15;134:21
<b>allowing (3)</b> 54:10;55:8;137:9	<b>answered (3)</b> 27:18,19;126:17	<b>appropriate (10)</b> 33:7;44:16;47:7; 48:14;49:5;52:13; 110:3;114:17;145:15; 169:12	<b>Arthur (3)</b> 77:20,21,22	<b>at-noon-the-day-before-the- (1)</b> 33:6
<b>allows (6)</b> 7:9;55:12;57:17; 149:17;159:17;161:6	<b>ant (1)</b> 126:22	<b>approval (3)</b> 25:3,6;125:21	<b>Article (1)</b> 150:20	<b>attach (2)</b> 86:9,10
<b>alluded (4)</b> 41:9;68:24;136:15; 139:14	<b>anticipate (2)</b> 64:8;145:7	<b>approvals (1)</b> 97:11	<b>articulated (1)</b> 64:23	<b>attached (5)</b> 23:23;55:11;74:10; 86:9;134:24
<b>almost (3)</b> 28:20;66:6;102:1	<b>anticipating (1)</b> 104:4	<b>approve (4)</b> 23:9;25:18;143:10; 169:1	<b>articulating (1)</b> 86:5	<b>attaches (2)</b> 43:14;81:13
<b>alone (2)</b> 61:18;156:17	<b>anymore (2)</b> 63:14;163:2	<b>approved (4)</b> 7:15;19:6;22:19; 159:16	<b>asbestos (32)</b> 6:7,14;13:20,22; 16:11;20:8;23:3; 30:21;31:6,7;32:12; 36:16;37:7,24;38:3; 39:7;42:21;69:9,11; 81:10;83:14,16,21,25; 84:8;88:22;89:14; 96:23;97:5;102:15; 118:15;124:1	<b>attempt (2)</b> 58:5;59:15
<b>along (8)</b> 36:15;47:24;81:9, 11,15,16;88:16;163:7	<b>AP (1)</b> 127:17	<b>approving (2)</b> 11:17;51:10	<b>asbestos-related (1)</b> 17:3	<b>attempted (1)</b> 70:10
<b>alternative (1)</b> 56:5	<b>apart (1)</b> 128:9	<b>April (1)</b> 82:17	<b>ascended (1)</b> 5:1	<b>attempting (1)</b> 167:19
<b>although (3)</b> 30:13;154:24;166:1	<b>apologize (1)</b> 112:4	<b>area (2)</b> 4:14;152:7	<b>aside (3)</b> 6:3;158:8;167:8	<b>attention (1)</b> 33:21
<b>always (6)</b> 34:25;47:24; 122:15;147:13; 157:25;159:21	<b>apparently (8)</b> 8:13;32:12;37:21; 84:12;117:20;131:10; 153:24;161:9	<b>argue (5)</b> 35:17;70:4;135:3; 137:9;160:3	<b>aspersions (2)</b> 36:4,9	<b>attorney (3)</b> 110:15;111:24; 130:20
<b>amend (2)</b> 9:9;140:5	<b>appeal (1)</b> 143:15	<b>argued (2)</b> 136:4;150:11	<b>assented (1)</b> 54:4	<b>attorneys (2)</b> 124:21;165:15
<b>amended (1)</b> 155:17	<b>appeals (1)</b> 129:10	<b>arguer (1)</b> 155:12	<b>asserted (4)</b> 16:12;144:18; 165:19;166:8	<b>attorneys' (1)</b> 118:9
<b>Amendment (1)</b> 67:7	<b>appear (2)</b> 13:15;168:19	<b>argues (1)</b> 136:1	<b>asserting (1)</b> 145:14	<b>August (5)</b> 6:22;33:14,14; 42:23;155:3
<b>amongst (1)</b> 105:1	<b>appeared (1)</b> 49:2	<b>arguing (3)</b> 86:10;151:11;153:4	<b>assertion (1)</b> 141:9	<b>authorities (1)</b> 128:24
<b>amount (14)</b> 6:16;19:16;39:2; 44:8;69:3,4,5;114:18; 139:18;142:14,19; 145:16;153:12; 165:12	<b>appears (2)</b> 165:17;166:3	<b>argument (8)</b> 18:15;84:11;86:6; 146:10;147:17; 157:10;159:19; 166:25	<b>assessing (1)</b> 13:14	<b>authority (2)</b> 121:25;157:4
<b>amounts (2)</b> 41:16;92:12	<b>appellate (1)</b> 139:3	<b>arguments (12)</b> 15:23;18:25;42:13; 43:5;86:7;117:21; 120:4;147:17;152:4, 13;169:24;170:20	<b>asset (13)</b> 30:19,20,22;37:12; 41:21,21;66:10,13; 119:16;133:17,19,21; 156:21	<b>automatic (7)</b> 118:6;119:7;130:3; 131:22;147:19;149:5; 158:18
<b>ample (1)</b> 131:21	<b>applicable (6)</b> 51:13;71:13; 167:24;168:13; 169:11,18	<b>arose (2)</b> 12:23;14:17	<b>assets (13)</b> 41:2;105:15;118:7; 119:13,14;123:3,18; 124:6,13,14;136:8; 159:23;161:6	<b>automobile (1)</b> 119:23
<b>analogous (1)</b> 132:12	<b>applications (1)</b> 22:5	<b>around (5)</b> 13:2;21:1;83:15,17; 138:22	<b>assign (1)</b> 99:9	<b>available (25)</b> 16:15;34:24;36:16; 37:7;39:2;50:22; 51:20;68:13;83:5,8; 99:22;103:16;116:7; 119:15,15;120:1; 145:9;162:21,21,22; 165:10;166:7,13; 167:16;168:7
<b>analysis (2)</b> 88:23,25	<b>applies (9)</b> 13:20;16:2;44:1; 57:16;71:11;127:24; 135:16;144:21; 149:22	<b>arrange (1)</b> 21:12	<b>assist (1)</b> 13:24	<b>avoid (8)</b> 9:23;118:7,9,10,13; 120:13;129:23; 134:13
	<b>apply (16)</b> 16:11;43:15;57:3,4;		<b>assistance (4)</b> 12:20;20:22;51:18,	<b>avoiding (2)</b> 8:25;123:18

September 10, 2024

<b>Avondale (1)</b> 137:2 <b>Avondale's (1)</b> 140:13 <b>aware (9)</b> 14:20,25;15:25; 31:7;89:25;90:17; 91:13;94:8;95:3 <b>away (5)</b> 12:9;41:14;97:5; 121:21;160:18 <b>axis (2)</b> 81:9,11	77:4;91:20;92:16; 97:13;103:10;107:16; 129:14;130:24; 153:22;156:9;161:24 <b>basically (1)</b> 56:10 <b>basing (1)</b> 152:5 <b>basis (24)</b> 22:19;23:3;31:24; 34:24;44:23,24; 57:15;58:25;72:1; 80:13;88:2;107:24; 108:4,23;109:3; 133:18;138:8;141:9, 18;142:25;143:11; 147:22;157:5;164:21 <b>bears (1)</b> 153:7 <b>became (1)</b> 12:10 <b>become (2)</b> 50:20;78:8 <b>becomes (4)</b> 50:19;67:19,19; 135:17 <b>Beers (2)</b> 133:9,16 <b>beforehand (2)</b> 58:6;153:16 <b>began (2)</b> 12:7;95:21 <b>begin (1)</b> 18:14 <b>beginning (3)</b> 83:13;84:23;150:12 <b>behalf (20)</b> 4:8;5:12;10:15; 19:11;23:20;30:9; 42:20;43:3;45:20; 47:2;52:10;54:2; 60:16;99:2;110:10; 127:20;135:5;138:4; 139:24;147:11 <b>behind (1)</b> 100:16 <b>behooves (1)</b> 141:16 <b>belabor (1)</b> 154:13 <b>belief (6)</b> 46:17;63:3;107:16, 24;108:23;109:4 <b>believer (1)</b> 151:12 <b>believes (4)</b> 15:6;54:25;68:22; 110:3 <b>below (6)</b> 82:14,16,18,22,25; 85:15 <b>BENDER (3)</b> 42:18,20,20	<b>benefit (12)</b> 30:15;44:18;101:7; 126:10;127:14; 136:22;137:21; 141:24;142:8;143:5; 159:23;161:6 <b>benefits (2)</b> 137:13,13 <b>Benton (1)</b> 139:1 <b>besides (1)</b> 127:5 <b>best (16)</b> 15:7,7;19:3,6;42:1; 56:19,20;58:6;59:16, 16;121:22;124:17,18; 144:3,4;157:7 <b>Bestwall (1)</b> 124:2 <b>Beth (4)</b> 29:20;114:3; 140:20;164:9 <b>better (5)</b> 8:25;22:18;31:17, 23;79:24 <b>beyond (4)</b> 29:9;92:6;152:3,4 <b>big (7)</b> 22:10,10;34:13; 86:15;91:20;141:15; 151:12 <b>biggest (3)</b> 27:2;86:7;91:25 <b>bill (1)</b> 95:10 <b>billion (1)</b> 37:17 <b>bills (3)</b> 95:7,8;99:12 <b>bit (5)</b> 4:21;79:11;96:8; 110:14;140:21 <b>blackline (2)</b> 6:14;24:25 <b>Blackwelder (1)</b> 123:10 <b>Blank (4)</b> 13:24;17:3;79:20, 22 <b>bleeding (1)</b> 156:24 <b>block (6)</b> 95:22;96:4,9,10,12; 105:15 <b>blocks (1)</b> 156:18 <b>blow (4)</b> 157:14,14,17,18 <b>blown (1)</b> 126:2 <b>board (1)</b> 156:20 <b>boards (1)</b>	84:7 <b>Bockius (1)</b> 37:1 <b>bodily (2)</b> 13:22;16:11 <b>bogged (1)</b> 124:11 <b>book (1)</b> 112:10 <b>books (2)</b> 50:22;51:6 <b>Boston (2)</b> 4:14;53:14 <b>both (8)</b> 17:22;86:24;87:21; 100:10,13;101:11; 125:3;139:17 <b>bottom (3)</b> 81:15,16;89:23 <b>bought (2)</b> 129:5,5 <b>bound (1)</b> 39:11 <b>box (1)</b> 82:9 <b>boxes (3)</b> 81:16;82:9,24 <b>breach (1)</b> 65:2 <b>breached (1)</b> 64:25 <b>break (6)</b> 73:8,23;93:22;96:8; 104:13;112:4 <b>Briar (1)</b> 131:20 <b>brief (10)</b> 32:21,21;35:24; 42:4;47:4;127:9; 134:6;138:16;158:5; 160:14 <b>briefing (7)</b> 32:20;33:5,18; 46:13;48:17;49:23; 152:12 <b>briefly (5)</b> 36:20;45:22;57:24; 69:22;72:21 <b>briefs (1)</b> 19:16 <b>bring (10)</b> 21:16;43:25;94:9; 138:7;140:4,5,17; 150:9;169:1;170:17 <b>bringing (4)</b> 19:19;38:18;66:6; 162:19 <b>brings (2)</b> 16:17;39:3 <b>broad (2)</b> 127:7;148:21 <b>broader (2)</b> 61:10;134:3	<b>broken (1)</b> 103:1 <b>Brothers (7)</b> 4:8,14;12:6;78:3; 79:15;106:4;138:17 <b>brought (15)</b> 43:5;45:3;47:5,10; 65:16;90:8;94:17,19; 119:2;127:6;137:23; 138:5,15;151:7;169:8 <b>BROWN (90)</b> 4:5,7,7,18;5:12; 11:1,4,4,9;12:2;15:17, 24;17:21;21:21,23; 23:11,14,16,21;49:2, 13;52:8,9,9,22;60:16, 16;62:12,14,16; 64:23;65:12;71:23, 23;72:13;73:6,9,12, 16,21,21;74:4,6;75:8, 10,23;76:1,9;103:4; 106:21;108:16;110:1, 3;111:23;115:4,20; 117:10,13,22;120:19, 24;122:2,4,8,13,18; 125:7;134:21,24; 154:11,12,12,22; 155:1;157:13,18; 159:5,21;160:5; 161:11,15,19;162:14; 163:11,14;164:24; 170:2,6,10,14 <b>Brown's (2)</b> 20:24;65:5 <b>BSA (1)</b> 123:3 <b>Buchanan (1)</b> 131:10 <b>bucket (1)</b> 162:7 <b>build (1)</b> 32:7 <b>built (1)</b> 120:9 <b>burden (7)</b> 130:22;143:25; 144:1;152:20;153:7, 9;154:4 <b>burdens (1)</b> 64:14 <b>burdensome (1)</b> 34:7 <b>burn (3)</b> 119:19;123:23; 124:24 <b>business (14)</b> 13:10;16:17;20:12; 32:22;48:1;64:18; 94:6;124:9;130:4; 131:12;132:2,21,24; 168:10 <b>buyback (4)</b> 79:3;97:4,18;158:2
--	---	---	--	--



September 10, 2024

<b>bylaw (1)</b> 106:13 <b>bylaws (5)</b> 74:20,22;106:4,5; 135:21	<b>cares (1)</b> 86:8 <b>Carolina (2)</b> 55:22;58:12 <b>carrier (5)</b> 81:17;82:4;93:18; 97:4;160:9 <b>carriers (34)</b> 39:2;78:14,17;79:1; 80:3,4;82:1;84:22,25; 85:4;86:3,5,12,17,25; 88:17;90:9;93:24; 95:9,11,16;96:5; 97:25;98:2;103:25; 104:8,16;105:1; 113:8;119:21;120:3; 121:3;137:24;160:13 <b>carry (2)</b> 15:4;159:9 <b>case (145)</b> 7:4,13;8:4,6,18,20; 12:24;13:6;14:18; 15:4;16:1,2,3;17:1; 19:2,16,23,23;20:9; 14,22;22:23;25:11,12, 13,18;26:17,17,18; 28:1,10,14,24;30:16, 18;32:4;33:1;34:14, 19;36:12,15;43:16,17, 23;48:2;49:4;50:15; 55:21,22;63:17; 66:22;67:20;72:10, 12;78:3;84:6;89:12; 96:18;99:10;106:19; 110:18;114:21; 116:13;117:24;118:7, 15;119:16;121:14,16, 17;122:1,9,12,16,18, 25;123:11,16,19,20, 24,25,25;124:3,3; 126:5,15,15,17,19,24; 127:2,4;129:2,8,9,11; 131:3,10,20,24;133:4, 6,13,15;136:2,12; 138:24;139:1,2,15,15, 16,19,20;141:19; 142:2;143:11;149:7; 150:9,25;151:6,8,9; 156:22;157:1,5; 159:24;160:2;161:6; 163:13,14,16,21,22; 166:4,5,5,9,12,15; 167:18;168:2,14; 169:16 <b>cases (43)</b> 7:15,18;8:7;21:13; 25:16;26:14;34:5; 36:11;46:18;47:24; 48:15;49:1,2;61:2; 67:2;83:6;85:15; 88:15;102:17;103:1; 123:17;124:1;127:13; 135:9,9,23;136:8,25; 137:10,16;138:3,21; 139:5,8,10;140:8,9; 141:15;143:23; 144:15;159:21,22,22 <b>cash (11)</b> 5:21;87:4,13,14; 103:16;119:19;124:6, 24;156:12,24;162:21 <b>casted (1)</b> 36:9 <b>casting (1)</b> 36:4 <b>categories (2)</b> 64:4;70:19 <b>category (1)</b> 22:1 <b>cause (10)</b> 17:12;21:15;64:15; 67:5;70:16,17,22; 129:21;161:21; 167:17 <b>caused (2)</b> 120:12;134:15 <b>causes (6)</b> 15:1;144:14; 156:13;165:18;166:7; 169:8 <b>causing (1)</b> 119:22 <b>cede (1)</b> 42:23 <b>ceiling (1)</b> 40:10 <b>Celotex (1)</b> 43:16 <b>central (3)</b> 20:9;32:4;119:15 <b>ceremony (1)</b> 34:6 <b>certain (14)</b> 24:3;34:5;42:20; 43:6;53:5;64:4;80:4; 84:3;86:21;97:11,23; 99:15;160:22;165:8 <b>certainly (22)</b> 5:1;11:16;14:12; 17:21;45:23;49:21; 50:24;51:20;52:14; 62:5;68:10;69:4; 71:24;72:7;74:20; 126:8;127:15;159:3; 160:3;165:15;170:8, 10 <b>certificate (2)</b> 10:16,22 <b>certificates (1)</b> 4:19 <b>CGL (1)</b> 70:2 <b>chair (2)</b> 119:10,11 <b>challenge (1)</b> 138:19 <b>chance (1)</b> 54:17 <b>chances (1)</b> 125:9 <b>change (5)</b> 9:9;45:10;153:25; 160:18;164:11 <b>changed (1)</b> 156:2 <b>changes (4)</b> 5:7;45:13;53:10,11 <b>channeling (3)</b> 131:16;132:11,13 <b>Chapter (8)</b> 14:20;16:2;19:23; 20:1;129:25;130:5,6; 162:22 <b>charge (1)</b> 17:6 <b>charged (1)</b> 13:1 <b>charges (1)</b> 22:4 <b>chart (13)</b> 37:14;83:1;89:9; 101:22;112:23,24,25; 113:2,3,4,5,10,20 <b>Chartered (1)</b> 10:15 <b>check (5)</b> 86:4;163:17; 164:13,16,19 <b>Chicago (3)</b> 4:16;77:5;148:20 <b>Choate (2)</b> 53:13;54:1 <b>choice (2)</b> 23:1;122:11 <b>choose (1)</b> 22:25 <b>chosen (1)</b> 22:13 <b>Christopher (1)</b> 4:13 <b>Chubb (8)</b> 24:1;39:15,21;40:5; 81:25;103:24;125:21; 137:24 <b>CIP (3)</b> 96:5,24;113:9 <b>Circuit (11)</b> 55:4,18;121:15; 123:4;126:22;148:25, 25;149:1,7;151:20; 166:4 <b>circulate (1)</b> 72:2 <b>circulated (2)</b> 65:20,22 <b>circumstance (1)</b> 123:8 <b>circumstances (12)</b> 54:23;68:8,15;70:5; 121:18;122:6;129:14, 21;136:1;156:2; 162:23;166:16 <b>circumstantial (1)</b> 130:24 <b>cite (4)</b> 43:11;54:16;55:21; 128:24 <b>cited (16)</b> 43:21;67:2;70:19; 123:1,20;126:18,24; 129:3,10;131:19; 136:11;139:20;151:6, 7;158:1,5 <b>cites (1)</b> 131:2 <b>citing (1)</b> 131:10 <b>citizens (1)</b> 148:14 <b>City (1)</b> 148:20 <b>Civil (1)</b> 134:11 <b>CKSMM (1)</b> 11:7 <b>claim (75)</b> 5:18;7:23;13:15,22; 64:8;65:6;84:4,4; 86:11,11;88:4,6,12; 93:19,21;94:9,15; 99:6,7;101:5;103:22, 24;107:22;108:1,6,24, 24;109:3,7,7,11,12, 12;111:8,12,16,20; 114:19,20,24;115:3,8, 14,18;116:2,4,5,12; 122:23,24;130:18,20; 138:11,12;141:10; 146:21,23;148:7,9,10, 15;149:16,17;150:3; 153:10,12,13,13,23; 162:11,17,17;167:12, 14,14 <b>claimant (2)</b> 38:2;41:17 <b>claimants (46)</b> 16:23;20:2;24:21, 23;31:8;36:17;37:7; 38:18,22;39:7,9;40:2; 42:7,21;43:6,16;44:1; 45:21;46:1,10;57:7; 93:2;110:10;113:3; 118:9,15,16;120:1,12; 123:23;124:11; 125:18;128:17,19,20; 135:8;137:10,22; 138:17;147:11;154:1; 162:18;165:8,9,10; 168:4 <b>claimants' (4)</b> 13:13,14,20;37:8 <b>claims (123)</b>
--	---



September 10, 2024

6:6,8,14;7:10;8:16; 9:20,22;12:12;13:14, 20;14:2;16:11;18:12, 14,17,18,19,21;20:3, 4;22:8;30:19,21; 38:19,25;41:8,10,10, 13;44:7;55:25;70:7; 72:9;83:21;84:3,5; 85:10;86:14,21; 87:18;88:23;91:9,21, 23;94:5;97:6,8,23; 98:22,23;99:1,4; 101:20;102:4;104:1, 2,4;105:2;106:13,13, 14;111:6;112:11,13, 15,16,19;113:17,17; 115:5;118:10,11,12, 17;119:5;120:3,19; 121:19;122:9;124:1; 125:15,19;127:11; 129:7,17;135:23,24; 136:3,15,16,17,19,25; 137:1,6,7,14,20; 138:6;139:17,21,21, 22;141:15;144:18,22; 145:14;146:15,15; 148:16;149:8,8,12; 153:16,18,19;157:19; 158:3,17;160:13; 162:19;166:6,15 <b>clarification (2)</b> 106:25;170:1 <b>clarified (1)</b> 111:7 <b>clarify (4)</b> 72:7;107:13,19; 110:13 <b>clarity (1)</b> 73:1 <b>CLARK (4)</b> 145:24,24;146:2,6 <b>Claro (6)</b> 77:14,15,16,18,23; 78:1 <b>class (1)</b> 30:19 <b>clean (1)</b> 36:7 <b>cleanest (1)</b> 57:21 <b>clear (26)</b> 6:9;8:11;25:6; 26:24,25;27:20;42:8; 47:9;59:2;72:19;79:2; 85:25;109:20;114:10; 121:15;124:6,23; 126:22,24;144:12; 149:10,11;158:3,6; 164:24;165:2 <b>cleared (2)</b> 4:21;10:7 <b>clearly (2)</b> 64:17;125:4	<b>Clement (14)</b> 42:22,25;43:1,3,3, 4;44:5,20;45:12; 135:5,5;140:3,9,12 <b>Clement's (2)</b> 146:17;147:15 <b>CLERK (8)</b> 4:1;7:12;8:3,5; 10:13;73:17,19;76:4 <b>clerk's (1)</b> 7:14 <b>client (5)</b> 144:2,9;146:23,24; 161:12 <b>clients (20)</b> 77:1,6;126:14; 136:9;137:3,22; 138:13;139:25; 140:16;144:17; 145:16;146:17,17,25; 147:1,7;154:1,15; 165:16,17 <b>clinging (1)</b> 64:7 <b>close (1)</b> 16:7 <b>cocounsel (2)</b> 31:25;54:1 <b>Code (5)</b> 11:18;23:6;38:7; 156:1;168:9 <b>cognizant (1)</b> 41:20 <b>cohesive (1)</b> 156:23 <b>Cole (1)</b> 43:16 <b>collateral (4)</b> 121:5;129:23; 130:2;158:12 <b>colleague (2)</b> 4:9;5:6 <b>colleagues (1)</b> 49:15 <b>collect (1)</b> 99:3 <b>collection (2)</b> 13:7,13 <b>collective (1)</b> 121:22 <b>column (4)</b> 101:14,17,18; 102:15 <b>columns (1)</b> 102:21 <b>Comardele (1)</b> 129:1 <b>combination (2)</b> 123:7;164:4 <b>comfortable (2)</b> 76:10;111:1 <b>coming (4)</b> 44:10;61:15;92:17;	94:5 <b>commencement (2)</b> 7:13;155:10 <b>commences (1)</b> 38:1 <b>comment (6)</b> 34:20;35:21,23; 42:4;47:4;113:19 <b>commentary (2)</b> 113:15,16 <b>comments (11)</b> 5:23;6:12;10:1; 21:23;26:23;35:19; 36:22;43:9;46:21; 62:3,11 <b>commercial (11)</b> 54:7;55:5,20;56:2; 58:9,22;59:2;62:4; 64:9;66:24;70:20 <b>commercially (4)</b> 54:13;71:6,7;83:14 <b>committee (57)</b> 6:12;8:7;10:11,15; 11:11,11;16:21; 17:17;18:25;19:12; 20:19;22:22;24:20; 27:3,12;28:1,6;29:13; 30:10,11,12;31:4,12, 19;32:15,16;33:21; 35:20,22;36:3,4,5; 37:2;43:9;44:2;45:23; 46:1,12;48:3,24; 60:20;61:3;62:6,21; 63:3;74:12;75:14; 100:7,8;127:21; 135:13;136:4;138:8; 150:1;161:13,15; 165:14 <b>committee's (6)</b> 20:7;28:14,24; 30:15;31:21;36:7 <b>common (3)</b> 25:16;93:15;104:18 <b>Commonwealth (2)</b> 53:16;149:6 <b>communications (1)</b> 53:9 <b>commutation (2)</b> 97:4,6 <b>companies (12)</b> 18:23;41:18;64:24; 81:24;118:20;144:25; 154:21;166:18,23; 168:13,20;169:2 <b>company (17)</b> 12:13,22;13:10; 53:1;66:21;74:20; 78:13;84:20;88:1,5; 92:17;103:11;104:23; 126:9;148:6;166:11; 168:21 <b>company's (1)</b> 12:21	<b>Compare (2)</b> 22:5;142:13 <b>compared (4)</b> 36:11;44:9;101:21; 102:4 <b>comparison (1)</b> 145:8 <b>compel (1)</b> 32:8 <b>compensate (1)</b> 37:7 <b>compensation (4)</b> 21:8;31:6;55:25; 128:9 <b>competing (2)</b> 71:17,18 <b>compile (1)</b> 116:23 <b>complaint (4)</b> 44:21,22;48:7; 99:10 <b>complaints (4)</b> 34:4;74:15,17; 119:1 <b>complete (4)</b> 7:10;141:12; 142:21;143:15 <b>completed (10)</b> 45:15;84:3,19; 86:11;90:6,7;91:5,24; 136:16;137:6 <b>completely (2)</b> 148:21,22 <b>complex (8)</b> 8:4,6;25:16;33:1; 34:14;70:9;77:3; 142:18 <b>complexities (1)</b> 142:16 <b>compliance (1)</b> 32:6 <b>complicated (5)</b> 82:15;89:16,17; 103:18;168:20 <b>complicates (2)</b> 88:23;89:1 <b>complication (1)</b> 7:12 <b>complications (1)</b> 9:1 <b>complies (1)</b> 23:5 <b>comply (2)</b> 51:12;63:22 <b>component (2)</b> 86:14;91:21 <b>compromised (1)</b> 39:14 <b>compromises (3)</b> 38:10;40:24,25 <b>compromising (1)</b> 31:5 <b>conceding (1)</b>	148:22 <b>concept (4)</b> 46:8;143:22;153:7; 156:3 <b>conceptually (1)</b> 96:25 <b>concern (24)</b> 15:1,1,3;17:13; 19:12;20:7;36:8;39:8; 40:17;42:5;44:5; 63:23;65:1;67:18; 105:9,12,13;107:15; 116:8;123:2;129:22; 131:12;132:2;165:7 <b>concerned (9)</b> 31:4;39:4,4,25; 41:22;66:12;103:13; 105:18;115:12 <b>concerning (2)</b> 66:4;155:9 <b>concerns (13)</b> 11:6;22:11;36:6,13; 40:16;44:8;50:11; 62:6;72:3;105:3; 123:3;164:19;165:6 <b>concession (1)</b> 154:14 <b>concessions (1)</b> 161:9 <b>conclude (1)</b> 159:8 <b>concluded (1)</b> 170:24 <b>concludes (1)</b> 127:15 <b>conclusion (10)</b> 108:17;109:1; 111:23;115:5,7,21,23; 116:14;161:25; 169:19 <b>conduct (5)</b> 28:22;29:3;44:15; 45:16;141:11 <b>conducting (1)</b> 17:1 <b>confer (4)</b> 58:5;59:12,15; 110:1 <b>conference (2)</b> 49:25;50:1 <b>conferred (1)</b> 148:11 <b>confident (3)</b> 158:20,21;163:23 <b>confidential (30)</b> 27:5,20;41:3;54:5; 55:5,20;56:3,8,23; 57:10,10,12,22;58:9, 20,21;59:1,7,10,23; 60:19;61:19;62:1; 63:10,22;64:9;67:24; 68:2;71:5;109:24 <b>confidentiality (46)</b>
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September 10, 2024

27:4,4,7,8,9,22; 29:6;36:5;41:4;53:5; 54:8,10,14,16;55:9, 12;57:2,6,14,18; 58:13,19;59:4,24; 60:6,22;61:3,7,9; 62:25,25;63:2,12,23; 64:11,25;65:2,9,19; 66:14,15,18;67:15; 68:3;71:4;100:6 <b>confirm (3)</b> 13:23;147:21; 159:25 <b>confirmable (1)</b> 163:25 <b>confirmation (4)</b> 6:8;8:16;167:19; 168:3 <b>confirmed (2)</b> 153:20;167:17 <b>conflict (1)</b> 15:1 <b>confusion (3)</b> 9:24;134:13,15 <b>conjunction (1)</b> 166:21 <b>connection (16)</b> 15:21;20:6;21:19; 27:12;32:13;33:24; 36:2;46:23;49:11; 50:5;62:18;67:14; 69:20;71:1;117:20; 169:25 <b>Connors (1)</b> 135:7 <b>consensual (2)</b> 150:23;160:22 <b>consenting (1)</b> 42:7 <b>consider (5)</b> 16:5;26:8;50:17; 122:19;157:6 <b>considerable (2)</b> 114:18;142:19 <b>considered (2)</b> 22:6;25:6 <b>considering (1)</b> 16:11 <b>consistent (3)</b> 23:6;63:5;134:11 <b>consolidated (2)</b> 26:7;133:9 <b>Constanza (1)</b> 135:7 <b>construction (1)</b> 18:9 <b>consultant (2)</b> 49:14;78:7 <b>consultants (1)</b> 124:22 <b>consulted (1)</b> 31:8 <b>consulting (1)</b>	14:1 <b>contact (1)</b> 90:8 <b>contain (3)</b> 93:8;121:21;160:21 <b>contemplated (1)</b> 168:8 <b>contend (2)</b> 47:15;129:4 <b>contends (1)</b> 129:13 <b>content (1)</b> 64:6 <b>contest (1)</b> 13:15 <b>contested (4)</b> 4:23;10:25;44:17; 47:12 <b>context (13)</b> 37:25;38:18;56:19; 86:24;87:23,25; 133:11,23;141:21,23; 142:14;145:13;160:2 <b>contingent (2)</b> 130:16;144:18 <b>continuance (5)</b> 35:3;42:16;45:25; 46:2,24 <b>continuation (1)</b> 155:10 <b>continue (19)</b> 25:23,25;26:22,23; 35:6;36:14;43:7;50:6, 18;51:25;87:15,15; 103:20;105:14; 129:23;133:24;144:5; 164:5;169:5 <b>continued (4)</b> 33:14;50:9;146:14; 167:7 <b>continues (5)</b> 13:23;70:1,12; 105:16;170:11 <b>continuing (2)</b> 35:9;50:19 <b>continuous (1)</b> 35:16 <b>contract (1)</b> 38:13 <b>contracts (2)</b> 38:13;84:8 <b>contrary (2)</b> 130:16;160:20 <b>contrast (1)</b> 128:17 <b>contribute (2)</b> 115:24;120:17 <b>contributed (1)</b> 22:7 <b>contributing (1)</b> 164:3 <b>contribution (5)</b> 93:23,25;94:1;	144:18;168:22 <b>contributions (1)</b> 22:9 <b>control (6)</b> 93:21;123:13,13; 148:17;157:1;162:24 <b>convenient (1)</b> 130:13 <b>conversations (1)</b> 91:20 <b>convert (7)</b> 47:11;99:16,20,24; 100:4;127:10,16 <b>converted (1)</b> 45:8 <b>convey (1)</b> 124:13 <b>conveying (1)</b> 124:14 <b>convinced (1)</b> 86:12 <b>cooperated (1)</b> 14:22 <b>coordinating (3)</b> 13:1;19:22;20:25 <b>Copeland (1)</b> 4:13 <b>copies (1)</b> 34:4 <b>copy (4)</b> 83:3;100:1,8;114:9 <b>Coralville (3)</b> 43:23;138:24;139:4 <b>corporate (1)</b> 76:19 <b>Corporation (1)</b> 131:20 <b>correction (1)</b> 53:8 <b>correctly (1)</b> 133:16 <b>cost (6)</b> 95:6;103:18,19; 105:24;162:3,4 <b>costs (16)</b> 87:19;88:10,11,11, 18;93:4;100:11; 103:13;113:11; 115:13,14,24;116:13; 119:24;153:15; 158:17 <b>counsel (51)</b> 4:9;10:11;12:9,14; 13:5,21,24,25;16:4,4, 6,8,15,25;17:2,5; 19:22;20:16,18,19; 22:13,25;23:1,3,9; 28:14;30:11;32:1; 33:3;43:9;44:2;48:3; 52:15,19;53:10;67:2; 74:4,12;99:9,12; 101:16;108:3;113:4; 135:13,20;136:4;	138:6,8;142:23; 146:12;149:25 <b>counsel's (2)</b> 84:11;111:7 <b>country (4)</b> 12:17;13:3;21:1; 77:6 <b>couple (12)</b> 4:22;5:23;6:12; 11:14;33:10;35:19; 36:22;114:7;124:4; 141:8;146:10;147:15 <b>Courington (32)</b> 11:6,12,18;12:4,10, 13,15,19,22;13:11,18, 23;14:5,8,10,14,19; 16:22;18:17;19:2,13, 21;20:25;21:7,10,14, 16,20;23:4,7;95:5; 102:24 <b>Courington's (8)</b> 12:25;15:3,7;17:14, 17;19:5;22:4,7 <b>course (26)</b> 9:14;11:10;13:14; 16:10,14,25;17:5,6; 21:11,13,24;22:9,16; 30:20;34:9;38:19; 41:19;49:14;50:2; 67:4;68:3;70:13;72:5; 120:24;121:13;151:3 <b>Court (302)</b> 4:2,6,11,17,18;5:5, 6,8,10,17,24;6:2,16, 20;7:1,12;8:9,12,19, 23,25;9:7,12,15,25; 10:6,12,19,22;11:2,8, 13,17,20,22,25;15:11, 14,19,23,24;17:19; 19:4,8,10;20:15; 21:15,18;22:15,24; 23:12,15,23,24;24:7, 9,12;25:4,17,21,25; 26:11;28:13,17,19,21; 29:10,18,22,23;30:7, 15;33:10,13;34:22, 22;35:3,13,15;36:8, 11,13,14,19,23,25; 38:12,18;42:3,17,19, 24;43:2,17,24;44:3, 17;45:7,18;46:22; 47:11,20,23;48:7,10; 49:10;50:4,19;51:23; 52:5,21,24;53:2,17, 20,22,24;54:9,19; 56:1,4,5,8,14,18;58:4, 10,12;59:13,24;60:10, 12,15,17;61:11;62:10, 13,15,17;63:18;64:3, 14,23;65:4,4,8,11,24; 66:2,16;67:8,13,23; 68:5,6,13;69:5,8,12, 17,19;70:25;71:24;	72:4,11;73:4,7,10,13, 17,19;74:1,3,5;75:7,9, 12,16,20,25;76:3,7, 11;79:13;81:7,8; 83:11;87:24;88:10; 102:10;103:5,7; 105:7;106:23;108:21, 25;109:23;110:7; 111:21,25;112:6; 115:22;116:16;117:8, 11,15,19;120:15,22; 122:1,3,6,11,17,18; 123:8,13;124:17; 125:5;126:22;127:7, 15,19;128:2;129:2, 10;130:10;131:19; 132:4,8,14,25;133:6, 11,18,23;134:21; 135:1,3;139:3,12,14; 140:1,7,10,18;141:1, 14,16;144:6,24; 145:20,22;146:1,5; 147:9;148:19;149:9, 14,18,19;151:13; 152:23;154:9,18,24; 155:4,16,20;157:6,10, 17;158:4;159:2,13,16, 18;160:2;161:8,13, 18;162:11,23;163:5,9, 13;164:8,23;165:3,6, 7;166:9,22;168:23; 169:10,15;170:3,5,13, 16,23,23 <b>courthouse (3)</b> 119:18;136:21; 165:8 <b>courtroom (5)</b> 12:3;14:18;84:11; 107:4;109:20 <b>courts (8)</b> 14:16;18:3;55:6,17; 58:9;67:2;70:18; 136:20 <b>Court's (3)</b> 118:14;123:12; 125:21 <b>Courville (1)</b> 129:9 <b>cover (2)</b> 88:17;93:17 <b>coverage (99)</b> 13:25;17:4;19:25; 30:20,25;31:3;37:12, 14,17;38:8,23,24; 39:14,16,17,20,25; 40:12,13,15;41:7,7; 61:22,23;64:24; 69:13;70:2,9;77:2; 78:23;79:5,16,17; 80:16;82:6;83:14,15; 84:11,12;85:13,14,20; 88:23;89:13,22;91:6, 9,92:1;95:22;96:4,9,
---	--	---	---	---

