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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	**Chapter 11**
HOPEMAN BROTHERS, INC.,	:	**Case No. 24-32428 (KLP)**
Debtor.	:	

CHUBB INSURERS' OBJECTION TO FIFTH MONTHLY FEE STATEMENT OF FTI CONSULTING, INC. FOR ALLOWANCE OF COMPENSATION FOR SERVICE RENDERED AND REIMBURSEMENT OF EXPENSES INCURRED FOR THE PERIOD FROM JANUARY 1, 2025 THROUGH JANUARY 31, 2025

Century Indemnity Company and Westchester Fire Insurance Company (together, the "Chubb Insurers"), parties in interest, object to the Fifth Monthly Fee Statement of FTI Consulting, Inc. for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period from January 1, 2025 through January 31, 2025 (Dkt. No. 630) (the "FTI Fee Application"). As explained below, significant portions of FTI's services were performed in attempt to convert a non-operating, liquidating debtor into a purported "reorganizing" debtor entitled to the "supplemental" discharge injunction of 11 U.S.C. § 524(g). But this Debtor is ineligible for a discharge because its assets were liquidated decades ago and it has no business

operations; thus, there is nothing to "reorganize." The putative § 524(g) "plan of reorganization" liquidates everything that remains of Hopeman. Because Debtor is ineligible for a discharge under § 1141, it necessarily is ineligible for the "supplemental" discharge injunction of § 524(g). Accordingly, fees incurred by Debtor, the Committee, and their respective professionals in pursuit of a § 524(g) plan cannot be reasonably likely to benefit Debtor's[1] estate. The FTI Fee Application, at least with respect to work related to a § 524(g) term sheet and plan, must be denied.

FACTUAL BACKGROUND

A. Hopeman is a Defunct Company with No Ongoing Business to Rehabilitate or Reorganize.

1. Hopeman filed its Chapter 11 petition on June 30, 2024. Its president, Christopher Lascell, testified that since 2003, "Hopeman has had no business operations and exists solely to defend and, when appropriate, settle [ ] Asbestos-Related Claims." Dkt. No. 8 ¶ 18. Mr. Lascell explained that since he became President of Hopeman in 2016, Hopeman has made no money and has been "burning cash" because of the shortfall between its total indemnity costs and defense spending for Asbestos-Related Claims compared to the amount it recovered from insurers.[2] Tr. 12/16/24, p. 27:5-13.

2. Because Hopeman could not manage the defense and resolution of Asbestos-Related Claims once its remaining cash was depleted – which now has happened because of the

[1] The Chubb Insurers reference "Hopeman" and "Debtor" interchangeably. Both mean Hopeman Brothers, Inc., the debtor in this Chapter 11 case.

[2] Hopeman's insurance policies are reimbursement policies, meaning that Hopeman advances the costs to defend against Asbestos-Related Claims and to resolve claims where appropriate and then "recovers a portion of the amount that they paid" from its insurers. Tr. 12/16/24, p. 61:17-24 (Testimony of Ron Van Epps, Hopeman's insurance and financial consultant since 2004).

administrative fees incurred in this case[3] – Hopeman commenced this Chapter 11 proceeding "to seek approval and implementation of an efficient, value maximizing process to monetize the remaining available insurance and distribute those proceeds equitably to valid holders of Asbestos-Related Claims." *Id*. at ¶ 37. Hopeman planned to accomplish this through largely identical settlements with the Chubb Insurers and Certain Insurers and a liquidating plan to distribute those settlement proceeds to current holders of Asbestos-Related Claims. *See* Dkt. Nos. 9, 53, 56-57.

3. Mr. Van Epps, Hopeman's insurance consultant and financial advisor since 2004 (*see* Tr. 12/16/24, p. 58:18-25), explained that Hopeman pursued the Chubb Insurers' and Certain Insurers' settlements and filed its liquidating plan because, "[w]e don't see an avenue that allows this to go on forever. ***The debtor doesn't have money***. ***They don't have a source of future income***." *Id*. at 103:21-23 (emphasis added).

