

**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. 3:24-cv-00717 (DJN)

v.

HOPEMAN BROTHERS, INC.,
Appellee.

**STIPULATION AND AGREED ORDER STAYING
BANKRUPTCY APPEAL PENDING MEDIATION AND NEGOTIATION**

This Stipulation and Agreed Order is entered into by and between Appellant, the Official Committee of Unsecured Creditors (“**Committee**”), and Appellee, Hopeman Brothers, Inc. (“**Debtor**”).

WHEREAS, on September 25, 2024, after a contested hearing, the Honorable Keith L. Phillips (“**Bankruptcy Court**”) entered the Second Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants, No. 24-32428 (KLP) (Bankr. E.D. Va.), ECF No. 245 (“**Stay Order**”) in the above-captioned chapter 11 case (“**Chapter 11 Case**”).

WHEREAS, on October 9, 2024, the Committee filed a notice of appeal from the Stay Order, commencing the above-captioned appeal (“**Appeal**”), and a motion for leave to appeal. ECF Nos. 1-2.



WHEREAS, on October 11, 2024, the Clerk of this Court sent a letter to counsel of record, notifying the parties of the briefing deadlines set forth in Bankruptcy Rule 8018. ECF No. 3 (“**Letter**”).

WHEREAS, on October 23, 2024, the Debtor objected to the Committee’s motion for leave to appeal. ECF No. 4.

WHEREAS, on October 29, 2024, the Committee filed a reply in support of its motion for leave to appeal. ECF No. 5.

WHEREAS, on November 12, 2024, the Court docketed notice of receipt of the record from the Bankruptcy Court. ECF Nos. 6-9.

WHEREAS, the Committee and the Debtor have entered into a Settlement Term Sheet for Hopeman Brothers, Inc. (“**Term Sheet**”), attached hereto as **Exhibit A**, that “sets forth certain essential terms for addressing the Insurer Settlement Motions scheduled to be heard on December 16, 2024, and of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims.” Term Sheet § A.2. The Committee and the Debtor have agreed, *inter alia*, to “jointly request that the Court order mediation for the purpose of attempting to reach a consensual resolution of the Chubb Motion.” *Id.* § C.1. The Committee and the Debtor have further agreed, *inter alia*, to “suspend[] indefinitely pending the mediation” all upcoming pretrial dates and deadlines in the contested matters related to the “Insurance Settlement Motions.” *Id.* § B.5.

WHEREAS, the Committee and the Debtor believe that continuing to litigate the Appeal at this time would divert the Committee’s and the Debtor’s focus away from the negotiations that are contemplated in the Term Sheet.

WHEREAS, to proceed efficiently and avoid a potentially unnecessary expenditure of the Committee’s, the Debtor’s, and this Court’s resources and time, the Committee and the Debtor

believe that suspending further proceedings in this Appeal, which would include deferral of this Court's ruling on the Committee's motion for leave to appeal and deferral of any upcoming deadlines in this Appeal would best preserve the bankruptcy estate's limited resources.

NOW, IT IS THEREFORE STIPULATED AND AGREED, AND IT SHALL BE SO ORDERED, as follows:

1. In accordance with Rule 7 of the Federal Rules of Civil Procedure, Rules 8001, 8018, and 9006(b) of the Federal Rules of Bankruptcy Procedure, and Local Civil Rule 7(G) of the Local Rules for the United States District Court Eastern District of Virginia, good cause supports a stay of further proceedings and the deferral of any applicable deadlines in this Appeal pending mediation in the Chapter 11 Case below.

2. All further proceedings and any and all deadlines in this Appeal are stayed, subject to the terms set forth below.

3. This Court will hold in abeyance any rulings on the Committee's motion for leave to appeal during the stay.

4. In the event the Debtor and the Committee reach an agreement resolving this Appeal, the Committee seasonably shall file with this Court a motion to dismiss the Appeal. Otherwise, upon termination of the Term Sheet in accordance with section H thereof, the Debtor and the Committee will file a joint notice of such termination with this Court and a joint request for a status conference before this Court, at which time the parties will address, *inter alia*, the Committee's motion for leave to appeal and a potential schedule for briefing the merits of this Appeal, to the extent the Court believes that such a schedule should be implemented.

5. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Richmond, Virginia

THE HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT JUDGE

Entered on Docket: _____

STIPULATED AND AGREED TO:

CAPLIN & DRYSDALE, CHARTERED

/s/ Jeffrey A. Liesemer

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EXHIBIT A

SETTLEMENT TERM SHEET FOR HOPEMAN BROTHERS, INC.

A. Preamble

1. This settlement term sheet (“**Term Sheet**”) is executed by and between the debtor and debtor-in-possession Hopeman Brothers, Inc. (“**Debtor**”) and the Official Committee of Unsecured Creditors appointed in the Debtor’s bankruptcy case (“**Committee**”). The Debtor and the Committee are hereinafter collectively referred to as the “**Parties**” and individually referred to as a “**Party**.”

2. This Term Sheet sets forth certain essential terms for addressing the Insurer Settlement Motions scheduled to be heard on December 16, 2024, and of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims. Neither Party is bound to move forward with a Plan containing the terms outlined herein if after good faith negotiations, such party does not deem pursuit of the Plan as in the best interest of the Debtor or its estate. . **This Term Sheet does not constitute an offer or solicitation for any chapter 11 plan of reorganization within the meaning of § 1125 of the Bankruptcy Code and is being presented for discussion and settlement purposes only.** This Term Sheet is delivered and may be used only in connection with settlement discussions between the Parties and is entitled to protection from any use or disclosure to any party or person under Federal Rule of Evidence 408 and any other rule of similar effect.

3. The full implementation of the settlement set forth in this Term Sheet is subject to (a) the negotiation and execution of definitive documentation in the form of a chapter 11 plan of reorganization and related documents for the Debtor acceptable to all the Parties (“**Plan**”); (b) the entry by the Bankruptcy Court for the Eastern District of Virginia, Richmond Division (“**Bankruptcy Court**”), the United States District Court for the Eastern District of Virginia (“**District Court**”), or the Bankruptcy Court and District Court acting jointly, of an order confirming the Plan (“**Confirmation Order**”); and (c) if the Confirmation Order is entered by the Bankruptcy Court, the entry of a separate order by the District Court affirming the Confirmation Order.

4. Unless defined elsewhere in this Term Sheet, all capitalized terms have the meanings ascribed to them in Section F herein.

B. Insurer Settlement Motions

1. Upon execution of this Term Sheet by each of the Parties, and subject to the terms of this Section B, the Committee will not oppose entry of an order granting the 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) [*sic*] Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief, ECF No. 53 (“**Resolute Motion**”).

2. To the extent changes are made to the proposed form of order filed with the Resolute Motion, the Debtor shall consult with the Committee in good faith over such proposed

changes. So long as such changes do not either (i) alter the “Settlement Amount” as defined in the Certain Settling Insurer Settlement Agreement (Ex. A to the Resolute Motion), as such agreement may be amended or modified (“**Resolute Agreement**”); (ii) modify the nature or scope of the relief currently sought in the Resolute Motion in a manner that the Committee reasonably believes would be materially adverse to its constituency; or (iii) expand the scope of the releases and injunctions currently proposed by the Resolute Motion (including, without limitation, by adding any other entity as one of the “Certain Settling Insurer Persons” (as such term is defined in the Resolute Agreement) or as an equivalent protected or released person under the Resolute Agreement), the Committee agrees that it will not object to approval of the Resolute Motion. If, however, any change identified or described in any of the preceding clauses (i), (ii), and (iii) is made, the Committee shall have the right to prepare and file an objection to such change with the Bankruptcy Court in advance of the hearing on the Resolute Motion.

3. The “Settlement Amount,” as defined in the Resolute Agreement, will be paid in accordance with the terms of the Resolute Agreement and, in accordance with section 2.2 of the Resolute Agreement, will be used and disbursed for the resolution of Asbestos Claims against the Debtor, for allowed administrative expenses of the Debtor’s bankruptcy case, or as otherwise authorized by the Bankruptcy Code and Bankruptcy Rules or by order of the Bankruptcy Court.

