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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	Chapter 11
HOPEMAN BROTHERS, INC.,	Case No. 24-32428 (KLP)
Debtor.	
OFFICIAL COMMITTEE OF UNSECURED CREDITORS,	
Appellant,	Civil Action No. 24-cv-00717
v.	
HOPEMAN BROTHERS, INC.,	
Appellee.	

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

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Hopeman Brothers, Inc. (the "Debtor") respectfully represents as follows for its objection to the *Motion of the Official Committee of Unsecured Creditors for Leave to Appeal from Second Interim Order Extending the Automatic Stay* [Doc. 2] (the "Motion for Leave")[1] filed by the Official Committee of Unsecured Creditors (the "Committee") in connection with its appeal of the Bankruptcy Court's *Second Interim Stay Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants* (the "Interim Stay Order"):

PRELIMINARY STATEMENT

1. The Court should deny the Motion for Leave because (1) the Committee lacks bankruptcy appellate standing, (2) the Interim Stay Order is not a final order, (3) the Interim Stay Order is not appealable immediately under the "collateral order" doctrine, and (4) the Committee has not established extraordinary circumstances for leave to appeal the interlocutory order.

2. First, the Committee lacks standing because it is not a "person aggrieved" by the Interim Stay Order. The Committee is advancing in this appeal, at the potential cost of all creditors of the Debtor, solely the interests of a limited group of well-represented creditors—all Louisiana claimants—who elected not to appeal the Interim Stay Order. The claims being stayed temporarily belong, by the Committee's own admission, only to creditors with direct action rights against non-debtors.

3. Even if this Court finds the Committee has appellate standing, the Interim Stay Order is not final because it has not fully disposed of the discrete dispute at issue, the Stay Motion. The Stay Motion seeks an extension of the automatic stay until the conclusion of the bankruptcy case. By its own terms, the Interim Stay Order did not fully grant or deny that motion. It is an interim order that will expire on March 10, 2025, and otherwise preserves all parties' rights.

[1] Capitalized terms used but not defined herein have the meanings given to them in the Motion for Leave.

Should the Debtor seek a further extension, the same issues will be litigated again. The Stay Motion will be fully resolved once a final order is entered granting or denying the motion.

4. Nor is the collateral order doctrine applicable because the Interim Stay Order falls outside the narrow class of orders the doctrine covers. The Interim Stay Order was a preliminary determination of the merits of the Stay Motion, it was not collateral to the merits. Nor did the Interim Stay Order conclusively determine anything. The Interim Stay Order also is not an order warranting immediate review because no party presented any evidence they would be harmed by the short delay in Louisiana claimants being permitted to assert direct actions against Liberty Mutual Insurance Company ("Liberty") as insurer for the Debtor.

5. Finally, the Committee has not established exceptional circumstances justifying a departure from the final order requirement for appellate review. The Interim Stay Order does not present a controlling issue of pure law because the determination by a bankruptcy court to extend the automatic stay is necessarily a fact determination. Further, there are no grounds for substantial differences on the controlling law; the Bankruptcy Court applied the correct legal standard. Under binding precedent, a bankruptcy court may extend the automatic stay to third parties if the specific circumstances of the case warrant such an extension. Immediate review of the fact determination that a temporary stay was warranted would not materially advance termination of the litigation since litigation of the dispute will recur if the Debtor's bankruptcy has not concluded within six months.

BACKGROUND

6. On June 30, 2024, the Debtor filed the Stay Motion seeking entry of both interim and final orders finding that the automatic stay of sections 362(a)(1) and 362(a)(3) of the Bankruptcy Code automatically stayed litigation against certain non-debtor defendants, including Liberty (collectively, the "Non-Debtor Defendants"), and requesting, if necessary, that the

Bankruptcy Court extend the stay to defer such litigation through the conclusion of the bankruptcy case. Stay Motion ¶ 1, ¶¶ 34-36.

7. On July 3, 2024, the Bankruptcy Court granted the Stay Motion on an interim basis and set a final hearing on August 6, 2024. *See* Bankr. E.D. Va., Case No. 24-32428, Doc. 35. That hearing was adjourned to September 10, 2024. *Id*., Doc. 89.