4. On July 12, 2024, Hopeman filed its Plan of Liquidation. Hopeman explained that the Plan "provides for an ***orderly wind-down of Hopeman***, ***which has had no business operations since 2003*** and has existed, as of the Petition Date, solely to defend and settle (when appropriate) Asbestos PI Claims." Dkt. No. 57 at pp. 6-7 of 148 (emphasis added). Hopeman further explained that:

> [t]he fact that the Debtor no longer maintains any business operations suggests that a reorganization or liquidation on terms substantially different than those currently proposed under the Plan may be improbable or infeasible. As a result, any attempt to propose an alternative plan containing different terms for any of these parties may not be confirmable and could delay and/or dilute distributions to creditors.

[3] According to Hopeman's Monthly Operating Report for the month ending February 28, 2025, its total assets were $1,301,986 and its post-petition payables were $6,494,472. Combined with its prepetition unsecured debt of $81,805, Hopeman's net worth as of month-end February 2025 is **$-5,274,292**. *See* Dkt. No. 635 at 2. Nearly $1 million in fees were incurred by Hopeman and the Committee (including various professionals) analyzing and negotiating a potential § 524(g) plan just in the first two months of 2025.

Id. at p. 32 of 148.

5. Hopeman's status as a liquidating debtor with no ongoing business operations cannot be disputed. Just four months ago, the Committee acknowledged exactly that, arguing to this Court that "***the Debtor has no ongoing business*** . . . ***to rehabilitate or reorganize***." Dkt. No. 342 at 2, ¶ 1 (emphasis added). The Committee further recognized that:

> ***[t]his case is a chapter 11 liquidation of a debtor with no business operations***; ***it exists solely to manage its asbestos liabilities***. And, although the Debtor has insurance coverage that it is seeking to monetize, it has 'no other assets that it must decide to keep or sell, no unexpired leases or executory contracts that it must decide to assume or reject, no employees it must decide to retain or discharge and ***no business to restructure***.'

Id. at 4-5, ¶ 9, citing *In re GMG Cap. Partners III, L.P*., 503 B.R. 596, 601 (Bankr. S.D.N.Y. 2014) (emphasis added).

B. The Committee Pushes Hopeman into Negotiating a Non-Confirmable § 524(g) Plan of Reorganization.

6. The Committee knows that "the Debtor seeks to liquidate, not reorganize." Dkt. No. 342 at 2, ¶1. Yet, in November 2024, the Committee objected to extending Hopeman's exclusivity, alleging that Hopeman's Plan of Liquidation "is deficient and unconfirmable." *Id*. at 6, ¶11. The Committee threatened that, "[t]here is no point in having extended litigation over a plan that asbestos creditors are likely to vote down," such that "Debtor and the Committee could negotiate a plan in which the Debtor assigns all its insurance rights to a trust," which could "seek to negotiate more favorable settlements [with insurers] on its own or permit claimants to seek recovery from the insurance in the tort system, all while giving the Debtor what it seeks, finality." *Id*. at 2, ¶ 3.

7. Threatening that Hopeman could not successfully confirm a plan and exit bankruptcy with protections for its owners and current/former directors without Committee

approval[4], the Committee coopted Hopeman into doing exactly what the Committee wanted – and more.

8. On November 29, 2024, Hopeman and the Committee entered into a Settlement Term Sheet that "set forth certain essential terms. . . of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims." *See* Dkt. No. 417, Ex. 1 (the "Initial Term Sheet")[5]. Notwithstanding Hopeman's and the Committee's recognition that Hopeman is a liquidating debtor with nothing to reorganize, the Term Sheet required Hopeman and the Committee to "negotiate in good faith over the terms of a Plan that would propose to create a Trust pursuant to § 524(g) of the Bankruptcy Code," *i.e*., a plan of ***reorganization*** with a supplemental discharge injunction. *Id*. at Ex. 1, Art. D.

