

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

IN RE:)	
)	Chapter 11
HOPEMAN BROTHERS, INC.)	Case No. 24-32428-KLP
)	
Debtor.)	

**OBJECTION OF THE UNITED STATES TRUSTEE TO: 1) 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 (DOCKET NO. 9), AND; 2) 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 (DOCKET NO. 53)**

Gerard R. Vetter, Acting United States Trustee for Region 4 (“United States Trustee”), by counsel, respectfully submits his objection to the 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; (V) Granting Related Relief (Docket No. 9) (the “Chubb 9019 Motion”) and the Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and Certain Settling

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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 (Docket No. 53) (the “Certain Settling Insurers 9019 Motion,” and together with the Chubb 9019 Motion, the “9019 Motions.”)

PRELIMINARY STATEMENT

The United States Trustee objects to the 9019 Motions to the extent the settlements would release or enjoin claims outside the scope of Section 363(f). In *Harrington v. Purdue Pharma, L.P.*, 603 U.S. ___, 144 S. Ct. 2071 (2024), the Supreme Court barred nonconsensual non-debtor releases of claims against other non-debtors and barred injunctions protecting non-debtors from such claims. Section 363(f) provides limited authority for a debtor to sell property of the estate free and clear of interests in that property, but that subsection does not permit a court to release or enjoin claims between third parties that are not property of the debtor and that are not directed against estate property. Neither Section 105 nor Rule 9019 can extend the Court’s limited authority under Section 363(f). Accordingly, to the extent the 9019 Motions seek relief beyond that authorized under Section 363(f) by releasing or enjoining claims outside the bounds of that section, they violate the Bankruptcy Code and *Purdue Pharma* and cannot be approved.

STANDING

1. Under 28 U.S.C. § 586(a)(3), the United States Trustee is charged with overseeing the administration of chapter 11 cases filed in this judicial district. This duty is part of the United States Trustee’s overarching responsibility to enforce the bankruptcy laws as written by Congress and interpreted by the courts. See *A-1 Trash Pickup, Inc. v. United States Trustee (In re A-1 Trash Pickup, Inc.)*, 802 F.2d 774, 775 (4th Cir. 1986) (citing to legislative history describing the U.S. Trustee as a “watchdog”).

2. The United States Trustee has standing to “appear and be heard on any issue in any case or proceeding under this title” 11 U.S.C. § 307. This applies “even though the [United States Trustee has] no pecuniary interest in any case.” *See United States Trustee v. Clark (In re Clark)*, 927 F.2d 793, 796 (4th Cir. 1991).

FACTS

3. On June 30, 2024, the Debtor filed a chapter 11 bankruptcy petition in this Court (Docket No. 1).

4. On June 30, 2024, the Debtor filed the Chubb 9019 Motion (Docket No. 9).

5. On July 10, 2024, the Debtor filed the Certain Settling Insurers 9019 Motion (Docket No. 53).

6. On July 12, 2024, the Debtor filed a Chapter 11 Plan of Liquidation (Docket No. 56; “the Plan”) and a Disclosure Statement related to that Plan (Docket No. 57). The Disclosure Statement has not been set for hearing.

7. Although the Debtor has filed bankruptcy because of asbestos related legal claims against it, the Debtor’s Plan does not include the special asbestos provisions of Bankruptcy Code Section 524(g).

8. The proposed order attached to the Chubb 9019 Motion as Exhibit B provides, in part, as follows (emphasis added):¹

¹ The provisions quoted herein are substantively the same as the proposed order attached to the Certain Settling Insurers 9019 Motion. *See* Docket 53, Exhibit B. The paragraph numbers in the proposed order attached to the Certain Settling Insurers 9019 Motion are one number behind the paragraph numbers in the order attached to the Chubb 9019 Motion (for example, paragraph 6 of the proposed order attached to the Chubb 9019 Motion is paragraph 5 of the proposed order attached to the Certain Settling Insurers 9019 Motion). For ease of reference, this Objection will cite to the provisions of the proposed order attached to the Chubb 9019 Motion although the provisions of the proposed order attached to the Certain Settling Insurers 9019 Motion are substantively identical and they are objectionable in the same ways.

3. Pursuant to Bankruptcy Rule 9019, the Chubb Insurer Settlement Agreement and each of its terms and conditions, including the releases contained therein, shall be, and hereby are, approved in their entirety. . . .

6. Upon the occurrence of the Payment Date, (a) the Chubb Insurers shall be irrevocably released from (i) all claims by the Debtor under, arising out of, related to, and/or in connection with the Policies, and (ii) all extra-contractual claims arising out of, related to, and/or in connection with the Policies, and (b) all rights and obligations between the Debtor and the Chubb Insurers in respect of the Policies shall be fully and finally extinguished. As a result, the Policies shall be terminated and of no force and effect and be exhausted in respect of all coverages thereunder. . . .

8. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor's sale of the Policies to the Chubb Insurers shall constitute a valid, legal, and effective transfer, which shall vest the Chubb Insurers with all right, title, and interest in and to the Policies free and clear of all liens, claims,² encumbrances, and other interests of any person, including, but not limited to, all rights and interests of the Debtor, any other person claiming by, through, or on behalf of the Debtor, any other insurer, any holder of any Asbestos-Related Claim against the Debtor, whether arising prior to or subsequent to the Petition Date, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of the estate or the Chubb Insurers, as the case may be, in the Policies).