8. Several parties involved in pending Louisiana direct action lawsuits filed objections to the Stay Motion, including Louisiana asbestos claimants represented by several law firms, and Huntington Ingalls Industries, Inc., a co-defendant in the Louisiana lawsuits. *See* Bankr. E.D. Va., Case No. 24-32428, Docs. 86, 135. 138, and 141. These objectors opposed any stay of direct actions against the Debtor's liability insurers, particularly Liberty. The Committee also objected even though the Committee does not itself have any claims within the scope of the stay.

9. On September 10, 2024, the Bankruptcy Court held an evidentiary hearing at which counsel for the objecting parties appeared. Hr'g Tr. 2-3, Sept. 10, 2024, attached as Exhibit B to Mot. for Leave (the "Stay Hr'g Tr."). At the hearing, the Debtor requested that the Stay Motion be granted for the pendency of the case. *Id.* 72:3-17. The Debtor presented testimony from two fact witnesses and introduced other evidence. None of the objecting parties offered any evidence.

10. The Bankruptcy Court decided, based on the evidence presented, that sections 362(a)(1) and (a)(3) of the Bankruptcy Code supported the relief granted in the Interim Stay Order and that the Debtor also had met the test for preliminary injunctive relief in seeking to extend the stay to protect non-debtors. Stay Hr'g Tr. 166:17-167:25. The Bankruptcy Court extended the automatic stay temporarily, for six months, unless the Debtor seeks an extension, "at which point all of the parties who wish to oppose that will . . . have the rights to oppose that. So all of the current arguments are preserved at that time." *Id.* 169:17-24.

11. The Bankruptcy Court entered the Interim Stay Order on September 25, 2024. That order provided for a stay that will expire on March 10, 2025, unless the Court extends it.

12. On October 9, 2024, the Committee filed a notice of appeal of the Interim Stay Order and its Motion for Leave. *See* Bankr. E.D. Va., Case No. 24-32428, Docs. 282, 286. None of the objecting parties who are subject to the Interim Stay Order have appealed.

OBJECTION

I. The Committee Lacks Bankruptcy Appellate Standing

13. "The test for standing to appeal a bankruptcy court's order to the district court is well-established: the appellant must be a *person aggrieved* by the bankruptcy order." *In re Urb. Broad. Corp.*, 401 F.3d 236, 243 (4th Cir. 2005) (citing *U.S. Trustee v. Clark (In re Clark)*, 927 F.2d 793, 795 (4th Cir.1991)). To be "a person aggrieved," the appellant must be "directly and adversely affected pecuniarily." *In re Urb. Broad Corp.* 401 F. 3d at 243.

14. In addition, "standing to appeal as a party aggrieved may arise from a party's official duty to enforce the bankruptcy law in the public interest." *In re Bestwall LLC*, No. 3:20-cv-105-RJC, 2022 WL 68763, at *4 (W.D.N.C. Jan. 6, 2022). This includes the United States Trustee, *In re Clark*, 927 F.2d at 796, and, in certain cases, official committees appointed by the United States Trustee, *In re Bestwall*, 2022 WL 68763 at *4 (citing *In re Western Pacific Airlines, Inc.*, 219 B.R. 575, 577-78 (D. Colo. 1998)). Standing is granted in such situations to allow these officials to fulfill their "watchdog" function in connection with their statutory rights and responsibilities. *Id.*

15. Here, the Committee is stepping outside its watchdog function by advancing the interests of only a select group of creditors who claim to have direct actions against non-debtor parties, not the interests of the entire unsecured creditor body with respect to their claims against the Debtor's estate. The Committee's appeal is focused solely on the stay barring direct actions

against Liberty, an issue that impacts only Louisiana claimants who have direct action rights. *See* Mot. for Leave ¶ 6.