C. The Committee and Hopeman Have Agreed to Pursue a Non-Confirmable Plan because Hopeman is Ineligible for a Discharge.

9. Under the guise of a 7-week long court-ordered mediation with the Chubb Insurers (which excluded the Chubb Insurers from all but the first session), the Committee pressed Hopeman into "pivot[ing]" from a liquidating plan to "a potential reorganization under 524(g)." 3/10/25 Tr., p. 5:18-20. The Committee engaged FTI to "[a]nalyze potential investment opportunities" and "investment strategies" for Hopeman in furtherance of a potential § 524(g) plan. Dkt. 630 at Ex. C, Task Categories 2 and 16. Debtor explained that this "investment" would be

[4] As Debtor's counsel explained to the Court, "current owners and directors needed a path out," and pursuing the § 524(g) plan desired by the Committee "does provide that." Tr. 3/10/25, p. 14:12-14.

[5] Although Debtor had been pursuing motions to approve settlements with the Chubb Insurers and Certain Insurers simultaneously (because the evidence supporting approval of both settlements is virtually identical), with a hearing on both motions scheduled for December 16, 2024, the Initial Term Sheet required Debtor to sever the hearing on the Chubb Insurers' settlement and delay that hearing while moving forward with the Certain Insurers' settlement approval motion. *Id*., ¶4. The Committee, which had opposed both settlements as being "too low" and spent months taking fact and expert discovery regarding both settlements, agreed not to oppose approval of the Certain Insurers' settlement so that the payment, once made, could be used for "allowed administrative expenses of the Debtor's bankruptcy case." *Id.*, ¶¶1, 3.

made in an attempt to "satisfy 524(g), which requires . . . some contributions over time to the trust" from a reorganized debtor. 3/10/25 Tr., p. 6:23-7:9.

10. Purchasing an "investment" for "$500,000 or less" cannot and does not change the fact that ***Hopeman is liquidating***, even under the putative § 524 "plan of reorganization" that Hopeman and the Committee have agreed upon. Dkt. 609, Settlement Term Sheet for § 524(g) Plan of Hopeman Brothers Inc. (the "Plan Term Sheet") at 1, ¶A.3, 2, ¶ C.4. The Plan Term Sheet makes this clear. Pursuant to the agreed "Plan terms, provisions, and conditions" (*id*., ¶C.1), on the Plan Effective Date:

- "the Debtor shall transfer all its assets, both tangible and intangible, to the Trust" (*id*., ¶C.2.(b));
- "all existing equity security interests in the Debtor shall be terminated and extinguished," and the "Reorganized Debtor shall thereupon issue new equity security interests, all of which shall be transferred to, and held by, the Trust." (*id*., ¶C.2.(c));
- the Debtor will "transfer the Debtor's books and records to the Trust. . . including the books and records presently stored in the Debtor's warehouse in Waynesboro, Virginia, and in or in storage near the offices of the Debtor's pre-petition claims administrator, Special Claims Services, Inc." (*id*., ¶D.3.(a)); and
- "the Trust will own everything, including the Reorganized Debtor" (*id*., ¶D.4.(b), n.1). *See also id*. at Ex. A ("Reorganized Hopeman Brothers shall become a subsidiary of the Trust on the Effective Date of the Plan").

11. Debtor's counsel's explanation of the Plan reinforces that it is, in fact, a liquidation masquerading as a purported "plan of reorganization:"

> at effective date . . . ***the debtor would be completely owned by the trust at that point and controlled by it***. ***So at that point, the current directors and officers would exit stage left. They would not have any role going forward***. We contemplate a plan that would provide releases to them and to the former directors . . . There would be an indemnity from the trust to make sure that it is final for the former and current D&Os, but there should be no continuing role going forward.
>
> * * *

> The [ ] goal, Your Honor, was to make sure that there was a mechanism to wind-down the debtor's defense and claims administration process, and this puts an end to it. As I said, ***the debtors'*** [*sic*] ***operations will go away. It'll all be handed over to the trust***.

3/10/25 Tr., pp. 6:2-13, 14:7-11 (emphasis added).