September 10, 2024

10,12,16,22,23;98:20; 100:22,25;104:11,13, 21;105:10,15;106:9; 114:9,10,11,13,16; 119:15,25;120:21; 123:6;128:9,12,14,18, 21;129:18;142:13,17, 21;145:4,8;156:11,17, 18,18;157:23,24,25, 25;158:1,14,15;160:9, 10;168:21 <b>coverage-in-place (6)</b> 96:6,15,24;97:2,6, 16 <b>coverages (1)</b> 18:2 <b>covered (1)</b> 160:14 <b>covering (3)</b> 83:16;85:6;102:25 <b>Cox (32)</b> 32:1;33:8;35:11; 36:21,24;37:1,1,2,4; 62:20,20;65:2,10,21; 66:4;67:16,25;69:10, 15,18;70:16;103:6; 106:24;107:2,3; 108:22;109:17;110:4; 112:4,8;114:2;116:14 <b>craft (1)</b> 157:4 <b>created (3)</b> 79:17,18;80:10 <b>creates (2)</b> 9:18;168:3 <b>Credit (1)</b> 139:15 <b>creditor (2)</b> 38:22;130:17 <b>creditors (19)</b> 7:22;9:17,20;10:16; 20:20;31:12;43:4; 126:10;136:22,23; 137:14,17,17;159:15, 24;161:7;162:15; 165:14;167:16 <b>Creek (1)</b> 131:20 <b>criteria (1)</b> 97:8 <b>criterion (3)</b> 151:16,23;152:8 <b>critical (4)</b> 16:19;25:13;26:13; 106:19 <b>cross (5)</b> 11:16,21,23;15:10; 160:13 <b>CROSS-EXAMINATION (3)</b> 107:1;110:11;114:5 <b>cross-examine (4)</b> 15:11;106:23; 110:7;117:8	<b>crumbles (1)</b> 120:11 <b>crystal (5)</b> 6:9;25:6;26:24,25; 27:20 <b>current (3)</b> 32:9;80:6;169:24 <b>currently (6)</b> 119:3,3;140:1,10; 158:8;163:9 <b>customarily (1)</b> 48:15 <b>cut (3)</b> 21:7;128:18,23 <b>cutting (2)</b> 84:6;137:4  <b>D</b>  <b>D&amp;Os (1)</b> 105:22 <b>damages (4)</b> 78:25;86:9;96:21; 98:19 <b>Dandry (4)</b> 135:7,8,10;139:10 <b>data (1)</b> 96:17 <b>database (11)</b> 98:16,18;99:8,11, 13,16,18,21;100:1,8; 112:10 <b>databases (1)</b> 101:12 <b>date (34)</b> 5:18;6:4,5;7:2,3,9, 17,24,25;8:13;9:10; 24:2,6;30:5;31:21; 32:14;49:24;50:2; 51:11,19,19;75:19; 84:9;86:9;89:8;94:23; 96:20,22;100:2; 103:9;127:11;141:2; 144:5;164:14 <b>dates (2)</b> 82:17;88:13 <b>David (7)</b> 12:7;32:1;37:1,2,4; 62:20;107:3 <b>day (15)</b> 6:6;18:7;26:13,20; 32:22;33:4;51:6;53:8; 63:19;117:2;131:14; 133:20;155:6;156:5; 157:8 <b>days (20)</b> 6:24;7:2;24:8;26:7; 27:15;28:3,12,18; 29:12;40:17;45:2; 46:15,20;48:14,21,21; 51:8;97:13,13;145:12 <b>days' (2)</b> 6:24;25:14	<b>De (2)</b> 133:9,16 <b>deadline (8)</b> 6:18,23;9:3;31:21; 32:6,21,21;34:15 <b>deadlines (1)</b> 26:16 <b>deal (20)</b> 14:15;21:25;61:8; 65:13;66:18;93:11; 97:22;104:5,7,9,11; 118:10,10;121:1; 124:18,18;125:25; 126:1;158:17,22 <b>dealing (6)</b> 17:23,24;41:18; 86:15;123:5;162:3 <b>deals (2)</b> 85:9;120:10 <b>dealt (3)</b> 92:2;98:2;162:10 <b>debtor (159)</b> 4:8;5:12;6:5,9;4; 11:5,17;13:8,8;15:1,6, 25;16:3;17:1,11;19:5, 23,23;20:10,11,12,16; 22:24;23:7,20;26:24; 30:18,23;31:2,10; 32:24;33:15;34:3,5, 13;37:12;41:21;42:8, 21;47:2;49:10;52:4, 10;53:10;54:6,13,20, 22,24;57:1;60:17; 61:13,15,20;66:16; 71:23;72:9;78:3; 104:5;106:17;110:24; 111:16,22;115:24; 116:12,17;118:21,23, 25;119:4,23;120:17, 17,22;121:1,3,4,15, 19;122:22,23;124:14; 128:1,14;129:5,6,13, 19,23,25;130:3,4,7,8, 16,17;131:1,2,6,7,13, 15,19;132:9;134:5,7; 135:20;136:1,3; 137:11;146:12,22,24; 147:6,7,20,25;148:1, 2,6,15;149:3,4,8,23, 23;150:11,11,14; 151:6;152:19;153:7; 154:4,12;155:8; 158:9;160:15;162:12, 12;165:11,20,20; 166:2,6,17,25;167:5, 9,17,22,24;168:5,7,8, 10,18,23,25;169:4,21 <b>debtors (12)</b> 15:18;23:2;32:11; 39:6;45:20;54:4; 116:24;131:17; 142:14;143:5;153:10; 164:15	<b>debtors' (1)</b> 17:5 <b>debtor's (38)</b> 6:7;7:16;19:15,18; 20:6;30:21;31:9; 32:11;40:23;41:9; 57:4;75:19;81:1; 115:10,16;116:10; 118:18;128:10,11; 129:3;130:15,22; 141:5;142:18,23; 143:2,17,24;144:23; 145:4;146:12;147:12; 153:8;157:16,24,25; 167:4,10 <b>decades (1)</b> 70:9 <b>deceased (1)</b> 135:12 <b>decide (10)</b> 13:14;16:1;124:17; 141:25;142:12; 158:11,11;162:25; 163:1,7 <b>decided (9)</b> 34:5;56:1,4,6; 121:6;123:8;127:12; 129:9;150:8 <b>decides (1)</b> 155:20 <b>deciding (1)</b> 153:5 <b>decision (9)</b> 16:16;41:24;55:23; 58:11;132:14;139:13; 142:2;148:13;166:22 <b>decisions (3)</b> 130:6,7;168:25 <b>declaration (2)</b> 74:7;128:12 <b>declarations (1)</b> 22:21 <b>deem (1)</b> 97:2 <b>deemed (3)</b> 61:19;84:4;86:22 <b>defamatory (1)</b> 64:6 <b>defeat (1)</b> 13:22 <b>defend (3)</b> 105:23;106:13; 116:5 <b>defendant (2)</b> 140:1;144:7 <b>defendants (10)</b> 69:9,11;94:24; 105:17;125:15;127:5; 130:1,2;133:18;161:9 <b>defended (1)</b> 95:3 <b>defending (4)</b> 18:17;88:12,14;	95:5 <b>defense (31)</b> 12:14;13:5;19:22; 20:9;81:5;87:19,21; 88:10,11,18;93:4; 96:1,3;98:17;99:13; 100:11,14;102:13,13, 14,16,18;103:13,19; 111:12;113:2,2,4; 115:13;116:13; 153:15 <b>defenses (1)</b> 156:18 <b>deference (1)</b> 22:24 <b>define (2)</b> 6:13;133:1 <b>defined (2)</b> 64:17;84:5 <b>definition (1)</b> 6:13 <b>Delaware (1)</b> 151:8 <b>delay (1)</b> 169:9 <b>delayed (1)</b> 63:1 <b>delays (1)</b> 35:4 <b>delete (1)</b> 25:3 <b>deliver (3)</b> 32:14;60:20;61:4 <b>delivered (1)</b> 37:21 <b>delivery (1)</b> 125:19 <b>demonstrated (1)</b> 168:18 <b>demonstrates (1)</b> 57:14 <b>demonstrative (1)</b> 117:14 <b>denied (2)</b> 46:6;105:9 <b>deny (3)</b> 51:25;64:24;154:7 <b>denying (1)</b> 50:17 <b>department (2)</b> 132:20,20 <b>departments (1)</b> 132:19 <b>depending (1)</b> 89:11 <b>depends (3)</b> 96:15;132:25; 156:22 <b>depiction (1)</b> 83:20 <b>deplete (2)</b> 136:3,10 <b>depleted (1)</b>
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September 10, 2024

137:8 <b>depletion (1)</b> 118:8 <b>depose (2)</b> 32:15;143:2 <b>deposition (2)</b> 32:10;49:20 <b>depositions (3)</b> 32:9;45:3;50:24 <b>describe (1)</b> 87:24 <b>described (4)</b> 29:25;39:5,10; 168:15 <b>designate (1)</b> 59:22 <b>designated (4)</b> 45:11,12;68:2; 101:10 <b>designates (1)</b> 63:24 <b>desire (1)</b> 14:20 <b>despite (4)</b> 68:13,14;130:10; 149:22 <b>detail (1)</b> 134:12 <b>details (1)</b> 83:7 <b>determination (1)</b> 141:25 <b>determinations (1)</b> 141:21 <b>determine (4)</b> 41:25;44:15;88:20; 96:7 <b>determined (1)</b> 166:9 <b>determining (1)</b> 45:4 <b>detriment (2)</b> 120:12;136:23 <b>develop (2)</b> 143:7;144:2 <b>development (1)</b> 58:22 <b>develops (1)</b> 89:4 <b>diagnosed (1)</b> 85:7 <b>diagnosis (1)</b> 97:10 <b>Dickstein (3)</b> 79:18,20,22 <b>difference (3)</b> 9:19;95:23;112:24 <b>different (24)</b> 22:13;54:25;61:5,6; 70:7;80:3;81:4,5; 86:23;87:20,22;89:5; 99:17;119:4;126:19; 130:1;137:19;140:21;	141:21;142:15; 148:22,23;150:8; 152:19 <b>differs (1)</b> 97:3 <b>difficult (2)</b> 31:17;46:10 <b>dig (1)</b> 142:23 <b>digest (1)</b> 142:20 <b>digested (1)</b> 66:1 <b>diligently (1)</b> 36:3 <b>diluted (2)</b> 38:9;162:16 <b>diluting (1)</b> 162:20 <b>diminish (1)</b> 165:9 <b>diminished (1)</b> 38:9 <b>direct (19)</b> 75:1;76:8;94:16,21; 118:17;120:15;122:9; 127:24;128:17; 129:16,22;134:2; 144:19;148:4,9,10; 152:12;154:1;165:18 <b>direct-action (1)</b> 74:14 <b>directed (4)</b> 33:25;49:16;86:20, 20 <b>directly (1)</b> 118:25 <b>director (2)</b> 76:23;152:24 <b>directors (20)</b> 94:18;101:3; 105:17;106:6,8; 118:18;127:3;135:19, 21,23;152:20;153:2; 156:7;161:10,14; 166:8,11,18,24; 168:13 <b>disagree (3)</b> 18:17;138:20; 148:12 <b>disbursed (1)</b> 93:1 <b>discharges (1)</b> 125:18 <b>disclosed (2)</b> 53:6;57:19 <b>disclosing (1)</b> 109:24 <b>disclosure (5)</b> 7:5,7,11;54:22; 66:21 <b>disclosures (2)</b> 14:25;15:3	<b>discovery (56)</b> 26:16,24;27:1,11, 13;28:4,8,22;29:2,2; 32:7;33:19,22;34:11, 21,25;35:4;36:1; 41:17;44:15,17,25; 45:1,9,13,17;48:17, 25;49:3,22,23;50:14, 23;54:24;55:1;57:20; 99:11;104:9;118:10; 120:25;121:2;128:8; 129:17,19;138:17,23; 141:12;145:3,9; 146:21,23;149:5; 158:18,18,20;160:11 <b>discreet (1)</b> 70:11 <b>discretion (2)</b> 19:5;21:15 <b>discuss (7)</b> 55:14;56:21,21,24; 58:6;59:16;111:6 <b>discussed (13)</b> 26:9,12;29:1;37:11; 55:2;56:14,18;57:18; 59:24;67:17;69:3,4; 129:11 <b>discusses (1)</b> 58:2 <b>discussing (3)</b> 56:22;59:21;98:7 <b>discussion (6)</b> 33:18;48:4;52:15; 84:2;108:5;164:3 <b>discussions (4)</b> 6:15;48:6;79:1; 142:24 <b>disease (4)</b> 89:2,4,8;135:11 <b>disinterested (1)</b> 23:8 <b>disperse (1)</b> 92:23 <b>disproportionate (3)</b> 102:7,8;113:11 <b>disproportionately (1)</b> 162:4 <b>dispute (2)</b> 72:25;86:1 <b>disputed (2)</b> 74:21;137:5 <b>disputes (6)</b> 32:7;34:25;76:19; 85:8;91:8;129:18 <b>disrupt (2)</b> 60:2;126:5 <b>disseminated (2)</b> 55:15;56:11 <b>distinguish (1)</b> 109:8 <b>distinguished (2)</b> 108:10;109:6 <b>distinguishes (1)</b>	136:10 <b>distribution (2)</b> 162:16;167:15 <b>District (11)</b> 4:2;55:22,22;58:11; 64:16;129:2,2; 141:14;158:4,4; 168:23 <b>disturbed (1)</b> 38:15 <b>docket (12)</b> 4:21;7:21;9:2;11:5; 24:2,6;53:15;55:14; 72:3;123:13;150:19; 157:1 <b>docketed (1)</b> 10:13 <b>docketing (1)</b> 5:15 <b>document (32)</b> 27:14,19,21;29:5,7, 8,14;32:6;33:24;36:7; 55:20;56:6,8;61:1; 63:20;64:21;67:16; 68:17,23,23,24;74:19; 79:10,25;80:12; 101:11,12;103:8; 106:3;109:22;116:23; 117:5 <b>documents (24)</b> 27:18,25;28:9;33:2; 34:3,8;54:10;55:8; 57:21;58:2,4,14,23; 59:13;60:7;63:6; 66:23;68:7,11,18; 101:10;107:14;117:4; 142:25 <b>document's (1)</b> 100:15 <b>dog (1)</b> 161:15 <b>doled (2)</b> 119:16;124:8 <b>dollar (3)</b> 31:5;39:15;82:22 <b>dollars (43)</b> 21:12;31:2,3;37:18; 38:24;39:13,16,20,24, 25;40:7,10,13,14; 41:11;81:12;82:5; 84:13,14;85:13;87:4, 8,12;90:16;92:16; 97:5;101:14,23,23; 102:2,13,13,18; 103:16;112:18,19,21, 22,25;113:2,21; 116:6;162:6 <b>dollars' (1)</b> 37:17 <b>Don (1)</b> 99:1 <b>done (12)</b> 8:6;36:1;45:6;	46:15,17;87:5;91:7; 97:5;98:23;124:9; 139:6;158:2 <b>doubt (1)</b> 46:16 <b>Doug (1)</b> 52:25 <b>down (16)</b> 4:14;9:1;18:13; 46:13;49:21;87:15; 96:8;101:15;117:16; 124:12,13;125:2; 130:9;155:22;163:1; 164:5 <b>downside (1)</b> 161:1 <b>dozen (1)</b> 61:5 <b>draining (2)</b> 162:7,20 <b>drastic (1)</b> 56:5 <b>draw (1)</b> 161:25 <b>drawn (1)</b> 80:6 <b>drill (1)</b> 156:4 <b>drop (1)</b> 32:18 <b>Drysdale (2)</b> 10:10,15 <b>D's (2)</b> 154:15,16 <b>duplicate (1)</b> 43:8 <b>duration (2)</b> 141:19;143:11 <b>during (18)</b> 52:16;55:3;72:10; 73:22;84:5;102:14, 17;112:16,22;126:17; 128:7;133:14;137:4; 146:9;157:5,5; 166:12;167:18 <b>duty (2)</b> 107:5,9 <b>dwelt (1)</b> 129:12
<b>E</b>				
<b>earlier (12)</b> 24:8;57:1;72:20; 81:17;84:11;88:24; 92:7;106:8;107:4; 111:7;128:20;164:1 <b>early (10)</b> 14:17;25:11,18; 28:13;33:20;37:19; 81:18;85:4,21;162:5 <b>easier (4)</b> 9:5;99:23;153:1;				



September 10, 2024

170:21 <b>easiest (2)</b> 7:23;57:21 <b>easily (1)</b> 17:15 <b>Eastern (4)</b> 4:2;55:22;129:2; 158:4 <b>easy (5)</b> 25:1;28:2;89:15; 140:23,25 <b>eat (1)</b> 87:12 <b>echo (1)</b> 146:3 <b>edited (2)</b> 80:10,11 <b>educate (2)</b> 14:6,10 <b>effect (6)</b> 130:3;132:18,22, 23;153:6;170:6 <b>effective (1)</b> 100:1 <b>effectively (4)</b> 54:22;55:11;60:11; 124:10 <b>effects (4)</b> 156:13;160:9,10,11 <b>efficient (2)</b> 14:9;19:3 <b>effort (4)</b> 27:23,24;40:2; 170:20 <b>efforts (1)</b> 31:9 <b>eight (2)</b> 12:19;129:11 <b>either (9)</b> 10:23;65:5;74:11; 83:8;85:24;95:15; 119:2;126:1;133:8 <b>eleven (4)</b> 27:13,18;101:20; 112:13 <b>eleventh (1)</b> 32:19 <b>eligibility (1)</b> 20:4 <b>eligible (1)</b> 20:3 <b>else (34)</b> 8:13;9:14;10:1; 14:7;15:20;16:18; 21:19,21;46:23; 47:23;50:5;69:19; 70:4,5,25;93:19; 110:7;113:11,18; 114:21,22;117:8,19; 118:22;119:10;133:1; 135:3;140:18;145:22; 152:16,17;154:10,16; 170:16	<b>else's (1)</b> 104:20 <b>elsewhere (1)</b> 55:4 <b>emergency (2)</b> 4:25;52:11 <b>employ (4)</b> 16:1,5;19:5;23:3 <b>employed (2)</b> 16:6;76:13 <b>employee (2)</b> 16:19;18:8 <b>employees (2)</b> 13:9;14:4 <b>employing (1)</b> 19:2 <b>employment (1)</b> 23:9 <b>enable (5)</b> 29:2;32:2;132:9; 166:22;168:4 <b>enabling (1)</b> 169:4 <b>encouraged (1)</b> 29:4 <b>end (12)</b> 14:21;73:1;83:11; 96:22,23;119:22; 128:5;131:14;133:20; 147:14;159:18; 164:17 <b>endeavor (1)</b> 71:25 <b>ended (2)</b> 78:11;83:18 <b>endorse (2)</b> 23:12;170:7 <b>endorsed (1)</b> 5:22 <b>ends (1)</b> 124:14 <b>enforceable (1)</b> 115:18 <b>engaged (3)</b> 32:11,17;49:10 <b>enjoin (2)</b> 44:7;131:21 <b>enjoined (1)</b> 131:8 <b>enough (10)</b> 26:21;30:23;33:1,1; 87:14;123:1;141:11; 143:7;155:19;165:21 <b>ensure (1)</b> 59:23 <b>ensures (1)</b> 55:13 <b>enter (12)</b> 10:6;52:2;54:9; 55:7;71:9;72:5;75:11; 99:8;141:18;143:19; 151:3;155:20 <b>entered (10)</b>	4:20;5:14;54:5; 55:14;67:3,3,13,17; 130:1;155:5 <b>entering (1)</b> 5:13 <b>entertain (2)</b> 50:23;71:17 <b>entire (6)</b> 40:10;68:24;78:23; 81:19,19;156:22 <b>entirely (1)</b> 142:6 <b>entities (1)</b> 144:21 <b>entitle (2)</b> 64:10,12 <b>entitled (7)</b> 64:21;67:21;68:11; 69:6;70:21;131:14; 133:3 <b>entity (1)</b> 133:7 <b>enumerated (1)</b> 70:20 <b>enumerates (1)</b> 64:4 <b>Epis (1)</b> 107:3 <b>Epp (1)</b> 49:12 <b>Epps (27)</b> 4:15;37:15;49:19; 72:23;76:2,2,3,12; 108:18;109:2;110:13; 117:16;119:19;120:2; 124:22;130:19; 136:14;146:9;149:9; 155:8;156:8;158:13, 21;160:10,23;162:5; 167:10 <b>Epps' (2)</b> 41:14;49:15 <b>equipped (1)</b> 149:19 <b>equitable (3)</b> 14:21;42:1;123:12 <b>Erica (1)</b> 135:7 <b>erupt (1)</b> 126:4 <b>especially (2)</b> 119:12;152:11 <b>essentially (2)</b> 137:16;155:25 <b>establish (5)</b> 13:22;14:20;22:24; 143:25;165:11 <b>established (1)</b> 168:11 <b>estate (53)</b> 15:2,8;18:16,23; 19:3,7,17,20;21:17; 42:2;48:23;66:10,13;	105:18;115:15;118:7; 119:13;121:7,14; 123:14;125:11; 128:15;136:4,10; 137:8,13,21;139:23; 142:1,4;145:17; 148:17;149:18;150:2; 153:7;154:3;155:10; 156:6;157:11;158:13; 159:6,23;160:6,8; 161:21;162:4,16,17, 20;167:2,16;168:11, 14 <b>estimate (1)</b> 32:11 <b>estimated (1)</b> 31:1 <b>estoppel (2)</b> 121:6;129:24 <b>evaluate (2)</b> 145:13,16 <b>evaporated (1)</b> 66:25 <b>even (28)</b> 10:20;14:21;22:18; 30:25;32:8;33:4; 50:15;51:19;66:9; 67:8;68:21,25;70:23; 80:19;136:6,6; 137:11;139:16; 142:18,21;147:3; 153:14;155:18; 159:11;164:1;168:9; 169:6,8 <b>evenly (2)</b> 89:15;96:21 <b>event (4)</b> 16:14;153:15; 167:24;168:12 <b>eventually (1)</b> 115:19 <b>everybody (8)</b> 8:13;36:14;46:19; 57:16;120:6;146:20; 154:16;165:4 <b>everyone (8)</b> 9:3;17:7;71:14,15; 113:11;145:12;150:7; 157:22 <b>everyone's (1)</b> 170:19 <b>evidence (28)</b> 15:16,17,20;16:6; 21:9;67:17;73:11; 74:11;75:18;83:4; 100:15;103:8;106:1; 117:19;121:10;125:5; 130:24;142:6;144:2; 155:7;156:6;160:7; 164:7;167:3,3,8; 168:12,16 <b>evidentiary (2)</b> 64:15;155:2	<b>exact (1)</b> 118:23 <b>exactly (10)</b> 49:16;55:9;56:10; 57:11;97:14;118:6; 140:12;149:7;151:12, 13 <b>exalted (2)</b> 146:16,25 <b>examination (5)</b> 34:12,13;49:18; 76:8;146:9 <b>examine (2)</b> 75:24;109:21 <b>example (5)</b> 32:5;55:20;82:11; 89:7;132:19 <b>examples (1)</b> 74:14 <b>exceed (2)</b> 139:18,22 <b>exceeds (1)</b> 21:14 <b>except (3)</b> 68:3,7;83:19 <b>excepted (1)</b> 131:22 <b>exception (2)</b> 165:25;166:24 <b>excess (25)</b> 78:14,17;79:1; 81:14;82:5,6,19,19, 21,22;95:8,16;97:25; 98:2;104:23;113:8; 119:21;120:20;121:3; 137:24;138:2;156:13; 160:9,13;168:21 <b>exclusions (1)</b> 81:11 <b>executed (5)</b> 54:6,7;68:19,20; 71:4 <b>exercise (3)</b> 19:4;147:2,5 <b>exercising (1)</b> 148:17 <b>exhaust (3)</b> 85:15;105:13;116:7 <b>exhausted (12)</b> 45:4,5;78:23;86:13; 91:5,24;93:6;120:5,5; 128:13;142:17;145:6 <b>exhaustion (14)</b> 78:22;90:6;92:6; 95:24;96:3,7;97:15, 21,22;98:1,3,14; 142:1;156:19 <b>exhaustions (4)</b> 80:6,7;95:22;98:20 <b>exhibit (31)</b> 61:13;72:19,20,24; 73:23;74:7,9,16,23, 25;75:19;79:11;
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100:15;101:9,10; 103:4,7,9;105:25; 112:10;114:8;116:22; 117:12;128:4,12; 134:6;144:15,23; 149:3;162:1;166:19 <b>exhibits (12)</b> 32:25;73:14;74:6, 12,13;75:10,13,16,18; 166:20;167:5,23 <b>exist (1)</b> 136:1 <b>existing (2)</b> 118:19;145:18 <b>exists (2)</b> 144:24;157:24 <b>expect (7)</b> 18:3;94:15;104:13; 108:6;109:10;114:24; 169:3 <b>expectation (2)</b> 108:19;115:10 <b>expediency (1)</b> 41:20 <b>expedited (3)</b> 34:24;44:23,24 <b>expend (2)</b> 138:16;149:4 <b>expense (1)</b> 143:12 <b>expenses (3)</b> 105:3;160:11; 167:18 <b>expensive (1)</b> 162:2 <b>experience (4)</b> 62:5;93:13;94:2; 103:17 <b>expert (9)</b> 32:8,11,14,17; 49:11,22;50:23; 149:10,11 <b>expertise (1)</b> 14:17 <b>experts (1)</b> 33:19 <b>explain (4)</b> 46:3;96:25;102:10, 23 <b>explained (4)</b> 18:7;115:12; 147:24;161:2 <b>explaining (1)</b> 102:22 <b>explanation (1)</b> 40:21 <b>explore (1)</b> 142:10 <b>exploring (1)</b> 115:8 <b>exposed (4)</b> 38:3,4;85:6;89:3 <b>exposure (8)</b>	39:9,10;43:14;86:9; 88:13;89:8;96:17; 128:20 <b>exposures (2)</b> 83:17;137:4 <b>express (1)</b> 129:22 <b>expressed (2)</b> 153:11,14 <b>expressing (3)</b> 111:11,15;112:1 <b>extend (12)</b> 123:6;141:24; 149:22,23,24;151:11; 154:7;159:8;166:17, 22;169:12,21 <b>extended (5)</b> 108:16;128:3; 129:13;152:4;164:13 <b>extending (3)</b> 126:24;153:1; 165:21 <b>extends (2)</b> 166:23;169:13 <b>extension (12)</b> 31:19,22;32:2; 42:16;44:4;46:11; 135:14;136:2;147:21; 154:25;165:24;166:2 <b>extensive (1)</b> 117:23 <b>extensively (1)</b> 54:15 <b>extent (14)</b> 18:21;41:6;56:13; 58:4;68:4;71:11; 108:25;109:23; 115:23;127:15,24; 142:13;144:21; 151:21 <b>extra (1)</b> 68:12 <b>extraneous (1)</b> 164:6 <b>extraordinary (2)</b> 63:7;68:8	138:24;149:3,4,8; 150:20;153:25; 157:13;158:2 <b>factor (2)</b> 16:5;131:4 <b>factors (3)</b> 131:1,4;150:13 <b>facts (11)</b> 13:12,12,21;14:6; 16:10,18,19;18:6; 113:23;123:19;162:2 <b>factual (5)</b> 141:12,17;142:9; 143:15,25 <b>fair (10)</b> 14:20;42:1;60:3; 78:16;80:25;83:20; 89:20;124:7;145:8; 159:17 <b>fairly (6)</b> 57:16;60:23;79:13; 119:16;124:8;169:3 <b>faith (3)</b> 23:6;58:5;59:15 <b>fall (1)</b> 137:5 <b>falls (4)</b> 58:20;70:19;71:2; 152:10 <b>familiar (4)</b> 79:6;94:16,19; 105:6 <b>familiarity (1)</b> 109:14 <b>family (1)</b> 27:16 <b>far (3)</b> 148:23;150:3;152:3 <b>faster (1)</b> 46:4 <b>father (1)</b> 12:7 <b>favor (1)</b> 68:14 <b>fear (1)</b> 25:9 <b>Federal (1)</b> 134:11 <b>fee (3)</b> 21:12,14;22:12 <b>feel (2)</b> 21:7;44:22 <b>feeling (1)</b> 21:2 <b>fees (6)</b> 22:18,19;104:5; 113:4;118:9,13 <b>feet (1)</b> 18:8 <b>fettered (1)</b> 63:16 <b>few (1)</b> 70:19	<b>fiduciary (1)</b> 18:16 <b>fifteen (3)</b> 61:5;73:15;87:10 <b>Fifth (2)</b> 148:25;149:6 <b>fifty-million (1)</b> 31:3 <b>fifty-million-dollar (1)</b> 41:11 <b>fight (7)</b> 107:23;122:25,25; 137:23;156:24;158:7; 161:16 <b>fight (15)</b> 104:11,13,24,25; 118:11;120:25;121:2; 124:12;126:4;157:20, 22;158:20;160:12; 161:20;164:6 <b>figure (9)</b> 50:1;56:18;59:15; 85:17,23;89:18; 104:24;149:18,19 <b>figured (1)</b> 45:15 <b>file (18)</b> 9:20,22;12:23; 45:21;53:3;68:16; 84:16;109:11;114:20, 24;115:3,9;116:11; 117:23;125:8;127:17; 137:25;169:14 <b>filed (66)</b> 4:20;6:21;7:4; 14:13;17:25;19:16; 23:23;24:1,5,19,20, 20;25:10,11;26:6; 28:13;32:24;34:12; 35:24;43:6;44:21; 51:14;52:12;53:7,8, 14;56:13,13;57:24; 58:2,22,24;59:1,7,9, 63:6;65:3,22;68:7,12, 25;72:25;74:17;75:1; 105:16;111:20;115:6; 117:25,25;118:1; 119:6,11,18,18; 124:23;144:11,20; 149:9,12,13,14; 150:19;153:13;155:3; 169:21;170:7 <b>FileMaker (3)</b> 99:18,20,24 <b>filing (10)</b> 7:23;13:1;20:25; 35:1;64:1,12;119:8; 127:11;163:21;165:1 <b>filings (2)</b> 67:8;69:5 <b>fill (6)</b> 85:17,23;87:6; 104:24;119:19;	156:12 <b>filled (1)</b> 156:11 <b>final (16)</b> 5:22;30:3;72:3,6,8; 90:5;129:25;134:9; 141:2;143:4,10,17,18; 144:5;150:16;152:18 <b>finality (1)</b> 94:3 <b>finalization (1)</b> 63:2 <b>finally (5)</b> 15:5;29:5;126:20; 153:6;161:4 <b>finance (1)</b> 76:19 <b>financial (5)</b> 13:25;49:14;78:6; 115:16;116:10 <b>find (14)</b> 13:12,18;11;19:4; 23:7;35:13;51:12,23; 63:19;78:12;87:3; 129:20;149:2;166:13, 22 <b>fine (9)</b> 8:2,13;9:6;37:4; 111:4;126:25;155:22; 156:3,17 <b>finish (2)</b> 50:14;126:5 <b>finite (1)</b> 19:16 <b>Finnerty (9)</b> 53:13,15,23,25; 54:1,21;60:13;69:21; 71:22 <b>firm (43)</b> 11:6,18;12:4,13,25; 13:18;14:5,7,10,25; 15:7;16:12,16;17:9, 14;18:10;19:2,5,13, 21;20:21,25;21:7,10, 14,16,20;22:4,7,11; 23:4,7;24:22,22;43:4, 5;53:14;57:7;76:18; 77:11,24;79:18; 114:12 <b>firmly (1)</b> 11:17 <b>firms (2)</b> 74:15;98:17 <b>firm's (1)</b> 17:17 <b>first (55)</b> 4:12,23;5:5,20;6:6; 7:2;12:9;18:7;21:24; 26:1,13;30:10;38:3; 48:3;53:2;58:8;66:5; 67:7;70:16;78:8,19, 21;81:7,16,20,20,22; 82:1,21;83:2;84:17;
--	---	---	--	--