16. There are 35 pending Louisiana direct action lawsuits that name Liberty as a defendant as the insurer for Wayne Manufacturing, Inc., a former affiliate of the Debtor. Stay Mot., Exhibit 1. None of the claimants have asserted direct action lawsuits against Liberty as insurer for the Debtor. Stay Hr'g Tr. 140:1-8. The Committee asserts, however, that these rights exist independent of claims against the Debtor. *Id.* 128:17-23. Accordingly, these Louisiana claimants, a small subset of the claimants in the bankruptcy case, are the parties aggrieved by the Interim Stay Order, if anyone is, not the Committee.

17. The Louisiana claimants that filed objections to the Stay Motion elected not to appeal the Interim Stay Order. Given that the parties directly affected by the Interim Stay chose to forgo an appeal, no valid reason exists for the Committee to expend estate resources to pursue the narrow interests of these well-represented creditors. Accordingly, the Committee lacks standing to appeal the Interim Stay Order because they are not a party aggrieved by it.[2]

II. The Interim Stay Order Is Not a Final Order

18. While "the concept of finality in bankruptcy cases has traditionally been applied in a more pragmatic and less technical way than in other situations," bankruptcy court orders must still "finally dispose of discrete disputes within the larger case" to be considered final. *McDow v. Dudley*, 662 F.3d 284, 287 (4th Cir. 2011) (cleaned up). If the order does not finally dispose of

[2] The Committee's right to be heard in the Bankruptcy Court under section 1109(b) of the Bankruptcy Code does not itself provide the Committee with appellate standing on the issues presented under the "person aggrieved" standard. *See, e.g., In re Bay Circle Prop., LLC,* No. 22-10521, 2022 WL 16002916, at *2-3 (11th Cir. Oct. 28, 2022) (party who participated in bankruptcy proceedings still must show direct harm from order sought to be appealed).

the dispute, it is not final. *See, e.g.*, *Kiviti v. Bhatt*, 80 F.4th 520, 530 (4th Cir. 2023) (order was not final because one claim in the adversary proceeding was unresolved).

19. The Interim Stay Order did not finally dispose of the dispute raised by the Stay Motion. The order will expire on its own unless the Debtor seeks to extend it. Further, the relief granted falls short of what the Debtor requested, an extension of the automatic stay "through the pendency of the case." Stay Hr'g Tr. 163:9-14. As a result, the Stay Motion remains a live dispute, and the Debtor fully expects further litigation on it.

20. The Committee argues that the Interim Stay Order is a final order because "the Debtor contemplates that its bankruptcy case will be completed or near completion by the time the Stay Order expires." Mot. for Leave ¶ 23. What Debtor's counsel said at the hearing is, "I hope we'll get to the plan within six months of the case." Stay Hr'g Tr. 163:21-22. But this is by no means certain. Finality in bankruptcy is not determined by hopes but by the final adjudication of a discrete dispute. The record reflects the Bankruptcy Court's intention to revisit this dispute after the six-month period "at which point all of the parties who wish to oppose [the extension] . . . will have the rights to oppose that. So all of the current arguments are preserved at that time." *Id.* 169:21-24. Accordingly, the record does not support the conclusion that "the Bankruptcy Court has effectively contemplated no further proceedings on this matter apart from liquidation of the Debtor's estate." Mot. for Leave ¶ 23.

21. The cases cited by the Committee either address a different matter (an order granting or denying a motion to *lift* the automatic stay) or are distinguishable. In almost every case cited, the order was finally disposing of the dispute. The stay extension in *In re Bestwall LLC*, No. 3:20-cv-103-RJC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022) was effective "through 30 days after the effective date of a confirmed plan." *See* Memo. Op. and Order at 17, W.D.N.C.,

Case No. 3:20-cv-103, Doc. 1-1. Similarly, in *In re Marine Power & Equipment & Co., Inc.*, the order on appeal extended the stay "indefinitely." 71 B.R 925, 926 (W.D. Wash 1987). In *In re Excel Innovations, Inc.*, the Ninth Circuit noted that "nothing in the record indicates that the bankruptcy court contemplated further proceedings on the injunction." 502 F.3d 1086, 1092 (9th Cir. 2007). While the Stay Motion sought a stay during the entire bankruptcy, that is not what the Bankruptcy Court granted.