12. Hopeman, as of the petition date and as currently constituted, has no tangible assets, no employees, and no business operations. In other words, it has already liquidated. Hopeman is liquidating whatever remains of its "assets" through the purported § 524(g) plan, and ***Hopeman*** will engage in no post-confirmation business operations – it is "exit[ing] stage left." That is the epitome of a liquidating debtor that is ineligible for a discharge pursuant to § 1141(d)(3).

ARGUMENT

A. Section 330 Prohibits Awarding Compensation for Services that Were Not "Reasonably Likely to Benefit the Debtor's Estate."

13. Section 330 of the Code provides the legal standard for compensating professional persons employed on behalf of the Committee pursuant to § 1103 of the Code, such as FTI. The provisions of § 330 allow the court to award professional persons "reasonable compensation for actual, necessary expenses." *David v. King*, 109 F.4th 653, 658 (4th Cir. 2024). Section 330 provides that:

> (a)(1) After notice to the parties in interest and the United States Trustee and a hearing and subject to sections 426, 327, and 329, the court may award to a . . . professional person employed under section [ ] 1103 –
>
> > (A) reasonable compensation for actual, necessary services rendered by the . . . professional . . .; and
> >
> > (B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). Section 330(a)(1) "provides compensation for all § 327(a) professionals—whether accountant, attorney, or auctioneer—for all manner of work done *in service of* the estate administrator." Baker Botts L.L.P. v. ASARCO LLC, 576 U.S. 121, 128 (2015).

14. Section 330 provides guidance as to what constitutes "reasonable" compensation:

> (3) In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> * * *
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> * * *

11 U.S.C. § 330(a)(3).

15. While a court has discretion in awarding compensation for "reasonable and necessary" services, § 330(a)(4)(A) provides that "the court ***shall not allow*** compensation for . . . services that were not—(I) reasonably likely to benefit the debtor's estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A) (emphasis added). "The burden of proof as to the reasonableness of requested compensation is on the applicant." *In re Great Sweats, Inc.*, 113 B.R. 240, 242 (Bankr. E.D. Va. 1990) (citations omitted).

16. Where "the debtor's inability to successfully develop and complete a plan should have been apparent to counsel from commencement of the case," any work performed by its law firm for such services "was not necessary" and the bankruptcy court properly "refus[ed] to compensate the law firm for such services." *In re Lederman Enterprises, Inc.*, 997 F.2d 1321, 1323–24 (10th Cir. 1993). *See also In re Amstar Ambulance Serv., Inc.*, 120 B.R. 391, 395 (Bankr. N.D. W.Va. 1990) (denying compensation for fees incurred to prepare a plan of reorganization

and disclosure statement where "the Debtor had no reasonable chance at accomplishing an effective reorganization"); *In re Rusty Jones, Inc.*, 134 B.R. 321, 339-340 (Bankr. N.D. Ill. 1991) (disallowing fees incurred by debtor's counsel and its accounting consultant for pursuing a non-confirmable plan because they were not "useful or necessary to confirmation of any lawful plan pursued by Debtor.").

B. FTI's Fee Application Includes Charges for Work That was Not Reasonably Likely to Benefit the Estate because Hopeman is Patently Ineligible for a § 524(g) Plan.

17. The Chubb Insurers object to the FTI Fee Application because it does not meet the standards set forth in § 330. ***None*** of the work that FTI performed in January 2025 supporting the Committee's § 524 term sheet and trying to find an "investment" for Hopeman in furtherance of a § 524(g) plan (Dkt. 630, Ex. C, Task Categories 2 and 16) was "reasonably likely to benefit the debtor's estate," because the Committee knows or should have known that Hopeman is ineligible for a discharge under § 1141 or the supplemental discharge injunction under § 524(g), such that a § 524(g) plan cannot be confirmed in this case. The fact that the Committee engaged FTI to perform that work in the first place proves that the Committee knows it. Hopeman certainly knows it. *See* Dkt. No. 57 at 32 of 148 ("[t]he fact that the Debtor no longer maintains any business operations suggests that a reorganization . . . may be improbable or infeasible").