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, all persons who hold or assert, or may in the future hold or assert, any claim against Hopeman Persons or Chubb Insurer Persons shall be and hereby are permanently stayed, restrained, and enjoined from asserting any Claim or right to entitlement, or taking any other action against the Chubb Insurer Persons, Hopeman Persons or any other Person who may be an insured, additional insured, or otherwise entitled to any benefit under the Policies, for the purpose of obtaining any recovery or other relief from the Chubb Insurer Persons or under or in connection with the Policies, arising out of or in connection with the activities covered by the Policies, or in connection with the Hopeman Persons' activities giving rise to claims made or to be made under the Policies. . . . (emphasis added).

14. The Debtor shall use the Settlement Amount solely to make payments to or for the benefit of holders of Asbestos-Related Claims and for other costs and expenses associated with this chapter 11 case; **provided, that, the Debtor shall**

² The proposed orders state that capitalized terms used but not defined in the proposed orders "have the meanings ascribed to them in the" settlement motion or the attached settlement agreement. See Proposed order attached to the Chubb 9019 Motion, fn. 1. Here "claims" is not capitalized, despite the defined term "Claim" in the settlement agreement. The capitalized defined term "Claim" is used in paragraph 9 of the Order.

make best efforts to ensure that the Liquidation Trustee or any other payor of the Asbestos-Related Claims **will obtain from each holder of an Allowed Asbestos-Related Claim**, prior to such holder receiving a disbursement on account of such Allowed Asbestos-Related Claim, **an executed Claimant Release** that is substantially similar to the form of Claimant Release attached to the Chubb Insurer Settlement Agreement as Exhibit C. (emphasis added).

15. This Order shall be binding upon the Debtor, the Chubb Insurers, all holders of Claims (including Asbestos-Related Claims) against the Debtor, all insurers who received notice of the Motion, all other persons and entities receiving notice as set forth in the Motion, the respective successors and assigns of each person referred to in this paragraph, and any chapter 11 trustee, Liquidation Trustee, or other trust or distribution vehicle established under a chapter 11 plan of the Debtor, and on any chapter 7 trustee if this chapter 11 case is converted to a chapter 7 proceeding.

9. “Hopeman Persons” is defined in paragraph 1.18 of the Chubb Insurer Settlement Agreement (Exhibit A to the Chubb 9019 Motion) as follows:

“Hopeman Persons” means Hopeman and (i) each of the past, present and future direct and indirect parents, subsidiaries, partners, holding companies, merged companies, divisions, joint ventures, joint venturers, affiliates and related companies of Hopeman, including without limitation, Wayne Manufacturing Corporation; (ii) each of the foregoing Persons’ past, present and future officers, directors, employees, representatives, claim handling administrators, agents, members, principals, attorneys and shareholders; (iii) each of the foregoing Persons’ predecessors, successors, assignors, and assigns, whether known or unknown, and all Persons acting on behalf of, by, through, or in concert with them, and (iv) any and all Persons known to Hopeman who are entitled or allegedly entitled to insurance coverage under the Policies as a “named insured,” “additional insured,” or otherwise as “insureds” or “assureds” within the meaning thereof.³

10. “Chubb Insurer Persons” is defined in paragraph 1.10 of the Chubb Insurer Settlement Agreement (Exhibit A to the Chubb 9019 Motion) as follows:

“Chubb Insurer Persons” means, applying the broadest definition Chubb Insurers⁴

³ The definition of “Hopeman Persons” in the Certain Settling Insurance Companies Settlement Agreement (Exhibit A to the Certain Settling Insurers 9019 Motion) is the same, except the phrase “or who have or claim to have any similar status under any Policies” appears at the end. The two settlement agreements are largely substantively identical. To the extent there are relevant differences they are discussed herein.

⁴ “Chubb Insurers” is in turn defined to include “Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America” and “Westchester Fire Insurance Company, on its own behalf and for policies novated to or assumed by Westchester Fire Insurance Company.”

and (i) each of the past, present and future direct and indirect parents, subsidiaries, partners, holding companies, merged companies, divisions, joint ventures, joint venturers, affiliates and related companies of one or both Chubb Insurers; (ii) each of the foregoing Persons' past, present and future officers, directors, employees, representatives, claim handling administrators, agents, members, principals, attorneys and shareholders; and (iii) each of the foregoing Persons' predecessors, successors, assignors, and assigns, whether known or unknown, and all Persons acting on behalf of, by, through, or in concert with them.

11. "Certain Settling Insurer Persons" is defined in paragraph 1.9 of the Certain Settling Insurance Companies Settlement Agreement (Exhibit A to the Certain Settling Insurers 9019 Motion) as follows:

"Certain Settling Insurer Persons" means, applying the broadest definition, Certain Settling Insurers and (i) each of the past, present and future direct and indirect parents, subsidiaries, partners, holding companies, merged companies, divisions, joint ventures, joint venturers, affiliates and related companies of one or both Certain Settling Insurers; (ii) each of the foregoing Persons' past, present and future officers, directors, employees, representatives, claim handling administrators, agents, members, principals, attorneys and shareholders; and (iii) each of the foregoing Persons' predecessors, successors, assignors, and assigns, whether known or unknown, and all Persons acting on behalf of, by, through, or in concert with them.⁵

12. "Claims" is defined in paragraph 1.11 of the Chubb Insurer Settlement Agreement (Exhibit A to the Chubb 9019 Motion) as follows:

"Claims" means any and all past, present, or future, known or unknown, foreseen or unforeseen, direct or indirect, fixed or contingent, matured or unmatured, liquidated or unliquidated, claims (including "claim" as defined in Section 101(5) of the Bankruptcy Code), proofs of claim, causes of actions, cross-claims, third-party claims, liabilities, rights, demands (including letter demands, notices, or inquiries from any person or government agency), penalties, assessments, damages, requests, suits, lawsuits, costs, attorneys' fees, expenses, and interest of any kind, actions, administrative proceedings, criminal proceedings, or orders, of whatever nature, character, type, or description, whenever and however occurring, whether at law or in equity, and whether sounding in tort or contract, or any statutory, regulatory or common law claim or remedy of any type including, without limitation: (a) any Asbestos Claim; (b) any claim seeking any type of relief, including compensatory, consequential, equitable, exemplary or punitive damages, rescission, or declaratory or injunctive relief; (c) any claim for billing or premium

⁵ "Certain Settling Insurer Persons" is in turn defined to include Continental Casualty Company, Fidelity & Casualty Company, Lexington Insurance Company, Granite State Insurance Company, Insurance Company of the State of Pennsylvania, National Union Fire Insurance Company of Pittsburgh PA and General Reinsurance Corporation, including as successor to North Star Reinsurance Corporation.

adjustments; (d) any claim on account of alleged bad faith, failure to act in good faith, violation of any duty of good faith and fair dealing, violation of any unfair claims practices act or similar statute, regulation or code, any unfair claims handling or settlement practices, fraud, conspiracy, concerted action, or other type of alleged misconduct; (e) any claim for any other act or omission of Hopeman Persons or Chubb Insurer Persons of any type for which a claimant might seek relief; (f) Direct Action Claims; (g) Insurance Coverage Claims and/or (h) except as set forth in section 3.4 with respect to Chubb Insurer-requested additional publication costs, Claims seeking to recover administrative-related expenses incurred in the Bankruptcy.

13. “Direct Action Claims” is defined in paragraph 1.13 of the Chubb Insurer

Settlement Agreement (Exhibit A to the Chubb 9019 Motion) as follows:

“Direct Action Claim” means any Claim by any Person, other than Hopeman, directly against Chubb Insurer Persons under any Policies that arises from the alleged liability of Hopeman Persons, or any insurance contract or Policies that is, or may in the future be, asserted to provide coverage for any of the aforementioned Claims, whether arising by contract, in tort, in equity, or under the laws of any jurisdiction, including any statute that gives a third party a direct cause of action against Chubb Insurer Persons.

14. “Insurance Coverage Claims” is defined in paragraph 1.20 of the Chubb Insurer

Settlement Agreement (Exhibit A to the Chubb 9019 Motion) as follows:

“Insurance Coverage Claim” means any Claim seeking defense or indemnity or any other benefit, including any claim for contribution or indemnity by Other Insurers, under or relating to the Policies, including as to alleged existence and exhaustion of applicable limits of each and every Policy. “Insurance Coverage Claim” does not include a dispute arising under or with respect to this Agreement.

15. The immense number of parties protected by these releases and injunctions and the scope of the claims released is difficult to grasp. In an attempt to determine exactly who would be protected and from what claims, the United States Trustee created the chart attached as **Exhibit 101**.

16. Of particular note, the releases and injunctions would bar: a) individuals with asbestos-related claims against the Debtor from bringing state law “direct action” claims for the same injuries against the settling insurance companies; b) individuals with asbestos-related claims from bringing those claims against a variety of other non-debtors, including everyone in

the broad definition of Hopeman Persons; c) anyone from bringing a claim against anyone who is “an insured, additional insured, or otherwise entitled to any benefit under the Policies” and; d) non-settling insurance companies from bringing claims based on any theory against the settling insurance companies.

ARGUMENT

17. The United States Trustee objects to the 9019 Motions for the reasons set forth herein.

I. The 9019 Motions Cannot Be Approved to the Extent they Release or Enjoin Claims Outside the Scope of Section 363(f).

18. The Debtor cites Section 363(f) as authority to “sell” its only assets, its insurance policies, back to the insurance companies that issued them for a sale price agreed to by: a) the Debtor, who has filed a liquidating plan contemplating dissolution, and b) the insurers, who, absent such sale, would be on the hook to pay asbestos claims made against the Debtor and related defense costs, as well as Debtor-related asbestos claims made directly against the insurance companies, for an undetermined amount of time with an undetermined amount of money.

19. Section 363(f) provides that a debtor in possession may sell property of the estate “free and clear of **any interest in such property** of an entity other than the estate” if certain criteria are met. 11 U.S.C. § 363(f) (emphasis added).

20. Section 363(f) thus only applies to interests **in property of the estate** because a debtor may only sell property of the estate under Section 363(f). A debtor cannot sell the property of a non-debtor. *See In re Signal Hill-Liberia Ave. Ltd. Partnership*, 189 B.R. 648, 652 (Bankr. E.D. Va. 1995) (“[S]ales of property under § 363(f) are limited to sales of property of the estate.”).

21. The Debtor bears the burden of establishing that the sale complies with section 363(f). *See In re Silver*, 338 B.R. 277, 280 (Bankr. E.D. Va. 2004) (“In order to sell property pursuant to 363(b), however, the trustee must also satisfy one of the five conditions prescribed under § 363(f).”). Because section 363(f) only authorizes sales free and clear of “any interest in” the property to be sold, this means the Debtor must show that the claims to be released and enjoined here are all “interests” in the Debtor’s property.