22. The other cited case, *Fung Retailing Ltd. v. Toys "R" Us, Inc.*, 593 B.R. 724 (E.D. Va. 2018), also is distinguishable because while the order on appeal was a grant of a preliminary injunction to avoid interference with an imminent sale, the issue on appeal was not the merits of the injunction but whether the bankruptcy court had personal jurisdiction over the party enjoined. *Id.* at 730; *see also* Order at 2-3, Bankr. E.D. Va., Adv. Pro. No. 18-3090, Doc. 25. Here, the Committee wants to appeal the merits, not personal jurisdiction, and the Bankruptcy Court has not yet adjudicated the merits on a final basis.

23. Accordingly, the Interim Stay Order is not a final order.

III. The Collateral Order Doctrine Does Not Apply

24. "To qualify as a collateral order, a decision must: (i) conclusively determine the disputed question; (ii) resolve an important issue completely separate from the merits of the action; and (iii) be effectively unreviewable on appeal from a final judgment. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 375 (1987) (internal quotations omitted). The "party seeking appeal must show that all three requirements are satisfied." *Id.*; *see* also *Will v. Hallock*, 546 U.S. 345, 349 (2006) ("the collateral order doctrine accommodates a small class of rulings, not concluding the litigation, but conclusively resolving claims of right separable from, and collateral to, rights asserted in the action.") (internal quotations omitted).

25. The Interim Stay Order does not meet any of these requirements. The Bankruptcy Court did not conclusively determine the disputed question, and the Interim Stay Order is a preliminary determination of the merits itself, not an issue completely separate from the merits. And, once the Bankruptcy Court enters a final order addressing the Stay Motion, it will then be reviewable.

26. A stay that merely delays proceedings cannot be appealed under the collateral order doctrine. *See Phyllis Schlafly Revocable Tr. v. Cori*, 924 F.3d 1004, 1011 (8th Cir. 2019) ("a stay qualifies for immediate appeal under the collateral order doctrine only when it amounts 'to a refusal to adjudicate the merits.' . . . When the stay merely 'delay[s] the proceedings,' the collateral order doctrine does not allow for appellate jurisdiction."). The Bankruptcy Court did not refuse to adjudicate the merits, it simply has not yet made any conclusive determination.

27. Nor did the Interim Stay Order resolve an important issue completely separate from the merits of the action. The "action" in this case is the Stay Motion. That is the discrete dispute being adjudicated below.

28. The Committee admits that the discrete dispute is the Bankruptcy Court's extension of the stay through the Interim Stay Order. Mot. for Leave ¶ 23. However, three paragraphs later, the Committee argues that the disputed question collateral to the merits of the action is "the scope of the automatic stay and the preliminary injunction in the [Interim] Stay Order." *Id.* ¶ 26. Said differently, the Committee argues that the Interim Stay Order is both the action and also collateral thereto. But an action cannot, by definition, be collateral to itself.

29. The Committee also argues that the Interim Stay Order is collateral to the merits of the entire bankruptcy case, "which ultimately hinges on whether a proposed chapter 11 plan is confirmable." Mot. for Leave ¶ 28. While that is undoubtedly true, if this were the test for whether

an interim order of a bankruptcy court could be appealed immediately, then virtually every order entered by a bankruptcy court, other than the confirmation order itself, would satisfy this test. The Committee must show that the Interim Stay Order is collateral to the merits of the discrete dispute in question, that is, the merits of the Stay Motion itself. That, the Committee cannot do.

30. Nor is the Interim Stay Order sufficiently important to warrant immediate review. It does not take away anyone's rights and it does not foreclose any future arguments. All it does is impose a temporary stay of certain actions against certain parties. And no party submitted evidence the temporary stay would cause them any harm. [3]

31. Accordingly, the Interim Stay Order does not fit within the narrow scope the collateral order doctrine is designed to address, such as, for example, absolute or qualified immunity from suit, *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 143 (1993), or whether victims of the September 11th terrorist attack were entitled to non-public, government documents used in the prosecution of one of the alleged perpetrators, *United States v. Moussaoui*, 483 F.3d 220, 224 (4th Cir. 2007).