18. Section 524(g) provides that "a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section." 11 U.S.C. § 524(g)(1)(A). By the statute's plain terms, a "plan of reorganization" with a "discharge" are necessary predicates to obtaining the "supplement[al]" relief of § 524(g). Accordingly, to qualify for a § 524(g) plan and injunction as Hopeman and the Committee are pursuing, Hopeman must qualify for a discharge under § 1141. *See In re Flintkote Co.*, 486 B.R.

99, 129 (Bankr. D. Del. 2012) ("[A] bankruptcy court may issue a channeling injunction 'to supplement the injunctive effect of a discharge under this section.' It follows then that there must be a discharge for the channeling injunction to 'supplement.'"), *aff'd*, 526 B.R. 515 (D. Del. 2014). That is impossible here.

Hopeman Cannot be Discharged Pursuant to § 1141(d)(3).

19. The requirements for a discharge are provided by § 1141(d). Under that section, plan confirmation "does not discharge" a corporate debtor if (1) "the plan provides for the liquidation of all or substantially all of the property of the estate" and (2) "the debtor does not engage in business after consummation of the plan." Both are true here.

20. By definition, a "reorganization" is "the restructuring of a corporation with continuing operations." *Reorganization*, Practical Law Glossary Item 4-382-3757. That is "in contrast to a liquidation of the estate and distribution of the proceeds to creditors in a case filed under Chapter 11 or Chapter 7." *Id*. Hopeman had no business operations when it filed its Chapter 11 petition, and it has none today. *See* ¶¶ 1, 3-5, above. Hopeman has no tangible assets or inventory; it has no cash (indeed, it is deeply administratively insolvent[6]) and no means to generate income; and it has no employees. Hopeman's only remaining assets are insurance policies/insurance rights, which cannot be "reorganized"[7] – the proceeds are available only to pay covered third-party claims, such that the policies can only be liquidated.

21. Pursuant to the terms of the § 524(g) plan that Hopeman and the Committee have agreed upon, Hopeman will liquidate all its remaining assets by transferring them to the Trust such

[6] *See* ¶ 2, n. 3.

[7] "[T]he rights and obligations of the Debtor and [its insurer] under the [insurance] policy are not altered because of the Debtor's Chapter 11 filing." *In re Amatex Corp.*, 107 B.R. 856, 865-866 (E.D. Pa. 1989), *aff'd*, 908 F.2d 961 (3d Cir. 1990). *See also In re Lloyd E. Mitchell, Inc.*, 2012 Bankr. LEXIS 5531, at *20 (Bankr. D. Md. Nov. 29, 2012) ("insurance contracts cannot be re-written" in bankruptcy).

that "the Trust will own everything, including the Reorganized Debtor" and Hopeman's current owners and directors will "exit stage left." *See* ¶¶ 10-12, above. The § 524(g) Plan contemplated by the Plan Term Sheet thus provides for the liquidation of all of the property of Hopeman's estate.

22. Plainly, Hopeman is liquidating, not reorganizing, because it has no "ongoing business to protect." *Carolin Corp. v. Miller*, 886 F.2d 693, 703 (4th Cir. 1989) (dismissing Chapter 11 petition where, among other things, "Carolin was more akin to a shell corporation than a viable enterprise" and there was "nothing in the record to suggest that, at any relevant time [preceding the Chapter 11 petition], Carolin was conducting or *could* conduct business activities of any kind"). As the Fourth Circuit explained in *Carolin*, the purpose of Chapter 11 is to "reorganize or rehabilitate an existing enterprise, or to preserve going concern values of a viable or existing business." *Id*. at 702, citing *In re Victory Constr. Co.,* 9 B.R. 549, 564 (Bankr. C.D. Cal. 1981).