22. The 9019 Motions ask the Court to issue numerous releases and injunctions of unclear effect.

A. For example, Paragraph 6(ii) of the proposed order attached to the Chubb 9019 Motion purports to release the insurance companies from “all extra-contractual claims arising out of, related to, and/or in connection with the Policies.” This subsection is not limited to claims of the Debtor like subsections (i) and (iii) of paragraph 6.⁶

B. Paragraph 8 of the proposed order attached to the Chubb 9019 Motion purports to transfer the insurance policies to the purchasing insurance companies “**free and clear of all liens, claims, encumbrances, and other interests of any person, including, but not limited to, all rights and interests of the Debtor, any other person claiming by, through, or on behalf of the Debtor, any other insurer, any holder of any Asbestos-Related Claim against the Debtor, whether arising prior to or subsequent to the Petition Date, and whether imposed by agreement, understanding, law, equity, or otherwise . . .**”

⁶ It may be that the omission of the word “Debtor” from paragraph 6(ii) is in error.

C. Paragraph 9 of the proposed order attached to the Chubb 9019 Motion permanently enjoins “**all persons who hold or assert, or may in the future hold or assert, any claim** against Hopeman Persons or Chubb Insurance Persons” **from bringing “any Claim** or right to entitlement, **or taking any other action against the Chubb Insurance Persons, Hopeman Persons or any other Person who may be an insured, additional insured, or otherwise entitled to any benefit under the Policies, for the purpose of obtaining any recovery or other relief from the Chubb Insurance Persons** or under or in connection with the Policies, arising out of or in connection with the activities covered by the Policies, or in connection with the Hopeman Persons' activities giving rise to claims made or to be made under the Policies.”

23. The provisions set out above are remarkably broad already, but they expand exponentially when the broad definitions of “Chubb Insurance Persons,” “Certain Settling Insurer Persons,” “Hopeman Persons” and “Claims” are applied.⁷ See **Exhibit 101**. Importantly, these provisions are **not** limited to claims against property of the estate, as required by Section 363(f), but purport to release or enjoin claims by third parties against other third parties.

24. As set forth above, the Debtors bear the burden of establishing that these provisions may be approved under Section 363(f). Section 363(f) cannot be used to justify broad non-consensual, non-debtor releases foreclosed by the Supreme Court’s decision in *Purdue Pharma*, which barred nonconsensual non-debtor releases of claims against other non-debtors and barred injunctions protecting non-debtors from such claims.

⁷ The definitions of Chubb Insurance Persons and Certain Settling Insurer Persons are specifically defined to require “applying the broadest definition.” See ¶¶ 11-12 *supra*.

25. *Purdue Pharma* is a watershed case. It speaks directly to the authority of bankruptcy courts to release and enjoin claims between non-debtors.

26. At issue in *Purdue Pharma* were release and injunction provisions in a plan that barred current and future opioid-related claims by anyone who might sue Purdue Pharma, including negligence, fraud, and willful misconduct claims. *See Purdue Pharma*, 144 S. Ct. at 2079. The releases and injunctions would not just have “prevent[ed] suits against the company’s officers and directors but would [have] run in favor of hundreds, if not thousands, of Sackler family members and entities under their control.” *Id.*

27. In *Purdue Pharma*, the Supreme Court noted that bankruptcy courts have many powers, rights and responsibilities when dealing with a debtor’s assets, “including the power to address certain collective-action problems when they implicate the debtor’s rights and responsibilities. **But those directions also indicate that a bankruptcy court’s powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors** (here, the opioid victims) **against other nondebtors** (here, the Sacklers).” *Purdue Pharma*, 144 S. Ct. at 2084 (emphasis added).

28. The Supreme Court’s decision in *Purdue Pharma* precludes entering the proposed orders attached to the 9019 Motions to the extent that the orders provide relief not authorized by section 363(f).

29. Even prior to the issuance of *Purdue Pharma*, this Court recognized the limits of Section 363(f). In *Health Diagnostic Laboratory, Inc.*, 2017 WL 4457609 (Bankr. E.D. Va. October 4, 2017), this Court examined the scope of a release and injunction given as part of a Section 363(f) sale of a debtor’s property, which certain parties argued barred “all creditor claims relating to the operation of the Debtors’ business.” *See id.* at *7. This Court held that the

protections under the sale agreement “apply only to claims that the Debtors held and had the capacity to release.” *See id.* at *6 (citations omitted). It further held that the sale agreement “could not release claims held by third party creditors.” *See id.* (citations omitted). This Court reasoned that although a court could at that time (before *Purdue Pharma* was decided) release nondebtors from such third-party claims in the context of a confirmation order that complied with the *National Heritage* framework, it could not do so through a sale order. *Id.* at *6 (citing *Nat'l Heritage Found. v. Highbourne Found.*, 760 F.3d 344, 347 (4th Cir. 2014) and *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 712 (4th Cir. 2011)).⁸

30. Consistent with the reasoning of *Health Diagnostic Laboratory*, other courts have declined to interpret Section 363(f) to permit nonconsensual non-debtor injunctions and releases under the guise of sales of insurance policies free and clear of non-debtors’ “interests in” the policies. *See In re Fraser’s Boiler Service, Inc.*, 2019 WL 1099713 at *8 (W.D. Wash. March 8, 2019) (reversing decision that approved the sale of insurance policies free and clear of claims between insurance companies because claims by non-settling insurance companies against the settling insurance companies were not an “interest” in the debtor’s property and the bankruptcy court had no authority to release those third-party claims); *Overton’s, Inc. v. Interstate Fire & Cas. Ins. Co. (In re Sportstuff, Inc.)*, 430 B.R. 170, 178 (B.A.P. 8th Cir. 2010) (overturning a bankruptcy court’s approval of an insurance settlement because it did not have “jurisdiction or authority to impair or extinguish independent contractual rights” belonging to third parties, including the right to defense and reimbursement of defense costs); *In re SoyNut Butter Co.*,