September 10, 2024

86:9;89:3,8;90:22; 96:17,21;101:13,14, 17;112:24;113:3; 121:17;124:5;131:2, 4;134:7;144:11; 148:19;150:13;151:7, 7;155:4;159:6;167:25	<b>form (5)</b> 23:13;51:22;62:15; 80:12;116:2	<b>freeze (3)</b> 133:17,19,21	<b>gets (3)</b> 99:6;103:21;116:3	60:21;65:24; 112:19;157:15
<b>format (2)</b> 99:17;100:4	<b>formed (1)</b> 77:16	<b>front (4)</b> 46:5;73:1;79:10; 143:10	<b>given (5)</b> 15:25;68:2;141:13, 13;167:6	<b>guidance (1)</b> 109:21
<b>formation (1)</b> 77:25	<b>former (3)</b> 94:17;105:16; 118:18	<b>full (5)</b> 34:9;44:15,25; 45:16;147:16	<b>gives (5)</b> 9:21;17:12,13; 45:16;122:15	<b>Gulf (1)</b> 12:16
<b>first-day (2)</b> 74:7,8	<b>formulating (1)</b> 14:23	<b>full-time (1)</b> 21:17	<b>giving (5)</b> 51:23;113:24,24; 114:1;142:24	<b>gut (1)</b> 163:17
<b>fit (1)</b> 59:20	<b>forms (1)</b> 108:23	<b>fully (10)</b> 5:22;16:20;46:7; 51:15;66:1;86:13; 91:24;94:15;142:10; 149:19	<b>glad (1)</b> 11:20	<b>H</b>
<b>five (8)</b> 82:5;85:2;101:16, 20,25;112:16;155:21; 164:16	<b>formula (2)</b> 97:14,15	<b>fund (3)</b> 95:15;132:9;165:11	<b>gladly (1)</b> 14:22	<b>HA (6)</b> 136:11,12,16,20; 137:19;139:13
<b>five-million (1)</b> 41:11	<b>forth (1)</b> 23:2	<b>fundamental (1)</b> 60:1	<b>global (1)</b> 76:18	<b>hac (3)</b> 42:22;45:20;53:15
<b>five-million-dollar (1)</b> 85:19	<b>forthcoming (1)</b> 62:24	<b>fundamentally (1)</b> 19:1	<b>goal (7)</b> 6:24;7:5;36:16,19; 165:11,12,14	<b>half (1)</b> 87:12
<b>flawed (1)</b> 19:1	<b>forty (2)</b> 48:21;87:7	<b>funds (16)</b> 36:16;37:6;78:12; 87:10;92:23;93:1,6; 105:14,21;113:7,8; 116:7;147:6;149:3,4; 166:12	<b>goals (1)</b> 15:4	<b>Hall (2)</b> 53:13;54:1
<b>flexibility (2)</b> 56:16;59:14	<b>forty-eight (1)</b> 59:17	<b>funnel (2)</b> 103:25;104:1	<b>goes (4)</b> 88:16;104:3; 109:17;156:17	<b>Hallner (1)</b> 135:8
<b>flip (1)</b> 102:9	<b>forward (18)</b> 6:8,11;7:11;8:18; 24:25;26:17;28:10; 29:12,14;47:19,21; 48:2;49:4;50:25; 104:3;137:10;139:19; 153:8	<b>further (6)</b> 6:13;9:1;25:3; 110:6;114:2;169:21	<b>Goldblatt (4)</b> 126:17;151:8,10,13	<b>hammered (1)</b> 54:13
<b>flow (3)</b> 60:3;62:23;107:17	<b>fought (2)</b> 43:23;85:5	<b>future (7)</b> 15:4;42:14;44:7; 71:12;79:4;86:18; 137:12	<b>Good (43)</b> 4:5,6,17;5:10;11:2, 8;19:9,10;23:6;30:7, 13,14;36:24,25;43:1, 2;51:2;52:23,24; 53:16,20,23,24;56:25; 58:5;59:15;64:15; 67:5;70:16,17,22; 75:25;82:11;107:3; 109:12;114:3;121:22; 129:8;146:6;168:8; 170:5,19,20	<b>hand (5)</b> 10:25;26:21;52:8; 76:4;101:15
<b>flowing (1)</b> 41:5	<b>found (7)</b> 20:4,23,24;32:10; 83:19;133:18;138:12	<b>G</b>	<b>grant (4)</b> 42:15;71:21;127:7, 7	<b>handle (2)</b> 61:9;157:7
<b>focus (2)</b> 155:11;163:4	<b>foundational (1)</b> 33:25	<b>gained (1)</b> 13:19	<b>granting (1)</b> 122:20	<b>handled (2)</b> 13:4;139:5
<b>focused (1)</b> 154:19	<b>founding (1)</b> 77:17	<b>game (1)</b> 159:17	<b>graphic (2)</b> 79:15;83:22	<b>handler (1)</b> 99:1
<b>focusing (1)</b> 161:18	<b>four (11)</b> 87:4;103:16;116:6; 122:19;123:10,15; 131:3;150:13;155:21; 158:14;163:21	<b>gap (2)</b> 85:1;124:24	<b>great (8)</b> 12:22;16:17;73:12; 76:11;83:1;154:15; 158:19;170:3	<b>handling (3)</b> 12:16,20;13:13
<b>FOLEY (4)</b> 52:23,25,25;53:21	<b>four- (2)</b> 159:9;167:23	<b>gaps (1)</b> 156:10	<b>grounds (1)</b> 121:12	<b>hands (1)</b> 63:17
<b>folks (1)</b> 79:22	<b>four-part (3)</b> 125:4,5;126:7	<b>gather (1)</b> 99:9	<b>group (9)</b> 24:21;77:14,15,16, 19,23;78:1;136:22; 139:10	<b>happen (9)</b> 67:18;85:7;123:24; 136:24;152:13; 160:12;163:7;164:7; 169:3
<b>follow (2)</b> 96:6;122:12	<b>fourth (9)</b> 19:18;55:4,18; 123:4,12;126:22; 149:1;161:4;166:4	<b>gave (3)</b> 8:7;27:3;153:19	<b>groups (1)</b> 136:9	<b>happened (11)</b> 17:25;49:19;70:3,8, 12;77:15;113:23,25; 114:1;119:8;121:1
<b>followed (1)</b> 124:4	<b>frank (1)</b> 155:15	<b>general (5)</b> 9:10;12:8;20:16; 83:16;136:18	<b>guardrail (1)</b> 22:18	<b>happening (2)</b> 50:22;84:5
<b>follows (1)</b> 12:5	<b>frankly (2)</b> 60:23;63:1	<b>generally (7)</b> 55:7,18;57:4,9; 97:10;108:18;110:20	<b>guardrails (3)</b> 16:23;22:17;97:11	<b>happens (4)</b> 58:15,15,16;130:9
<b>follow-up (1)</b> 34:11	<b>FRD (1)</b> 64:17	<b>generate (1)</b> 85:9	<b>guess (4)</b>	<b>happy (12)</b> 5:16;24:25;29:21; 34:22;42:11;62:3; 69:21;126:11;127:16, 16;134:24;157:6
<b>footnote (2)</b> 139:13,20	<b>free (4)</b> 42:8;47:8;158:3,6	<b>generic (1)</b> 9:17		<b>hard (5)</b> 46:3;59:18;93:24; 124:16;147:13
<b>forced (3)</b> 85:9;129:17,18		<b>Gentry (1)</b> 98:6		<b>harm (23)</b> 68:20,21;69:22; 125:12,13;143:4; 145:17;156:6,7; 158:12,13;160:6,6,7,
<b>forecasts (1)</b> 79:4				
<b>forecloses (1)</b> 133:5				
<b>forever (1)</b> 87:2				
<b>forfeited (1)</b> 40:11				
<b>forfeiting (1)</b> 40:14				
<b>forgiven (2)</b> 140:22,24				

September 10, 2024

16,17;161:21;165:19, 20;168:11,14;169:4,5 <b>harmed (1)</b> 159:6 <b>harmful (2)</b> 125:11;169:9 <b>harmless (1)</b> 108:11 <b>harms (4)</b> 125:11;152:9; 155:9;162:15 <b>hate (1)</b> 153:17 <b>hazard (1)</b> 137:6 <b>hear (10)</b> 4:12;8:17;30:4; 52:13;64:20;69:22; 110:3;146:4,5;160:16 <b>heard (48)</b> 5:2;6:22;14:14; 19:21;21:19;22:9; 24:14;16;33:13,22; 36:9;45:22;46:23; 47:17;48:4,5,7;50:5; 51:6;52:12,19;62:18, 22;69:19;70:15;71:1; 110:14;119:13;121:9; 125:12;128:20,25; 135:20;141:3;142:15; 145:5;148:16;153:8, 9;154:18;155:4,8; 160:22;162:1,9; 164:12;167:4;170:20 <b>hearing (46)</b> 7:8;23:25;24:8,8; 25:6;26:14;28:11; 29:3,15;30:3;31:20; 32:22,23;33:4,7;35:6, 9;45:14;48:11,16,19, 20;49:9,11;50:9,13, 19;51:21;52:16;53:3, 7,18;55:3;63:19;73:7; 74:8;141:2;143:4,18; 144:5;146:3;155:2; 162:7;165:23;167:7,7 <b>hearings (2)</b> 26:15;34:24 <b>heavy (2)</b> 153:7,9 <b>held (1)</b> 133:6 <b>help (6)</b> 6:15;14:15;81:7; 110:17;122:15;126:6 <b>helped (3)</b> 12:11;18:10;29:15 <b>helpful (3)</b> 61:13;73:4;134:25 <b>hereby (2)</b> 75:18;103:8 <b>here's (1)</b> 97:4	<b>Herrington (1)</b> 126:19 <b>high (5)</b> 31:1;46:19;56:22; 89:19;162:4 <b>higher (3)</b> 40:14;81:13;154:4 <b>highlighted (1)</b> 40:5 <b>hired (3)</b> 79:19;98:22,24 <b>historical (2)</b> 13:7;18:8 <b>historically (1)</b> 136:18 <b>historicals (1)</b> 116:22 <b>history (1)</b> 16:3 <b>hit (2)</b> 91:10;117:24 <b>hitting (1)</b> 80:23 <b>hoc (2)</b> 57:15;130:13 <b>Hoffman (3)</b> 45:21;57:7;147:11 <b>hold (2)</b> 17:9;162:13 <b>hold- (1)</b> 108:10 <b>hold-harmless (4)</b> 107:15,17;109:14, 18 <b>hole (5)</b> 85:17,22;87:13; 104:24;119:19 <b>holes (2)</b> 87:6;156:11 <b>home (3)</b> 29:22;85:19,21 <b>honest (1)</b> 144:11 <b>honestly (1)</b> 46:4 <b>Honor (191)</b> 4:5,9,18;5:4,9,12, 15;6:4,14;8:2,11,21; 9:6,8,14;10:14,24; 11:3,4,5,14,24;12:2; 14:12;15:13,17,22,24, 24;16:20;17:8,14,16; 18:24;19:9,12,21; 21:23;22:14;23:11, 19,22;24:19;25:1; 26:2,4,9,12;28:1,11; 29:11,20;30:10; 34:16,17,17;35:11; 36:5,18,24;37:5,8; 40:4;41:24;42:2,11, 18;43:1;45:19;46:17, 21;47:1,3,3,6,17,22, 25;48:3,12,13,14,20;	49:1,2,6,8,13,20,25; 50:1;52:4,7,11,23; 53:21,23;54:3,17,21; 60:8,16;62:20,22; 65:3,10;66:1,5,20; 67:11,16,25;69:15,18, 21,25;70:24;71:22, 23;72:3,13,20,23; 73:16,21,24,25;74:6; 75:6,15,24;76:1; 82:13;103:4,6; 106:22,24;108:16,22; 109:17;110:4,5,9; 112:5;114:2;115:12, 20;116:15;117:7,10, 13,17,22,23;118:23; 119:9;122:5,8,14; 126:11;127:22; 128:20;129:20,20; 133:25;135:2;141:3, 12;142:5;143:3,7; 144:11;145:24; 147:10,13;149:10; 152:10;153:5;154:6, 12;157:13;159:22; 160:14;161:19,24; 162:14;163:11;170:2, 4,10,14 <b>Honorable (1)</b> 4:3 <b>honoring (1)</b> 61:25 <b>Honor's (2)</b> 109:19;134:17 <b>hope (5)</b> 26:25;72:1;163:19, 20,21 <b>hopefully (5)</b> 18:13;36:14;41:4; 71:15;140:21 <b>Hopeman (83)</b> 4:8;12:6,8;13:18, 23;14:2,4,6;16:6,12; 37:10,15,25;38:6,19, 20,20;63:24;78:2,8, 12,20;79:7,15;83:13, 18,21;84:1,16,20; 85:8;86:25;87:6;88:4, 5,17;90:1,7;92:18; 93:9;94:9,24;95:7,8, 20;98:22;99:1; 100:24;103:22,23; 104:1;105:1,22,22,23; 106:4;107:5,16; 108:7,14;110:10; 113:6,7;116:4; 118:19;119:11,12; 135:16,25;136:6; 137:18;138:4,7,17,19; 139:7,11;140:3,5,6, 16,17;146:8 <b>Hopeman's (8)</b> 84:6;87:2;95:6;	102:14;105:10;109:6; 119:8;137:2 <b>hopes (1)</b> 46:19 <b>Hopman's (1)</b> 138:18 <b>horizontally (1)</b> 85:24 <b>hour (2)</b> 22:5;32:19 <b>hours (5)</b> 58:6;59:12,17,17; 156:4 <b>house (1)</b> 120:8 <b>huge (1)</b> 70:9 <b>Humrickhouse (1)</b> 126:23 <b>hundred (5)</b> 39:19;40:7,9;151:1, 10 <b>hundred- (1)</b> 39:24 <b>hundred-million (1)</b> 37:18 <b>hundreds (9)</b> 31:1;32:25;37:16; 38:23;39:13;40:13; 84:13,14;85:12 <b>Huntington (18)</b> 24:20;25:1,1,2; 29:21;57:3;74:17; 114:4;119:2;140:13, 20;144:6,13,14; 152:14;164:10;166:1, 1 <b>Huntington's (1)</b> 24:24 <b>Hunton (3)</b> 4:7;5:11;13:24	<b>ignoring (1)</b> 21:24 <b>illustration (1)</b> 40:5 <b>imagine (1)</b> 68:10 <b>immediately (6)</b> 33:22;46:5;115:15; 116:13;143:13;149:2 <b>impact (10)</b> 59:5;105:10,15,18, 20;120:11;121:6; 141:14;144:16,22 <b>impacts (3)</b> 106:12;142:2; 160:15 <b>impair (1)</b> 41:23 <b>impaired (1)</b> 41:8 <b>impasse (1)</b> 143:23 <b>implement (1)</b> 123:1 <b>implicated (2)</b> 128:15;149:5 <b>import (2)</b> 132:14;133:21 <b>important (19)</b> 16:4;22:2,3;51:17; 57:5,8;61:21,24; 80:22,24;83:25;84:9; 85:20;106:17;135:17; 148:4;150:10;153:3,5 <b>importantly (1)</b> 158:21 <b>impose (4)</b> 64:14;107:9; 108:14;169:17 <b>imposed (1)</b> 128:8 <b>impression (1)</b> 45:13 <b>INA (2)</b> 81:24;98:4 <b>inadvertent (1)</b> 21:3 <b>inappropriately (1)</b> 128:8 <b>Inc (3)</b> 4:8,14;12:6 <b>inclined (1)</b> 47:11 <b>include (9)</b> 98:4,4,5,5,6,6; 106:5;110:23;134:22 <b>included (4)</b> 74:16;128:5; 166:20;169:7 <b>includes (3)</b> 32:21;88:10;168:6 <b>including (4)</b> 40:21;60:19;63:11;
			<b>I</b>	
			<b>IBM (1)</b> 64:16 <b>ID (2)</b> 88:13;97:9 <b>idea (2)</b> 51:2;163:15 <b>identification (1)</b> 130:12 <b>identified (5)</b> 30:24;130:23; 134:8,20;147:12 <b>identify (4)</b> 18:18;96:18;107:5; 134:15 <b>identifying (1)</b> 64:5 <b>identity (5)</b> 118:21;122:21; 123:1;129:14;141:10	



September 10, 2024

70:20 <b>inconsistency (2)</b> 7:22;18:24 <b>inconsistent (1)</b> 18:16 <b>incredibly (1)</b> 70:8 <b>incumbent (2)</b> 63:9;64:13 <b>incur (4)</b> 104:5;119:24; 158:17;167:17 <b>incurrences (1)</b> 118:13 <b>indemnification (4)</b> 88:3;130:10,14; 167:13 <b>indemnified (1)</b> 105:22 <b>indemnify (7)</b> 88:1;93:9;106:6; 107:10,17,21;108:15 <b>indemnity (63)</b> 87:18,21,23;88:6; 93:13,16,18;94:4,9, 15:96;1,3;98:17; 99:14;100:11,14; 101:14,17,23,24; 102:2,3,18;103:22,24; 106:13;107:15,17,22; 108:1,4,6,23,24; 109:3,7,11;111:6,8, 21;112:21,22,25; 113:3;114:19;118:11, 12;122:24;130:18; 135:22;138:6,11,12; 141:10;146:8,21; 147:3;148:5;158:16; 160:11;162:17; 168:15,16 <b>indicate (4)</b> 50:17;90:15; 100:24;110:2 <b>indicated (13)</b> 6:6;7:16;8:15; 23:21;28:23;50:20, 21;51:4;54:24;65:12, 18;109:25;137:11 <b>indicates (1)</b> 43:12 <b>indicating (2)</b> 25:12;138:11 <b>indifferent (1)</b> 130:8 <b>indiscernible (4)</b> 131:3;146:8; 150:21;152:13 <b>individuals (1)</b> 135:11 <b>Industries (2)</b> 29:21;114:4 <b>industry (4)</b> 77:1,9;85:5;140:20	<b>Ine (1)</b> 136:11 <b>inform (2)</b> 30:17;90:23 <b>informal (1)</b> 49:3 <b>information (39)</b> 13:8,13;14:1;18:11, 12,13;27:5;34:1;54:7; 55:5;56:3;58:9,10,20, 22;59:16;60:3,4; 61:19;62:8,24;64:5,5, 9;70:20;71:6,8;82:10; 90:15;98:15;99:4,9; 103:10;109:24; 113:12;116:23;117:4; 128:7;142:20 <b>informed (1)</b> 41:24 <b>Ingalls (7)</b> 29:21;114:4; 140:13,20;144:6; 152:14;164:10 <b>initially (2)</b> 6:21;51:11 <b>initiate (1)</b> 35:25 <b>initiated (1)</b> 45:10 <b>injunction (19)</b> 44:6,11,13;123:9; 131:16;132:12,13; 133:12,13;141:18; 143:13;144:1;145:17; 150:5,15;152:6; 154:3;159:10;167:25 <b>injunctions (7)</b> 72:9;110:23,23; 125:18;150:17,20,21 <b>injunction-type (2)</b> 46:9;150:25 <b>injunctive (4)</b> 131:15;133:3,7,8 <b>injured (1)</b> 37:24 <b>injuries (1)</b> 89:6 <b>injury (11)</b> 13:22;16:11;38:1,9; 64:18,19,22,22;65:7; 66:20;67:5 <b>inquiries (1)</b> 13:4 <b>inside (1)</b> 55:17 <b>Insofar (1)</b> 151:19 <b>insolvent (4)</b> 80:4;85:16,17,21 <b>instance (6)</b> 31:7;44:16;71:11; 136:24;137:18; 139:19	<b>instead (2)</b> 163:16,17 <b>institute (1)</b> 140:11 <b>institutional (1)</b> 16:9 <b>instruction (1)</b> 66:17 <b>instructions (1)</b> 9:21 <b>instructional (2)</b> 55:23;82:7 <b>instrumental (1)</b> 12:20 <b>insurance (91)</b> 12:12;13:25;17:4; 18:20,23;19:25; 20:11,19;23:25;24:1; 25:8,13;30:20,22; 31:23;32:1,13;34:1, 14;35:14;37:9,12,22; 38:5,6,8,13,23,24; 39:2,13;40:4,19,22; 41:18;45:24;49:14; 53:1;64:24;66:21; 69:13;70:2;74:23,24; 77:1,2,3,9;78:6,20; 79:7,8;81:20,21,24; 82:6;83:16;85:5,19; 86:2,3;87:25,25;88:5; 90:9;93:24;100:25; 105:10;118:20; 119:14,20;120:7; 124:6;128:10,14,21; 141:6;144:25;145:4; 148:6,7;154:21; 159:4;166:7,11,18,23; 168:6,13,20;169:2 <b>insure (1)</b> 70:1 <b>insured (5)</b> 43:19;128:23; 134:5;139:1,7 <b>insureds (1)</b> 101:6 <b>insurer (26)</b> 25:5;38:11,14,16; 43:19;64:13;70:6,6; 74:18;93:14;94:21, 24;95:4,13;118:25; 119:3,4;128:22; 129:5,7;135:16,25; 139:1,5;142:7;148:11 <b>insurers (32)</b> 24:3;31:2,12;39:9; 40:24,25;45:3;61:24; 63:25;64:8;85:16; 94:1,3;99:21;110:24; 118:18;120:7,20; 123:18;125:19;127:4; 128:1;136:23;137:25; 138:2,21,22,22; 144:10,17;150:22;	160:22 <b>insurers' (1)</b> 39:22 <b>Insuring (3)</b> 69:9,10;135:18 <b>intend (5)</b> 11:19;71:8;110:2; 134:22;169:17 <b>intended (1)</b> 6:22 <b>intending (1)</b> 63:12 <b>intention (2)</b> 6:2;117:11 <b>interact (2)</b> 97:17;99:15 <b>interactions (1)</b> 12:18 <b>interest (33)</b> 15:7;17:10;19:3,6; 37:9,22,23;38:5;56:6; 58:12,13;118:23; 119:24;121:14; 122:22;123:2;126:8, 8;128:13,18,21;129:4, 6,15;136:5;141:10; 143:16;152:25;159:6, 15,15;161:5,5 <b>interested (2)</b> 50:24;79:2 <b>interesting (2)</b> 148:18;149:25 <b>interests (8)</b> 18:22;42:1;60:6; 118:21;121:4,5; 128:19;129:24 <b>interfere (4)</b> 121:23;131:9,22; 138:1 <b>interference (4)</b> 118:14;123:13,19; 159:1 <b>interfering (1)</b> 119:6 <b>interim (7)</b> 72:5;134:14;143:6; 144:4;145:18;155:5; 170:11 <b>interlaced (1)</b> 97:19 <b>international (1)</b> 84:24 <b>internet (1)</b> 63:13 <b>interpret (1)</b> 134:17 <b>interpretation (1)</b> 93:10 <b>interpreted (1)</b> 35:22 <b>interrelate (1)</b> 97:20 <b>interrogatories (3)</b>	27:14,18;33:23 <b>interrupt (1)</b> 47:16 <b>into (32)</b> 7:6;10:25;12:23; 13:9;20:1;22:1;54:5; 61:12;66:16;67:17; 72:21;74:11;75:18; 78:24;81:14;91:1; 92:17;99:8,17,20; 103:8;106:1;109:12; 110:2,25;118:2; 133:2;143:14;147:5; 151:3;155:21;169:8 <b>intricacies (1)</b> 13:21 <b>introduce (3)</b> 4:11;52:17;61:12 <b>invaluable (3)</b> 12:11,22;13:19 <b>invite (1)</b> 169:14 <b>involve (6)</b> 40:4;96:25;105:1; 119:1;145:14;168:15 <b>involved (20)</b> 12:15;13:13;27:13, 14;28:7;46:19;51:16; 64:7;74:16;78:8; 89:10;90:16;110:18; 120:22,24,25;139:2,7, 8;166:5 <b>involvement (2)</b> 14:8;138:18 <b>involves (2)</b> 30:18;116:18 <b>involving (2)</b> 88:24;124:1 <b>irony (1)</b> 66:8 <b>isolated (1)</b> 156:17 <b>issue (48)</b> 10:23;20:9;21:25, 25;22:2,13;23:1; 25:13,21;26:5;27:2; 28:21;35:7;39:18; 42:9,12;43:23;50:8, 10,15;59:8,11;61:10; 62:22;66:5;67:19; 86:15,16;91:20,25; 97:22,24;98:1,3; 126:13,20;136:9; 139:17;142:1,5; 143:2;148:19,22,23; 149:20,21;150:2; 152:21 <b>issued (3)</b> 37:15;43:20;83:4 <b>issues (33)</b> 12:23;17:4,16;18:3; 28:23;30:14;33:16; 45:2;49:7;50:23;
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September 10, 2024

51:22;52:3,14;62:7; 73:23;91:12,15;92:2, 3;95:20;98:7;103:17; 104:5,8,9;121:6; 126:13;141:21; 142:15;145:9,10; 156:19,25 <b>item (2)</b> 10:25;23:20 <b>items (4)</b> 5:13;7:6;68:7; 99:15	<b>K</b>	<b>largest (1)</b> 92:2 <b>Lascell (21)</b> 4:13;11:15,19;12:2, 8,9,18,21,25;13:9,17, 23;14:19,24;15:5,10, 12;16:14;17:12; 74:21;128:11 <b>last (18)</b> 4:23;10:16;12:19; 30:12;37:16;42:4; 49:19,20;52:6;80:10; 84:25;101:16,19,25; 126:7,13;141:19; 163:17 <b>late (5)</b> 7:23;13:9;37:19; 78:9;155:4 <b>lately (1)</b> 141:16 <b>later (13)</b> 9:22;14:14;30:5; 35:9;53:8;68:19;72:2; 78:24;84:1;86:10; 96:24;129:10;143:20 <b>latitude (1)</b> 15:25 <b>law (30)</b> 13:19;14:16;16:10, 13;18:1;22:23;24:22; 38:6;43:4,12,15,21; 51:13;57:7;79:18; 114:11;117:24;118:2, 2;121:14,17;122:25; 123:20;129:8;142:2; 148:12;151:20; 152:13;158:3;160:14 <b>lawsuit (1)</b> 127:5 <b>lawsuits (9)</b> 14:12;75:1;94:17, 21;95:12;118:24; 119:4;158:12;161:21 <b>lawyer (3)</b> 12:11;20:9;115:5 <b>lawyered (1)</b> 170:21 <b>lawyers (5)</b> 13:5;16:7;17:13; 141:17;149:13 <b>layer (7)</b> 82:6,20,20,22,23, 23;85:19 <b>layers (1)</b> 85:15 <b>lays (1)</b> 159:16 <b>lead-ups (1)</b> 99:10 <b>learned (1)</b> 12:10 <b>least (16)</b> 46:13;51:11;56:21;	58:5;71:7;79:1;118:1; 132:20;134:16;139:9; 141:7;145:12;147:23; 149:12;162:2;169:7 <b>leave (3)</b> 112:5,6;156:16 <b>leaves (1)</b> 150:5 <b>leaving (1)</b> 77:16 <b>LECG (3)</b> 77:24;90:2,3 <b>LEFG (1)</b> 90:1 <b>left (5)</b> 31:12;101:15; 102:14;120:3;124:6 <b>left-hand (1)</b> 101:25 <b>legal (18)</b> 93:9;108:17,20,25; 110:25;111:23;115:4, 7,20,22;116:14,19; 121:12;141:20; 142:15;149:10,11,12 <b>legislature (1)</b> 148:14 <b>legitimate (3)</b> 35:5;60:5;161:7 <b>Leissner (1)</b> 25:12 <b>lengthy (1)</b> 164:21 <b>less (9)</b> 40:9;56:5;61:24; 87:4;103:16;116:6; 117:2;143:15;162:5 <b>less-than-nineteen- (1)</b> 39:23 <b>letting (1)</b> 60:13 <b>level (12)</b> 56:22;67:6;68:11, 12,18;69:6;81:14,20, 20,22;94:3;170:11 <b>levels (1)</b> 97:11 <b>Lewis (3)</b> 20:21;37:1;62:21 <b>Lexington (1)</b> 98:5 <b>liabilities (3)</b> 6:9;32:12;70:9 <b>liability (16)</b> 30:20;37:12,22; 38:5;12,23,24;41:9; 44:10;79:4,8,16;81:1; 119:14;136:18; 139:16 <b>Liberty (199)</b> 52:15,16,19;53:1; 54:2,3,6,14,21;55:2, 12;56:11;57:3,11;	59:1,5,8;60:5,19,24; 61:8,18,25;62:1; 63:11;64:7,13;65:6,6, 17;66:8,9,20,22; 67:12;68:21,22;69:8, 10,22,25;70:4,6,11, 12;71:19;72:21; 74:18;75:4;78:11; 81:15,18,22;82:3,8, 23;84:18;86:12,13; 89:23;90:3,5,10,18, 23;91:4;92:6,12,22; 93:9;94:8,20;95:3,12, 15,18;97:18,21,23; 98:3,23,24;99:2; 103:12,21,21;104:22; 107:6,25;108:2,3,6; 109:10;111:8;114:19; 115:9,13,17;116:2,11; 118:25;119:2;120:4, 16,16;121:1;122:23, 24;125:24;127:25,25; 128:10,12,14,18,18; 129:16;130:7,14,16, 18;131:14;133:2; 134:2;135:16,18,25; 136:3,7;137:11,12,15, 16,22;138:4,6,10,14, 23,25;139:4,11;140:1, 4,5,9,10,14,16,17; 141:9;144:7,14,15; 145:6;146:15,16,20, 24;147:2,2;148:1,16; 149:16,24;150:1,2; 152:11;153:3,14; 154:2,7,19;156:8,10, 13,16;157:10,21; 159:7,11;160:8,12; 161:9,18,20,21; 165:18,22,25;166:24; 167:1,12,13,20; 168:14,17;169:5,8 <b>Liberty's (4)</b> 60:10,23;108:4; 158:7 <b>lie (1)</b> 80:7 <b>Liesemer (42)</b> 10:14,14,21;11:24; 15:13,22;19:9,11,11; 20:23;26:2,18;30:9,9; 33:12,20;35:2,11,14, 18;36:10,12,18,20; 37:2;39:12;41:8;42:4; 75:15;127:20,20; 128:5;130:11;131:25; 132:6,11,17;133:2,16, 25;135:2;170:4 <b>Liesemer's (1)</b> 26:22 <b>lift (2)</b> 163:3,8 <b>lifting (2)</b>
<b>J</b>		<b>jam (1)</b> 59:19 <b>Janet (1)</b> 135:6 <b>Jeffrey (4)</b> 10:14;19:11;30:9; 127:20 <b>jeopardize (1)</b> 61:23 <b>job (2)</b> 78:13;170:21 <b>jobs (1)</b> 131:12 <b>Johns (4)</b> 136:11,16,20; 137:19 <b>joined (1)</b> 114:12 <b>joiner (1)</b> 18:9 <b>joining (1)</b> 77:11 <b>Jonathan (6)</b> 42:22;43:3;135:5; 146:17;155:15,15 <b>Judge (22)</b> 23:16;30:8;62:9; 73:6;116:20;120:8; 121:8,13;122:19; 123:21;125:2;126:17, 23;140:19;145:21; 151:9,12;155:1,19; 164:9,22,24 <b>judgment (5)</b> 23:6;38:20,22; 113:19;130:1 <b>July (5)</b> 24:6;27:3;28:16; 72:5;155:4 <b>jump (5)</b> 7:5;10:24;24:17,19; 119:17 <b>June (2)</b> 24:2;155:4 <b>jurisdictions (1)</b> 13:2 <b>justify (1)</b> 165:21	<b>Kaufman (1)</b> 52:25 <b>Kaye (4)</b> 11:12;12:10;95:5; 102:24 <b>Kayla (1)</b> 135:6 <b>keep (4)</b> 56:23;62:1;63:10; 158:24 <b>keeper (1)</b> 18:5 <b>keeping (1)</b> 96:2 <b>keeps (1)</b> 150:14 <b>Keith (1)</b> 4:3 <b>Kevin (2)</b> 53:13;54:1 <b>key (4)</b> 26:5;48:18;49:8; 131:25 <b>kind (7)</b> 16:3;81:13;96:9; 122:10;133:5;136:14; 155:2 <b>knew (1)</b> 144:13 <b>knowledge (5)</b> 13:11,19;16:9,17; 108:13 <b>known (4)</b> 79:20;81:25;83:2; 158:4 <b>knows (5)</b> 14:7,7;16:12,18; 18:10 <b>Kollin (1)</b> 42:20 <b>Kurth (2)</b> 4:7;5:11	<b>L</b>