23. The Fourth Circuit's holding in *Carolin* is consistent with well-established law throughout the country that a "reorganization" under Chapter 11 requires the reorganization/rehabilitation of business that existed as of the petition date. For example, in *In re Cinole, Inc*., 339 B.R. 40, 45 (Bankr. W.D.N.Y. 2006), the bankruptcy court explained that "Chapter 11 of the Bankruptcy Code is not an economic development program." Rather, "in the case of a business Chapter 11, its purpose is to allow an existing business to be reorganized and rehabilitated." *Id*. The court dismissed the debtor's bankruptcy case because "[Debtor] had no existing business on [the petition date] that could be reorganized or rehabilitated in Chapter 11." *Id*. Similarly, in *In re 15375 Mem'l Corp. v. Bepco, L.P.*, 589 F.3d 605, 619 (3d Cir. 2009), the Third Circuit held that there was no valid Chapter 11 reorganizational purpose served by a case where debtors "have no going concerns to preserve – no employees, offices, or business other than

the handling of litigation." Likewise, in *Singer Furniture Acquisition Corp. v. SSMC, Inc. N.V.*, 254 B.R. 46, 52–53 (M.D. Fla. 2000), the district court concluded that "there is no real possibility of reorganization" where a debtor "is not engaged in any business and has no employees" on the petition date and has "no accounts receivable, no accounts, no inventory . . . ." That is precisely the case here. Hopeman has no "going concern" to preserve and it ***is not reorganizing***.

24. As Congress explained during the enactment of § 1141, a Chapter 11 discharge "is not granted" where "all or substantially all of the distribution under the plan is of all or substantially all of the property of the estate," and "if the business, if any, of the debtor ***does not continue***." S. REP. 95-989, 130, 1978 U.S.C.C.A.N. 5787, 5916 (emphasis added). The Fourth Circuit has made clear that § 1141(d)(3) requires the "*continuation* of *a pre-petition business*" following confirmation. *In re Grausz*, 63 F. App'x 647, 650 (4th Cir. 2003).

25. Hopeman has no pre-petition business to "continue" after the putative § 524(g) Plan is consummated because it had no business operations when this Chapter 11 case began. As Mr. Lascell testified, "Hopeman exited [its business as a 'ship joiner' contractor] in the 1980s and following the sale of substantially all of its assets in 2003, Hopeman has had no ongoing business operations." Dkt. No. 8 ¶ 2. Because Hopeman had no pre-petition business to "continue" after plan confirmation, it will not "engage in business after confirmation of the plan" as required by § 1141(d)(3).[8]

[8] *See also Spokane Rock I, LLC v. Um* (*In re Um*), 2015 WL 6684504, at *7 (Bankr. W.D. Wash., Sept. 30, 2015) ("Based on the legislative history and the cases most factually analogous to this case, the Court is persuaded that § 1141(d)(3)(B) refers to the **continuation** of a debtor's pre-petition business in the requirement that 'the debtor does not engage in business after consummation of the plan'") (emphasis in original), *aff'd*, 2016 WL 7714141, at *4 (W.D. Wash. Aug. 18, 2016) ("the Court concludes that, in the context of the bankruptcy code, the term 'business' in § 1141(d)(3)(B) means pre-petition business"); *In re Berwick Black Cattle Co*., 394 B.R. 448, 461 (Bankr. C.D. Ill. 2008) (denying confirmation because the plan, although "dressed up to look like a reorganization, . . . is in essence one of liquidation" because one debtor "is being merged out of existence, after all of its assets have been liquidated," and the "new venture"

The Plan Term Sheet Embodies a Plan that Perverts the Purpose and Requirements of § 524(g).

26. The § 1141(d)(3) requirement for a continuing business that existed pre-petition is mandated by § 524(g). Congress enacted § 524(g) to codify the channeling injunction entered in the *Johns-Manville* bankruptcy, which had the "imperative" purpose of protecting and preserving "the ***continuing*** viability" of the operating entity to provide an "evergreen" funding source to pay future claims. *In re Johns-Manville Corp.*, 68 B.R. 618, 622 (Bankr. S.D.N.Y. 1986) (emphasis added), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, *Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636 (2d Cir. 1988). Congress reiterated this purpose when it enacted § 524(g), stating that the supplemental injunction is intended to allow "***an otherwise viable business*** to quantify, consolidate, and manage its debt so that it can satisfy its creditors to the maximum extent feasible, but without threatening its ***continued existence*** and the thousands of jobs that it provides." 140 Cong. Rec. S. 14461-01, at S 14454 (Oct. 6, 1994) (emphasis added).