⁸ Further, to the extent that the Debtor intends to argue that the analysis under Section 363(f) and under the Plan are different, it is also factually unavailing here because the injunction protecting the settling insurance companies in the 9019 Motions appears in the Plan, because the same injunction is repeated there. *See* Plan, Article X, Section 10.4 (Docket No. 56). That injunction specifically includes an injunction against “any Claim released in an Approved Asbestos Insurance Settlement Agreement”

2018 WL 3689549 at *4 (Bankr. N.D. Ill. August 1, 2018) (holding that a Section 363(f) sale of an insurance policy that released the claims of additional insureds against the issuing insurance company could not be approved because the debtor could not sell the additional insureds' rights in the policy or their legal claims since those rights and claims were not part of the estate); *In re Adelphia Communications Corp.*, 364 B.R. 518, 528 (Bankr. S.D.N.Y. 2007) (permitting the debtor to sell its rights under insurance policies to the insurers but refusing to “authorize invocation of section 363(f)” or limit the rights of certain objecting parties to bring claims against the purchasing insurers and refusing to issue the “channeling injunction” barring claims against the purchasing insurers); *In re Forty-Eight Insulations, Inc.*, 133 B.R. 973, 980 (Bankr. N.D. Ill. 1991), *aff'd*, 149 B.R. 860 (N.D. Ill 1992)) (holding that Section 363(f) sale of a debtor's rights in an insurance policy could not support a release and injunction against the debtor's parent corporation that was an additional insured and had its own rights under the policy).

31. Paragraph 8 of the proposed order attached to the Chubb 9019 Motion purports to release claims “arising prior to or subsequent to the Petition Date.” As discussed above, there is no authority that would permit the Court to release claims against the purchasers that arise after the sale of the policies. Such claims could not be an interest in property of the estate since the policies are no longer property of the estate after they are sold and transferred to the buyers.

32. Thus, to the extent that the Debtor is asking the Court to issue any relief under the 9019 Motions that extends beyond the clear terms of the limits of Section 363(f)—that the trustee can sell property of the estate “free and clear of any interest in such property”—then the 9019 Motions cannot be granted.

II. Neither Section 105(a) Nor Rule 9019 Expands the Court’s Authority Under Section 363(f) Nor Authorizes the Court to Issue Nonconsensual Third-Party Releases in Violation of Supreme Court Precedent.

33. In addition to Section 363(f), the Debtors cite Section 105 and Rule 9019 as authority for the 9019 Motions, but neither provision authorizes the Court to issue any relief beyond Section 363(f)’s express limits.

34. It is axiomatic that Section 105(a) is not an independent grant of authority. *Purdue Pharma* specifically rejects §105(a) as a freestanding basis for nonconsensual non-debtor injunctions, ruling that § 105(a) “serves only to ‘carry out’ authorities elsewhere conferred” in other provisions of the Bankruptcy Code, and that there is no Code section that authorizes nonconsensual releases or injunctions. 144 S. Ct. at 2082 n.2; *see also Law v. Siegel*, 571 U.S. 415, 421 (2014) (“We have long held that whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.”) (internal citation omitted). Section 105(a) does not permit the third-party releases and injunctions generally or the requested “policy injunction” specifically.⁹

35. Bankruptcy Rule 9019(a) provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). “In making its evaluation, the court must determine whether ‘the compromise is fair, reasonable, and in the best interest of the estate.’” *In re Washington Mutual, Inc.*, 442 B.R. 314, 328 (Bankr. D. Del. 2011) (quoting *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

36. Nothing in Bankruptcy Rule 9019 permits bankruptcy courts to impose nonconsensual non-debtor releases. The Rule is limited to approvals of a debtor’s “compromise or settlement.” Fed. R. Bankr. P. 9019(a). But a debtor lacks standing to pursue its creditors’

⁹ See Proposed Order attached to the Chubb 9019 Motion as Exhibit B, ¶ 9.

direct claims against third parties. *See Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 426-29 (1972). Moreover, a compromise or settlement is, by definition, consensual. *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (emphasis added) (defining a “settlement” as “an **agreement ending a dispute** or lawsuit,” and defining an “agreement” as “a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; a manifestation of mutual assent by two or more persons”) (emphasis added). By its plain terms, Bankruptcy Rule 9019 does not authorize the imposition of non-consensual releases between non-debtors.

37. Nor could Bankruptcy Rule 9019 authorize the imposition of nonconsensual releases, even if, counterfactually, it purported to do so. Because 28 U.S.C. § 2075 commands that bankruptcy rules shall not abridge, enlarge, or modify any substantive right, bankruptcy courts may not rely on Rule 9019 (or any court rule) to approve the very thing *Purdue Pharma* expressly held no Bankruptcy Code provision permits—nonconsensual third-party releases and injunctions. *Purdue Pharma*, 144 S. Ct. at 2088 (“[T]he bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non-debtor without the consent of affected claimants.”).

38. Notably, to the extent that the Court determines the releases are limited to claims that are property of the estate, it still must provide exacting scrutiny of the claims being released. *See Markwest Liberty Midstream and Resources, LLC v. Meridien Energy, LLC*, 2024 WL 3345342 at *22 (E.D. Va. July 9, 2024). In *Meridien*, the District Court examined the scope of releases in a 9019 settlement of a debtor’s direct claims that were far less sweeping than the releases and injunction proposed by the Debtor in its 9019 motions. The District Court

determined that the Bankruptcy Court had not appropriately scrutinized the extent of the claims released and vacated the sale order. *See id* at *22.