128:7;129:20 <b>light (5)</b> 21:9;24:15;128:7; 129:9;169:10 <b>lightly (1)</b> 63:8 <b>likelihood (3)</b> 131:5;152:7;168:1 <b>likely (2)</b> 62:23;159:18 <b>limbo (1)</b> 5:15 <b>limit (4)</b> 39:18;81:13;91:22; 158:16 <b>limited (21)</b> 5:23;6:12;19:17; 20:14;22:3;25:10; 26:18;47:21;48:1; 50:15;105:13,21; 106:24;121:19; 127:22,23;128:6,25; 129:11;135:14; 151:14 <b>limits (26)</b> 33:4;39:11;40:7,10; 41:7;45:4,5;80:18,19, 21;81:12;82:8;84:14, 18;85:4;86:14;90:6; 91:6,24;94:6;137:7, 20;139:18,22,23; 142:3 <b>linchpin (1)</b> 39:6 <b>line (4)</b> 56:20;126:5;147:7, 8 <b>lingers (1)</b> 124:3 <b>liquidating (5)</b> 20:1;130:5;131:13; 159:25;168:4 <b>liquidation (8)</b> 6:11;20:6,11;130:6; 131:18,23;132:16; 159:13 <b>liquidations (2)</b> 131:8;132:18 <b>list (10)</b> 17:12;52:18;72:18, 24;74:25;97:9; 130:16;135:8;137:17; 166:20 <b>listed (9)</b> 41:1;66:9;134:5,10, 22;136:7;144:23; 150:1;166:19 <b>listing (1)</b> 153:19 <b>literally (2)</b> 37:16;39:14 <b>litigants (2)</b> 64:14;146:14	<b>litigate (1)</b> 138:21 <b>litigated (2)</b> 139:3;149:14 <b>litigating (3)</b> 138:25;147:1; 153:16 <b>litigation (14)</b> 12:14;72:15;95:4; 103:12,19;105:16; 118:19;119:6;130:12; 140:11;144:7;155:11; 162:3;169:5 <b>little (13)</b> 33:16;44:9;46:3; 48:5;61:24;79:11; 82:15;87:22;96:8; 110:14;125:14; 140:21;161:2 <b>local (5)</b> 7:1;25:15;99:9,12; 113:4 <b>located (1)</b> 83:6 <b>location (1)</b> 168:5 <b>lodged (1)</b> 107:23 <b>logically (1)</b> 165:6 <b>London (7)</b> 79:2;81:25;82:12, 14,14;98:4;104:21 <b>Long (68)</b> 4:10;5:6,9,11,11, 20;6:1,3,19,21;7:3; 8:2,10,17,20,24;9:6,8, 13,19;10:5,9,24;11:3; 13:9;16:3;23:17,19, 20;24:16;26:4,12; 28:16,18,20;29:4,11, 24;33:23;35:19,22; 46:25;47:1,2,16,22, 25;48:9,12;49:12,23; 50:21;52:4,7;77:8; 85:16;92:9,9;114:7, 15,16;117:1;133:6; 140:23;154:13;155:3, 19;163:16 <b>longer (8)</b> 8:23;13:10;83:17; 84:8;157:11;167:2; 168:10;169:20 <b>Long's (1)</b> 34:20 <b>long-term (1)</b> 13:17 <b>long-time (2)</b> 19:22;20:8 <b>look (23)</b> 66:3;68:9;71:18; 79:3,4;80:2;82:12; 84:10;85:17;86:18;	88:20;102:12;104:20; 120:7;122:20;123:9; 137:2;153:14;155:6; 163:2;166:4;170:5,18 <b>looked (4)</b> 22:20;62:11;86:20; 106:9 <b>looking (13)</b> 88:12,13,13,14; 94:2,3;96:10;101:14, 23;102:13;104:16; 135:24;136:18 <b>looks (5)</b> 22:1;80:22;81:1; 96:7;159:25 <b>loosely (1)</b> 84:5 <b>lose (1)</b> 158:15 <b>losing (1)</b> 119:25 <b>loss (3)</b> 158:13;160:8,9 <b>lot (29)</b> 6:10;27:5;28:3,5; 40:16,18;41:13,19; 47:14,18;48:4;50:14; 53:4;61:18;65:14; 66:2;70:7,7;84:12; 86:2,23;103:11,18,23; 117:24;118:2;141:3; 162:4;163:24 <b>Lots (3)</b> 18:3;80:18;123:20 <b>Louisiana (62)</b> 12:16;13:19;14:12, 15,16;16:12,15;18:1, 3;24:21,22;43:6,15, 15,17,22,24;44:1; 74:25;94:16;101:17, 21;102:2,5,16,20,25; 103:3;112:11,13,17, 19;113:1,11,14,18,22; 118:16;122:9;129:3, 10;130:9;134:16; 135:9;137:10,21; 138:3;144:7;145:25; 146:14;148:4,10,12, 13,14;152:13;153:25; 154:1;158:2,4;162:3; 168:23 <b>love (1)</b> 164:11	63:23;65:9,19;68:3; 153:2 <b>maintained (2)</b> 57:10;59:25 <b>maintaining (1)</b> 58:12 <b>maintains (4)</b> 54:9;55:11;57:17; 98:16 <b>maintenance (1)</b> 13:7 <b>major (1)</b> 62:4 <b>majority (1)</b> 102:25 <b>makes (12)</b> 25:6;35:10;52:21; 59:6,9,21;61:17; 121:24;141:20;143:8; 148:4;170:21 <b>making (13)</b> 7:24;17:6;94:5; 104:2;106:13,14; 113:15,16,19;120:3,4; 146:21;152:25 <b>manage (1)</b> 12:12 <b>manageable (1)</b> 168:6 <b>managed (2)</b> 13:7;112:4 <b>management (1)</b> 5:21 <b>managing (2)</b> 12:17;76:23 <b>mandatory (1)</b> 70:18 <b>manifest (1)</b> 89:9 <b>manifests (1)</b> 89:4 <b>manner (1)</b> 61:18 <b>Manufacturing (1)</b> 135:19 <b>Manville (4)</b> 136:12,17,20; 137:19 <b>many (6)</b> 7:19;12:23;16:22; 18:4;83:6;125:16 <b>map (26)</b> 61:13,21,22;79:17; 80:7,19,22,24;81:16, 19,23;82:24;84:11; 85:14,18,18;86:22; 89:22;96:10;100:22; 104:20;114:9,11,13, 16;142:21 <b>March (2)</b> 82:17;163:1 <b>Mark (3)</b> 45:19;110:9;147:10	<b>Market (3)</b> 79:2;81:25;83:16 <b>mass (3)</b> 46:18;58:15;121:15 <b>Massachusetts (1)</b> 53:16 <b>massive (4)</b> 41:21;70:6;121:19; 166:6 <b>material (5)</b> 6:7;54:15;57:10; 58:7;59:4 <b>materials (4)</b> 57:4;59:7,20; 126:18 <b>math (1)</b> 153:20 <b>Matt (1)</b> 145:24 <b>matter (8)</b> 11:5;44:18;47:12; 51:17;72:3;88:12,15; 105:14 <b>matters (16)</b> 4:22,23;5:5;12:16, 17;13:3;14:2,15,17; 17:3,10;20:18;77:3; 102:15;103:2;113:14 <b>maximize (7)</b> 18:22;36:16;37:6; 39:1,6;40:2;41:22 <b>maximum (2)</b> 164:14;165:12 <b>Maxine (1)</b> 135:6 <b>may (26)</b> 7:22;12:1;14:21; 43:18;47:13;51:9; 52:15;73:25;74:1,3; 75:23;83:7;94:4; 105:18;115:9;117:16; 135:18;138:18; 140:12,13;144:18,24; 145:25;147:3;149:3; 160:13 <b>maybe (20)</b> 5:5;10:13;25:9; 41:10;61:24;73:1,10; 89:8;102:22;110:1; 126:14;132:19; 140:14;143:8,8; 148:7,8;153:22; 158:15,15 <b>McGuireWoods (1)</b> 114:4 <b>mean (21)</b> 9:16;14:21;18:6,19; 20:18;26:8;32:3;36:6; 38:17;54:20;65:25; 66:8;87:24;89:1; 104:6,20;131:19; 133:12;140:24; 151:11,15
---	--	---	--	---

September 10, 2024

<b>meaningful (2)</b> 35:25;37:11	22;162:16;167:15	135:8	18;51:10,14,25;52:1, 6,7,11,13,19;53:3,7, 11,14,18;54:17;55:11, 21;56:4;57:24;62:19; 65:5,11,13,15;67:14; 69:20;70:19;71:1,13, 16,21;72:4,17;73:22; 74:10;94:10;105:6; 106:16;109:17; 117:18,20;118:5,16; 126:21,25;127:6,12; 130:18;135:4;137:25; 141:1,4,6;144:11,15, 23;145:23;146:22,23; 147:21;154:7,10; 169:21	125:24;135:16,25; 136:7;137:11,12,15, 16,22;138:14,24; 139:1,4,11;146:16,16; 148:2,16;149:24; 150:1,2;152:11; 153:3,14;154:2,7,19; 165:19,22;166:24; 167:1,12,13,20; 168:14,17;169:5,8
<b>means (7)</b> 38:17;50:22;64:15; 82:20;148:1;151:11; 156:10	<b>million (19)</b> 39:20,24,25;40:7,9; 82:5,19,19,19;87:4, 11,11,12;90:16;97:5; 102:16;103:16;116:6; 162:6	<b>monitor (3)</b> 22:18;100:12; 129:24	<b>Motors (1)</b> 139:15	<b>Mutual's (1)</b> 52:15
<b>meant (1)</b> 133:11	<b>millions (8)</b> 31:1;37:16;38:24; 39:13;40:13;84:13, 14;85:12	<b>monitored (1)</b> 92:25	<b>mouthful (2)</b> 24:4;39:22	<b>myself (1)</b> 22:16
<b>meantime (2)</b> 20:17;73:14	<b>mind (3)</b> 107:9;108:11;168:2	<b>monitoring (2)</b> 17:6;100:13	<b>move (23)</b> 6:4,8,10;7:11;8:18; 26:15,15,16,17;28:10; 29:12,14;34:19;46:9; 47:18,21,24;48:1; 49:4;117:11;119:4; 132:21;159:23	<b>N</b>
<b>mechanism (1)</b> 116:17	<b>mine (1)</b> 82:14	<b>month (12)</b> 33:16,16,18,19; 41:14;44:4;155:20; 157:5;164:13,15; 169:17,20	<b>Motion (1)</b> 59:18	<b>naive (1)</b> 156:15
<b>mechanisms (2)</b> 22:17;49:7	<b>Mines (1)</b> 133:9	<b>months (14)</b> 28:5,20;31:10; 92:11;155:19,21; 156:5;157:8;163:18, 21,22;164:16,25; 165:1	<b>moving (4)</b> 31:19;46:4,20;51:2	<b>name (11)</b> 76:11;90:1;107:3; 118:25;127:4,6; 134:6,8,10,15,20
<b>medical (1)</b> 97:10	<b>minimize (2)</b> 18:20;39:9	<b>more (45)</b> 6:24;14:9;18:4; 19:1;28:5,15,25; 29:12;31:16;33:5; 34:21,22;35:14; 36:22;37:17,18; 41:13;44:18;47:3; 48:8,21;51:15;57:4, 20;59:9;61:19;66:7, 12;67:8;79:11;87:2; 90:16;104:22;105:3; 134:3;136:5,17; 139:20;140:22; 141:20;142:25; 155:10;158:21; 162:19;164:21	<b>Mrs (1)</b> 15:2	<b>named (7)</b> 94:23,25;95:1,4,13; 105:17;128:3
<b>medicals (1)</b> 88:14	<b>minimum (2)</b> 56:23;162:18	<b>Morgan (3)</b> 20:20;37:1;62:21	<b>much (20)</b> 6:16;14:9,22;17:20; 31:10,13;41:10;59:9; 66:12;72:25;81:6; 90:13;97:24;99:23; 123:25;141:20;146:2; 152:21;153:21; 167:11	<b>names (1)</b> 118:24
<b>meet (4)</b> 58:5;97:9;152:9; 161:7	<b>Mintz (13)</b> 45:19,19;110:9,10, 12;125:20;126:14; 147:9,10,10;154:14; 160:20;161:11	<b>morning (22)</b> 4:5,6,9,17;5:9,10; 19:9,10;23:19;36:24, 25;42:18,19;43:1,2; 52:23,24;53:23,24; 129:1;140:23;142:16	<b>Much (2)</b> 16:25;131:4	<b>narrow (1)</b> 152:5
<b>meet-and-confer (1)</b> 56:17	<b>minute (1)</b> 155:12	<b>most (10)</b> 4:24;7:18;13:11,20; 37:11;61:2;96:16; 141:7;150:20;165:24	<b>Multiple (5)</b> 82:15;86:7,19; 88:25;103:11	<b>national (3)</b> 12:14;16:8;19:22
<b>members (2)</b> 13:18;77:17	<b>mismatched (1)</b> 20:14	<b>mother (1)</b> 37:3	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>nature (3)</b> 84:2;88:22;97:23
<b>mention (4)</b> 4:25;87:23;130:17; 158:1	<b>missed (2)</b> 102:22;169:25	<b>motion (125)</b> 4:24;5:1,3,18;6:5, 22;7:6,16;14:13; 23:17,21,22;24:1; 25:23,24,25;26:9,13, 13,22,23;27:12,21; 28:18;29:8,25;30:2; 31:20;33:25;34:2,7, 12,15,18;35:1,16,20, 24;36:2;39:6;40:22; 41:1;42:5;43:6,8; 44:7;45:7,9,22,24; 46:5,24;47:5,8,13; 48:22;50:6,6,7,10,18,	<b>must (2)</b> 16:25;131:4	<b>NCC (1)</b> 113:4
<b>mentioned (16)</b> 14:4;16:14;18:5; 54:12;55:17;57:1; 59:11;61:11;72:20; 83:10;88:23;89:23; 96:8;97:25;98:14; 129:15	<b>mission (4)</b> 19:13;20:13,15; 61:8	<b>Mother (1)</b> 37:3	<b>need (51)</b> 6:8,10;9:15;16:15; 18:11;20:8;21:3; 22:19;27:6;28:6,25; 29:12;32:17;40:18; 41:20,25;46:6;47:18, 21;48:18;51:18; 52:17,18;60:20; 61:12,14;62:24; 63:18;66:17;68:4; 70:16,23;73:25;74:8; 109:20,20;118:3,13; 124:13;126:6;127:17, 18;138:18;140:4; 143:14;145:3;149:14;	<b>near (1)</b> 38:4
<b>mere (3)</b> 149:2,4,8	<b>Mississippi (2)</b> 103:1,2	<b>morning (22)</b> 4:5,6,9,17;5:9,10; 19:9,10;23:19;36:24, 25;42:18,19;43:1,2; 52:23,24;53:23,24; 129:1;140:23;142:16	<b>Much (2)</b> 16:25;131:4	<b>nearly (2)</b> 148:20;152:21
<b>merely (1)</b> 16:21	<b>MMO (1)</b> 98:5	<b>most (10)</b> 4:24;7:18;13:11,20; 37:11;61:2;96:16; 141:7;150:20;165:24	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>necessarily (5)</b> 14:5;21:7;93:21; 121:6;160:8
<b>merits (3)</b> 31:16;45:25;67:6	<b>model (1)</b> 94:7	<b>mother (1)</b> 37:3	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>necessary (12)</b> 11:16;17:18,20,21; 21:16;42:13;45:17; 50:20,21;132:5; 143:25;145:15
<b>mess (7)</b> 120:2;121:9,9,10; 161:21;162:1,2	<b>modeling (2)</b> 49:16,17	<b>motion (125)</b> 4:24;5:1,3,18;6:5, 22;7:6,16;14:13; 23:17,21,22;24:1; 25:23,24,25;26:9,13, 13,22,23;27:12,21; 28:18;29:8,25;30:2; 31:20;33:25;34:2,7, 12,15,18;35:1,16,20, 24;36:2;39:6;40:22; 41:1;42:5;43:6,8; 44:7;45:7,9,22,24; 46:5,24;47:5,8,13; 48:22;50:6,6,7,10,18,	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>need (51)</b> 6:8,10;9:15;16:15; 18:11;20:8;21:3; 22:19;27:6;28:6,25; 29:12;32:17;40:18; 41:20,25;46:6;47:18, 21;48:18;51:18; 52:17,18;60:20; 61:12,14;62:24; 63:18;66:17;68:4; 70:16,23;73:25;74:8; 109:20,20;118:3,13; 124:13;126:6;127:17, 18;138:18;140:4; 143:14;145:3;149:14;
<b>messy (1)</b> 103:17	<b>modest (5)</b> 31:19,22;32:2; 42:16;46:11	<b>most (10)</b> 4:24;7:18;13:11,20; 37:11;61:2;96:16; 141:7;150:20;165:24	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>named (7)</b> 94:23,25;95:1,4,13; 105:17;128:3
<b>met (5)</b> 16:24;86:17; 130:22;152:19;154:4	<b>moment (3)</b> 70:3;75:6;151:24	<b>mother (1)</b> 37:3	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>names (1)</b> 118:24
<b>method (1)</b> 80:21	<b>moments (1)</b> 145:25	<b>motion (125)</b> 4:24;5:1,3,18;6:5, 22;7:6,16;14:13; 23:17,21,22;24:1; 25:23,24,25;26:9,13, 13,22,23;27:12,21; 28:18;29:8,25;30:2; 31:20;33:25;34:2,7, 12,15,18;35:1,16,20, 24;36:2;39:6;40:22; 41:1;42:5;43:6,8; 44:7;45:7,9,22,24; 46:5,24;47:5,8,13; 48:22;50:6,6,7,10,18,	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>narrow (1)</b> 152:5
<b>Microsoft (1)</b> 99:20	<b>monetize (1)</b> 19:24	<b>mother (1)</b> 37:3	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>national (3)</b> 12:14;16:8;19:22
<b>middle (1)</b> 104:21	<b>monetizing (1)</b> 20:10	<b>most (10)</b> 4:24;7:18;13:11,20; 37:11;61:2;96:16; 141:7;150:20;165:24	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>nature (3)</b> 84:2;88:22;97:23
<b>might (24)</b> 8:25;9:5;40:14; 55:2,5;62:6;66:25; 72:23;89:10;107:5; 114:20;123:5;124:17; 125:19;131:22; 132:17;138:17;144:8; 147:5;149:4;153:10,	<b>money (23)</b> 18:23;19:3;39:2; 44:8;84:21;95:13,16; 103:18,23;104:7,23; 105:24;116:5;119:21, 22;124:10,12,22; 137:12;138:16; 158:22,24;162:5	<b>mother (1)</b> 37:3	<b>Mutual (56)</b> 52:16;53:1;54:2; 60:19;65:6,6,17; 68:21,22;69:8,10,22; 70:1;81:15;82:3; 95:18;98:23;103:12;	<b>near (1)</b> 38:4
	<b>Monica (1)</b>			<b>nearly (2)</b> 148:20;152:21



September 10, 2024

156:11,25;162:24; 170:1 <b>needed (2)</b> 13:21;98:15 <b>needs (15)</b> 8:14;26:17;46:6; 63:3,4;67:18,20,20, 22:68;24:74:11; 119:16;124:7,7;156:1 <b>negotiate (2)</b> 32:3;119:10 <b>negotiated (6)</b> 54:14,19;57:2,6; 69:24;98:2 <b>negotiating (2)</b> 31:11;119:13 <b>negotiations (3)</b> 31:10;61:6;99:22 <b>neighborhood (3)</b> 39:16,24;87:7 <b>nevertheless (4)</b> 21:4;31:2;71:6; 131:7 <b>new (12)</b> 8:4,4;12:11;14:11; 21:9;37:20;38:6; 43:12,22;64:16; 155:11;170:12 <b>newspapers (1)</b> 63:14 <b>next (5)</b> 11:5;23:16,20; 80:17;81:12 <b>Nice (1)</b> 29:23 <b>night (1)</b> 10:16 <b>nine (2)</b> 6:24;27:15 <b>ninety (1)</b> 7:2 <b>noble (1)</b> 165:12 <b>nobody (8)</b> 22:1;50:11;70:4; 99:19;124:7;150:9; 161:2;167:8 <b>nominal (1)</b> 105:4 <b>non- (3)</b> 131:16;136:2;161:8 <b>nonasbestos (3)</b> 5:18;6:4,6 <b>nonconsensual (5)</b> 72:16;125:18; 160:21,23,24 <b>nondebtor (1)</b> 130:1 <b>non-debtor (3)</b> 133:3;142:8;146:24 <b>nondebtors (1)</b> 123:17 <b>non-debtors (1)</b>	141:24 <b>None (3)</b> 117:10;140:7,7 <b>nonmutual (1)</b> 130:2 <b>nonobjecting (1)</b> 42:7 <b>nonoperating (1)</b> 84:20 <b>nonpublic (2)</b> 54:12;59:3 <b>noon (2)</b> 32:22,23 <b>nor (1)</b> 124:3 <b>note (6)</b> 20:18;22:21;30:1; 58:18;71:3;143:17 <b>notebook (4)</b> 74:1;75:5;79:11; 101:10 <b>noted (1)</b> 81:15 <b>notice (25)</b> 6:24,25;7:13,16,19; 8:3,8;9:11,16,17,21; 25:3,10,15,19;26:7, 21,21;27:6;34:25; 51:23,24;57:24;99:7; 167:6 <b>noticed (4)</b> 11:10;24:12; 127:11;155:3 <b>noticing (2)</b> 7:16;50:12 <b>notifies (1)</b> 9:2 <b>notion (1)</b> 146:7 <b>November (28)</b> 7:4,7,17,21,24;8:3, 21;9:5,10;10:1,3; 24:9;29:3;35:1,2,3; 45:14,15;49:11; 50:25;51:18;141:2; 143:4;144:5;154:25; 163:10,10;164:14 <b>nuances (2)</b> 16:10;18:2 <b>null (1)</b> 8:8 <b>number (15)</b> 4:19,20;5:13;8:18; 16:13;24:2,6;53:15; 60:18;80:8;82:16; 104:2;112:11;136:5; 165:17 <b>numbers (3)</b> 83:3,5;87:20 <b>numerous (3)</b> 12:18;13:4;166:6	<b>O</b> <b>object (7)</b> 9:8;57:23;67:11; 75:12;108:16;115:4; 161:13 <b>objected (2)</b> 25:21,22 <b>objecting (3)</b> 48:24;127:23; 165:24 <b>objection (41)</b> 4:19;8:22;10:17; 11:11,12,24;22:21,23; 24:24;29:25;30:5; 31:21;34:15;42:10; 43:7;58:1,25;103:6; 109:1;111:16,21,23; 112:2;115:20;116:15; 127:22,23;128:6,25; 129:12;134:1;135:14, 15,17;138:1;139:24; 140:21;143:17; 147:16;152:24;153:1 <b>objections (7)</b> 11:22;22:22;24:17, 19;52:1;103:5;154:8 <b>objective (3)</b> 37:6;71:3;78:18 <b>objectors (2)</b> 14:18;16:13 <b>obligation (6)</b> 107:16,21;108:9, 13;130:10,21 <b>obligations (3)</b> 6:7;93:8;106:5 <b>obstacles (1)</b> 160:1 <b>obstruct (1)</b> 35:21 <b>obstructed (2)</b> 27:1,24 <b>obstructing (1)</b> 26:24 <b>obtain (2)</b> 33:25;143:25 <b>obvious (2)</b> 16:16;19:2 <b>obviously (8)</b> 32:15,25;34:13; 37:11;70:10;142:2; 144:13,16 <b>occur (1)</b> 164:17 <b>occurred (1)</b> 43:19 <b>occurrence (1)</b> 118:9 <b>occurrences (1)</b> 81:5 <b>occurring (2)</b> 153:24,25	<b>occurs (1)</b> 165:20 <b>October (7)</b> 6:18,19;7:9,9,25; 31:20;34:15 <b>Oddly (1)</b> 30:23 <b>off (7)</b> 21:8;65:8;72:14; 128:18,23;132:19; 162:13 <b>offense (1)</b> 27:23 <b>offensive (1)</b> 130:2 <b>offer (9)</b> 11:19;15:10,16,20; 51:20;103:4;117:19; 143:22;155:2 <b>offered (5)</b> 117:13;121:10; 154:24;167:8,23 <b>offering (1)</b> 75:4 <b>officer (2)</b> 12:8;152:25 <b>officers (22)</b> 94:18;101:3; 105:17;106:6,9; 118:18;123:17;127:3; 135:19,22,22,23; 152:20;153:2;156:7; 161:10,14;166:8,10, 18,23;168:13 <b>official (2)</b> 10:15;20:19 <b>often (1)</b> 85:4 <b>Oil (1)</b> 149:6 <b>old (3)</b> 66:23,24;99:19 <b>ominous (1)</b> 72:1 <b>omni (1)</b> 143:4 <b>omnibus (8)</b> 24:8;31:20;34:16; 57:16;61:17;65:13; 71:13;141:2 <b>Once (2)</b> 26:14;38:15 <b>one (80)</b> 5:21;6:3,13;10:7,9; 11:19;14:14;16:18; 23:24;24:19,20,20; 25:9;27:20;30:19; 31:21,23;42:4;47:4; 49:15;52:14;54:6; 57:8,14;60:19;61:7,8; 62:23;66:14,22;70:8; 71:11;72:22;74:4,15, 16,21,23;77:17;	78:19;79:1;80:10,11; 81:16;82:11,12;85:8; 86:7;89:1;98:11,12; 100:21;101:5;107:6, 14;113:8;119:11; 120:10;128:1;134:3, 16;136:5,22;138:15; 140:13;145:18;147:4, 5;149:16;150:13; 155:7,12;156:25; 158:14;159:17; 160:16;161:25;168:5, 5,21 <b>ones (9)</b> 40:6;73:25;75:20; 80:4;98:1;124:2; 144:23;151:23; 161:17 <b>one's (1)</b> 25:21 <b>ongoing (5)</b> 22:19;70:6,14;89:2, 2 <b>online (1)</b> 11:13 <b>only (50)</b> 7:20;9:19;13:5; 16:9,24;17:23;24:13; 25:7;27:11;30:19; 37:3,3;40:12;41:21; 43:11;51:5;53:8; 65:11;70:15;71:3,11, 20;75:20;84:22;85:2; 113:2;117:14;118:8, 15;121:9;127:2,23; 138:5,9;139:6;141:8; 143:12;144:22; 149:22;150:5;156:6; 159:19;160:15; 161:19,22,25;164:14; 167:3,15;169:12 <b>open (11)</b> 56:14;58:4;63:4,7, 18;64:2;67:22;68:4,6; 88:15;99:15 <b>openness (1)</b> 68:14 <b>operate (2)</b> 78:24;99:19 <b>operated (1)</b> 77:18 <b>operates (1)</b> 99:18 <b>operating (6)</b> 20:12;78:13;130:4; 131:12;132:2,23 <b>operation (2)</b> 84:6;136:16 <b>operational (10)</b> 48:1;84:4,5;86:11, 14,22;91:9,21,23; 97:23 <b>operations (13)</b>
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September 10, 2024