4. The Debtor will request that the Court continue or adjourn the hearing, currently set for December 16, 2024, on 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; and (V) Granting Related Relief, ECF No. 9 (“**Chubb Motion**”) to an omnibus hearing date in March 2025.

5. In addition, the Debtor and the Committee will jointly request that all upcoming dates and deadlines set forth in Exhibit 1 to the Second Agreed Order Continuing Hearing on Insurer Settlement Motions and Modifying Discovery/Briefing Schedule[ECF No. 376], be, solely with respect to the Chubb Motion, suspended indefinitely pending the mediation set forth in Section C. If the mediation is unsuccessful, the Parties will meet and confer to resolve open scheduling issues and any new pre-hearing dates and deadlines that need to be calendared for the Chubb Motion.

6. The Committee’s agreement, subject to the terms and conditions set forth herein, not to object to the Resolute Motion shall not be construed as a waiver of any ground on which the Committee may object to the Chubb Motion or any subsequent insurer settlement motion. Nothing in the terms or agreements set forth in this Term Sheet, or in the Resolute Motion or Resolute Agreement, shall be construed to bar or estop the Committee from objecting to the Chubb Motion on any ground, and the Committee reserves all rights to oppose or object to the Chubb Motion on any ground, notwithstanding any granting or approval by the Bankruptcy Court of the Resolute Motion or Resolute Agreement.

C. Mediation

1. The Debtor and the Committee will jointly request that the Court order mediation for the purpose of attempting to reach a consensual resolution of the Chubb Motion. The parties to the mediation will be (1) the Debtor, (2) the Committee, (3) Century Indemnity Company and Westchester Fire Insurance Company, and (4) any other entity wishing to participate and as to whom the Debtor and the Committee both consent in writing to their participation.

2. In connection with their joint request for mediation, the Debtor and Committee will request that the Bankruptcy Court, in its discretion, select as mediator a United States bankruptcy judge for the Eastern District of Virginia who (a) has no connection to the Debtor's bankruptcy case and (b) is willing to serve as mediator at no cost to the Debtor's bankruptcy estate.

3. The duration of the mediation will run from entry of the mediation order up to and through January 31, 2025, unless extended by written consent of the Debtor and Committee. If the mediation is extended, the Debtor and Committee shall jointly file a notice with the Bankruptcy Court stating that the mediation has been continued and the date through which the mediation has been continued. The Debtor shall prepare and present the proposed form of mediation order to be tendered to the Court, the form and substance of which shall be acceptable to the Committee.

D. Future Claims Representative and 524(g) Trust

The Parties agree to negotiate in good faith over the terms of a Plan that would propose to create a Trust pursuant to section 524(g) of the Bankruptcy Code, including the proposed individual to serve as the legal representative ("FCR") for purposes of protecting the rights of persons that might subsequently assert Demands, in accordance with 11 U.S.C. § 524(g)(4)(B)(i). If the Parties reach agreement that a Plan pursuant to section 524(g) is the preferred path for the Debtor, the Debtor and the Committee will jointly move for entry of an order appointing an individual mutually acceptable to the Committee and Debtor as the FCR. For the avoidance of doubt, nothing in this Term Sheet binds the Debtor or the Committee to agree to establishment of a trust pursuant to section 524(g) of the Bankruptcy Code as part of any Plan that may ultimately be agreed to by the Parties.

E. Certain Matters Relating to the Plan

1. The Parties agree to negotiate in good faith and work cooperatively to consider proposing a Plan that would include terms, provisions, and conditions that (a) satisfy the requirements of 11 U.S.C. § 524(g), and (b) are acceptable to the Parties and the FCR, if an FCR is ultimately appointed.

2. The Parties agree that if the Debtor and Committee reach an agreement on a proposed Plan, the Debtor, the Committee, and the FCR (if one is appointed) will be co-proponents of such agreed Plan ("**Plan Proponents**") and that the Debtor will assume primary responsibility for drafting the Plan, the disclosure statement, and any other documents related to the Plan other than any documents associated with the Trust. The Parties further agree that the

Committee and the FCR (if one is ultimately appointed) will assume primary responsibility for drafting all documents associated with the Trust, including the trust agreement and the trust distribution procedures. The final forms of the Plan, the disclosure statement, and all other documents related to the Plan must be acceptable to the Parties if an agreement is ultimately reached. The final forms of the trust agreement, the trust distribution procedures, and all other documents related to them must be acceptable to the Parties if an agreement is ultimately reached.