III. The Court Lacks Constitutional Authority under *Stern v. Marshall* to Adjudicate Non-Debtor Releases and Injunctions.

39. To the extent the Court approves any relief in the 9019 Motions that exceeds the bounds permitted by Section 363(f), then the Court must make a report and recommendation to the District Court because the Bankruptcy Court lacks constitutional authority over the claims sought to be released therein.

40. Specifically, in *Stern v. Marshall*, the Supreme Court held that the bankruptcy court “lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor’s proof of claim.” 564 U.S. 462, 503 (2011). For claims over which this Court does not have constitutional authority under Article III, the Court must make a report and recommendation to the District Court. *See Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 676 (E.D. Va. 2022) (finding that the Bankruptcy Court exceeded its constitutional authority, vacating the confirmation order at issue, and treating the confirmation order as a report and recommendation).

41. The fact that these issues arise in the context of Section 363(f) and Rule 9019 does not change the analysis. “*Stern* teaches that courts should focus on the content of the proceeding rather than the category of the proceeding when determining whether a bankruptcy court has acted within its constitutional authority.” *Mahwah*, 636 B.R. at 669.

IV. To the Extent the Injunction in the 9019 Order Protects the Debtor It Cannot Be Approved Because It Violates 11 U.S.C. § 1141(d)(3).

42. In addition to the significant third-party release and injunction problems with the 9019 Motions, paragraph 9 of the proposed order in the Chubb 9019 Motion provides for an improper injunction protecting the Debtor:

Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, **all persons who hold or assert, or may in the future hold or assert, any claim against Hopeman Persons or Chubb Insurer Persons shall be and hereby are permanently stayed, restrained, and enjoined from asserting any Claim or right to entitlement, or taking any other action against the Chubb Insurer Persons, Hopeman Persons or any other Person who may be an insured, additional insured, or otherwise entitled to any benefit under the Policies, for the purpose of obtaining any recovery or other relief from the Chubb Insurer Persons or under or in connection with the Policies, arising out of or in connection with the activities covered by the Policies, or in connection with the Hopeman Persons' activities giving rise to claims made or to be made under the Policies.**

(emphasis added).

43. This is a liquidation case, and the Debtor is a corporation. The Debtor is not entitled to a discharge in this case. *See* 11 U.S.C. §§ 1141(d)(3) & 727(a)(1).

44. The Debtor's Plan acknowledges that it is not going to receive a discharge. *See* Plan, Article X, Section 10.10 (Docket No. 56).¹⁰

45. Paragraph 9 of the proposed order in the Chubb 9019 Motion would enjoin "all persons" who may have claims against the Debtor now or in the future from bringing claims "under or in connection with the Policies, with the activities covered by the Policies, or in connection with the Hopeman Persons' activities giving rise to claims made or to be made under the Policies."

46. This sweeps up an enormous number of potential claims against the Debtor and bars "all persons" from bringing those claims.

¹⁰ Despite Article X, Section 10.10 of the Plan, Article X, Section 10.2 of the Plan provides for an injunction protecting the Debtor from pre-Effective Date claims. That is also an attempt to effectuate an improper discharge of the Debtor, and the United States Trustee will object to it in due course.

47. Hopeman has not operated since 2003 and exists only to resolve asbestos related personal injury claims against it. *See* Chubb 9019 Motion, ¶ 1.

48. For all practical purposes paragraph 9 of the proposed order attached to the Chubb 9019 Motion is a discharge injunction by another name.

49. The Debtor cannot get a discharge in this case and therefore the Debtor should not be able to get the functional equivalent of a discharge injunction in connection with the 9019 Motions.

V. The Settlement Orders Include a “Claimant Release” with the Liquidation Trust that Cannot be Approved.

50. The proposed orders attached to the 9019 Motions require that the Debtor use its “best efforts to ensure” that anyone that will receive payment from the liquidation trust proposed in the Plan sign a “Claimant Release.”¹¹

51. Consistent with the proposed orders, the proposed Plan requires that each holder of an Asbestos PI Claim must sign a Claimant Release as a condition of being paid by the liquidation trust. *See* Docket No. 56, Plan, Section 8.4 and the “Trust Release” attached to same. The “Claimant Release” attached to the 9019 Motions and the “Trust Release” attached to the Plan are the same.

52. The Claimant Release provides, in part, as follows:

¹¹ The Claimant Release is attached as Exhibit C to the Settlement Agreement between the Debtor and the insurance companies (Docket No. 9, pages 64-68). The Claimant Release is also attached to the Certain Settling Insurers 9019 Motion (Docket No. 53, pages 67-71).

1. On behalf of the Injured Party, the Injured Party's estate, the Injured Party's heirs, and/or anyone else claiming rights through the Injured Party, now and in the future, Claimant hereby fully and finally RELEASES, ACQUITS, and FOREVER DISCHARGES the Liquidation Trust, the Trust Advisory Committee, the Debtor, the Debtor's Estate, the Debtor's former affiliates and subsidiaries, any Settling Asbestos Insurance Entity, and each of the foregoing's respective settlors, trustors, trustees, members, directors, officers, agents, consultants, financial advisors, servants, employees, attorneys, heirs, executors, and any Asbestos Protected Party (collectively, the "Releasees") from any and all Asbestos Claims and any claims related thereto (collectively, the "Released Claims"), except as expressly provided herein.