84:1,3,19;86:11; 90:6;91:6;136:15,25; 137:3,6,7,20;139:21 <b>opinion (10)</b> 111:11,15;112:1; 113:25;114:1;116:19; 153:11,12,14;158:5 <b>opportunity (15)</b> 28:9;29:16;35:16; 37:8;53:25;56:24; 73:11;125:8,10; 143:1;150:14;151:16, 22;152:7;170:9 <b>oppose (4)</b> 45:25;162:13; 169:22,23 <b>opposed (4)</b> 30:3;97:1,3;124:15 <b>opposes (1)</b> 16:21 <b>opposing (5)</b> 48:17;74:4;118:15; 134:4;143:6 <b>opposition (6)</b> 14:13;24:14,15,18; 48:6;170:7 <b>ops (1)</b> 91:24 <b>orchestrated (1)</b> 100:7 <b>order (88)</b> 4:4;5:1,19,21,22, 25:6;13,17;8:8,10,12; 9:9;10:4,6,17,19; 23:10,13,23;24:13,25; 25:20;30:6;32:4,9; 35:5;41:25;45:7;52:2, 3,19;53:12,19;54:9; 55:7,10;56:2,17; 57:16;58:1,3;60:10, 11;61:2,16;62:4,11, 15,19;64:11,12;65:19, 21;67:12,13;68:16; 69:20;71:1,9,10,18, 20,25;72:5,6,8;73:20; 109:19;130:14;132:8; 133:17,19,21;134:9, 14,17,18,19,23;144:4; 146:14;150:16;155:5, 21;170:6,7,11,12 <b>ordered (1)</b> 56:9 <b>orderly (1)</b> 6:11 <b>orders (9)</b> 4:20;5:13,14;61:6; 67:3;71:17,18,19; 170:18 <b>ordinary (6)</b> 21:11,13,24;22:16; 38:19;39:1 <b>original (4)</b> 9:3,16;130:18;	147:16 <b>originally (2)</b> 33:13;79:17 <b>Orleans (1)</b> 12:11 <b>O's (2)</b> 154:15,16 <b>ostensibly (1)</b> 55:6 <b>others (6)</b> 13:6;60:20;101:7; 119:17;152:19;154:8 <b>otherwise (2)</b> 55:15;119:25 <b>ourselves (1)</b> 87:4 <b>out (73)</b> 4:21;7:13;8:3; 11:12;15:4;19:19; 20:23,24;22:17; 25:10,19,23;27:2; 28:3,5;32:10;34:16; 40:12;48:17,24;49:6, 22,23;50:1;54:13; 56:18;59:15;60:24; 61:3,10,21;62:8; 63:19;73:2;75:1,5; 85:17,23;89:7,18; 95:15;102:2;103:1; 104:13,18,24;113:7, 17;119:16,21;120:11, 21;121:17;124:8; 129:10;134:4;149:18, 19;150:12;151:8; 152:14;154:23; 156:10;157:4;159:9, 14,16;163:6,15; 166:16;168:22,24; 169:2 <b>outcome (3)</b> 120:23,24;129:18 <b>out-of-town (1)</b> 33:3 <b>outset (1)</b> 61:11 <b>outside (4)</b> 38:17;55:17;56:12; 124:25 <b>outweigh (1)</b> 169:5 <b>outweighed (2)</b> 56:7;58:13 <b>outweighs (1)</b> 125:12 <b>over (28)</b> 10:10;12:14,15,19; 26:21,22;28:5;31:25; 33:16,17;36:21; 37:15;53:4;76:4;77:6; 79:4;85:1;96:4;98:19; 99:21;101:19,19,25; 124:10,13;143:18; 146:16,25	<b>overlay (1)</b> 80:7 <b>overprotective (1)</b> 134:18 <b>overrule (2)</b> 51:25;52:1 <b>overruled (1)</b> 151:24 <b>overview (4)</b> 80:25;81:3,6;83:20 <b>own (5)</b> 61:2;70:5;118:17; 126:2;158:1 <b>P</b> <b>packages (1)</b> 18:9 <b>page (8)</b> 82:1,12;85:18; 101:13;102:9,11,12; 131:10 <b>pages (2)</b> 27:17;32:25 <b>paid (19)</b> 19:19;39:7;69:3; 84:18;86:13;90:13; 91:23;92:12;95:7,13, 15;101:6;112:21,22; 113:4,5,7,8;115:13 <b>papers (9)</b> 11:7;24:23;32:24; 36:10;42:5;64:19; 131:7;147:12;150:8 <b>paragraph (4)</b> 25:2,4;129:3,11 <b>paragraphs (1)</b> 128:24 <b>parameters (1)</b> 71:3 <b>parcel (1)</b> 46:7 <b>Parliament (5)</b> 151:8,9,9,15,18 <b>part (30)</b> 34:13;44:5,6;46:7; 57:5;59:4;79:6;80:23; 91:19;92:5,22;93:4, 10;94:6;95:10;98:9; 100:10;108:5;113:8; 116:1,18;126:7; 128:19;136:7;145:2; 152:15;153:24; 159:10;167:24; 168:17 <b>participants (1)</b> 82:15 <b>participate (2)</b> 29:16;91:16 <b>participated (1)</b> 110:19 <b>participating (1)</b> 31:9	<b>participation (1)</b> 78:11 <b>particular (13)</b> 8:14;18:2,12;65:17; 70:8;71:16;80:9;82:9; 91:1,14;127:22; 156:1;165:17 <b>particularized (1)</b> 67:5 <b>particularly (5)</b> 16:2;91:12;129:8; 146:12;165:14 <b>parties (56)</b> 29:1;30:4;32:3; 34:23;46:12;48:17, 24;50:25;51:15,18; 54:25;55:15;56:12, 17,24;57:8;58:5; 59:12,15;60:4;65:23; 71:17,25;72:10,18; 73:10;104:2;110:1; 121:23;122:21;128:3; 134:5,6,8,10,15; 141:11;142:9;143:6, 8;144:16;145:15; 150:22;160:17; 165:13,24,25;166:10; 167:6,11;169:6,9,14, 22;170:1,8 <b>parts (2)</b> 54:15;168:19 <b>party (13)</b> 35:16;49:22;55:24; 57:13;71:4;100:25; 119:1;122:10;134:20; 144:8;151:1;155:7; 157:15 <b>party-in-interest (1)</b> 111:17 <b>pass (2)</b> 10:10;24:25 <b>passed (1)</b> 12:9 <b>passes (1)</b> 17:15 <b>past (5)</b> 33:18,19;87:5; 89:12;143:23 <b>path (5)</b> 87:15;124:5;163:1, 2;164:5 <b>pause (3)</b> 72:15;119:7,7 <b>pay (18)</b> 19:17;78:14;84:25; 85:14;95:13;97:7,12; 98:16;99:4;104:22; 116:12,17;119:21; 124:20,21,21;162:12; 166:7 <b>payable (2)</b> 115:15,19 <b>paying (9)</b>	33:21;78:17;84:22; 85:8,22;86:6;88:5; 90:10;99:12 <b>payment (5)</b> 20:3;41:8;88:6; 91:5;95:9 <b>payments (19)</b> 84:21;85:3;90:5; 92:6,9,10,18;94:5; 95:18,21,23,25,25; 96:2,4;98:18;100:11; 102:7;113:3 <b>payouts (1)</b> 116:22 <b>payroll (1)</b> 96:19 <b>pays (2)</b> 88:4;168:21 <b>pendency (6)</b> 72:11;133:15; 163:13,14;166:12; 167:18 <b>pending (9)</b> 13:3;23:25;25:8,25; 28:4;34:16;118:24; 138:3;144:22 <b>pennies (2)</b> 39:14;40:13 <b>pennies-on-the- (1)</b> 31:4 <b>people (13)</b> 4:11;6:24;7:19; 9:22;26:15;28:5; 29:16;56:20;70:10; 94:5;127:10;146:17; 155:5 <b>per (2)</b> 90:6;92:24 <b>perceive (1)</b> 28:21 <b>percent (14)</b> 87:7,11,17;101:20; 102:1,1,4,19;112:13, 18,21;113:1;151:1,10 <b>percentage (3)</b> 86:21;102:17; 112:16 <b>Perhaps (7)</b> 16:21;22:18;26:1; 32:7;33:14;51:15; 57:19 <b>period (11)</b> 14:3;56:23;85:2; 96:13,14;112:22; 164:20;169:13,14,17, 20 <b>peripheral (1)</b> 20:17 <b>permanent (13)</b> 72:7,8;110:23; 126:16;131:15;133:3, 5,7,12,21;145:14; 150:15,17
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September 10, 2024

<b>permanently (1)</b> 125:22	<b>plaintiff's (1)</b> 13:5	122:14;124:15;136:5; 7,18;141:6;142:1,4, 22;150:2;156:9,14; 157:15,16;158:5,9; 159:4;166:7	123:12;131:21; 162:24	42:13;169:24
<b>permission (1)</b> 140:11	<b>plan (30)</b> 7:4,11;20:6;39:6; 72:17;110:17,22; 124:4,4;125:8,8,10, 17;126:4;130:6; 150:18;151:24; 159:25;160:20,25; 162:22,25;163:6,20, 22,25;164:3;167:16, 19;168:3	<b>policy (28)</b> 39:11;45:4;70:2; 79:3;82:16;83:3,3,5; 88:2,20;90:11; 100:16;101:6,6; 106:9,14;129:6; 137:7,20;139:18,23; 143:9;150:20;154:2; 157:11;164:3,5;167:2	<b>practical (3)</b> 127:10,14;140:22	<b>president (4)</b> 4:13;12:6,7,10
<b>permit (1)</b> 31:22			<b>practicalities (1)</b> 127:1	<b>presiding (1)</b> 4:3
<b>person (3)</b> 13:11;32:16;37:24	<b>plans (1)</b> 14:23		<b>practically (1)</b> 127:16	<b>press (1)</b> 42:11
<b>personal (3)</b> 14:8;19:14;64:5	<b>play (5)</b> 81:14;82:8;83:21; 111:3;159:14	<b>policyholder (5)</b> 38:11,14,16;88:1; 93:19	<b>practicing (1)</b> 121:17	<b>presumably (1)</b> 120:20
<b>personally (2)</b> 12:15;27:23	<b>players (1)</b> 123:7	<b>policyholders (4)</b> 70:1,7,13;77:2	<b>practitioners (1)</b> 20:22	<b>presumption (3)</b> 67:7;68:5,5
<b>perspective (10)</b> 20:7;30:16;34:10; 36:7;60:17,18;62:2; 69:1;141:5;164:18	<b>pleadings (5)</b> 6:7;20:20;26:14; 32:24;71:7	<b>pony (1)</b> 119:20	<b>pre- (1)</b> 31:10	<b>presumptions (2)</b> 63:5;68:14
<b>pertains (1)</b> 19:13	<b>Please (6)</b> 4:3;23:12;73:19; 76:3,11;170:8	<b>portfolio (4)</b> 79:7;81:1;83:24; 156:22	<b>pre-1959 (1)</b> 83:19	<b>presumptively (1)</b> 63:6
<b>petition (7)</b> 7:3;22:8;24:2,6; 31:11;100:2;167:14	<b>plenty (2)</b> 28:12;157:3	<b>portion (5)</b> 58:1;59:7;103:2; 113:13;152:25	<b>precedent (1)</b> 43:24	<b>pretend (1)</b> 150:24
<b>ph (4)</b> 43:23;55:21;129:2; 131:10	<b>PM (1)</b> 170:24	<b>pose (1)</b> 109:18	<b>precisely (1)</b> 155:10	<b>pre-trial (1)</b> 32:3
<b>Pharma (8)</b> 126:15,19;133:5; 151:10,14,25;152:3; 160:25	<b>podium (9)</b> 10:10,25;26:21; 31:25;33:8;36:21; 42:23;52:8;114:9	<b>posed (3)</b> 108:5;109:10; 111:18	<b>preclude (2)</b> 51:10;54:22	<b>pretty (7)</b> 38:1;55:23;56:25; 62:4;87:20;93:13; 167:11
<b>Phillips (1)</b> 4:3	<b>point (42)</b> 11:12;15:10;22:16; 26:5;28:4;29:7;36:9; 47:12,17;51:16;57:5; 58:8;60:1;69:23; 70:15;78:22;80:19; 81:11;83:13;84:7,20; 86:10;101:19;104:6; 106:25;113:10,12; 128:22;144:25; 146:18;152:2,5,18; 153:5;155:11;163:2; 165:7,23;166:5; 167:11;169:6,22	<b>position (6)</b> 30:2;37:25;46:2,10; 91:7;145:19	<b>precludes (2)</b> 50:18;65:23	<b>prevent (4)</b> 59:19;136:21,22; 138:13
<b>PI (1)</b> 131:1	<b>pointed (5)</b> 27:2,3;49:6;134:4; 152:14	<b>possibility (3)</b> 64:23;144:24; 151:17	<b>prefer (1)</b> 164:16	<b>preventing (1)</b> 44:13
<b>Piccinin (2)</b> 122:16;123:4	<b>points (3)</b> 146:10;147:15; 154:23	<b>possible (5)</b> 25:19,19;127:8; 165:25;166:24	<b>preliminarily (1)</b> 30:25	<b>previous (4)</b> 40:23,25;69:13; 87:9
<b>pick (3)</b> 45:8;82:11;89:11	<b>policies (58)</b> 18:20;34:4;37:13, 21;40:6,19,22;43:13, 20;66:9,10;70:12; 74:23;78:22;81:3,4, 10,14;83:4,6,7,19,20; 88:17,25;89:5,9;90:4, 14;91:10,22,25;98:4; 100:21;114:17;118:8; 120:5,8;121:5,20;	<b>possibly (1)</b> 153:23	<b>preliminary (12)</b> 30:15;123:9;133:8, 18,19;143:13;144:1; 150:5;152:5;154:3; 159:10;167:25	<b>previously (1)</b> 167:1
<b>picked (1)</b> 74:15		<b>post (3)</b> 63:13,14;130:13	<b>premature (1)</b> 50:13	<b>primary (10)</b> 76:25;81:17,20,21; 82:4,6,23;90:11,13; 119:14
<b>picking (1)</b> 89:7		<b>post- (2)</b> 22:7;167:13	<b>prematurely (1)</b> 42:9	<b>Primeaux (1)</b> 135:7
<b>picks (1)</b> 82:5		<b>post-petition (7)</b> 12:24;13:1;14:3,17; 17:22;21:6;103:12	<b>premise (2)</b> 57:9;58:23	<b>principles (1)</b> 129:1
<b>picture (2)</b> 7:10;145:4		<b>pot (1)</b> 165:10	<b>preparation (3)</b> 33:2,5;50:14	<b>print (1)</b> 79:13
<b>piece (1)</b> 82:5		<b>potential (10)</b> 9:1;65:13;115:8; 118:11;138:5,10; 144:13,17;167:15,18	<b>prepare (6)</b> 28:25;114:8,10,11; 116:23;167:8	<b>printed (1)</b> 101:11
<b>piecemeal (2)</b> 57:15;121:21		<b>potentially (8)</b> 40:10,12;123:24; 136:3;138:7;145:9; 165:9;167:14	<b>prepared (6)</b> 50:25;71:17;72:2; 101:12;114:11,13	<b>prior (4)</b> 8:9;12:8;35:1; 77:11
<b>pieces (1)</b> 158:14		<b>power (3)</b>	<b>preparing (2)</b> 12:23;31:11	<b>private (2)</b> 64:9;75:6
<b>place (12)</b> 22:17;44:21;51:18; 90:24;96:16;98:10, 12;126:9;146:14; 169:20;170:11,12			<b>pre-petition (4)</b> 12:23;17:22;20:8; 61:25	<b>pro (7)</b> 42:22;45:19;53:15; 99:19,20,24;162:18
<b>plaintiff (2)</b> 96:1;98:17			<b>present (8)</b> 12:3;60:13;63:17; 78:2,5,6;97:7;113:12	<b>probably (8)</b> 4:24;5:2;9:2;28:14; 32:16;37:17;122:15; 164:16
<b>plaintiffs (8)</b> 80:23;85:6;103:11; 116:8;119:5;127:2, 13;169:7			<b>presentation (1)</b> 35:12	<b>problem (13)</b> 8:1;9:4;27:24;28:2; 40:3;62:2;123:22; 124:20;143:20; 154:17;156:3;161:3; 164:20
<b>plaintiffs' (1)</b> 85:10			<b>presented (5)</b> 20:10;48:13;86:17; 95:8;152:22	
			<b>preserve (2)</b> 118:7;131:12	
			<b>preserved (2)</b>	

September 10, 2024

<b>problems (2)</b> 51:3;87:2	37:10;40:11;78:12; 23;79:5,16;80:17,18; 82:16;84:23;85:11, 21,23,24;87:14; 96:22;98:20;104:21; 119:20	<b>protect (9)</b> 59:10;60:5;67:15; 74:10;119:23;121:4; 124:9;165:16,16	150:10;151:10,13,25; 152:3;160:24	16:13;17:16;18:1; 22:23;33:17;42:5,9; 50:11;52:14;65:14; 66:6;98:3;104:8; 126:14,21;131:2; 152:18,21
<b>procedure (3)</b> 29:2;44:25;134:11	<b>progress (2)</b> 37:14;164:18	<b>protected (20)</b> 54:8;56:1,8,14; 64:4;71:8;94:10; 129:25;130:3;134:6, 8,9,15,20;144:8,16; 145:15;146:13; 166:10,11	<b>purpose (4)</b> 17:1;51:21;92:21; 134:12	<b>raising (2)</b> 33:17;97:25
<b>procedures (34)</b> 8:4,5;20:5;22:8; 23:17,21;25:7,11,18, 22,24;29:25;30:2; 31:20;32:4,9;35:8,9, 24;42:6;43:8;44:4; 48:4,5,8;50:6,10,12, 18;51:3,12,14,22;52:1	<b>progresses (1)</b> 38:2	<b>protecting (5)</b> 55:9;123:17,17,18; 125:24	<b>purposes (4)</b> 53:17;80:8;117:14; 159:9	<b>ran (1)</b> 86:23
<b>proceed (9)</b> 12:1;21:11;38:23; 46:6;138:14;154:3; 157:2;163:24;167:11	<b>prohibit (1)</b> 149:21	<b>protection (20)</b> 64:21;67:6;68:12, 12,18;69:6;70:21; 72:18;93:22,23; 121:13;125:22;126:1, 17;130:15;131:16; 154:15;157:2;158:24; 159:14	<b>pursuant (1)</b> 44:11	<b>range (1)</b> 30:25
<b>proceeded (1)</b> 147:20	<b>projections (1)</b> 86:18	<b>protections (2)</b> 44:20;60:9	<b>pursue (5)</b> 103:12;125:8,10; 144:25;167:19	<b>rata (1)</b> 162:18
<b>proceeding (18)</b> 38:25;44:12,14,19, 23;45:8,11,15;47:6, 10;63:6;68:14;122:3; 126:21;134:16; 146:13;147:6,8	<b>projects (1)</b> 18:9	<b>protective (26)</b> 5:1;52:19;53:11,18; 54:9;55:7,10;56:2,17; 58:1,3;60:10;61:2,6, 16;62:4,19;64:11,12; 67:3,12;68:16;69:20; 71:1,9,25	<b>pursuing (3)</b> 77:2;126:4;131:17	<b>rather (8)</b> 7:24;11:6;21:25; 32:18;33:6;39:21; 61:1;169:14
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>prong (2)</b> 17:7;161:4	<b>protects (1)</b> 121:13	<b>push (3)</b> 22:1;25:23;124:10	<b>rationale (1)</b> 159:3
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>pronounce (1)</b> 122:15	<b>prototypical (2)</b> 55:19;64:20	<b>put (18)</b> 7:3;8:7;9:2,10; 11:15;19:25;27:23; 32:5;40:10;44:9; 46:11;52:18;98:10; 110:17;112:11;119:7; 144:1;150:12	<b>rationalization (1)</b> 130:13
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>pronounced (1)</b> 67:9	<b>prove (1)</b> 96:20	<b>puts (1)</b> 126:9	<b>re (4)</b> 136:11,20;137:19; 139:14
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>proof (3)</b> 114:20;115:14; 116:2	<b>provide (2)</b> 73:1;159:13	<b>putting (1)</b> 153:8	<b>reach (6)</b> 73:25;87:1;89:19, 19;98:8,10
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>proper (2)</b> 97:10;98:3	<b>provided (5)</b> 6:17;62:3;72:17; 77:8;107:13	<b>Q</b>	<b>reached (7)</b> 41:16;60:24;73:24; 90:18,19;91:8,10
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>properly (1)</b> 134:19	<b>provision (4)</b> 58:3,20;59:13;65:3	<b>quality (1)</b> 113:16	<b>reaching (1)</b> 168:25
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>property (12)</b> 48:23;84:19; 121:14;128:15;142:1, 4;148:17;149:23; 150:1;154:2;157:11; 167:2	<b>provisions (12)</b> 27:7,7;54:14,16; 60:22;62:25;64:25; 66:14,18;68:22; 93:13;111:2	<b>quarrel (1)</b> 68:17	<b>read (7)</b> 11:20;34:14;60:22; 81:8;109:16;114:17; 148:20
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>prophylactically (1)</b> 66:6	<b>public (9)</b> 55:14;58:13;63:7; 68:13;126:7,8;134:7; 161:4,5	<b>quasi-permanent (1)</b> 141:18	<b>reading (1)</b> 148:24
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>proponent (1)</b> 65:5	<b>publicly (1)</b> 55:14	<b>quick (1)</b> 21:23	<b>reads (1)</b> 63:14
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>proposal (2)</b> 20:14;164:12	<b>public's (1)</b> 56:6	<b>quickly (13)</b> 12:10;25:19;26:15, 16;46:9;47:21,24; 59:19;105:13;116:7; 162:7;165:11;169:3	<b>ready (4)</b> 119:5;155:17,18,18
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>propose (6)</b> 4:22;11:15;48:15, 21;59:13;140:25	<b>pull (3)</b> 120:9,10;156:12	<b>quite (3)</b> 51:6,14;60:23	<b>real (10)</b> 28:21;36:6;39:8; 41:21;46:13;50:8; 66:20;72:19;123:22; 130:23
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>proposed (24)</b> 6:17;10:17;19:13; 20:5,18;23:4;25:22; 31:25;32:4;42:6; 51:12,24;55:10; 56:16;59:12;60:10; 62:8;67:12;130:5; 142:14;145:8;160:21; 164:13;170:8	<b>Purdue (9)</b> 126:15,19;133:4;	<b>quote (2)</b> 64:16;153:17	<b>realistic (1)</b> 125:10
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>proposing (1)</b> 164:21		<b>quoted (1)</b> 131:20	<b>really (41)</b> 16:19;17:16;20:8,9; 22:15;36:8,9;37:3; 39:7;48:7;50:11,12; 61:24;64:1;67:7;71:9; 74:7;109:13;110:25; 118:4,5;122:19,21,21; 123:15,23;129:18; 130:8;146:3;147:20, 22,24;148:18,18,20; 152:9;153:4,7; 154:18;156:25; 161:10
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>prosecute (6)</b> 16:1;115:5;116:12; 118:17;146:15; 162:22		<b>R</b>	
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24	<b>prosecution (1)</b> 159:7		<b>race (4)</b> 119:17;124:8; 136:21;165:7	
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7	<b>prospect (1)</b> 34:25		<b>Ragusa (5)</b> 135:6,6,7,10; 139:10	
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24			<b>raise (6)</b> 7:22;10:2;21:15; 42:13;65:15;76:4	
<b>proceeds (4)</b> 19:25;119:14; 139:23;168:7			<b>raised (18)</b>	
<b>proceedings (13)</b> 54:11;55:6,8,13,16; 56:12;57:22;58:15, 16;60:2,3;68:6; 170:24				



September 10, 2024

<b>reason (18)</b> 7:13;8:14;46:3; 47:20;51:24;67:11; 124:23;127:10,15; 141:3;143:21;145:3; 150:10;155:13;156:2; 159:2;162:8,17	115:17	78:20;81:22;84:19; 102:3,5;141:10; 144:13	159:22	20:5
<b>reasonable (4)</b> 23:3;41:12;131:5; 134:12	<b>recoveries (5)</b> 18:20,22;39:7; 41:22;162:20	<b>relates (4)</b> 91:22;102:19; 106:24;113:14	<b>reorganize (1)</b> 132:21	<b>resolve (4)</b> 18:21;29:24;32:7; 137:15
<b>reasonably (1)</b> 55:13	<b>recovering (1)</b> 165:8	<b>relating (1)</b> 14:2	<b>repay (1)</b> 153:23	<b>resolved (7)</b> 18:3;24:17,24;30:5; 52:20;91:13,15
<b>reasons (10)</b> 15:6;35:6;42:15; 57:5,8;60:8;62:23; 134:1;154:6;169:19	<b>recovery (2)</b> 40:2;77:1	<b>release (7)</b> 69:2;72:16;93:25; 94:1;160:22,23,24	<b>repeatedly (1)</b> 19:15	<b>resolves (1)</b> 91:14
<b>reassess (1)</b> 169:15	<b>rectify (1)</b> 28:3	<b>released (3)</b> 66:10;128:13;136:6	<b>reply (20)</b> 19:15;22:21;23:23; 26:7,25;27:2;32:21; 21:35;23:42;9; 117:23;118:5;129:4; 15:131:2;134:6; 138:15;143:17; 147:22;152:22	<b>resolving (1)</b> 18:14
<b>rebuttal (1)</b> 32:17	<b>recur (1)</b> 62:23	<b>releases (6)</b> 133:4;150:21; 151:1,17,23;160:21	<b>report (2)</b> 32:14,18	<b>resources (8)</b> 19:17,17;20:14; 22:4;26:18;47:21; 48:1;165:12
<b>recall (1)</b> 5:18	<b>redact (5)</b> 56:19;58:6;59:16; 22:65;25	<b>releasing (1)</b> 62:7	<b>reported (1)</b> 128:13	<b>respect (24)</b> 5:21;17:2;32:23; 52:3;55:18;56:4; 61:16;65:17;67:4; 71:16;74:6;79:7; 83:21,24;95:20;96:9; 122:14;129:1;130:12; 145:11;159:11;161:8; 10;167:20
<b>recap (1)</b> 75:7	<b>redactions (1)</b> 56:25	<b>relevant (11)</b> 27:21;34:2,6;55:6; 6:67;19;69:13,14; 88:14;128:10,24	<b>reports (1)</b> 50:24	<b>respectfully (1)</b> 67:25
<b>receipt (1)</b> 109:6	<b>Redirect (1)</b> 117:9	<b>relied (2)</b> 17:22;136:12	<b>represent (7)</b> 17:1,9,11;43:6; 71:24;101:11;135:9	<b>respond (8)</b> 47:4;49:13;69:21; 70:15;78:25;89:6; 127:12;129:17
<b>receive (3)</b> 11:10;71:19,21	<b>redo (1)</b> 74:8	<b>relief (24)</b> 25:16;26:8;28:7; 66:17;72:10;105:9; 106:16;122:20; 126:16,23;127:7,7; 131:15;132:13;133:3; 5,7,8;143:20;144:3; 156:1,2;159:1;169:15	<b>representation (2)</b> 79:15;83:22	<b>responding (3)</b> 35:4;44:25;155:16
<b>received (8)</b> 37:13;38:19;54:24; 55:15;75:18;95:16; 100:6;103:8	<b>referred (5)</b> 33:23;37:2;38:12; 65:4;69:25	<b>reliefs (1)</b> 26:6	<b>representative (2)</b> 100:21;167:5	<b>response (5)</b> 34:10,20;108:21; 127:19;143:17
<b>receiving (1)</b> 21:8	<b>referring (4)</b> 11:7;39:23;114:20, 22	<b>relies (1)</b> 14:5	<b>representatives (1)</b> 31:8	<b>responses (3)</b> 27:15,17;45:9
<b>recently (4)</b> 28:15;90:5;94:25; 126:18	<b>refers (1)</b> 65:11	<b>reluctant (1)</b> 64:1	<b>represented (2)</b> 24:21;101:24	<b>responsibility (3)</b> 20:17;104:17,19
<b>recess (3)</b> 73:15,17,18	<b>reflects (2)</b> 16:6;74:24	<b>rely (5)</b> 14:5,9,10;43:9;44:1	<b>representing (2)</b> 16:23;29:21	<b>responsible (4)</b> 85:5;86:8;87:6; 105:2
<b>recipients (1)</b> 33:2	<b>refocus (1)</b> 147:18	<b>relying (1)</b> 16:4	<b>request (6)</b> 29:7;49:5;60:24,25; 72:6;74:9	<b>responsive (4)</b> 27:25;30:19;55:1; 89:13
<b>recited (1)</b> 72:16	<b>refused (2)</b> 78:14;104:22	<b>remain (1)</b> 169:11	<b>requested (1)</b> 53:11	<b>rest (5)</b> 15:18;85:3;117:17; 120:13;152:9
<b>recognize (4)</b> 46:7;71:5;151:19; 169:13	<b>regard (2)</b> 90:5;91:8	<b>remaining (3)</b> 19:24;87:13;156:24	<b>requests (11)</b> 27:14,19;29:5,9,14; 33:24;49:3,3;54:25; 55:1;57:20	<b>restart (1)</b> 123:23
<b>recollection (1)</b> 166:15	<b>regarding (3)</b> 13:6;45:24;53:5	<b>remains (1)</b> 129:8	<b>require (4)</b> 7:2;20:18;103:23; 116:12	<b>restate (1)</b> 111:19
<b>reconvene (1)</b> 73:15	<b>regards (3)</b> 45:21;152:11,20	<b>remedy (1)</b> 63:7	<b>required (7)</b> 6:25;44:12;46:14; 48:22;79:3;92:13; 95:18	<b>restraining (1)</b> 64:2
<b>record (22)</b> 23:20;29:20;30:1; 47:2;99:14;110:9,13; 114:3;134:7;140:19; 141:13,17;142:7; 143:7,10,15,25;145:7; 147:11;150:19;164:9, 12	<b>regular (1)</b> 80:12	<b>Remember (2)</b> 13:8;133:16	<b>requirement (1)</b> 59:12	<b>restrictions (2)</b> 16:24;54:8
<b>records (4)</b> 18:8,8,8;96:20	<b>rehabilitate (3)</b> 131:11;132:1,5	<b>reminded (1)</b> 19:15	<b>requirements (1)</b> 23:5	<b>restructuring (3)</b> 17:2,13;159:12
<b>recourse (2)</b> 20:2;168:5	<b>rehash (2)</b> 146:19;147:14	<b>removed (1)</b> 150:3	<b>requires (2)</b> 65:22;134:12	<b>resubmit (1)</b> 9:13
<b>recover (1)</b>	<b>reiterate (1)</b> 51:17	<b>removing (1)</b> 137:16	<b>research (1)</b> 58:21	<b>result (4)</b> 13:17;46:1;114:25; 167:12
	<b>reiterate (1)</b> 51:17	<b>reorganization (10)</b> 110:17,23;131:5,6, 17,24;132:7,15; 159:13,20	<b>reservation (1)</b> 128:6	
	<b>relate (6)</b> 18:2;25:7;29:5; 35:12;97:18;103:2	<b>reorganizations (1)</b>	<b>Resolute (1)</b> 103:25	
	<b>related (10)</b> 29:8;42:10;60:6;		<b>resolution (1)</b>	

September 10, 2024

<b>resulted (2)</b> 132:8,9	<b>rights (19)</b> 38:15;42:12;43:13, 21;44:14;93:24,25; 94:1;124:19;128:6; 148:14;158:9;160:18, 19;164:4,5;167:1; 168:22;169:23	<b>run (3)</b> 61:1;86:3;92:10	48:18;128:11; 130:17	<b>seeks (1)</b> 118:5
<b>retain (1)</b> 16:16		<b>run-around (2)</b> 119:22,23	<b>scheduling (5)</b> 34:23;35:5;50:1,23; 53:3	<b>seem (2)</b> 31:17;168:24
<b>retained (2)</b> 16:25;84:17		<b>running (1)</b> 119:21	<b>scope (1)</b> 142:17	<b>seems (5)</b> 20:14;35:7;65:14; 112:6;155:1
<b>retaining (2)</b> 15:6;16:4	<b>Riley (1)</b> 139:1	<b>runs (1)</b> 82:17	<b>scrambling (1)</b> 78:12	<b>sell (1)</b> 47:8
<b>retention (6)</b> 10:10;11:17;16:21; 22:5,13;23:4	<b>ripple (1)</b> 156:13	<b>rush (1)</b> 31:14	<b>scrutiny (1)</b> 141:13	<b>selling (2)</b> 40:12;132:18
<b>return (1)</b> 100:16	<b>rise (4)</b> 4:1;68:18;73:17; 170:23	<b>rush-to-judgment's (1)</b> 41:23	<b>seal (18)</b> 56:4,13;58:2,10,23, 24;59:2,8,9;64:2,12; 65:22;67:21;68:7,12, 16,25;109:18	<b>send (3)</b> 29:13;63:13;98:18
<b>returning (1)</b> 20:13	<b>risk (6)</b> 119:25;130:17,23, 23;156:21,23	<b>S</b>	<b>sealed (1)</b> 56:9	<b>sending (1)</b> 9:23
<b>review (2)</b> 71:10;170:7	<b>Rivet (4)</b> 135:6,6,10;139:10	<b>sabotage (1)</b> 123:24	<b>sealing (4)</b> 56:5;59:10;62:7; 63:7	<b>sense (18)</b> 26:1;35:10;39:1; 50:11;52:21;57:20; 59:6,9,22;61:17; 72:24;90:13;121:24; 141:20;143:8,9; 148:4;168:24
<b>reviewed (2)</b> 14:24;22:12	<b>road (4)</b> 9:1;18:13;61:13; 155:22	<b>safeguards (1)</b> 45:16	<b>Sean (2)</b> 32:1;37:2	<b>sensible (3)</b> 32:3,20;33:5
<b>revise (1)</b> 10:3	<b>roadblocks (1)</b> 47:14	<b>sale (2)</b> 25:17;48:23	<b>seated (2)</b> 4:3;73:19	<b>sensitive (11)</b> 54:7,13;55:5,20; 56:2,7;58:9;63:25; 68:22,25;71:7
<b>revised (6)</b> 8:12;9:9;23:22; 24:13,25;52:2	<b>Robbins (13)</b> 122:1,17;131:20; 132:4,6;136:11,12,16, 20;137:19;139:13; 166:4,21	<b>sales (1)</b> 42:8	<b>Second (16)</b> 24:11;25:2,4;58:18; 70:17;101:18;102:9, 12,15;112:23,25; 113:2,4;125:11; 150:24;168:18	<b>sensitivity (2)</b> 35:21;66:25
<b>revision (1)</b> 51:5	<b>Robin (1)</b> 151:19	<b>same (27)</b> 9:10;43:14,22;44:3, 8,14;45:2;54:24;60:4, 11,22;77:24;94:6; 115:20;118:23; 122:10,10,23;123:19; 133:13,23;142:11,15; 145:16;153:4;162:20; 168:23	<b>secondary (1)</b> 83:4	<b>sent (3)</b> 7:13;8:3;95:10
<b>revisions (3)</b> 24:15,16;25:20	<b>Robins (4)</b> 121:16;122:12,18, 18	<b>sat (1)</b> 86:12	<b>secondly (1)</b> 18:15	<b>sentence (2)</b> 25:3,4
<b>revisit (1)</b> 169:11	<b>Robins-Piccinin (1)</b> 122:16	<b>satisfactory (2)</b> 35:8;71:15	<b>secrets (1)</b> 64:6	<b>separate (4)</b> 39:18;92:24;108:8; 115:18
<b>right (120)</b> 4:12,15;5:4,8;8:19; 9:12,23,25;10:3; 11:25;15:14,19,23; 19:12;20:22,23; 22:25;28:19;29:11, 18;30:7;32:5;35:13, 18,18,18;36:20,23; 37:23;38:8;39:5; 40:14;42:3,17;45:18; 46:22;49:10;50:4,8; 52:5,5;60:12,15; 62:10,17;65:12;67:7; 69:17;70:5;71:2,21; 73:4;75:13,16,21,25; 76:4,4,5;77:8;78:19; 79:20;82:6,11,14,16; 84:23;86:12;87:23; 88:7;89:22;96:15; 97:2;100:24;101:5,9, 22;102:21;104:10,22; 106:5,16;113:20; 117:11,15,16,20; 120:3,16,19;131:25, 25;132:11,25;133:1, 25;134:21;135:1; 140:7,18;142:7; 145:20;147:3,9; 148:11;154:9,22; 155:1;157:1,10,13; 159:5;161:8;162:14; 163:4;164:8;165:4; 170:5,16,18	<b>role (12)</b> 13:18;17:23;18:15, 16;21:5;22:10,11; 76:25;78:2,5,6;95:20	<b>satisfied (2)</b> 159:11;167:23	<b>separately (3)</b> 100:11;103:1; 127:25	
	<b>roles (1)</b> 18:24	<b>satisfies (2)</b> 17:7,15	<b>Section (11)</b> 16:24;38:6,7;44:12; 58:21;70:18,20;71:3; 131:21;150:19; 166:21	<b>September (2)</b> 6:23;77:19
	<b>rolling (1)</b> 142:25	<b>satisfy (4)</b> 38:20,25;85:9; 126:6	<b>Sections (2)</b> 23:8;167:21	<b>series (2)</b> 86:17,18
	<b>Rome (4)</b> 13:24;17:3;79:21, 23	<b>save (3)</b> 18:23;19:3;131:13	<b>seeing (4)</b> 46:18;56:6;81:7; 151:23	<b>serious (1)</b> 64:17
	<b>Ron (4)</b> 72:23;76:2,2,12	<b>saw (5)</b> 8:3,12;24:18,24; 61:21	<b>seek (11)</b> 20:22;61:1;109:20; 125:22;128:6;137:14; 138:1,17,23;156:2; 159:1	<b>serve (1)</b> 143:16
	<b>Ronald (1)</b> 4:15	<b>sawing (1)</b> 84:6	<b>seeking (41)</b> 6:5;35:3;44:6,7,9, 10;72:1,8,8,9,14,15, 18;125:23;126:1,16, 16;127:1;131:6,16; 135:14,15,17;137:12; 138:2,4;140:11,15,15; 150:25;151:1,2; 158:24;160:18,18,24; 163:9,11;165:16; 166:17;167:25	<b>served (10)</b> 7:19,20;17:23; 27:11,13,15;33:22,23, 23;127:13
	<b>Roussel (3)</b> 24:22,23;43:4	<b>saying (14)</b> 35:25;45:24;46:5; 58:20;65:8;68:1; 93:10;149:22;151:3; 152:15;154:19;158:9; 162:5;167:22		<b>services (3)</b> 17:18;18:4;77:8
	<b>routinely (2)</b> 58:10;139:6	<b>scenarios (3)</b> 86:19,20,23		<b>serving (2)</b> 12:7,13
	<b>Rule (3)</b> 36:2;60:9;134:11	<b>schedule (11)</b> 24:7;25:22;32:3,20; 33:6;34:8;41:2;46:13; 48:25;49:23;136:8		<b>SES (7)</b> 98:16,21,22;99:1, 18;100:2,13
	<b>Rules (9)</b> 6:25;7:1;25:15,15; 34:14;48:22;51:13; 70:23;159:16	<b>schedules (3)</b>		<b>session (3)</b> 4:2;73:7,19
	<b>ruling (1)</b> 169:21			<b>set (35)</b> 6:3,5,23;7:6,7,7;