3. To the fullest extent permitted by applicable law and to the extent the Parties ultimately agree to the terms of a proposed Plan and Confirmation Order, the Plan and the Confirmation Order shall, for any act taken or omitted to be taken in connection with the Plan, the disclosure statement, the Debtor's bankruptcy case, or any document created or entered into in connection with the Plan, (a) provide for the full release by claimants and creditors (solely in their capacities as such) of all claims arising on or before the Effective Date that such claimants and creditors may have against the Plan Proponents, their professionals (acting in such capacity), and the Protected Parties, and (b) exculpate the Plan Proponents and their professionals (acting in such capacity) from any liability to any entity. Notwithstanding the foregoing, no release of the Parties or their professionals shall diminish, reduce, or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Insurance Policy or asbestos-related settlement agreement or coverage-in-place agreement.

4. To the extent the Parties reach an agreement on a proposed Plan and Confirmation Order and, in addition to the Asbestos Channeling Injunction, the Plan will include releases of claims and exculpations, for the Protected Parties, the terms of which shall be subject to the consent of each of the Plan Proponents, which consent shall not be unreasonably withheld.

5. To the extent the Parties reach an agreement on a proposed Plan and Confirmation Order, the Committee will, in its sole discretion, select and identify the persons to be appointed as members of the Trust's trust advisory committee ("TAC").

F. Defined Terms

As used in this Term Sheet, capitalized terms have the meanings set forth below:

1. "**Asbestos Claim**" means an Asbestos Personal Injury Claim or an Asbestos Indirect Claim.

2. "**Asbestos Indirect Claim**" means any "claim" (as defined in 11 U.S.C. § 101(5)) asserted by an entity that is not an Asbestos Insurer for contribution, reimbursement, indemnification, or subrogation, or any other indirect or derivative recovery, on account of or with respect to any Asbestos Personal Injury Claim.

3. "**Asbestos Insurance Coverage**" means all rights, title, privileges, interests, claims, demands, benefits, or entitlements to proceeds, payments, indemnity, or reimbursement under any Asbestos Insurance Policy relating to a Channeled Asbestos Claim.

4. “**Asbestos Insurance Policy**” means any insurance policy that provides or potentially provides for Asbestos Insurance Coverage; *provided, however*, that the term “Asbestos Insurance Policy” shall not include any rights or obligations under any insurance policy to the extent, but only to the extent, that such rights or obligations pertain solely to coverage for workers’ compensation claims.

5. “**Asbestos Insurance Settlement**” means each agreement (a) that an Asbestos Insurer and the Debtor have entered into prior to the Effective Date (b) that the Committee and the FCR have consented to and determined in writing to be sufficiently comprehensive to warrant that such Asbestos Insurer receive the protections of a Settling Insurer under § 524(g) of the Bankruptcy Code, and (c) that is approved by final order of the Bankruptcy Court.

6. “**Asbestos Personal Injury Claim**” means any “claim” (as defined in 11 U.S.C. § 101(5)) or allegation or portion thereof against, or any debt, liability, or obligation of, the Debtor, whether now existing or hereafter arising, whether in the nature of or sounding in tort, or under contract, warranty, or any other theory of law, equity, or admiralty for, arising out of, resulting from, or attributable to, directly or indirectly, death, bodily injury, sickness, disease, or any other actual or alleged personal injury, physical, emotional, or otherwise, to persons, caused or allegedly caused, directly or indirectly, by the presence of, or exposure to, asbestos, including asbestos-containing products or materials engineered, designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any other way used by the Debtor or any other entity for whose products or operations the Debtor has liability or is alleged to have liability, but only to the extent arising, directly or indirectly, from acts, omissions, business, or operations of the Debtor (including the acts, omissions, business, or operations of any other entity for whose products or operations the Debtor has liability, but only to the extent of the Debtor’s liability for such acts, omissions, business, or operations), including all related claims, debts, obligations, or liabilities (such as any claim or demand for compensatory damages; loss of consortium; medical monitoring; wrongful death; survivorship; proximate, consequential, general, special, or punitive damages).