32. Finally, a holding that the Interim Stay Order is not immediately appealable does not make it effectively unreviewable. At the expiration of six months, the Debtor may seek an extension and parties may contest that extension. If the Bankruptcy Court subsequently decides to enter a final order on the Stay Motion, parties with standing will have an opportunity to appeal it.

[3] There is no evidence of record supporting the Committee's arguments in ¶ 30 of the Motion for Leave about potential harm to direct action claimants from delayed consideration of any appeal.

IV. The Court Should Not Grant Leave to Appeal the Interim Stay Order

33. Under 28 U.S.C. § 1292(b),[4] an appellate court may grant leave to appeal an interlocutory order when it finds that "[1] such order involves a controlling question of law [2] as to which there is substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). All three elements must be satisfied, and the party seeking leave has the burden of proof. *Thomas v. Maximus, Inc.*, No. 3:21-cv-498 (DJN), 2022 WL 1482008, at *4 (E.D. Va. May 10, 2022).

34. Because appeal of an interlocutory order is contrary to the rule of finality, section 1292(b) "should be used sparingly and its requirements must be strictly construed." *Difelice v. U.S. Airways, Inc.*, 404 F. Supp. 2d 907, 908 (E.D. Va. 2005). Further, "the district court has unfettered discretion to decline to certify an interlocutory appeal if exceptional circumstances are absent." *Thomas v. Maximus*, 2022 WL 1482008 at *4 (internal quotations omitted).

35. The Committee cannot show the required three elements are present here. Accordingly, the Court should deny the Motion for Leave.

A. The Appeal Does Not Present a Controlling Question of Law

36. The Committee's appeal does not present a controlling question of law because whether the automatic stay should be extended to protect non-debtors inherently is a fact-based question. "[C]ourts in the Fourth Circuit have described a 'controlling question of law' as 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.'" *Off. Comm. of Asbestos Claimants*

[4] The Committee notes, and the Debtor does not dispute, that district courts routinely look to 28 U.S.C. § 1292(b) to determine whether an interlocutory order entered by a bankruptcy court may be appealed under 28 U.S.C. § 158(a)(3).

v. Bestwall LLC, 2023 WL 7361075 (W.D.N.C. Nov. 7, 2023) (citing *KPMG Peat Marwick, L.L.P. v. Estate of Nelco, Ltd.*, 250 B.R. 74, 78 (E.D. Va. 2000) and quoting *Fannin v. CSX Transp. Inc.*, 873 F.2d 1438 (4th Cir.1989)).

37. In the Fourth Circuit the automatic stay may be extended to non-debtors under "unusual circumstances." *Biltmore Invs., Ltd. v. TD Bank, N.A.*, 626 F. App'x 390, 391 (4th Cir. 2015) ("the stay may under 'unusual circumstances' be extended to non-bankrupt third parties.") (citing *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir.1986)). This is a "fact-intensive" determination focused on the particular situation of the debtor and the parties it seeks to protect. *See, e.g.*, *Chesapeake Crossing Assocs. v. TJX Companies, Inc.*, No. 2:92-cv-631, 1992 WL 469801, at *3 (E.D. Va. Oct. 9, 1992). Accordingly, an extension of the stay is not a matter of pure law whose resolution will completely dispose of the matter. That should end the analysis under section 1292(b).

B. <u>There Are Not Substantial Grounds for Differences of Opinion on the Controlling Question</u>

38. In addition, the Committee has not shown that substantial grounds for differences of opinion exist on a controlling question of law. A substantial ground for difference of opinion exists only if there is "genuine doubt as to whether the district court applied the correct legal standard." *Thomas v. Maximus*, 2022 WL 1482008, at *5 (internal quotations omitted). "An absence of unanimity on the question presented alone does not provide a substantial ground for difference of opinion." *Id.* The Court has a duty "to analyze the strength of the arguments in opposition to the challenged ruling when deciding whether the issue for appeal is truly one on which there is a *substantial* ground for dispute." *Id.* (citing *Flor v. BOT Fin. Corp (In re Flor)*, 79 F.3d 281, 284 (2d Cir. 1996).