September 10, 2024

8:2,11;19:23;23:2,25; 25:14;26:14,14;28:3, 10;29:15;30:2,4; 31:21;34:15;47:12; 48:15,18,20,21;50:2; 92:22;123:22;141:1; 142:21;143:3,18; 158:8;170:11 <b>setting (6)</b> 7:8;49:8;51:11; 67:9;121:24;147:6 <b>settle (1)</b> 125:15 <b>settled (12)</b> 31:3;92:3,4;95:12, 17;101:21;112:15,17, 17,19;151:2;167:1 <b>settlement (99)</b> 7:6;18:22;19:25; 23:17,21,25;24:1,3,5, 13;25:5,7,8,11,13,17, 24;26:8;30:23;31:5,9; 32:13;39:3,8,15,19, 21,22,22;40:5,6; 41:16;42:10;43:7,20; 44:7,16;45:24;47:5,8; 48:5,16,22;49:4,8,25; 50:6,16,18;51:5,10, 13;52:1,16;54:5; 55:19,24;56:3;58:16; 63:10,11;66:7,11,22; 67:3,4;69:12,14;70:8; 75:4;86:23;90:7,18, 20;91:8,11;92:5;93:8, 14;97:1,3,18;101:16; 107:6,14;108:10,14, 17;119:10;120:5; 124:16;125:23; 137:25;138:19; 142:14;153:24; 157:14;164:4;167:3 <b>settlements (37)</b> 20:1;31:15,17,24; 37:9;38:10;39:4,5; 40:1,3,4,23;42:1,8; 43:18;70:3;86:24; 87:1,5,9;95:14;97:12; 101:17,18,18,24; 102:2,3;121:2; 124:15;145:8;150:21; 151:3;163:5,20; 164:2;169:1 <b>settlement's (1)</b> 41:11 <b>settlers (1)</b> 125:21 <b>settles (1)</b> 88:4 <b>settling (7)</b> 24:3;93:18;94:1; 110:24;125:19; 144:10,17 <b>seven (1)</b>	137:17 <b>seventy (2)</b> 112:18,21 <b>seventy-one (2)</b> 102:1,1 <b>seventy-three (2)</b> 102:19;113:1 <b>seventy-two (4)</b> 58:6;59:12,17; 92:11 <b>seventy-two-hour (1)</b> 63:21 <b>sever (1)</b> 125:14 <b>several (4)</b> 7:20;39:19;40:7,9 <b>severity (1)</b> 113:17 <b>shade (2)</b> 80:3,4 <b>shaded (1)</b> 85:19 <b>shall (1)</b> 25:5 <b>Shapiro (3)</b> 79:18,20,22 <b>share (4)</b> 36:19;64:25;87:21; 101:2 <b>shared (4)</b> 60:24;74:24;101:5; 106:9 <b>shares (3)</b> 100:25;101:3,4 <b>ship (1)</b> 137:5 <b>shipyard (3)</b> 96:19,19;140:13 <b>Shipyards (1)</b> 137:3 <b>short (5)</b> 34:8;57:24;73:8,14; 77:10 <b>shortened (1)</b> 34:24 <b>shorter (4)</b> 31:13;83:17;96:13, 14 <b>shortly (4)</b> 7:8;24:5;31:25; 77:16 <b>show (10)</b> 49:5;60:25;64:15; 65:6;66:21;70:16; 80:3,5,6;113:10 <b>showing (5)</b> 64:15,18;67:5,5; 68:20 <b>shown (2)</b> 70:17,22 <b>sic (1)</b> 151:19 <b>side (12)</b>	16:22;61:7;98:17; 101:15,22,25;124:10; 125:13,13;156:24; 160:15;163:6 <b>sides (2)</b> 101:11;139:17 <b>sideshow (3)</b> 162:8,9,9 <b>sideshows (1)</b> 162:25 <b>Sieg (21)</b> 29:20,20,24;30:8; 114:3,3,6;115:7; 116:9,20;117:7,17; 140:19,20;144:10; 145:2,21;154:19,22; 164:9,9 <b>sign (5)</b> 6:2;27:4,8,21;62:3 <b>signal (1)</b> 66:19 <b>signaled (1)</b> 47:15 <b>signed (4)</b> 5:24;10:12,19;27:9 <b>significance (1)</b> 83:23 <b>significant (12)</b> 16:9;24:15;25:16; 28:7,23;30:18;50:15; 59:5;104:25;113:13; 142:9;165:21 <b>silent (1)</b> 32:5 <b>similar (13)</b> 21:13;38:7;60:10; 70:5;71:12;87:20; 102:12,18;114:13; 122:6;135:13;141:22; 145:11 <b>simple (3)</b> 152:15;153:20; 156:15 <b>simply (6)</b> 6:5;99:20;108:20; 113:21;115:4;143:6 <b>single (1)</b> 155:12 <b>sit (8)</b> 28:2;46:13;49:21; 125:16;155:13,14,19; 161:1 <b>sits (5)</b> 80:16;82:12,21,22, 25 <b>Sitting (1)</b> 125:13 <b>situated (1)</b> 127:25 <b>situation (5)</b> 22:16;31:24; 138:25;143:14; 168:20	<b>situations (2)</b> 46:18;70:11 <b>six (12)</b> 92:11;129:9; 155:20;157:5;163:17, 22;164:12,15,25; 165:1;169:17,19 <b>Sixth (1)</b> 148:25 <b>sixty (15)</b> 24:8;26:7,20;28:3, 11;29:12;40:17;45:2; 46:15,20;48:14,21; 51:8;97:13;145:12 <b>size (1)</b> 81:12 <b>skeptical (2)</b> 66:20;69:2 <b>sketch (2)</b> 49:22,22 <b>skyscraper (1)</b> 120:9 <b>slash (1)</b> 136:16 <b>sleep (1)</b> 27:16 <b>slew (1)</b> 32:24 <b>slide (2)</b> 5:2;101:22 <b>slightly (2)</b> 87:20;152:18 <b>sliver (1)</b> 64:7 <b>small (4)</b> 79:13;120:12; 123:22;152:15 <b>sold (2)</b> 77:19;158:6 <b>sole (1)</b> 12:8 <b>solely (5)</b> 135:24;136:25; 138:4,23;140:5 <b>solidly (1)</b> 120:9 <b>solution (4)</b> 7:23;140:25;144:3, 4 <b>solve (3)</b> 62:2;87:2;154:17 <b>somebody (5)</b> 9:4;10:1;27:5; 98:24;119:10 <b>somehow (3)</b> 18:15;97:19;158:8 <b>someone (9)</b> 14:7,10;16:5,23; 72:16;90:23;104:20; 118:22;156:1 <b>sometimes (1)</b> 80:2 <b>somewhat (1)</b>	28:15 <b>somewhere (3)</b> 39:15,24;87:7 <b>soon (2)</b> 25:19;27:2 <b>sooner (1)</b> 34:18 <b>sorry (10)</b> 29:19;47:16;75:9; 77:18,21;102:22; 117:24;129:5;146:2; 155:15 <b>sort (9)</b> 7:5;21:8,12;26:21; 55:19;132:17,22; 136:8;168:24 <b>sorted (2)</b> 168:22;169:2 <b>sought (7)</b> 34:21;105:9; 106:16;133:17; 137:25;144:8;160:23 <b>source (2)</b> 14:16;31:5 <b>sources (1)</b> 57:25 <b>South (2)</b> 55:22;58:11 <b>Southern (1)</b> 64:16 <b>spade (2)</b> 151:4,4 <b>speak (2)</b> 30:14;130:15 <b>speaking (1)</b> 107:4 <b>special (6)</b> 16:5;20:18,19;23:3, 9;32:1 <b>specialized (2)</b> 16:25;20:22 <b>specializes (1)</b> 76:18 <b>specialty (1)</b> 77:1 <b>specific (5)</b> 9:21;54:23;64:18; 81:3;103:21 <b>specifically (5)</b> 59:1;69:3,23; 108:19;155:24 <b>specificity (1)</b> 134:12 <b>specifics (2)</b> 61:12;72:22 <b>specify (1)</b> 71:10 <b>speculating (1)</b> 147:4 <b>spend (9)</b> 97:5;102:19; 103:23;104:7;113:14; 116:5;124:12;149:3;
--	--	---	---	---

September 10, 2024

158:22 <b>spending (1)</b> 87:10 <b>spent (5)</b> 31:10;90:15; 103:19;113:1;153:21 <b>spoke (2)</b> 57:25;114:19 <b>spot (1)</b> 9:23 <b>spread (1)</b> 89:15 <b>square (1)</b> 18:8 <b>squarely (2)</b> 28:1;60:8 <b>squeezed (1)</b> 31:18 <b>stack (5)</b> 89:19,19;120:7,8; 156:9 <b>stage (2)</b> 27:25;130:9 <b>stages (1)</b> 33:20 <b>stake (1)</b> 30:16 <b>stale (1)</b> 70:14 <b>stand (5)</b> 34:6;61:18;76:2; 109:13;121:11 <b>standard (8)</b> 123:9,10;125:4,6; 126:7;131:3;150:6; 159:10 <b>standing (2)</b> 11:11;53:16 <b>standpoint (1)</b> 128:14 <b>stands (1)</b> 151:18 <b>start (17)</b> 26:15;29:6;37:5; 41:5;50:22;73:5; 78:17;79:3;81:10; 83:1;84:22;90:8,22; 96:17;155:18;157:20; 162:5 <b>started (5)</b> 65:8;85:10;99:1; 104:19;121:17 <b>starting (2)</b> 82:4,7 <b>starts (2)</b> 82:17;99:6 <b>state (2)</b> 101:18;160:13 <b>stated (3)</b> 43:10;153:15; 169:19 <b>statement (5)</b> 7:5,8,11;42:6;	148:18 <b>States (13)</b> 4:1;5:22;12:16; 58:3;101:21;112:12, 17;113:22;133:9,17, 20;148:3,5 <b>stating (2)</b> 113:21,23 <b>Status (3)</b> 90:3;146:16,25 <b>statute (4)</b> 38:7;39:10;64:7; 144:19 <b>statutes (3)</b> 37:20;38:21;123:6 <b>stay (87)</b> 4:25;5:3;14:13; 17:24;21:2,3;26:10, 13;27:12,21;29:8; 33:24;34:2,7;36:2; 46:5;52:6,7,14;57:21; 72:4;73:22;94:10; 105:6;106:17;118:6, 16,22;119:7;120:21; 124:24;126:24; 127:24;128:2,7,8; 129:13,16,20;130:3, 14;131:22;132:9; 133:14;134:5,9,14,19; 135:14,15,18;136:2; 139:7;141:2,4,7,24; 142:8;143:5,6; 144:13,21;146:13; 147:19,21,22;149:5, 22;151:12;153:2; 158:18;159:8;163:8, 9,12;165:21,24;166:2, 9,17,22;168:12; 169:11,12,13,15,18 <b>stayed (3)</b> 146:21;152:16; 158:18 <b>staying (1)</b> 134:1 <b>stays (2)</b> 17:7;169:20 <b>stem (2)</b> 108:24;120:14 <b>step (6)</b> 23:16;105:23; 117:16;124:3;154:20; 159:17 <b>Stephanie (1)</b> 135:7 <b>Stewart (2)</b> 53:14;54:2 <b>sticking (1)</b> 156:23 <b>still (14)</b> 11:11;24:14;33:20; 41:14;61:25;69:8,10, 14;97:22;120:22; 132:8,9;164:2,20	<b>stop (4)</b> 77:22;83:11; 119:18;127:2 <b>stoppable (1)</b> 130:2 <b>stopped (1)</b> 83:16 <b>stored (1)</b> 18:10 <b>stores (2)</b> 132:20,21 <b>Stout (16)</b> 4:15;13:25;17:4; 49:13;76:16,17,18,20, 24,25;77:11,19; 99:16;100:10;101:12; 103:8 <b>straighten (1)</b> 73:2 <b>straightforward (2)</b> 54:3;60:23 <b>streamline (1)</b> 73:2 <b>stress (1)</b> 63:9 <b>strict (1)</b> 54:16 <b>strictly (1)</b> 139:4 <b>strikes (1)</b> 55:7 <b>string (2)</b> 120:10;156:12 <b>strong (2)</b> 63:3;83:3 <b>stuck (1)</b> 5:15 <b>stuff (1)</b> 18:10 <b>subject (20)</b> 11:16,21,23;12:3; 39:17;40:6,22,25; 57:19;86:22;109:19; 111:16,21;126:2; 133:7;141:6,15; 144:12;149:4;158:15 <b>subjects (1)</b> 18:1 <b>submit (4)</b> 23:9;28:11;65:7; 71:18 <b>submitted (13)</b> 9:21;10:16,22; 24:12;49:19;52:2; 67:20,21;71:19;99:6; 138:9;167:5;170:19 <b>subrogation (1)</b> 160:12 <b>subsequent (4)</b> 38:10,15;43:19; 51:19 <b>subsequently (1)</b> 93:1	<b>subset (4)</b> 118:8,16;119:17; 120:12 <b>subsidiaries (1)</b> 101:4 <b>subsidiary (1)</b> 93:20 <b>substance (7)</b> 47:13,18,19;53:18; 56:22;91:3,4 <b>substantial (1)</b> 32:6 <b>substantially (2)</b> 56:7;58:13 <b>substantive (6)</b> 42:10;51:22;53:10, 11;148:11;160:19 <b>substantively (1)</b> 35:14 <b>substitute (2)</b> 118:19,22 <b>substituting (1)</b> 122:23 <b>substitution (1)</b> 119:12 <b>subtle (1)</b> 41:7 <b>succeed (1)</b> 157:19 <b>success (11)</b> 106:19;125:9; 150:14;151:16,22; 152:7,8;159:25; 160:3;168:1,2 <b>successful (9)</b> 116:3;131:5;147:1; 159:19,21,22;161:5; 166:15;168:9 <b>successfully (1)</b> 159:23 <b>sue (6)</b> 127:3,4;148:6; 154:15,16;156:16 <b>sued (8)</b> 94:20;103:21; 107:25;114:24,25; 118:21;125:16; 161:16 <b>sufficient (4)</b> 26:7;28:22;29:13; 51:8 <b>suggest (5)</b> 21:9;28:25;30:3; 67:13;162:2 <b>suggested (3)</b> 46:1,2;94:8 <b>suggestion (1)</b> 169:10 <b>suggestions (3)</b> 13:2;17:24;21:1 <b>suggests (3)</b> 131:7;142:3;164:7 <b>suing (2)</b>	122:21;156:7 <b>support (9)</b> 11:18;35:24;45:23; 46:8;47:9;123:20; 125:5;142:7;156:22 <b>supporting (1)</b> 117:3 <b>supportive (1)</b> 161:5 <b>supports (2)</b> 11:17;126:8 <b>suppose (1)</b> 132:25 <b>supposed (7)</b> 7:14;8:5;56:17; 63:22;117:25;118:1,6 <b>Supreme (8)</b> 38:12;43:17,24; 133:6,18;141:16; 148:19;151:13 <b>sure (21)</b> 16:20;17:6;26:11; 28:24;33:12;35:8; 45:5,14;53:6;57:21; 69:10;73:2;92:23; 97:9,10;107:20; 110:14;121:20; 141:17;146:20;149:1 <b>surely (1)</b> 66:25 <b>surprise (1)</b> 94:12 <b>surprising (1)</b> 104:25 <b>sustain (2)</b> 109:1;116:16 <b>Sustained (4)</b> 111:25;134:2; 135:11;139:25 <b>sworn (2)</b> 76:5,6 <b>system (3)</b> 20:13;146:22;147:2
<b>T</b>				
<b>tab (2)</b> 100:16,18 <b>table (1)</b> 4:9 <b>tailored (1)</b> 134:19 <b>takeaway (1)</b> 121:18 <b>talk (23)</b> 22:3;24:18;26:9; 27:16;32:17;37:8; 61:22;63:20;79:10; 84:2;87:18;91:12; 118:21;135:20; 136:20;148:23;150:7, 9;151:4,6;153:6; 158:10;163:24				



<b>talked (14)</b> 22:8;92:7;97:19; 101:13;119:20; 125:20;138:9,24; 139:14;156:8;158:14; 160:7,10;164:1	116:18;155:8;160:23	<b>threat (1)</b> 138:10	156:23	<b>trial (3)</b> 119:5;155:17,18
<b>talking (36)</b> 8:23;39:15;63:15, 18;64:2;65:23;80:5; 81:21,21;87:17,18; 90:20;95:25;96:10; 97:17;112:25;116:2, 3;122:8;123:16; 125:20,24;126:23; 133:13,14;138:16; 148:1,2;150:6,14; 151:5;162:15;163:5, 5;164:25,25	<b>testimony (15)</b> 15:9,15;41:15; 90:10;121:9;125:12; 141:4;145:5;161:20, 22,22,24;167:4,10,23	<b>threaten (1)</b> 130:14	<b>told (5)</b> 107:25;108:2,3; 134:13;148:19	<b>tried (1)</b> 55:10
<b>task (1)</b> 78:21	<b>tests (2)</b> 160:4,6	<b>threatened (2)</b> 122:24;138:6	<b>tomorrow (1)</b> 71:20	<b>triggering (1)</b> 118:11
<b>tasks (1)</b> 78:19	<b>Texas (1)</b> 124:2	<b>three (27)</b> 4:23;8:23;24:18; 54:4,12,25;55:12; 68:17;77:25;84:24; 85:20;87:12;104:21; 135:9,23;136:9,25; 137:10,16;138:3; 139:9,25;140:9; 145:25;160:4,6; 163:21	<b>took (2)</b> 37:25;75:5	<b>tri-party (1)</b> 38:13
<b>technically (2)</b> 49:16;72:6	<b>thanks (1)</b> 60:13	<b>thrilled (2)</b> 34:17,18	<b>top (5)</b> 81:25;82:12;85:13; 97:20;102:21	<b>trouble (1)</b> 37:3
<b>telling (1)</b> 91:14	<b>theme (3)</b> 50:2;104:18;118:4	<b>throughout (2)</b> 82:2;97:24	<b>tort (13)</b> 20:13;37:22;38:13; 46:18;58:15;88:1; 121:19;138:2,14,18; 146:22;147:1;166:6	<b>true (4)</b> 43:22;66:5;85:12; 111:20
<b>tells (1)</b> 147:25	<b>Therapia (2)</b> 55:21;58:11	<b>throw (1)</b> 72:14	<b>tortfeasor (4)</b> 37:23;38:14; 128:23;148:6	<b>trust (25)</b> 18:14;20:1,3;92:17, 18,19,20,21,22;93:6; 95:15;121:24;124:7, 19,20;132:8,10; 159:24;162:22; 166:13,14,14;168:3,4, 6
<b>temporary (8)</b> 72:10;126:16; 133:12,14;145:17; 150:15,16;166:2	<b>thereafter (2)</b> 7:8;38:2	<b>throwing (1)</b> 163:15	<b>torts (2)</b> 121:15;166:6	<b>Trustee (5)</b> 5:23;22:23;23:12; 92:23,25
<b>ten (8)</b> 31:10;73:15;87:10, 11;102:4;104:22; 125:15;139:13	<b>therefore (1)</b> 137:21	<b>ties (1)</b> 63:18	<b>total (8)</b> 69:5;102:4,19; 112:12,13,22;113:1; 135:9	<b>truth (1)</b> 151:25
<b>tend (1)</b> 30:13	<b>there'll (5)</b> 47:14;65:12;71:12; 104:2;148:8	<b>tight (5)</b> 125:14;155:13,14, 19;161:2	<b>touch (1)</b> 72:21	<b>try (10)</b> 14:6;45:2;56:18; 86:24;87:5;93:21; 104:23;109:8;143:23; 157:14
<b>tends (1)</b> 46:20	<b>thinking (2)</b> 107:13;121:16	<b>till (1)</b> 77:17	<b>toward (1)</b> 50:3	<b>trying (32)</b> 18:18,19,21;31:15; 39:1;41:22;44:22; 45:13;46:9,16;59:19; 60:2,2,5;78:16;98:7; 108:8,22;109:9; 115:10,15;120:13; 124:4,9,10;126:8; 127:3;136:21,21; 147:19;150:17; 168:24
<b>term (3)</b> 84:12;88:5;153:18	<b>third (4)</b> 25:9;119:1;150:22; 168:19	<b>timeframe (1)</b> 84:24	<b>towards (3)</b> 46:9;147:13;165:13	<b>turned (1)</b> 99:21
<b>terms (20)</b> 8:25;31:15;56:22; 62:7,7;69:2;71:10; 78:24;87:21;91:1; 92:24;96:6;108:17, 19;110:20,22;121:12; 130:23;149:22; 163:25	<b>third- (1)</b> 150:25	<b>times (2)</b> 8:18;102:15	<b>track (7)</b> 96:2;98:18,20; 99:10,11;100:10,12	<b>turn (9)</b> 14:15;20:4;31:24; 33:8;36:20;101:9; 105:25;131:20;165:9
<b>test (6)</b> 17:15;123:10; 159:12;161:7;167:24; 168:19	<b>third-party (9)</b> 43:13,21;74:17; 140:14;141:14;144:6; 148:8;151:17,23	<b>timing (2)</b> 30:17;32:17	<b>tracking (9)</b> 88:15;92:16;95:20, 21,23,24;98:14; 100:10,13	<b>turning (1)</b> 130:11
<b>testified (11)</b> 37:16;95:19;106:8; 107:5;108:18;109:2; 112:12,15;120:2; 130:19;158:13	<b>thirty (7)</b> 6:24;12:15;16:7; 59:3;77:10;87:17; 97:13	<b>title (1)</b> 76:20	<b>trade (1)</b> 64:6	<b>turns (1)</b> 61:10
<b>testify (16)</b> 11:16;12:3,4,9,21, 25;13:3,6,17;14:19, 24;15:5;115:23;	<b>thirty-five (6)</b> 87:7,11,17;118:24; 127:2,5	<b>Toby (4)</b> 4:10;5:11;23:20; 47:2	<b>traditional (2)</b> 131:1,3	<b>twelve (1)</b> 28:18
	<b>thirty-four (1)</b> 68:18	<b>today (52)</b> 4:12,16;5:2;8:18; 14:14,18;23:24; 24:10;26:6;33:22; 35:7;42:12,21;52:16; 53:3,6,13;54:3;55:3; 56:19;57:19,25; 60:14;61:11;67:18; 69:7,13;87:8;105:7; 141:4;143:10;146:10, 18;152:1;155:2,6,12; 156:5;157:1,8; 158:10,11;159:12; 161:20,23;162:9; 164:25;167:4,23; 169:18;170:15,20	<b>trajectory (1)</b> 19:24	<b>twenty (11)</b> 12:14;16:8;56:20; 59:3;82:18,19,21; 85:1;87:16;97:4; 138:23
	<b>thirty-four-years (1)</b> 66:23	<b>today's (3)</b> 53:17;149:20;162:7	<b>transactions (1)</b> 59:3	<b>twenty-million- (1)</b> 82:21
	<b>thirty-one (1)</b> 69:24	<b>together (7)</b> 36:15;66:16;71:14; 106:9;110:17;112:11;	<b>transcript (4)</b> 56:23;59:22,22; 65:25	<b>twenty-million-dollar (1)</b> 82:20
	<b>thirty-one-million-dollars (1)</b> 39:19		<b>transferring (1)</b> 100:7	
	<b>thirty-year (1)</b> 85:2		<b>transmit (1)</b> 99:13	
	<b>thorough (1)</b> 41:24		<b>transparent (4)</b> 63:4;67:10,22;68:6	
	<b>though (7)</b> 14:21;50:15;80:19; 113:5;139:16;146:12; 157:17		<b>travel (1)</b> 33:4	
	<b>thought (11)</b> 5:24,24;10:12;11:9; 33:14;35:19;61:2,9; 130:19;134:3;146:18		<b>Travelers (2)</b> 81:24;84:23	
	<b>thousands (2)</b> 70:1,13		<b>treated (1)</b> 42:7	
			<b>treatment (2)</b> 56:10;81:5	

September 10, 2024

<b>twenty-one (4)</b> 25:14;66:24;68:19; 69:25 <b>twenty-seven (2)</b> 27:14,19 <b>two (37)</b> 4:11;5:5,14;17:16; 23:24,25;24:13;25:7; 26:3;28:5,20;31:22; 39:4;50:16;51:5;54:6; 57:5,8,13,25;66:23; 77:19;84:25;102:21; 106:12;107:11,13; 108:8,11;123:4; 124:2;126:13;145:11, 25;155:19;156:5; 157:8 <b>two-page (1)</b> 101:10 <b>Tyler (7)</b> 4:7;11:4;52:9; 60:16;71:23;73:21; 154:12 <b>type (11)</b> 29:2;34:23;50:12; 58:10;70:2;71:13; 77:24;97:12;136:17, 19,24 <b>types (4)</b> 7:15;136:9;150:25; 168:25 <b>typical (3)</b> 58:14;93:14;123:10 <b>typically (8)</b> 7:1,14,17;15:25; 20:15;88:24;93:16; 114:15	86:19;88:2;90:13; 97:8;101:6;107:6; 122:6,13;123:7; 126:23;128:15; 129:14,21;131:18,21; 135:21,22;144:18; 147:24;152:13;158:2; 159:8;160:13;166:16 <b>underlying (7)</b> 88:12,15;96:1,18; 97:22;117:4;129:17 <b>underneath (2)</b> 41:7;44:6 <b>underperforming (1)</b> 132:19 <b>understands (2)</b> 83:11;146:20 <b>understood (6)</b> 17:19;38:1;91:18; 147:23;161:19;165:3 <b>undertake (1)</b> 19:14 <b>undertaken (3)</b> 20:16;21:6;63:8 <b>undertakes (1)</b> 22:12 <b>underway (1)</b> 20:11 <b>unfair (1)</b> 35:20 <b>unfortunate (1)</b> 151:25 <b>Unfortunately (1)</b> 148:13 <b>unique (2)</b> 37:9;81:4 <b>uniquely (1)</b> 37:20 <b>United (5)</b> 4:1;5:22;133:9,17, 20 <b>unless (9)</b> 9:4,14,16;10:1; 28:10;47:3;52:3; 94:25;169:20 <b>unlike (1)</b> 123:25 <b>unnecessary (3)</b> 118:13,14;123:18 <b>unquote (1)</b> 153:17 <b>unsecured (4)</b> 7:10;10:16;20:20; 115:14 <b>unusual (4)</b> 20:21;121:18; 129:14;136:1 <b>up (54)</b> 4:22;9:22;10:8; 11:10;26:1;34:18; 43:5,25;45:3,9;47:12; 59:19;66:6;71:14; 75:4;78:22;80:17,17,	20;81:18,25;82:5,12, 24;85:24;86:1,22; 87:12;89:19;92:22; 93:22;105:23;109:13; 119:20;121:24; 124:14;126:2;135:20; 136:14;137:23;138:5, 15;139:3;147:6; 150:9;151:7;155:3; 156:9;157:14,14,17, 19;159:18;170:17 <b>uploaded (1)</b> 10:18 <b>upon (7)</b> 60:24;63:9;64:13; 97:13;108:14;119:8; 136:12 <b>urge (2)</b> 29:13;154:6 <b>usable (1)</b> 100:4 <b>USC (2)</b> 63:5;64:4 <b>use (14)</b> 35:20;48:23;54:10; 55:8,13;57:17;60:4; 61:11;68:4;70:4; 80:15,16;123:5;153:5 <b>used (10)</b> 16:7;57:22;58:4; 70:10;80:7;84:1,8; 98:24;148:21;161:6 <b>using (5)</b> 59:13,20;101:12; 125:4;153:17 <b>usual (1)</b> 33:6 <b>utilize (2)</b> 98:19;99:23	41:9;76:19 <b>value (1)</b> 30:24 <b>Van (31)</b> 4:15;37:15;41:14; 49:12,15,19;72:23; 76:2,2,3,12;107:3; 108:18;109:2;110:13; 117:16;119:19;120:2; 124:22;130:19; 136:14;146:9;149:9; 155:8;156:8;158:12, 21;160:10,22;162:5; 167:10 <b>various (1)</b> 96:5 <b>vendettas (1)</b> 19:14 <b>venue (1)</b> 89:11 <b>venues (2)</b> 89:5,14 <b>verges (1)</b> 115:22 <b>verify (1)</b> 74:21 <b>version (1)</b> 80:9 <b>versions (2)</b> 79:25;80:2 <b>versus (9)</b> 18:18;109:7; 112:11,12,17;113:18, 22;126:21;136:15 <b>vertically (1)</b> 85:25 <b>vested (2)</b> 128:19,21 <b>vet (1)</b> 142:10 <b>via (1)</b> 59:10 <b>viable (1)</b> 165:19 <b>vice (3)</b> 42:22;45:20;53:15 <b>victim (3)</b> 38:3,14;43:13 <b>victims (4)</b> 30:21;31:6;37:22; 43:21 <b>view (1)</b> 159:24 <b>violates (1)</b> 139:12 <b>violating (1)</b> 61:23 <b>violations (4)</b> 17:24;21:2,3;35:5 <b>Virginia (6)</b> 4:2;37:21;38:7,12; 43:12,22 <b>virtue (2)</b>	66:10;167:2 <b>visible (1)</b> 11:13 <b>void (1)</b> 8:8  <b>W</b>  <b>Wait (5)</b> 107:19;109:5; 162:9,10;165:9 <b>waiting (2)</b> 32:18;125:14 <b>walk (2)</b> 81:8;102:10 <b>wallboard (1)</b> 137:4 <b>wants (7)</b> 8:11,21;49:22; 64:14;147:2;150:9; 155:20 <b>Ward (1)</b> 99:1 <b>warehouse (1)</b> 18:6 <b>warrants (1)</b> 67:6 <b>warranty (1)</b> 136:2 <b>Washington (1)</b> 63:14 <b>waste (1)</b> 164:6 <b>waved (2)</b> 68:23,23 <b>way (37)</b> 24:1;27:1;34:14; 35:22;39:17;56:15, 19;57:21;58:6;79:24; 80:17,20;81:19; 85:17,24,25;91:5; 100:24;104:24; 113:16;119:2;121:24; 127:6;139:3,6; 140:24;143:23,24; 146:11;147:23;148:5; 157:7;158:7;163:7; 165:1;166:14;168:25 <b>Wayne (14)</b> 74:18;91:9;92:1; 94:21;95:4,13;101:4; 119:1,3;135:18,24; 140:14;142:6,7 <b>Waynesboro (1)</b> 18:7 <b>ways (5)</b> 59:16,16;122:19; 123:4,15 <b>wayside (1)</b> 152:10 <b>week (6)</b> 31:21;37:16;49:19, 20;72:2;124:5
<b>U</b>				
<b>UCC (7)</b> 57:2,23;58:19,23; 59:6,11;71:4 <b>unavailable (1)</b> 83:14 <b>uncapped (1)</b> 137:20 <b>unclear (1)</b> 142:6 <b>uncontested (2)</b> 4:22;5:13 <b>under (70)</b> 6:25;8:5;11:18; 19:5;21:25;22:13; 23:8;25:15,15;27:6,7; 37:20;38:6,6,20; 39:10;42:6;43:13,15; 44:12,14;45:10;47:8, 9;48:22;56:13;58:2, 22,24;59:2,7,9;62:8; 64:2,12;65:4,22; 67:21;68:7,7,12,15, 16,25;70:17,22;	<b>United (5)</b> 4:1;5:22;133:9,17, 20 <b>unless (9)</b> 9:4,14,16;10:1; 28:10;47:3;52:3; 94:25;169:20 <b>unlike (1)</b> 123:25 <b>unnecessary (3)</b> 118:13,14;123:18 <b>unquote (1)</b> 153:17 <b>unsecured (4)</b> 7:10;10:16;20:20; 115:14 <b>unusual (4)</b> 20:21;121:18; 129:14;136:1 <b>up (54)</b> 4:22;9:22;10:8; 11:10;26:1;34:18; 43:5,25;45:3,9;47:12; 59:19;66:6;71:14; 75:4;78:22;80:17,17,		<b>V</b>	
		<b>vacate (1)</b> 9:15 <b>vacated (1)</b> 9:3 <b>Vacating (1)</b> 8:9 <b>vacuum (1)</b> 113:21 <b>Valerie (1)</b> 135:6 <b>valid (13)</b> 13:16;18:18,19; 39:7;40:1;109:3,7,9,9, 12;111:12;118:12; 153:12 <b>validity (1)</b> 138:19 <b>valuable (6)</b> 17:23;18:4,12,13; 30:22;31:5 <b>valuation (2)</b>		<b>via (1)</b> 59:10 <b>viable (1)</b> 165:19 <b>vice (3)</b> 42:22;45:20;53:15 <b>victim (3)</b> 38:3,14;43:13 <b>victims (4)</b> 30:21;31:6;37:22; 43:21 <b>view (1)</b> 159:24 <b>violates (1)</b> 139:12 <b>violating (1)</b> 61:23 <b>violations (4)</b> 17:24;21:2,3;35:5 <b>Virginia (6)</b> 4:2;37:21;38:7,12; 43:12,22 <b>virtue (2)</b>