7. “**Channeled Asbestos Claims**” means, collectively, the Asbestos Claims and Demands. For the avoidance of doubt, Channeled Asbestos Claims includes, but is not limited to, prepetition claims.

8. “**Demand**” means a “demand,” as defined in 11 U.S.C. § 524(g)(5), against the Debtor.

9. “**Settling Insurer**” means any Asbestos Insurer that has entered into an Asbestos Insurance Settlement.

G. Cooperation, Confidentiality, and Settlement

1. The Parties shall use their commercially reasonable best efforts to negotiate over the terms of the Plan and Confirmation Order contemplated by this Term Sheet but are under no obligation to pursue such Plan at this time. If agreement on the terms of the Plan and

Confirmation Order is reached by the Parties, the Parties agree to use commercially reasonable best efforts to obtain confirmation and consummation of the Plan consistent with the terms described above, and to not directly or indirectly support efforts by other parties to hinder, delay, or oppose prompt confirmation of the Plan to extent a Plan and Confirmation Order is ultimately agreed to by the Parties.

2. The Parties shall treat all negotiations regarding this Term Sheet as confidential. Without the prior written consent of all the Parties and until such time as the Term Sheet is publicly disclosed as provided herein or below, neither the contents nor the existence of this Term Sheet shall be disclosed by any Party, either orally or in writing, except to each Party's members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients on a confidential basis, or except (a) when and if necessary to apprise and engage in discussions with the FCR, if appointed in the Debtor's bankruptcy case, and any professionals that might be employed by any such FCR with the Bankruptcy Court's approval; (b) when necessary to comply with court orders; (c) in an action to enforce the terms and provisions of the Term Sheet itself, and (d) to the extent necessary to inform Chubb of the continuance of the hearing on the Chubb Motion and the proposed mediation described above.

3. Further, without the prior written consent of all the Parties, the contents of any documents contemplated hereby shall not be disclosed by any Party, either orally or in writing, except to each Party's members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients on a confidential basis, or except (a) when and if necessary to apprise and engage in discussions with the FCR appointed in the Debtor's bankruptcy case and the professionals employed by the FCR with the Bankruptcy Court's approval; (b) when necessary to comply with court orders; or (c) when required to commence or proceed with approval and consummation of the settlement in the Bankruptcy Court or the District Court. The contents of these documents shall be used solely for the purpose of consummating the settlement contemplated hereunder. Any members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients receiving the information shall similarly maintain the confidentiality of the contents of any documents contemplated hereby upon the same terms and use these contents solely for the purpose of consummating the settlement contemplated hereunder.

4. Neither this Term Sheet nor the settlement set forth herein constitutes, and shall not be construed, interpreted, or otherwise read to constitute any admission by the Parties.

5. The rules of construction set forth in 11 U.S.C. § 102 shall govern the interpretation or construction of this Term Sheet, and the laws of the Commonwealth of Virginia shall govern such interpretation or construction in all other respects.

6. This Term Sheet may be amended only by written agreement executed by each of the Parties.

7. This Term Sheet may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

H. Termination of the Term Sheet

1. This Term Sheet may be terminated at any time by the written agreement of all the Parties.

2. Unless all the Parties consent in writing to extend such date (and such consent shall not be unreasonably withheld), this Term Sheet shall terminate within thirty (30) days following the conclusion of the proposed mediation.

3. Upon termination under Section H.1 or Section H.2 above, the Term Sheet shall be of no further force and effect.

I. Execution Date

This Term Sheet is executed as of November 29, 2024.

AGREED AND ACCEPTED BY:

HOPEMAN BROTHERS, INC.

By: /s/ Tyler Brown

Name: Tyler Brown

Title: Counsel to the Debtor

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: /s/ Jeffrey A. Liesemer

Name: Jeffrey A. Liesemer

Title: Counsel to the Committee