3. Claimant intends this Release and Indemnity Agreement to be as broad and comprehensive as possible so that the Releasees shall never be liable, directly or indirectly, to the Injured Party or the Injured Party's heirs, legal representatives, successors or assigns, or any other person or entity claiming by, through, under, or on behalf of the Injured Party, for or on account of any Released Claim, except as expressly provided herein, whether the same is now known or unknown or may now be latent or may in the future appear to develop or worsen, including all spousal claims for the Injured Party's claims. If Claimant is an Official Representative, Claimant represents and warrants that Claimant has all requisite legal authority to act for, bind and accept payment on behalf of the Injured Party and all heirs of the Injured Party on account of any Released Claim and hereby agrees to indemnify and hold harmless, to the extent of payment hereunder, excluding attorneys' fees and costs, the Releasees from any loss, cost, damage, or expense arising out of or in connection with the rightful claim of any other Entity to payments with respect to the Injured Party's Released Claim.

53. The Claimant Release "extinguish[es] a broad swath of claims held by a wide variety of people." *Mahwah*, 636 B.R. at 703. While *Purdue Pharma* leaves open questions around consensual third-party releases¹², a requirement that a claimant sign away his or her rights against non-debtors in order to get paid from a Bankruptcy Court approved liquidation trust is not consensual. *See, e.g., Reichert v. Rapid Invs., Inc.*, 56 F.4th 1220, 1230-31 (9th Cir. 2022) (holding acceptance of benefits does not constitute acceptance of an offer where rejection would incur a penalty).

54. The Claimant Release is also another attempt to obtain a discharge of the Debtor in contravention of 11 U.S.C. § 1141(d)(3).

55. The Settlement Orders do not require that the Court approve the Claimant Release at this time. However, the Settlement Orders do require that the Debtor make "best efforts" to

¹² *See Purdue Pharma*, 144 S. Ct. at 2087.

obtain Court approval of the Claimant Release. Accordingly, the United States Trustee reserves his right to object to the Claimant Release in connection with the Disclosure Statement, Plan, or other pleading filed in this case.

CONCLUSION

56. The proposed third-party releases and injunctions included in the 9019 Motions cannot be approved under *Purdue Pharma*. Neither Sections 363(f) or 105(a) nor Rule 9019 support third-party releases and injunctions in violation of *Purdue Pharma*. To the extent the Court believes that it would be appropriate to enter an order approving either 9019 Motion, the Court must make a report and recommendation to that effect to the District Court.

WHEREFORE, the United States Trustee respectfully asks that this Court deny the Chubb 9019 Motion and the Certain Settling Insurers 9019 Motion and that the Court award such other and further relief as may be just and proper.

Dated: November 20, 2024

Respectfully Submitted,

GERARD R. VETTER
Acting United States Trustee Region 4

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via CM/ECF on this 20th day of November, 2024, on the counsel for the debtor, counsel for the unsecured creditors committee, and all parties receiving notice in the above-captioned case, constituting all necessary parties. In addition, the foregoing was emailed to counsel for the debtor and counsel for the unsecured creditors committee at:

Debtor:

tpbrown@hunton.com

hlong@hunton.com

Committee:

jliesemer@capdale.com

nmiller@capdale.com

/s/ Kathryn R. Montgomery

Kathryn R. Montgomery

United States Trustee's
Exhibit 101
(3 pages)

For both 9019 Motions, charts of:

- Releasing Persons and Persons Enjoined
 - Claims Released and Claims Enjoined
- Persons Released and Persons Protected by Injunction

RELEASING PERSONS IN CHUBB 9019 and OTHER SETTLING INSURERS 9019 Exhibit (5) to Claims of Releasing Persons Enjoined Claims Released and Claim			PERSONS ENJOINED
Any persons	Hopeman Bros., Inc. and the following:	NINE INSURANCE COMPANIES: Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, Fidelity & Casualty Company, Lexington Insurance Company, Granite State Insurance Company, Insurance Company of the State of Pennsylvania, National Union Fire Insurance Company of Pittsburgh, PA, General Reinsurance Corporation, and for each of these, the following:	All persons asserting claims
Bankruptcy estate	Past, present future direct parents	Past, present future direct parents	All future persons asserting claims
Any other insurer	Past, present, future indirect parents	Past, present, future indirect parents	
Holders of asbestos claims	Past, present, future subsidiaries	Past, present, future subsidiaries	
Any holder of any of the over 126,000 asbestos injury claims against Hopeman Bros., Inc. predecessors and assignors	Past, present, future partners	Past, present, future partners	
	Past, present, future holding companies	Past, present, future holding companies	
	Past, present, future divisions	Past, present, future divisions	
	Past, present, future joint ventures	Past, present, future joint ventures	
	Past, present, future joint venturers	Past, present, future joint venturers	
	Past, present, future affiliates	Past, present, future affiliates	
	Past, present, future related companies	Past, present, future related companies	
	Past, present, future officers of any of the above	Past, present, future officers of any of the above	
	Past, present, future directors of any of the above	Past, present, future directors of any of the above	
	Past, present, future employees of any of the above	Past, present, future employees of any of the above	
	Past, present, future representatives of any of the above	Past, present, future representatives of any of the above	
	Past, present, future claims handlers of any of the above	Past, present, future claims handlers of any of the above	
	Past, present, future agents of any of the above	Past, present, future agents of any of the above	
	Past, present, future members of any of the above	Past, present, future members of any of the above	
	Past, present, future principals of any of the above	Past, present, future principals of any of the above	
	Past, present, future attorneys of any of the above	Past, present, future attorneys of any of the above	
	Past, present, future shareholders of any of the above	Past, present, future shareholders of any of the above	
	For all of the above, any predecessors	For all of the above, any predecessors	
	For all of the above, any successors	For all of the above, any successors	
	For all of the above, any assignors	For all of the above, any assignors	
	For all of the above, any assigns	For all of the above, any assigns	