September 10, 2024

<b>weekend (1)</b> 53:4	72:21;122:3;129:16; 19:158:3;25;165:19	<b>year (3)</b> 83:23;87:11;164:17	14:20;16:2;19:23; 20:1;63:5;64:4;75:3; 129:25;130:5,6; 162:22	34:12,18;36:2;78:9; 84:17;87:3
<b>weeks (2)</b> 8:23;141:8	<b>witness (16)</b> 11:19,22;50:23; 61:22;72:22;74:1; 75:3,22,24;76:6; 109:21;110:8;128:11; 142:18;153:9,10	<b>years (36)</b> 12:14,15,19;13:8; 16:7,8,22;37:15,18; 59:4;66:24;68:19; 69:25;77:10,19,25; 81:9;84:24,25;85:2, 20;87:16;88:25; 92:11;101:15,16,20; 102:1;103:11;104:21, 23;112:16;124:4; 125:25;129:9;138:23	<b>11:37 (1)</b> 73:18 <b>11:54 (1)</b> 73:18 <b>1175 (1)</b> 149:6 <b>12th (4)</b> 7:7;24:9;35:2,3 <b>14 (1)</b> 23:8 <b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>weren't (7)</b> 53:6;62:4;83:15; 84:25;86:6,12;139:2	<b>witnesses (2)</b> 49:11;143:2	<b>yesterday (15)</b> 19:16;20:23,24; 27:9;32:23;35:24; 42:9;53:4,9,15;65:25; 100:7;117:23,25; 141:8 <b>York (5)</b> 37:20;38:6;43:12, 22;64:16	<b>11:54 (1)</b> 73:18 <b>1175 (1)</b> 149:6 <b>12th (4)</b> 7:7;24:9;35:2,3 <b>14 (1)</b> 23:8 <b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>what's (17)</b> 6:25;61:5;64:22; 65:19,21;68:25; 82:25;95:23;96:10; 107:24;109:3;125:13; 127:13;142:17;151:8; 161:1;168:8	<b>work (38)</b> 14:22;21:6,14;29:6; 36:15;37:14;41:19; 46:20;48:17,24;49:6, 24;50:3;57:15;61:3; 62:6;71:14,25;73:23; 77:25;78:13;79:6; 80:12,17;85:24; 92:16;93:24;97:15; 99:3,8;102:25; 120:15,18;137:3; 143:21,24;164:15; 165:13	<b>Z</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>whatsoever (1)</b> 153:12	<b>worked (5)</b> 49:1;86:24;124:16; 156:10;166:16	<b>zero (1)</b> 18:23	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>whereas (1)</b> 44:23	<b>work (38)</b> 14:22;21:6,14;29:6; 36:15;37:14;41:19; 46:20;48:17,24;49:6, 24;50:3;57:15;61:3; 62:6;71:14,25;73:23; 77:25;78:13;79:6; 80:12,17;85:24; 92:16;93:24;97:15; 99:3,8;102:25; 120:15,18;137:3; 143:21,24;164:15; 165:13	<b>0</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>Whereupon (1)</b> 170:24	<b>workers' (1)</b> 55:25	<b>05 (1)</b> 77:17	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>White (1)</b> 139:14	<b>worker's (1)</b> 128:9	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>whole (6)</b> 32:24;37:10;97:24; 133:22;152:25; 159:15	<b>working (14)</b> 15:3;27:17;36:3; 46:16,16;49:15,17; 76:25;77:2;78:2; 85:10;89:25;103:10; 112:6	<b>1 (4)</b> 74:7;82:12;125:7; 128:12 <b>1- (1)</b> 112:10 <b>10 (9)</b> 75:3,22;101:9,10; 103:4,7,9;116:22; 150:20 <b>10.4 (1)</b> 150:19 <b>100 (1)</b> 90:16 <b>1003 (1)</b> 131:10 <b>101 (1)</b> 23:8 <b>105 (4)</b> 44:12;125:4; 131:21;159:8 <b>105a (1)</b> 123:7 <b>107 (5)</b> 58:21;63:5;70:18, 20;71:3 <b>10th (3)</b> 24:6;35:1;51:1 <b>11 (11)</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>wholesale (1)</b> 64:1	<b>works (2)</b> 99:5;148:5	<b>105 (1)</b> 77:17	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>who's (1)</b> 160:16	<b>world (3)</b> 16:17,17;46:9	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>whose (1)</b> 162:16	<b>worried (1)</b> 66:7	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>wide (1)</b> 15:25	<b>worth (4)</b> 37:17;41:10,10,13	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>widely (1)</b> 38:1	<b>Wow (1)</b> 112:4	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;90:7,21,22	<b>2005 (1)</b> 77:16 <b>2009 (1)</b> 95:22 <b>2014 (1)</b> 129:3 <b>2016 (1)</b> 12:7 <b>2017 (2)</b> 77:18;80:11 <b>2019 (1)</b> 103:2 <b>2020 (2)</b> 89:9;103:2 <b>2021 (2)</b> 55:23;58:11 <b>2022 (1)</b> 77:18 <b>2024 (1)</b> 87:3 <b>22nd (2)</b> 27:3;28:16 <b>25,000 (1)</b> 21:12 <b>26 (1)</b> 60:9 <b>2nd (2)</b> 82:17;155:4
<b>willing (7)</b> 68:3;84:22,25;85:2; 164:15;166:1,3	<b>writ (1)</b> 146:8	<b>1</b>	<b>15th (5)</b> 6:19,20,23;7:9,25 <b>172 (1)</b> 53:15 <b>18.8 (1)</b> 102:16 <b>1937 (2)</b> 81:18;83:5 <b>1959 (3)</b> 79:16;81:18;83:1 <b>1965 (2)</b> 84:24;96:12 <b>1970 (1)</b> 82:18 <b>1974 (2)</b> 82:4;89:8 <b>1975 (1)</b> 64:17 <b>1977 (1)</b> 83:23 <b>1980s (2)</b> 37:19;85:4 <b>1984 (3)</b> 83:12,17;96:22 <b>1985 (3)</b> 79:16;83:11;96:12 <b>1986 (1)</b> 149:7 <b>1989 (1)</b> 81:18 <b>1990 (4)</b> 54:6;	

September 10, 2024

<b>362a3 (8)</b> 121:13;122:1,13; 123:2;128:16;148:20, 24;149:21	83:25 <b>7th (1)</b> 42:23			
<b>363f (1)</b> 47:9	<b>8</b>			
<b>38.2-2200 (1)</b> 38:7	<b>8 (9)</b> 74:12,25;75:8,10, 12,13,16,19;128:25			
<b>4</b>	<b>805 (1)</b> 149:6			
<b>4 (4)</b> 7:9;74:14,16;162:6	<b>84 (1)</b> 83:18			
<b>4,200 (1)</b> 27:17	<b>85 (2)</b> 81:10;89:13			
<b>40 (2)</b> 64:17;129:3	<b>9</b>			
<b>46 (1)</b> 64:17	<b>9 (7)</b> 75:3,21,23;79:11; 114:8;117:12;162:1			
<b>4th (11)</b> 7:4,17,21,24;8:3, 21;9:5,10;10:1,3; 82:18	<b>9019 (4)</b> 47:8;141:23; 142:12;145:13			
<b>5</b>				
<b>5 (2)</b> 24:2;74:14				
<b>502e (1)</b> 149:17				
<b>524g (3)</b> 131:16;132:12; 133:4				
<b>53 (1)</b> 24:6				
<b>56 (1)</b> 150:19				
<b>59 (1)</b> 81:10				
<b>6</b>				
<b>6 (2)</b> 74:20;105:25				
<b>6,000- (1)</b> 18:7				
<b>65d (1)</b> 134:11				
<b>67 (2)</b> 64:17;82:17				
<b>6th (2)</b> 6:22;33:14				
<b>7</b>				
<b>7 (4)</b> 74:23;100:15,18; 128:25				
<b>70s (1)</b> 37:19				
<b>74 (1)</b> 89:12				
<b>77 (1)</b>				



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

In re:

HOPEMAN BROTHERS, INC.,  
  
Debtor.

Chapter 11

Case No. 24-32428 (KLP)

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Appellant,

v.

HOPEMAN BROTHERS, INC.,  
  
Appellee.

Civil Action No. \_\_\_\_\_

**MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE  
OF UNSECURED CREDITORS FOR LEAVE TO APPEAL FROM  
SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY**

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## **TABLE OF CONTENTS**

Preliminary Statement.....	1
Background.....	5
Questions of Law Presented for Interlocutory Review.....	8
Argument .....	9
I. The Bankruptcy Court’s Stay Order Is Final and Appealable of Right Under 28 U.S.C. § 158(a)(1).....	9
II. The Bankruptcy Court’s Stay Order Is Immediately Appealable Based on the Collateral Order Doctrine .....	11
A. The Order Conclusively Determines the Disputed Question.....	12
B. The Stay Order Resolves an Important Issue Separate from the Merits of the Debtor’s Chapter 11 Case.....	13
C. The Stay Order Would Be Effectively Unreviewable on Appeal from Final Judgment.....	14
III. Alternatively, If the Stay Order Is Interlocutory, This Court Should Grant Leave to Appeal Under 28 U.S.C. § 158(a)(3).....	15
A. The Committee’s Appeal Presents Controlling Questions of Law .....	16
B. The Committee Is Presenting Legal Questions as to Which There Are Substantial Grounds for Differences of Opinion.....	17
1. Whether a court is barred from granting preliminary injunctive relief (in the form of “extending” the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief .....	18
2. Whether the proponent of a preliminary injunction or stay extension can meet the “likelihood of success” element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize.....	20
C. Immediate Appeal May Materially Advance the Termination of the Litigation .....	22
Conclusion .....	23

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>A.H. Robins Co. v. Piccinin</i> , 788 F.2d 994 (4th Cir. 1986) .....	21, 22
<i>In re Al's Transmission Serv., Inc.</i> , No. 95-1-1579-PM, 1995 WL 781697 (Bankr. D. Md. Dec. 28, 1995) .....	13
<i>In re Aldrich Pump LLC</i> , No. 20-30608 (JCW), 2021 WL 3729335 (Bankr. W.D.N.C. Aug. 23, 2021) .....	20
<i>Barcelona Cap., LLC v. Neno Cab Corp.</i> , 648 B.R. 578 (E.D.N.Y. 2023) .....	16, 17, 18, 22
<i>In re Bestwall LLC</i> , 606 B.R. 243 (Bankr. W.D.N.C. 2019), <i>aff'd</i> , No. 3:20-CV-103-RJC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022), <i>aff'd</i> , 71 F.4th 168 (4th Cir. 2023) .....	20
<i>In re Bestwall LLC</i> , No. 3:20-CV-103-RJC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022), <i>aff'd</i> , 71 F.4th 168 (4th Cir. 2023), <i>cert. denied</i> , 144 S. Ct. 2519, <i>and cert. denied</i> , 144 S. Ct. 2520 (2024) .....	10, 11
<i>In re Bestwall LLC</i> , No. 3:21-CV-151-RJC, 2021 WL 1857295 (W.D.N.C. May 10, 2021) .....	15
<i>In re Biltmore Invs., Ltd.</i> , 538 B.R. 706 (W.D.N.C. 2015) .....	16
<i>In re Boxall</i> , 188 B.R. 198 (E.D. Va. 1995) .....	12, 13
<i>Bailey ex rel. Brown v. Exxon Mobil Corp.</i> , 76 So. 3d 53 (La. Ct. App. 2011) .....	14
<i>Bullard v. Blue Hills Bank</i> , 575 U.S. 496 (2015) .....	9, 10, 11
<i>Cohen v. Beneficial Indus. Loan Corp.</i> , 337 U.S. 541 (1949) .....	11

<i>In re Colonial Penniman, LLC</i> , 575 B.R. 664 (Bankr. E.D. Va. 2017) (Santoro, J.), <i>aff'd in part, remanded in part sub nom. Williams v. Colonial Penniman, LLC</i> , 582 B.R. 391 (E.D. Va. 2018) .....	13
<i>COMM 2013 CCRE12 Crossing Mall Rd., LLC v. Tara Retail Grp., LLC</i> , No. 1:17CV67, 2017 WL 2837015 (N.D. W. Va. June 30, 2017) .....	18
<i>In re Computer Learning Ctrs., Inc.</i> , 407 F.3d 656 (4th Cir. 2005) .....	9, 11
<i>Craddock Washabaugh v. Miller</i> , No. 1:16CV694, 2016 WL 4574690 (M.D.N.C. Sept. 1, 2016) .....	15
<i>David v. Alphin</i> , No. 3:07-CV-11-RJC-DLH, 2009 WL 3633889 (W.D.N.C. Oct. 30, 2009) .....	17
<i>De Beers Consol. Mines v. United States</i> , 325 U.S. 212 (1945) .....	7, 8, 19, 20
<i>In re Env't Manucraft Inc.</i> , 118 B.R. 404 (Bankr. D.S.C. 1989) .....	21
<i>In re Excel Innovations, Inc.</i> , 502 F.3d 1086 (9th Cir. 2007) .....	10
<i>Fannin v. CSX Transp., Inc.</i> , 873 F.2d 1438 (4th Cir. 1989) (per curiam) (unpublished table decision) .....	16
<i>First Owners' Ass'n of Forty Six Hundred v. Gordon Props., LLC</i> , 470 B.R. 364 (E.D. Va. 2012) .....	15, 16
<i>Fung Retailing Ltd. v. Toys "R" Us, Inc.</i> , 593 B.R. 724 (E.D. Va. 2018) (Gibney, J.) .....	10, 11
<i>Gaston v. Lexisnexis Risk Sols.</i> , No. 5:16-CV-9, 2017 WL 5340384 (W.D.N.C. Nov. 13, 2017) .....	16
<i>Gateway Residences at Exch., LLC v. Ill. Union Ins. Co.</i> , 917 F.3d 269 (4th Cir. 2019) .....	2
<i>Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.</i> , 527 U.S. 308 (1999) .....	19, 20
<i>Warfle ex rel. Guffey v. Sec'y of Health &amp; Hum. Servs.</i> , 92 Fed. Cl. 361 (2010) .....	14

<i>Harrington v. Purdue Pharma L.P.</i> , 144 S. Ct. 2071 (2024).....	18
<i>In re Johns-Manville Corp.</i> , 26 B.R. 420 (S.D.N.Y. 1983).....	22
<i>Kadel v. Folwell</i> , 446 F. Supp. 3d 1 (M.D.N.C. 2020), <i>aff'd sub nom. Kadel v. N.C. State Health Plan for Tchrs. &amp; State Emps.</i> , 12 F.4th 422 (4th Cir. 2021).....	14
<i>Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC</i> , No. 13 CIV. 4650 JFK, 2014 WL 4783008 (S.D.N.Y. Sept. 25, 2014) .....	21
<i>In re Lee</i> , 461 F. App'x 227 (4th Cir. 2012) .....	10
<i>In re Looney</i> , 823 F.2d 788 (4th Cir. 1987) .....	14
<i>Lumbermen's Mut. Cas. Co. v. Elbert</i> , 348 U.S. 48 (1954).....	2
<i>In re Marine Power &amp; Equip. Co.</i> , 71 B.R. 925 (W.D. Wash. 1987).....	10
<i>Martin v. Garrett</i> , No. 1:17-CV-350-MOC-WCM, 2020 WL 4700717 (W.D.N.C. Aug. 13, 2020).....	22
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	14
<i>McDow v. Dudley</i> , 662 F.3d 284 (4th Cir. 2011) .....	11
<i>McFarlin v. Conseco Servs., LLC</i> , 381 F.3d 1251 (11th Cir. 2004) .....	17
<i>Mort Ranta v. Gorman</i> , 721 F.3d 241 (4th Cir. 2013) .....	9, 11
<i>In re New Towne Dev., LLC</i> , 410 B.R. 225 (Bankr. M.D. La. 2009) .....	19
<i>In re Optical Techs., Inc.</i> , 216 B.R. 989 (Bankr. M.D. Fla. 1997) .....	19
<i>P.R. Aqueduct &amp; Sewer Auth. v. Metcalf &amp; Eddy, Inc.</i> , 506 U.S. 139 (1993).....	13

<i>In re Pitts</i> , No. 808-74860-REG, 2009 WL 4807615 (Bankr. E.D.N.Y. Dec. 8, 2009).....	21
<i>In re Plan 4 Coll., Inc.</i> , No. 09-17952DK, 2009 WL 3208285 (Bankr. D. Md. Sept. 24, 2009) .....	21
<i>Ritzen Grp., Inc. v. Jackson Masonry, LLC</i> , 589 U.S. 35 (2020).....	10
<i>Sales v. U.S. Underwriters Ins. Co.</i> , No. 93 CIV. 7580 (CSH), 1995 WL 144783 (S.D.N.Y. Apr. 3, 1995) .....	3
<i>Shapiro v. Republic Indem. Co. of Am.</i> , 341 P.2d 289 (Cal. 1959) .....	3
<i>Smith &amp; Wesson v. Birmingham Fire Ins. Co.</i> , 510 N.Y.S.2d 606 (N.Y. App. Div 1987) .....	3
<i>Storm v. Nationwide Mut. Ins. Co.</i> , 97 S.E.2d 759 (Va. 1957).....	3
<i>In re Teknek, LLC</i> , 343 B.R. 850 (Bankr. N.D. Ill. 2006) .....	20
<i>Thomas v. Maximus, Inc.</i> , No. 3:21CV498 (DJN), 2022 WL 1482008 (E.D. Va. May 10, 2022).....	16, 17
<i>United States v. Moussaoui</i> , 483 F.3d 220 (4th Cir. 2007) .....	12, 13
<i>West v. Monroe Bakery, Inc.</i> , 46 So. 2d 122 (La. 1950) .....	2
<i>In re Wijewickrama</i> , No. 1:16-CV-00347-MR, 2018 WL 2212983 (W.D.N.C. Mar. 15, 2018).....	16
<i>Winter v. Nat’l Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	20

## **Statutes**

11 U.S.C. § 105(a) .....	7
11 U.S.C. § 362(a) .....	2
11 U.S.C. § 362(a)(1).....	3, 7
11 U.S.C. § 362(a)(3).....	7

11 U.S.C. § 524(e) .....	18
11 U.S.C. § 524(g) .....	18
11 U.S.C. § 524(g)(1)(A) .....	18
11 U.S.C. § 1102(a) .....	6
11 U.S.C. § 1107(a) .....	5
11 U.S.C. § 1108 .....	5
11 U.S.C. § 1141(d)(3) .....	18
28 U.S.C. § 158(a)(1) .....	1, 9
28 U.S.C. § 158(a)(3) .....	1, 15
28 U.S.C. § 1292(b) .....	15, 16, 20
ARIZ. REV. STAT. ANN. § 14-3110 .....	15
FLA. STAT. ANN. § 768.21 .....	15
IDAHO CODE § 5-327(2) .....	15
<b>Other Authorities</b>	
Fed. R. Bankr. P. 8004 .....	1



Appellant, the Official Committee of Unsecured Creditors (“**Committee**”) of Hopeman Brothers, Inc., by and through its undersigned counsel, hereby moves this Court for leave to appeal from the *Second Interim Order Extending the Automatic Stay to Asbestos- Related Actions Against Non-Debtor Defendants* (ECF No. 245)<sup>1</sup> (“**Stay Order**”), entered by the United States Bankruptcy Court for the Eastern District of Virginia (Phillips, J.) (“**Bankruptcy Court**”) on September 25, 2024.

The Committee brings this Motion in an abundance of caution. For the reasons explained below, the Committee believes that the Stay Order is a final order that gives the Committee an appeal of right under 28 U.S.C. § 158(a)(1) or alternatively, is an immediately appealable order under the collateral order doctrine. In either case, the Committee can present for appellate review all factual and legal issues connected with the Stay Order. Nevertheless, if this Court concludes that the Stay Order is neither final nor an appealable collateral order, the Committee requests leave to pursue an interlocutory appeal under 28 U.S.C. § 158(a)(3) and Federal Rule of Bankruptcy Procedure 8004 on the questions of law described below.

For the reasons set forth below, this Court should determine that the Stay Order is immediately appealable without leave because it is a final or collateral order or, alternatively, grant the Committee leave to pursue the interlocutory appeal requested herein.

### **PRELIMINARY STATEMENT**

1. This appeal arises from the chapter 11 case of Hopeman Brothers, Inc. (“**Debtor**”), which is pending before the Bankruptcy Court. Before selling its operating business in 2003, the Debtor was a joiner subcontractor that, *inter alia*, installed ceiling and wall panels inside ocean-going vessels. These panels contained asbestos fibers that were released during installation, which

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<sup>1</sup> All ECF numbers referenced herein are in the above-captioned bankruptcy case.

caused exposures to those fibers and resulting illnesses or death to tens of thousands of individuals. The Debtor thus filed for chapter 11 relief facing claims for personal injury or wrongful death arising from these asbestos exposures.

2. The filing of the Debtor’s chapter 11 petition automatically stayed the commencement and continuation of asbestos lawsuits against the Debtor. *See* 11 U.S.C. § 362(a). Nevertheless, in certain States—most notably here, Louisiana—individuals holding asbestos claims against the Debtor may pursue “direct actions” against the Debtor’s liability insurers without having to name the Debtor as a co-defendant.<sup>2</sup> One of those insurers is Liberty Mutual Insurance Company (“**Liberty**”), which for decades provided to the Debtor primary and umbrella-level liability insurance coverage that was—and remains—responsive to asbestos-related claims against the Debtor.

3. In conjunction with its chapter 11 filing, the Debtor filed a motion with the Bankruptcy Court to “extend” the § 362(a) stay to enjoin the direct actions of asbestos claimants against the Debtor’s asbestos insurers, including Liberty. The Committee filed a limited objection to the stay motion, opposing only the stay of direct actions against Liberty for two reasons. First, direct actions against Liberty would not implicate or affect property of the Debtor’s bankruptcy estate because the Debtor had disclaimed any interest in the Liberty insurance coverage, contending that the Liberty coverage “is exhausted and released” based on an agreement the Debtor

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<sup>2</sup> *See Lumbermen’s Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 51 (1954) (finding the Louisiana direct action statute creates “a separate and distinct cause of action against the insurer which an injured party may elect in lieu of his action against the tortfeasor”); *Gateway Residences at Exch., LLC v. Ill. Union Ins. Co.*, 917 F.3d 269, 272 (4th Cir. 2019) (finding that under the direct action statute, “a plaintiff may sue a tortfeasor’s liability insurer without joining the tortfeasor as a defendant and establish both the insured’s liability and the insurer’s obligation in a single suit” (citing LA. STAT. ANN. § 22:1269(B))); *West v. Monroe Bakery, Inc.*, 46 So. 2d 122, 123 (La. 1950) (finding the direct action statute thus confers “substantive rights on third parties to contracts of public liability insurance, which become vested at the moment of the accident in which they are injured”).

entered into with Liberty in 2003.<sup>3</sup> But even though the Debtor believes that it has released *its* interest in the Liberty coverage, asbestos claimants across the country, who possess enforceable rights under the applicable policies, have not released *their* interests, which cannot be extinguished or altered by a subsequent bilateral agreement between the Debtor and Liberty.<sup>4</sup>

4. Second, direct actions against Liberty are not stayed under 11 U.S.C. § 362(a)(1) because, by its express terms, the statute stays proceedings against only debtors, not nondebtor codefendants. The Debtor nevertheless argued that there were “unusual circumstances” favoring an expansion of the stay beyond its statutory terms based on an alleged “identity of interest” between the Debtor and Liberty. In particular, the Debtor asserted that Liberty had threatened to seek indemnification from the Debtor and its bankruptcy estate if direct actions against Liberty

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<sup>3</sup> Hr’g Tr. 54:4-7, Sept. 10, 2024 (K. Finnerty) (“There’s three agreements . . . entered into between the debtor and Liberty, one executed in 1990, two executed in 2003 . . .”). A copy of the partially redacted September 10, 2024 hearing transcript is annexed to the Motion of the Official Committee of Unsecured Creditors for Leave to Appeal From Second Interim Order Extending the Automatic Stay, filed contemporaneously herewith, at **Exhibit B**.

<sup>4</sup> See *Storm v. Nationwide Mut. Ins. Co.*, 97 S.E.2d 759, 764 (Va. 1957) (noting that “rights and interests” of an injured person under a liability insurance policy cannot be “defeated” between the actions of the insured and the insurer under “what the statutes make a tri-party contract”); see also, e.g., *Smith & Wesson v. Birmingham Fire Ins. Co.*, 510 N.Y.S.2d 606, 608 (N.Y. App. Div 1987) (“[I]f a settlement is recognized as binding upon the non-participating injured third party, the insurer and insureds would have a strong incentive to settle, merely to limit the amount the injured third party could collect against the insurer. This would defeat the beneficial purposes of [New York] Insurance Law § 3420.”); *Sales v. U.S. Underwriters Ins. Co.*, No. 93 CIV. 7580 (CSH), 1995 WL 144783, at \*9 (S.D.N.Y. Apr. 3, 1995) (“[P]laintiffs’ right of action under [New York Insurance Law] Section 3420(a)(2) accrued at the time of the injury, and . . . any subsequent settlement or release effectuated by . . . [the tortfeasor] and . . . [insurance company] is not determinative of plaintiffs’ rights.”); *Shapiro v. Republic Indem. Co. of Am.*, 341 P.2d 289, 291 (Cal. 1959) (noting that persons injured by a tortfeasor are “third-party beneficiaries of the [tortfeasor’s] policy” and “had an interest that could not be altered or conditioned by independent action of the insurer and the insured. Nor can these rights be conclusively determined against the injured persons in an action to which they were not made parties.”).

were not stayed.<sup>5</sup> But Liberty's supposed indemnification rights against the Debtor are allegedly based on an agreement that was never offered into evidence at the hearing on the stay motion.<sup>6</sup> And the Debtor did not list Liberty as a creditor on its bankruptcy schedules, which undercuts the Debtor's own assertions that it faces the risk of indemnification claims from Liberty as a result of continuing direct actions.

5. After a contested evidentiary hearing on September 10, 2024, the Bankruptcy Court granted the Debtor's stay motion and ruled that direct actions against Liberty would be stayed. The Bankruptcy Court subsequently entered the Stay Order. By this appeal, the Committee seeks reversal of the Stay Order only with respect to direct actions against Liberty.

6. The Stay Order is the product of factual and legal errors that warrant immediate appellate review. If this Court determines that the Stay Order is appealable, either as a final order or under the collateral order doctrine, the Committee intends to present for appellate review all factual and legal issues pertaining to the Stay Order. If, however, the Court determines that the Stay Order is interlocutory, it should grant leave to appeal because the Stay Order raises controlling questions of law (described below) as to which there is substantial ground for difference of opinion. Additionally, an immediate appeal from the Stay Order may materially advance the ultimate termination of the litigation because it could definitively determine that the automatic stay does not extend to direct actions against Liberty or narrow significant legal issues in the bankruptcy case. Accordingly, this Court should grant the relief requested herein.

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<sup>5</sup> *E.g.*, Omnibus Reply in Support of Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants ¶ 25, ECF No. 157; Hr'g Tr. 122:22-24 (T. Brown) ("You're substituting Liberty on the same claim against the debtor. Liberty has threatened to make an indemnity claim.").

<sup>6</sup> Hr'g Tr. 75:3-6 (T. Brown).

## **BACKGROUND**

7. On June 30, 2024, the Debtor commenced the above-captioned bankruptcy case by filing its petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to act as a debtor-in-possession in accordance with 11 U.S.C. §§ 1107(a) and 1108. The Debtor asserts that it commenced its chapter 11 case “to utilize . . . [its] remaining cash and its unexhausted insurance policies issued by solvent insurers to address the over 2,700 asbestos-related personal injury claims asserted and unresolved against the Debtor as of June 23, 2024, as well as likely-to-be asserted prepetition asbestos-related personal injury claims against the Debtor.”<sup>7</sup> The Debtor has filed motions seeking the Bankruptcy Court’s approval of insurance settlement agreements that the Debtor entered into with certain of its insurers to monetize its asbestos-related insurance coverage.<sup>8</sup> The Debtor has also proposed a chapter 11 plan of liquidation that, if confirmed by the Bankruptcy Court, would establish a liquidation trust to receive the insurance settlement proceeds and to liquidate and pay from those proceeds eligible asbestos claims.<sup>9</sup>

8. Also on June 30, 2024, the Debtor filed the Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against

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<sup>7</sup> Motion of the Debtor for Entry of an Order (I) Establishing Bar Dates for Submitting Proofs of Non-Asbestos Claim; (II) Approving Procedures for Submitting Proofs of Non-Asbestos Claim; (III) Approving Notice Thereof; (IV) Approving a Tailored Proof of Non-Asbestos Claim Form; and (V) Granting Related Relief ¶ 9, at 3, ECF No. 74.