i. There is No Authority Prohibiting a Bankruptcy Court from Extending the Automatic Stay Unless the Debtor is Reorganizing

39. In an effort to manufacture conflicting precedent, the Committee argues that the 1945 Supreme Court case of *De Beers Consol. Mines v. United States*, 325 U.S. 212 (1945), stands for the proposition that a bankruptcy court may not extend the automatic stay to third parties if the debtor has proposed a liquidating plan. It does not stand for that proposition.

40. In *De Beers*, the United States brought an antitrust action against several foreign corporations. *De Beers*, 325 U.S. at 215. The government obtained a preliminary injunction to prevent the defendants from transferring assets out of the United States since those assets would be the only means of enforcing any violation of the potential judgment it sought. *Id.* The Supreme Court held the relief granted was so far outside the scope of the action brought by the government that it could not be sustained. *Id.* at 220. The Court would not allow a litigant to freeze the assets of a defendant on the mere supposition that the defendant may one day violate a judgment and that the frozen assets would be needed to satisfy a monetary sanction issued for the violation. *Id.* at 222-23.

41. By contrast, a stay extension was precisely what the Debtor was seeking through the Stay Motion. The extension was based on evidence, not assumptions, and it is well-settled that a bankruptcy court has authority to extend the automatic stay "to protect the integrity of a bankrupt's estate and the Bankruptcy Court's custody thereof and to preserve to that Court the ability to exercise the authority delegated to it by Congress." *In re Johns-Manville Corp.*, 40 B.R. 219, 226 (S.D.N.Y. 1984) (internal quotations omitted). The only question is whether the exercise of that power is appropriate in the specific circumstances of the case, an inherently fact-based question.

42. The other case the Committee cites is a bankruptcy case from another circuit that addressed the same issue as *De Beers*, whether a court could freeze a defendant's assets as a prejudgment remedy. *In re Teknek, LLC*, 343 B.R. 850, 868 (Bankr. N.D. Ill. 2006). As neither that case nor *De Beers* addressed the issue of whether a bankruptcy court may extend the automatic stay to prohibit actions against third parties during a chapter 11 case, they do not create substantial grounds for differences of opinion on the controlling law.

43. In addition, just because the Debtor has not proposed a reorganization plan that would include a permanent injunction under section 524(g) does not mean that the Bankruptcy Court cannot grant a stay to preserve for the Debtor the opportunity to pursue a chapter 11 plan free from litigation, which testimony established would give rise to substantial administrative claims and potential indemnity claims against the Debtor. *De Beers* simply does not stand for the proposition that a bankruptcy court cannot enter orders providing temporary relief to protect the estate.

44. In addition, while the Debtor currently is not seeking a permanent stay of direct actions against its insurers, the chapter 11 plan ultimately might provide for permanent injunctive relief either by consent of the impacted parties in exchange for their treatment under the plan or by the Debtor paying claimants in full. Either type of relief is potentially available, but those issues will be addressed as the bankruptcy case unfolds. That the Debtor has proposed a liquidating plan does not change the fact that the Bankruptcy Court has the power, under the facts in evidence, to grant a temporary stay of actions harmful to the estate.

ii. "Likelihood of Success" Does Not Require a Reorganization

45. The Committee argues there are grounds for substantial disagreement over whether the stay may be extended to third parties if the debtor is not seeking to reorganize. The Committee, however, has not offered a single case in which a court has made such a ruling. In each case cited,

the courts followed well-established precedent and examined the specific circumstances to determine whether an extension of the stay was warranted.