CLAIMS RELEASED BY CHUBB 9019 AND OTHER SETTLING CLAIMS ENJOINED BY CHUBB 9019 AND OTHER SETTLING INSURERS 9019
 Exhibit 101-Chart of Releasing Persons Enjoined by Chubb Released and Claim Page 9 of 4

Claims [undefined term] arising prior to or subsequent to the Petition Date whether imposed by agreement, understanding, law, equity, or otherwise	All Claims, liens, interests, demands, encumbrances, rights of any nature against: 1) Hopeman Bros., Inc. and 2) NINE INSURANCE COMPANIES: Century Indemnity Company, Westchester Fire Insurance Company, Continental Casualty Company, Fidelity & Casualty Company, Lexington Insurance Company, Granite State Insurance Company, Insurance Company of the State of Pennsylvania, National Union Fire Insurance Company of Pittsburgh, PA, General Reinsurance Corporation, 3) and for Hopeman Bros. Inc. and each Insurer, the following additional persons:
Claims [undefined term] including interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of the estate in the Policies	Past, present future direct parents
Claims [undefined] including interests in Policies purporting to give any party a right or option to effect any forfeiture, modification, or termination of the interest of any of the NINE INSURANCE COMPANIES listed in column 2, row 2.	Past, present, future indirect parents
Claims [undefined] including interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the interest of the NINE INSURANCE COMPANIES listed in column 2, row 2.	Past, present, future subsidiaries
Claims as defined by 11 USC Section 101 (5)	Past, present, future partners
Claims for bad faith	Past, present, future holding companies
Claims for unfair or improper claims handling or settlement practices	Past, present, future divisions
Claims for conspiracy	Past, present, future joint ventures
Claims for fraud	Past, present, future joint venturers
Claims for violation of any law, regulation, code, statutes, or other conduct whether based on contract, tort or otherwise	Past, present, future affiliates
Claims for coverage related to Policies for property damage, bodily injury, personal injury, advertising injury	Past, present, future related companies
Claims for any loss potentially covered by the policies	Past, present, future officers of any of the above
Direct action claims	Past, present, future directors of any of the above
Coverage claims	Past, present, future employees of any of the above
Any claim or any other act or omission of the Hopeman Persons or Chubb Persons of any type for which a claimant seeks relief	Past, present, future representatives of any of the above
All past, present, or future known or unknown claim	Past, present, future claims handlers of any of the above
All past, present, or future foreseen or unforeseen claim	Past, present, future agents of any of the above
All past, present, or future direct or indirect claim	Past, present, future members of any of the above
All past, present, or future fixed or contingent	Past, present, future principals of any of the above
All past, present, or future matured or unmatured	Past, present, future attorneys of any of the above
All past, present, or future liquidated or unliquidated	Past, present, future shareholders of any of the above
Criminal proceedings	For all of the above, any predecessors
Causes of action, cross-claims, third party claims, suits, costs, fees	For all of the above, any successors
Claims in law, equity, contract, tort, common law or statutory	For all of the above, any assignors
Claims for punitive damages, declaratory or injunctive relief	For all of the above, any assigns

Hopeman Bros., Inc. and the following additional persons:	<p>NINE INSURANCE COMPANIES as follows:</p> <ol style="list-style-type: none"> 1) Century Indemnity Company 2) Westchester Fire Insurance Company 3) Continental Casualty Company 4) Fidelity & Casualty Company 5) Lexington Insurance Company 6) Granite State Insurance Company 7) Insurance Company of the State of Pennsylvania 8) National Union Fire Insurance Company of Pittsburgh, PA 9) General Reinsurance Corporation <p>and for each of these, the following additional persons:</p>
Past, present future direct parents	Past, present future direct parents
Past, present, future indirect parents	Past, present, future indirect parents
Past, present, future subsidiaries	Past, present, future subsidiaries
Past, present, future partners	Past, present, future partners
Past, present, future holding companies	Past, present, future holding companies
Past, present, future divisions	Past, present, future divisions
Past, present, future joint ventures	Past, present, future joint ventures
Past, present, future joint venturers	Past, present, future joint venturers
Past, present, future affiliates	Past, present, future affiliates
Past, present, future related companies	Past, present, future related companies
Past, present, future officers of any of the above	Past, present, future officers of any of the above
Past, present, future directors of any of the above	Past, present, future directors of any of the above
Past, present, future employees of any of the above	Past, present, future employees of any of the above
Past, present, future representatives of any of the above	Past, present, future representatives of any of the above
Past, present, future claims handlers of any of the above	Past, present, future claims handlers of any of the above
Past, present, future agents of any of the above	Past, present, future agents of any of the above
Past, present, future members of any of the above	Past, present, future members of any of the above
Past, present, future principals of any of the above	Past, present, future principals of any of the above
Past, present, future attorneys of any of the above	Past, present, future attorneys of any of the above
Past, present, future shareholders of any of the above	Past, present, future shareholders of any of the above
For all of the above, any predecessors	For all of the above, any predecessors
For all of the above, any successors	For all of the above, any successors
For all of the above, any assignors	For all of the above, any assignors
For all of the above, any assigns	For all of the above, any assigns