<sup>8</sup> See Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (III) Approving the Sale of Certain Insurance Policies; (IV) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief, ECF No. 9; Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (IV) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief, ECF No. 53.

<sup>9</sup> See Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, ECF No. 56.

Non-Debtor Defendants (ECF No. 7) (“**Stay Motion**”). The Stay Motion sought to prevent asbestos victims from, *inter alia*, bringing direct actions against Liberty during the pendency of the chapter 11 case and identified only thirty-five (35) pending actions against Liberty. Stay Mot. ¶¶ 15-17; *id.* at Ex. 1.

9. On July 3, 2024, at a hearing before the Bankruptcy Court on “first-day” motions and prior to the Committee’s appointment, the Bankruptcy Court granted the Stay Motion on an interim basis and issued the first Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 35) (“**First Stay Order**”). The First Stay Order set a final hearing on the Stay Motion “[i]f a timely objection is received . . . to consider such timely objection to the Motion.” First Stay Order ¶ 7.

10. On July 15, 2024, the Debtor filed its Schedules of Assets and Liabilities (ECF No. 59) and Statements of Financial Affairs (ECF No. 60). Neither filing disclosed Liberty as a creditor of the Debtor or indicated that Liberty had potential claims for indemnification against the Debtor.

11. On July 22, 2024, the Office of the United States Trustee formed the Committee and appointed its members.<sup>10</sup> The Committee is a statutory committee of creditors appointed under 11 U.S.C. § 1102(a) that represents the shared interests of the Debtor’s unsecured creditors, including, notably, those holding asbestos-related claims against the Debtor.

12. On August 30, 2024, the Committee filed the Limited Objection of the Official Committee of Unsecured Creditors to the Debtor’s Motion for Extension of the Automatic Stay to Enjoin Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 141) (“**Objection**”), whereby the Committee objected to the Stay Motion to the extent it sought to enjoin direct actions by asbestos claimants against Liberty. The Committee asserted in its Objection that direct actions

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<sup>10</sup> Appointment of Unsecured Creditors Committee (ECF No. 69).

against Liberty could not be stayed under § 362(a)(3) of the Bankruptcy Code because, according to the Debtor itself, those actions do not implicate and would not affect property of the Debtor's estate. Obj. ¶¶ 5-8. Further, direct actions against Liberty could not be stayed under § 362(a)(1) because § 362(a)(1) stays proceedings against only debtors, not nondebtor codefendants. Obj. ¶¶ 9-16.

13. On September 9, 2024, the Debtor filed the Omnibus Reply in Support of Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 157) (“**Reply**”). For the first time in its Reply, and less than twenty-four (24) hours before the hearing on the Stay Motion, the Debtor argued that, where the automatic stay could not be extended under §§ 362(a)(1) and 362(a)(3), the Bankruptcy Court could grant a preliminary injunction under § 105(a) of the Bankruptcy Code. Reply ¶¶ 32-59.

14. On September 10, 2024, the Bankruptcy Court held a contested evidentiary hearing on the Stay Motion. At that hearing, the Committee argued, *inter alia*, that the Bankruptcy Court could not grant a preliminary injunction where it failed to meet the four-factor test of the Fourth Circuit, which requires a reasonable likelihood of a successful reorganization.<sup>11</sup>

15. The Committee also argued, *inter alia*, that the Supreme Court's decision in *De Beers Consol. Mines v. United States* barred the Bankruptcy Court from granting preliminary injunctive relief because Liberty was ineligible for permanent injunctive relief in the Debtor's bankruptcy case. 325 U.S. 212, 220 (1945) (holding a preliminary injunction may not be granted when such an injunction is not “of the same character as that which may be granted finally”).<sup>12</sup>

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<sup>11</sup> Hr'g Tr. 132:1-18 (J. Liesemer).

<sup>12</sup> Hr'g Tr. 133:2-22 (J. Liesemer).

16. In response to the Committee’s arguments, the Bankruptcy Court determined that the “likelihood of success” prong was not limited to only reorganizations but could be applied to liquidations as well.<sup>13</sup> The Bankruptcy Court also disagreed that *De Beers* should be applied to a temporary stay during the pendency of the case.<sup>14</sup> Ultimately, the Bankruptcy Court ruled that it would grant the Stay Motion and, among other things, stay direct actions against Liberty. The Bankruptcy Court determined that the stay should be extended to Liberty principally based on Liberty’s threat that it would seek indemnification from the Debtor if direct actions against Liberty were allowed to proceed. But the agreement that allegedly vested Liberty with indemnification rights was never offered into evidence.

17. On September 25, 2024, the Bankruptcy Court entered the Stay Order. By its express terms, the Stay Order is to remain in effect until March 10, 2025, unless the Bankruptcy Court extends its duration or enters a third interim stay order or a final stay order. Stay Order ¶¶ 1,6.

#### **QUESTIONS OF LAW PRESENTED FOR INTERLOCUTORY REVIEW**

18. If this Court determines that the Stay Order is immediately appealable as a final order or based on the collateral order doctrine, the Committee will seek appellate review of all factual and legal issues connected with the Stay Order. If, however, this Court determines that the Stay Order is interlocutory, the Committee requests leave to pursue interlocutory review of the following questions of law:

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<sup>13</sup> Hr’g Tr. 167:20-168:10 (Phillips, J.).

<sup>14</sup> Hr’g Tr. 133:6-24 (Phillips, J.).



1. Whether a court is barred from granting preliminary injunctive relief (in the form of “extending” the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief.

2. Whether the proponent of a preliminary injunction or stay extension can meet the “likelihood of success” element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize.

### **ARGUMENT**

#### **I. THE BANKRUPTCY COURT’S STAY ORDER IS FINAL AND APPEALABLE OF RIGHT UNDER 28 U.S.C. § 158(a)(1)**

19. District courts “have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges.” 28 U.S.C. § 158(a)(1). In ordinary civil litigation, a case culminates in a “final decisio[n]” when a court “disassociates itself from a case.” *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015) (first alteration in original) (citation omitted). But the Fourth Circuit has “recognized on many occasions, the concept of finality in bankruptcy traditionally has been applied in a ‘more pragmatic and less technical way’ than in other situations.” *Mort Ranta v. Gorman*, 721 F.3d 241, 246 (4th Cir. 2013) (quoting *McDow v. Dudley*, 662 F.3d 284, 287 (4th Cir. 2011)). Therefore, in bankruptcy cases, the Fourth Circuit “allow[s] immediate appellate review of orders that ‘finally dispose of discrete disputes within the larger case.’” *Mort Ranta*, 721 F.3d at 246 (quoting *McDow*, 662 F.3d at 287); *see also In re Computer Learning Ctrs., Inc.*, 407 F.3d 656, 660 (4th Cir. 2005) (same).

20. The Supreme Court agrees: “The rules are different in bankruptcy” because a “bankruptcy case involves ‘an aggregation of individual controversies,’ many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor.” *Bullard*, 575 U.S. at 501.

(citation omitted). Thus, “orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case.” *Id.* (citation omitted).

21. Courts have found that orders extending the automatic stay are final orders. *E.g.*, *In re Bestwall LLC*, No. 3:20-CV-103-RJC, 2022 WL 67469, at \*4 (W.D.N.C. Jan. 6, 2022) (finding that the bankruptcy court’s orders that extended the automatic stay were final and appealable), *aff’d*, 71 F.4th 168 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519, and *cert. denied*, 144 S. Ct. 2520 (2024); *In re Marine Power & Equip. Co.*, 71 B.R. 925, 926 (W.D. Wash. 1987) (finding that a bankruptcy indefinitely extending the automatic stay was a “final, appealable order”); *cf. Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37-38 (2020) (finding that a court’s adjudication of a creditor’s motion for relief from the automatic stay is a final, appealable order); *In re Lee*, 461 F. App’x 227, 231 (4th Cir. 2012) (“An order granting or denying relief from the automatic stay is final and appealable.” (citation omitted)).

22. Likewise, bankruptcy court orders granting preliminary injunctions concerning the automatic stay have been found to be final orders. *E.g.*, *Bestwall*, 2022 WL 67469, at \*4 (finding that the bankruptcy court’s preliminary injunction orders that extended the automatic stay were final and appealable); *Fung Retailing Ltd. v. Toys “R” Us, Inc.*, 593 B.R. 724, 731 (E.D. Va. 2018) (Gibney, J.) (concluding injunction order preventing party from prosecuting an action in Hong Kong was a final, appealable order); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1092 (9th Cir. 2007) (concluding injunction order which was in effect an extension of the automatic stay was a final, appealable order). Further, “[w]here a bankruptcy court issues a preliminary injunction but contemplates no further hearings apart from the outcome of the . . . [chapter 11 case at confirmation] then the injunction order is a final, appealable order.” *See Bestwall*, 2022 WL 67469, at \*4.

23. Here, the Stay Order “finally dispose[d] of the discrete dispute” over the scope of the automatic stay—*i.e.*, whether the automatic stay can and should be “extended” to enjoin direct actions against Liberty. *See Bullard*, 575 U.S. at 501; *Mort Ranta*, 721 F.3d at 246; *McDow*, 662 F.3d at 285; *Computer Learning Ctrs.*, 407 F.3d at 660. While the Stay Order provides that the automatic stay is extended and the preliminary injunction is to remain in effect until March 10, 2025, the Debtor contemplates that its bankruptcy case will be completed or near completion by the time the Stay Order expires.<sup>15</sup> By granting the Stay Order with the understanding of the timeline the Debtor contemplates for its chapter 11 case, the Bankruptcy Court has effectively contemplated no further proceedings on this matter apart from liquidation of the Debtor’s estate. *See Bestwall*, 2022 WL 67469, at \*4.<sup>16</sup> For the reasons stated above, this Court should hold that the Stay Order is final and appealable as of right.

## **II. THE BANKRUPTCY COURT’S STAY ORDER IS IMMEDIATELY APPEALABLE BASED ON THE COLLATERAL ORDER DOCTRINE**

24. The Supreme Court has recognized that a party may appeal an order under the collateral order doctrine if the order “finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.” *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). “To come within

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<sup>15</sup> *See* Hr’g Tr. 163:9-25 (T. Brown) (“[W]e were seeking the stay . . . through the pendency of the case. . . [L]et’s take a gut check in six months, you know, we could do that, you know? But let’s -- because I hope we’re going to get to the plan by then. I hope we’re going to get to the settlements within three, four months of filing our case. I hope we’ll get to the plan within six months of the case.”).

<sup>16</sup> Moreover, this Court has found that relief from the automatic stay—an order procedurally similar to the Stay Order—constituted an appealable final decision even though the bankruptcy court stated that the order would be subject to re-evaluation less than four months later. *See Fung Retailing Ltd.*, 593 B.R. at 731.

the parameters of the collateral order doctrine, the order from which the appeal is taken must ‘[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from final judgment.’” *United States v. Moussaoui*, 483 F.3d 220, 228 (4th Cir. 2007) (quoting *Will v. Hallock*, 546 U.S. 345 (2006)). In other words, the doctrine applies when the issues at play are such that “in the interest of achieving a healthy legal system, [they must] be treated as final.” *Id.* (citation omitted).

#### **A. The Order Conclusively Determines the Disputed Question**

25. An order is deemed to have conclusively determined a disputed question when it is not “tentative, informal or incomplete,” and the lower court does not intend to revisit the ruling. *In re Boxall*, 188 B.R. 198, 201-02 (E.D. Va. 1995) (citing *Cohen*, 337 U.S. at 546). Even when an order is styled as “preliminary,” the order is not rendered inconclusive. *See id.* at 202 (“Indeed, even though the injunction was styled ‘preliminary,’ it is quite clear that the bankruptcy court did not intend to enter a permanent injunction at a later date . . .”).

26. Here, the Court conclusively determined the disputed question regarding the scope of the automatic stay and the preliminary injunction in the Stay Order. The Stay Order is not “tentative, informal or incomplete” as the Court contemplated the Stay Order being in effect for the vast majority (if not the entirety) of the Debtor’s contemplated timeline for its chapter 11 case. *See Boxall*, 188 B.R. at 201-02. Here, unlike in *Boxall*, where the bankruptcy court in the adversary proceeding needed to “revisit the issue of the extent to which the transfer . . . was a fraudulent conveyance at the trial,” *id.* at 201, the Bankruptcy Court did not leave unresolved any aspect of the Stay Order. It simply contemplated parties requesting extensions of the stay or relief from the stay in six months’ time. *See Stay Order* ¶¶ 1, 6-7.

**B. The Stay Order Resolves an Important Issue Separate from the Merits of the Debtor's Chapter 11 Case**

27. To satisfy the second prong, the issue in question must be sufficiently important to warrant immediate review and unrelated to the merits of the underlying action. *See Moussaoui*, 483 F.3d at 229-30; *see also P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993) (resolution of question of immunity has no impact on merits of the action); *Boxall*, 188 B.R. at 202 (“Resolution of this issue on appeal [*i.e.*, the bankruptcy court’s estimate of the debtor’s assets and liabilities] would in no way impinge upon the bankruptcy court’s adjudication of the merits of the fraudulent conveyance claim . . .”).

28. Whether the automatic stay can and should be “extended” to Liberty to preliminarily enjoin direct actions against it is sufficiently important to warrant immediate review. The automatic stay is “a core feature of the bankruptcy system.” *In re Colonial Penniman, LLC*, 575 B.R. 664, 688 (Bankr. E.D. Va. 2017) (Santoro, J.), *aff’d in part, remanded in part sub nom. Williams v. Colonial Penniman, LLC*, 582 B.R. 391 (E.D. Va. 2018). Indeed, the automatic stay is designed to shield the debtor “from the financial pressures which prompted the filing for relief.” *In re Al’s Transmission Serv., Inc.*, No. 95-1-1579-PM, 1995 WL 781697, at \*2 (Bankr. D. Md. Dec. 28, 1995). Determining the scope of the automatic stay is essential for claimants to understand whether direct actions can proceed against Liberty while the Debtor’s bankruptcy case is pending and whether they can receive prompt payment from Liberty for their asbestos-related injuries. *See Moussaoui*, 483 F.3d at 229-30; *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145; *Boxall*, 188 B.R. at 202. The automatic stay is also sufficiently separate from the “merits” of this chapter 11 case, which ultimately hinges on whether a proposed chapter 11 plan is confirmable. *See Moussaoui*, 483 F.3d at 229-30; *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145; *Boxall*, 188 B.R. at 202.

**C. The Stay Order Would Be Effectively Unreviewable on Appeal from Final Judgment**

29. An interlocutory order should be appealable where a denial of review by the court “would render impossible any review whatsoever.” *In re Looney*, 823 F.2d 788, 791 (4th Cir. 1987). This is because the finality requirement should “be construed so as not to cause crucial collateral claims to be lost and potentially irreparable injuries to be suffered.” *Mathews v. Eldridge*, 424 U.S. 319, 331 n.11 (1976); *Warfle ex rel. Guffey v. Sec’y of Health & Hum. Servs.*, 92 Fed. Cl. 361, 366 (2010) (“[C]ases that have held such orders to be immediately reviewable [under the collateral order doctrine] generally have involved practical exigencies or irreparable harm.”).

30. If the Stay Order were not reviewed now, asbestos claimants would be potentially unable to challenge the injunction of their direct claims against Liberty until the conclusion of the chapter 11 case, whether that conclusion came in the form of confirmation of a chapter 11 plan, or the dismissal or closing of the chapter 11 case. That would inflict undue delay and irreparable harm on them because they could never recover the lost time that they otherwise could have used to seek recompense from Liberty. And this would have real—and tragic—consequences. Asbestos claimants who are sick, and many of whom are dying, may not receive funds for needed medical care or to support their families. *See, e.g., Kadel v. Folwell*, 446 F. Supp. 3d 1, 11 (M.D.N.C. 2020) (identifying harm from continued denial of healthcare coverage for medically necessary procedures), *aff’d sub nom. Kadel v. N.C. State Health Plan for Tchrs. & State Emps.*, 12 F.4th 422 (4th Cir. 2021). In addition, the death of a claimant can and will result in lost legal rights and compensation. *See, e.g., Bailey ex rel. Brown v. Exxon Mobil Corp.*, 76 So. 3d 53, 54-55 (La. Ct. App. 2011) (holding that punitive damages could not be recovered in a wrongful death

action).<sup>17</sup> Thus, delay in bringing direct actions against Liberty will irreparably harm asbestos victims in the form of lost claims, lost remedies, and the loss of immediate financial support that an award of damages could provide. Here, justice delayed would be justice denied.

31. For the reasons set forth above, the Court should determine that the Stay Order is immediately appealable under the collateral order doctrine.

### **III. ALTERNATIVELY, IF THE STAY ORDER IS INTERLOCUTORY, THIS COURT SHOULD GRANT LEAVE TO APPEAL UNDER 28 U.S.C. § 158(a)(3)**

32. If the Stay Order is interlocutory, the Committee should be granted leave to pursue an interlocutory appeal in accordance with 28 U.S.C. § 158(a)(3). This Court, “in determining whether to grant leave for an interlocutory appeal, . . . ha[s] routinely looked by analogy to the standard set forth in 28 U.S.C. § 1292(b), which governs interlocutory appeals in non-bankruptcy cases.” *First Owners’ Ass’n of Forty Six Hundred v. Gordon Props., LLC*, 470 B.R. 364, 371-72 (E.D. Va. 2012) (citing *Atl. Textile Grp., Inc. v. Neal*, 191 B.R. 652, 653 (E.D. Va. 1996)); *see also In re Bestwall LLC*, No. 3:21-CV-151-RJC, 2021 WL 1857295, at \*3 (W.D.N.C. May 10, 2021) (“[C]ourts employ an analysis similar to that employed by the Court of Appeals in certifying interlocutory review when deciding whether to grant leave to appeal an interlocutory order of the Bankruptcy Court.” (quoting *In re Biltmore Invs., Ltd.*, 538 B.R. 706, 710-11 (W.D.N.C. 2015))); *Craddock Washabaugh v. Miller*, No. 1:16CV694, 2016 WL 4574690, at \*1 (M.D.N.C. Sept. 1, 2016) (“Given . . . the lack of direct guidance concerning a standard for the grant or denial of leave to appeal interlocutory orders in § 158 itself, courts apply an analysis similar to that employed when certifying interlocutory review by the circuit court of appeals under 28 U.S.C. § 1292(b).”).

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<sup>17</sup> *See also, e.g.*, FLA. STAT. ANN. § 768.21 (specifying damages available to decedent’s estate or personal representative); ARIZ. REV. STAT. ANN. § 14-3110 (providing that damages for pain and suffering do not survive death of tort victim); IDAHO CODE § 5-327(2) (specifying limited damages available in survival actions).

Section 1292(b) provides that an order is appropriate for interlocutory appeal when it “[1] involves a controlling question of law [2] as to which there is a substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the litigation.” *Thomas v. Maximus, Inc.*, No. 3:21CV498 (DJN), 2022 WL 1482008, at \*3 (E.D. Va. May 10, 2022) (quoting 28 U.S.C. § 1292(b)).

#### **A. The Committee’s Appeal Presents Controlling Questions of Law**

33. The Fourth Circuit has defined a controlling question of law to be one that presents a “narrow question of pure law whose resolution will be completely dispositive of the litigation, either as a legal or practical matter, whichever way it goes.” *Fannin v. CSX Transp., Inc.*, 873 F.2d 1438 (4th Cir. 1989) (per curiam) (unpublished table decision). More specifically, a question is one of law where it involves “an abstract legal issue that the . . . [higher court] can decide quickly and cleanly.” *Thomas*, 2022 WL 1482008, at \*4 (quoting *United States ex rel. Michaels v. Agape Senior Cmty.*, 848 F.3d 330, 340 (4th Cir. 2017)). Often, “[a] question of law refers to ‘a question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine’ as opposed to an issue of fact.” *Gaston v. Lexisnexis Risk Sols.*, No. 5:16-CV-9, 2017 WL 5340384, at \*1 (W.D.N.C. Nov. 13, 2017) (quoting *Lynn v. Monarch Recovery Mgmt.*, 953 F. Supp. 2d 612, 623 (D. Md. 2013)).

34. In addition, “[a]n order involves a controlling question of law when . . . reversal of the bankruptcy court’s order would terminate the action[] or . . . materially affect the outcome of the litigation.” *Biltmore Invs., Ltd.*, 538 B.R. at 711 (citation omitted); *see also First Owners’*, 470 B.R. at 373 (citing *Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2d Cir. 1990)) (same); *Barcelona Cap., LLC v. Neno Cab Corp.*, 648 B.R. 578, 586 (E.D.N.Y. 2023) (quoting *2178 Atl. Realty LLC v. 2178 Atl. Ave. Hous. Dev. Fund Corp.*, No. 20-CV-1278 (RRM), 2021 WL 1209355, at \*4 (E.D.N.Y. Mar. 30, 2021)) (same); *In re Wijewickrama*, No. 1:16-CV-00347-MR, 2018 WL



2212983, at \*3 (W.D.N.C. Mar. 15, 2018) (applying the same analysis in finding that the first factor weighed in favor of leave to appeal, even though the case would not terminate).<sup>18</sup>

35. The Committee is presenting the two following issues for interlocutory review: (a) whether a court is barred from granting preliminary injunctive relief (in the form of “extending” the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief; and (b) whether the proponent of a preliminary injunction or stay extension can meet the “likelihood of success” element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize. Both issues are questions of law because each of them is “stated at a high enough level of abstraction to lift the question out of the details of the evidence or facts of a particular case and give it general relevance to other cases in the same area of law.” *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004). This Court could resolve these questions “quickly and cleanly without having to study the record.” *Barcelona Cap., LLC*, 648 B.R. at 586 (citation omitted). And both questions are “controlling” because a ruling in the Committee’s favor on either issue would necessitate reversal of the Stay Order as to Liberty, which would leave asbestos claimants free to pursue direct actions against it.

**B. The Committee Is Presenting Legal Questions as to Which There Are Substantial Grounds for Differences of Opinion**

36. A “substantial ground [for difference of opinion] must arise out of a genuine doubt as to whether the . . . [bankruptcy] court applied the correct legal standard.” *Thomas*, 2022 WL 1482008, at \*5. “[A] controlling question of law involves a ‘substantial ground for difference of

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<sup>18</sup> “Conversely, a question of law is not controlling if litigation will ‘necessarily continue regardless of how that question [is] decided.’” *David v. Alphin*, No. 3:07-CV-11-RJC-DLH, 2009 WL 3633889, at \*3 (W.D.N.C. Oct. 30, 2009) (alteration in original) (citation omitted). The court in *Alphin* held that the issue of standing was a controlling question of law because its “resolution will be dispositive” of claims. *Id.*

opinion’ only when the law remains unclear in the controlling jurisdiction and other courts have issued conflicting decisions.” *COMM 2013 CCRE12 Crossing Mall Rd., LLC v. Tara Retail Grp., LLC*, No. 1:17CV67, 2017 WL 2837015, at \*4 (N.D. W. Va. June 30, 2017) (citing *In re Health Diagnostic Lab’y., Inc.*, No. 15-32919-KRH, 2017 WL 2129849, at \*4 (E.D. Va. May 16, 2017)). This prong is satisfied when “(1) there is conflicting authority on the issue, or (2) the issue is particularly difficult and of first impression for the . . . Circuit.” *Barcelona Cap., LLC*, 648 B.R. at 586 (quoting *Osuji v. U.S. Bank, N.A.*, 285 F. Supp. 3d 554, 558 (E.D.N.Y. 2018)). For the reasons explained below, there is substantial ground for differences of opinion as to both questions presented by the Committee.

1. *Whether a court is barred from granting preliminary injunctive relief (in the form of “extending” the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief*

37. Except in cases where an asbestos-related channeling injunction is authorized under 11 U.S.C. § 524(g), no provision of the Bankruptcy Code authorizes courts to permanently stay or enjoin litigation against a nondebtor such as Liberty. *See Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2088 (2024); *see also* 11 U.S.C. § 524(e) (providing that a “discharge [in bankruptcy] of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt”). The one exception already noted—§ 524(g)—does not apply here because the Debtor has proposed a chapter 11 plan in which it would liquidate and not reorganize. Section 524(g) authorizes a court, when certain requirements are met, to issue a permanent channeling injunction that can protect nondebtors from asbestos lawsuits only in connection with confirmation of “a plan of reorganization” and only to “supplement the injunctive effect of a [bankruptcy] discharge.” 11 U.S.C. § 524(g)(1)(A). Here, the Debtor has proposed a plan of *liquidation*, not one of reorganization. Moreover, in a liquidation, the Debtor is ineligible for a chapter 11 discharge. *See* 11 U.S.C. § 1141(d)(3). There will thus be no discharge of claims

against the Debtor that a 524(g) channeling injunction could “supplement.” Accordingly, as a nondebtor, Liberty is not—and could never be—entitled to a permanent stay of direct actions against it through the Debtor’s bankruptcy case. *See In re New Towne Dev., LLC*, 410 B.R. 225, 232 (Bankr. M.D. La. 2009) (“It would indeed be anomalous if the Bankruptcy Code prohibited a plan from discharging a liquidating . . . [corporate] debtor that will not remain in business postconfirmation, but allowed that plan effectively to discharge non-debtor third parties by means of releases and permanent injunctions.”).<sup>19</sup>

38. Because Liberty is ineligible for a permanent stay of asbestos direct actions, it follows that it is not entitled to a preliminary or temporary stay of such actions (whether in the form of an “extension” of the automatic stay or otherwise). *See De Beers*, 325 U.S. at 220 (holding a preliminary injunction may not be granted when such an injunction is not “of the same character as that which may be granted finally”). In *De Beers*, the Supreme Court found that a preliminary injunction that prevented a defendant from using his funds or property was overbroad and not authorized either by statute or equity. *Id.* at 222-23. Finding that such an injunction was not permitted on a permanent basis, the Supreme Court lifted the preliminary injunction. *Id.* at 216; *see also Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 326 (1999) (stating that a “preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally” (quoting *De Beers*, 325 U.S. at 220)). In addition, at least one bankruptcy court has denied a preliminary injunction where the injunctive relief would

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<sup>19</sup> *See also In re Optical Techs., Inc.*, 216 B.R. 989, 994 (Bankr. M.D. Fla. 1997) (holding that “the issuance of a third-party injunction is inappropriate in the instant cases” where a chapter 11 plan “provides for the total liquidation of the debtor” because “[i]n a liquidation case, substantial assets cannot be contributed to the reorganization because the debtor is not reorganizing” and “a third-party injunction is not essential to the continued operation of the debtor because the purpose of such an injunction is to aid in the rehabilitation of an ongoing business”).

not have been allowed as a permanent injunction, relying on *DeBeers* and *Grupo Mexicano*. See *In re Teknek, LLC*, 343 B.R. 850, 868, 870-71 (Bankr. N.D. Ill. 2006) (citing *DeBeers*, 325 U.S. at 220; *Grupo Mexicano*, 527 U.S. at 326).

39. When the Committee cited the *De Beers* case at the hearing on the Stay Motion, the Bankruptcy Court responded that it thought *De Beers* was inapplicable or distinguishable. See Hr’g Tr. 133:2-24 (Phillips, J.). Another bankruptcy court in this Circuit has declined to invoke *De Beers* as a basis for denying a preliminary injunction of third-party litigation. See *In re Aldrich Pump LLC*, No. 20-30608 (JCW), 2021 WL 3729335, at \*34, \*38 (Bankr. W.D.N.C. Aug. 23, 2021). A substantial ground for a difference of opinion therefore exists: On the one hand, there is the *De Beers* case, which the Supreme Court decided outside the context of a chapter 11 bankruptcy, and the *Teknek* case, which applied *De Beers* in denying a preliminary injunction within bankruptcy. On the other hand, there are decisions rendered by the Bankruptcy Court below and the *Aldrich* court. Thus, as to this legal issue, the Committee has satisfied the second prong of the § 1292(b) standard.

2. *Whether the proponent of a preliminary injunction or stay extension can meet the “likelihood of success” element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize*

40. Under the traditional injunction standard, a “plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In chapter 11 cases, courts have modified the first element of the traditional standard to require a showing of “[t]he debtor’s reasonable likelihood of a successful reorganization.” *In re Bestwall LLC*, 606 B.R. 243 (Bankr. W.D.N.C. 2019) (emphasis added),

*aff'd*, No. 3:20-CV-103-RJC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022), *aff'd*, 71 F.4th 168 (4th Cir. 2023). Because the Debtor intends to liquidate under chapter 11, it did not—and could not—show a reasonable likelihood of a successful reorganization. The Debtor thus failed to establish an essential element of the traditional injunction standard, which necessitates reversal of the Stay Order as to Liberty.

41. The critical distinction between reorganization and liquidation also applies to the “unusual circumstances” test for enjoining third-party lawsuits that the Fourth Circuit established in *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986). “The overarching basis upon which courts have held that unusual circumstances justify expanding the automatic stay to non-debtor parties is to prevent an adverse impact on the debtor’s ability to formulate a Chapter 11 plan [of reorganization].” *In re Plan 4 Coll., Inc.*, No. 09-17952DK, 2009 WL 3208285, at \*2 (Bankr. D. Md. Sept. 24, 2009) (footnote omitted) (concluding that, because “there is no corporate reorganization as this is a Chapter 7 liquidation,” the “Florida actions in no way can have a negative impact upon an attempt by the Debtor in this bankruptcy case to reorganize”).

42. Courts have found that “unusual circumstances” are not present where the debtor seeks not a reorganization but rather a liquidation. *See, e.g., Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC*, No. 13 CIV. 4650 JFK, 2014 WL 4783008, at \*4 (S.D.N.Y. Sept. 25, 2014) (“[A]llowing Plaintiffs to continue their action against . . . [the nondebtor] cannot pose a serious threat to the Debtor’s reorganization efforts because there is no reorganization to threaten.”); *In re Pitts*, No. 808-74860-REG, 2009 WL 4807615, at \*6 (Bankr. E.D.N.Y. Dec. 8, 2009) (noting that the *Piccinin* rule allowing extension of the automatic stay to a nondebtor does not apply because “there is no risk to any reorganization if the stay is not extended to the Corporate Defendants because the Debtor is liquidating”); *In re Env’t Manucraft Inc.*, 118 B.R. 404, 405-06

(Bankr. D.S.C. 1989) (finding there were no unusual circumstances to justify staying nondebtor actions when the plan was to liquidate and not reorganize). Ample authority thus supports the conclusion that no “unusual circumstances” are present because the Debtor is proposing to liquidate under chapter 11 and not reorganize, and therefore the Stay Order as to Liberty should be reversed.

43. Nevertheless, the district court in *In re Johns-Manville Corp.*, one of the first asbestos mass-tort bankruptcy cases, found that that bankruptcy courts have “ample power [under § 105] to enjoin actions excepted from the automatic stay which might interfere in the rehabilitative process *whether in a liquidation or in a reorganization case.*” *Piccinin*, 788 F.2d at 1003 (emphasis added) (quoting *Johns-Manville Corp.*, 26 B.R. 420, 425 (S.D.N.Y. 1983)). The Bankruptcy Court followed that precedent. Hr’g Tr. 168:2-10 (Phillips, J.).

44. Thus, a substantial ground for a difference of opinion exists as to the second question of law presented by the Committee.

**C. Immediate Appeal May Materially Advance the Termination of the Litigation**

45. “Generally, this requirement is met when resolution of a controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation.” *Martin v. Garrett*, No. 1:17-CV-350-MOC-WCM, 2020 WL 4700717, at \*3 (W.D.N.C. Aug. 13, 2020) (quoting *Clark Constr. Grp., Inc. v. Allglass Sys., Inc.*, No. CIV.A. DKC 2002-1590, 2005 WL 736606, at \*4 (D. Md. Mar. 30, 2005)). “The third prong, assessing whether an appeal would materially advance termination of the litigation, is satisfied where the appeal promises to advance the time for trial or to shorten the time required for trial.” *Barcelona Cap., LLC*, 648 B.R. at 587 (quoting *Osuji*, 285 F. Supp. 3d at 558). Here, the third prong of the 1292(b) standard is satisfied because rulings by this Court on the Committee’s questions of law may materially advance the termination of litigation over whether direct actions against Liberty may be stayed by the Bankruptcy Court.

Indeed, if this Court were to rule in the Committee's favor on either question, the stay of direct actions against Liberty would terminate, and asbestos victims would be free to pursue, resolve, and receive compensation from Liberty through their direct actions. In addition, the Debtor would remain free to pursue its intended liquidation in chapter 11.

46. For the reasons noted above, interlocutory review of the two questions of law presented by the Committee is permissible and appropriate.

### **CONCLUSION**

For all the reasons set forth above, this Court should (1) determine that the Stay Order is final and appealable as of right, or alternatively, (2) determine that the Order is an immediately appealable order under the collateral order doctrine, or alternatively, (3) grant the Committee leave to pursue an interlocutory appeal from the Order on the two questions of law described above, and in all events (4) grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

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