27. Hopeman had no viable business to save on the Petition Date, nor has it tried to engage in any business since the Petition Date. Hopeman will not engage in any business if its purported § 524(g) plan is confirmed, either, because Hopeman will no longer exist. The Trust and "Reorganized Hopeman" will become one, and ***the Trust*** will manage the "low cost, income generating" investment required by the Plan Term Sheet. *See* ¶¶ 9-11, above; Plan Term Sheet at Ex. A (Trustee of the § 524(g) must have "[e]xperience w/ triple net lease/rental property or other type of investment contemplated by Plan," and the "Trust Administration" includes "*Real estate management (if applicable)*").

– essentially consisting of the ongoing business of the non-debtor with which debtor was merging – "cannot be considered to be a continuation of [the Debtors'] cattle business.").

28. This foundational element of Hopeman's and the Committee's Plan Term Sheet turns § 524(g) upside down. As the Supreme Court explains, § 524(g) "allows a Chapter 11 debtor with substantial asbestos-related liability to establish and fund a trust that assumes the debtor's liability for 'damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.'" *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 273 (2024), quoting 11 U.S.C. § 524(g)(2)(B)(i)(I). This "ensure[s] that health claims can be asserted only against the Trust and that [the company's] operating entities will be protected from an onslaught of crippling lawsuits that could jeopardize the entire reorganization effort." *Id*. at 274. Section 524(g) thus provides for a trust to which a debtor's asbestos liabilities are channeled for resolution and payment while the reorganized debtor ***separately*** continues its business post-confirmation, cleansed of asbestos liabilities. Nothing in Section 524(g) contemplates that the trust assuming debtor's liability ***becomes the reorganized debtor*** that ***continues*** to be sued for Asbestos-Related Claims, as the Plan Term Sheet provides. *See* Plan Term Sheet at Ex. A, "Claims Processing (potential options)," providing that "Tort claimants file complaints in the tort system, suing the Reorganized Debtor." That defeats the very purpose of § 524(g).

29. According to the FTI Fee Application, FTI billed 199.2 hours, with fees totaling $160,623.50, from January 1, 2025 through January 31, 2025. *See* Dkt. No. 630 at Ex. A. FTI expended 123.4 hours to "draft term sheet-related materials" for the Committee and to "[a]nalyze potential investment opportunities" and "investment strategies" for Hopeman in furtherance of a potential § 524(g) plan. *Id.* at Ex. C, Task Categories 2 and 16. FTI's fees associated with that work total $ 92,921.50. *Id*. The Chubb Insurers object to allowance of those fees. As explained above, Hopeman is not eligible for a discharge pursuant to § 1141(d) and, accordingly, it cannot qualify for a supplemental § 524(g) channeling injunction. As a result, the § 524(g) plan that

Hopeman and the Committee have committed to pursue cannot possibly be confirmed.[9] Thus, not one penny in fees that Hopeman, the Committee, and their respective professionals spend in attempt to confect and pursue such a plan could be "reasonably likely to benefit" Hopeman's estate are required by § 330(a)(4)(A).

CONCLUSION

The FTI Fee Application should be disallowed for the reasons and as set forth above.

Dated: March 31, 2025

Respectfully submitted,

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[9] There are numerous other reasons why the plan contemplated by the Plan Term Sheet cannot be confirmed. The Chubb Insurers raise here only the key threshold issue that precludes a § 524(g) plan from even being considered in this case, much less from being negotiated at the significant expense and detriment of Debtor's administratively insolvent estate.

Counsel for Century Indemnity Company and Westchester Fire Insurance Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on March 31, 2025, a true and correct copy of the foregoing Objection to Fifth Monthly Fee Statement of FTI Consulting, Inc. for Allowance of Compensation for Services Rendered and Reimbursement of Expenses Incurred for the Period from January n1, 2025 through January 31, 2025 was served upon all parties receiving electronic notice through the Court's ECF notification system.

/s/ Dabney J. Carr
Dabney J. Carr