46. Two of the cited decisions were chapter 7 cases. *See In re Plan 4 Coll., Inc.*, No. 09-17952DK, 2009 WL 3208285, at *2 (Bankr. D. Md. Sept. 24, 2009); *In re Pitts*, No. 808-74860-REG, 2009 WL 4807615, at *2 (Bankr. E.D.N.Y. Dec. 8, 2009). In each, the trustee had taken custody of the debtor's assets to liquidate them. By contrast, the Debtor in this case is seeking, through its chapter 11 plan, to establish a trust to be funded in part by the proceeds of two proposed settlements and to have the trust run an asbestos-related claims resolution process. The Debtor seeking protection to proceed with its chapter 11 case without expensive distractions is a far cry from a chapter 7 liquidation. As the Bankruptcy Court found, success in this case may be confirmation of a plan that establishes the proposed trust. Stay Hr'g Tr. 159:21-160:3.

47. In another cited case, *Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC*, No. 13-cv-4650-JFK, 2014 WL 4783008 (S.D.N.Y. Sept. 25, 2014), a chapter 11 trustee had sold all of the debtor's assets prior to the request to extend the automatic stay. *See* Pls. Opp'n to Defs. Mot. to Stay at 3, S.D.N.Y., Case No. 13-cv-4650, Doc. 27. Importantly, the party seeking the stay was the former CEO of the debtor, who the trustee had displaced for cause. *Le Metier Beauty*, 2014 WL 4783008 at *1. The court reasonably concluded that extending the stay to protect the former CEO would not serve the underlying purpose of section 362 because there would be no harm to the estate by allowing proceedings to continue against the former CEO. *Id.* at *4. In contrast, the Debtor in this case sought a breathing spell to allow for consideration of the approval of its proposed settlements and to seek confirmation of its plan for the benefit all creditors of the estate. Accordingly, the purpose of section 362 is well-served by the Interim Stay Order.

48. The last case the Committee cites, *In re Env't Manucraft Inc.*, is a three-page order denying extension of the automatic stay where there was "no evidence presented . . . that demonstrates that the pending state court action would impair the debtor's ability to reorganize." 118 B.R. 404, 405 (Bankr. D.S.C. 1989). Unsurprisingly, the court concluded that the debtor had failed to show circumstances that warranted extending the stay. *Id.* at 406. By contrast, the Debtor presented fulsome evidence on the harm to the estate from a failure to extend the automatic stay to direct actions against Liberty. There was no evidence to the contrary.

49. None of the cases cited by the Committee stand for the proposition that a court may never extend the stay unless the debtor plans to reorganize. As even the Committee admits, the rule in this Circuit is the opposite. *See Piccinin*, 788 F.2d at 1003 (courts may enjoin actions that interfere with rehabilitative efforts, whether in a liquidation or reorganization). Accordingly, the Committee has not shown that grounds for substantial disagreement exist.

C. An Immediate Appeal Would Not Materially Advance the Termination of the Litigation

50. Certification of the appeal will not materially advance the termination of the litigation. 28 U.S.C. § 1292(b). "Mere speculation regarding the potential pre-trial and trial expenses and effort to be saved by an interlocutory appeal does not satisfy this requirement. Instead, the Court must examine whether appellate review might avoid protracted and expensive litigation." *Thomas v. Maximus*, 2022 WL 1482008, at *6 (internal citations omitted).

51. The Committee argues that an immediate appeal would resolve the question of whether direct actions against Liberty may be stayed by the Bankruptcy Court. It would not. The two legal issues presented by the Committee focus only on the standard for granting a preliminary injunction. The Bankruptcy Court correctly applied the uncontradicted evidence under the correct legal standard for a preliminary injunction, but if not, the case will need to be remanded to

reconsider the evidence. Stay Hr'g Tr. 167:25-169:9. In addition, the Committee's argument ignores the fact that the Bankruptcy Court also found that sections 362(a)(1) and (a)(3) of the Bankruptcy Code support the relief granted in the Interim Stay Order. *Id.* 166:17-167:25. Thus, even if the Court were to certify the appeal and rule in favor of the Committee on the two questions it presents, there would remain an active dispute over whether the automatic stay directly applies to Liberty through sections 362(a)(1) and (a)(3). Accordingly, the Committee has not met the third factor.

CONCLUSION

52. For the reasons set forth above, the Court should deny the Motion for Leave.

Dated: October 23, 2024
Richmond, Virginia

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

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