

HUNTON ANDREWS KURTH LLP

Joseph P. Rovira (admitted *pro hac vice*)
Catherine A. Rankin (admitted *pro hac vice*)
600 Travis Street, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200

Attorneys for Debtor and Debtor in Possession

HUNTON ANDREWS KURTH LLP

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

:
: **Chapter 11**
:
: **Case No. 24-32428 (KLP)**
:
:
:
:

**OBJECTION OF HOPEMAN BROTHERS, INC. TO CLAIM NO. 10
OF LIBERTY MUTUAL INSURANCE COMPANY**

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (“Hopeman” or the “Debtor”) respectfully represents as follows in support of this Objection (the “Objection”):

I. RELIEF REQUESTED

1. The Debtor hereby seeks entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), disallowing and expunging claim number 10 (the “Claim”) filed by Liberty Mutual Insurance Company (“Liberty Mutual”).

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157, and the



Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”).

III. BACKGROUND

4. On June 30, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing this chapter 11 case. The Debtor continues to manage its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.¹

5. On September 12, 2024, this Court entered an Order establishing November 4, 2024, as the general bar date for the filing of proofs of claim for claims other than asbestos-related personal injury claims (“Asbestos Related Claims”) and those belonging to governmental entities.

A. Liberty Mutual’s Claim

6. Liberty Mutual filed its Claim on November 4, 2024. The Claim asserts a “partially contingent and unliquidated” unsecured claim in the amount of \$317,254.89. As the basis for its Claim, Liberty Mutual alleges that as a result of indemnity obligations of Hopeman in settlement-related agreements entered into in 2003 (described below), “Hopeman is liable to Liberty Mutual . . . for all past and future costs incurred by Liberty Mutual in connection with the Liberty Policies and/or related claims asserted by direct action claimants, in a partially contingent and unliquidated amount of no less than \$317,254.89” *See* Claim, Attachment, at p. 2. Liberty Mutual further

¹ Additional information regarding the Debtor and the circumstances leading to the commencement of this chapter 11 case is set forth in detail in the *Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.* [Docket No. 8], which is fully incorporated herein by reference.

asserts that it “anticipates that the Claim Amount will increase on account of ongoing and future costs incurred by Liberty Mutual in connection with the theories and potential claims asserted by direct action claimants, including, without limitation, indemnity and defense costs.” *Id.*

7. No details are provided with the Claim regarding the \$317,254.89 in costs allegedly incurred by Liberty Mutual. Upon information and belief, some or all of these costs are attorneys’ fees and costs Liberty Mutual has incurred in having its bankruptcy counsel monitor this case. Since no litigation against Liberty Mutual on account of Asbestos Related Claims should have proceeded during this bankruptcy due to the automatic stay and this Court’s entry of interim stay extension orders staying litigation against Liberty Mutual, among others, it is unlikely that any of these fees or costs were incurred in defense of any Asbestos Related Claims.

B. Liberty Mutual Insurance Policies Issued to Hopeman

8. Hopeman’s asbestos-related liability insurance program consists of primary-layer insurance policies and multilayer excess general liability insurance policies issued by various insurers, the last coverage period for which ended December 31, 1984.

9. Liberty Mutual issued primary layer policies that Hopeman (or its affiliates) purchased from 1937 to 1984 (the “Primary Policies”). Liberty Mutual also issued excess insurance policies that Hopeman purchased from 1965 through 1984 (the “Excess Policies”).

10. Liberty Mutual’s insurance coverage issued to Hopeman also covered Wayne Manufacturing Corporation, a wholly-owned subsidiary of Hopeman that dissolved in 1985 (the “Wayne Primary Policies,” and together with the Primary Policies and Excess Policies, the “Liberty Mutual Policies”).

C. Asbestos Related Claims Asserted Against Hopeman and Wayne

11. Over the past 45 years, persons allegedly injured by asbestos-containing products have named Hopeman as a defendant in over 126,000 claims, either filed in lawsuits or asserted in an out-of-court administrative process. Hopeman has presented these claims to its insurance carriers, including Liberty Mutual, for reimbursement of indemnity payments and defense costs incurred with respect to those claims.

12. In addition, after Wayne was dissolved, Liberty Mutual has been named as a defendant in its capacity as insurer for Wayne in numerous direct action lawsuits in Louisiana for Asbestos-Related Claims allegedly caused by Wayne.

D. Liberty Mutual's 2003 Settlement with Hopeman

13. On March 21, 2003, Hopeman and Liberty Mutual resolved certain disputes between them as to the coverage provided by Liberty Mutual for Asbestos Related Claims by entering into (i) the Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Settlement Agreement"), and (ii) the Indemnification and Hold Harmless Agreement Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Indemnification Agreement", together with the Settlement Agreement, the "2003 Agreements").

14. The 2003 Agreements, which were executed concurrently, (i) settled certain disputes between Hopeman (defined to include Wayne) and Liberty Mutual that arose under previous agreements concerning the Liberty Mutual Policies, and (ii) compromised and settled all coverage issues, both present and future, between Hopeman and Liberty Mutual related to the Liberty Mutual Policies. *See* Settlement Agreement at § II; Indemnification Agreement at § II.

15. Pursuant to the 2003 Agreements, among other payments to be made, Liberty Mutual agreed to pay a sum certain (the “Settlement Funds”) into a newly created and independent trust (the “2003 Insurance Coverage Trust” or the “Trust”). *See* Settlement Agreement at §§ IV.B & C.

16. Under the Settlement Agreement, the Trust was to use the Settlement Funds to disburse amounts to Hopeman [REDACTED] and for certain other expenses, including to seek coverage from other insurers or to pay or reimburse Liberty Mutual for any “Indemnified Claims” (as defined in both 2003 Agreements and set forth below). *See Id.* at § I.G.

17. In exchange for the Settlement Funds, Hopeman agreed to provide Liberty Mutual with a full release of its rights under the Liberty Mutual policies issued to Hopeman to effectuate Liberty Mutual’s “buy-back” of Hopeman’s coverage. *See Id.* at §§ VII and VIII.

E. Liberty Mutual’s Indemnification Rights

18. The 2003 Agreements contemplated that others might claim rights in, and assert claims under, the Liberty Mutual policies notwithstanding Hopeman’s release of the coverage. This contingency is addressed in an Indemnification Agreement under which Liberty Mutual is afforded a limited right to indemnification from the Trust—not Hopeman—against such claims so long as Settlement Funds remain in the Trust.

19. The Indemnification Agreement provides:

[REDACTED]

[REDACTED]

See Indemnification Agreement at § III.A.1 (emphasis added).

20. Pursuant to both of the 2003 Agreements, an “Indemnified Claim” is defined to include:

[REDACTED]

See Indemnification Agreement at § I.K (emphasis added); Settlement Agreement at § I.K (emphasis added).

21. To the extent Liberty Mutual had an Indemnified Claim, the Trust was to reimburse or pay Liberty Mutual amounts it was owed for the Indemnified Claim out of the Settlement Funds, only to the extent the Trust had funds left to do so. The relevant section of the Indemnification Agreement provides as follows:

[REDACTED]

See Indemnification Agreement at § III.A.2.

22. The Indemnification Agreement expressly provides that Liberty Mutual's exclusive source of indemnification and reimbursement for Indemnified Claims is the Trust and only to the extent that the Trust has funds to undertake such an obligation. Critically, the Indemnification Agreement expressly states that [REDACTED] is *Hopeman* obligated to reimburse or indemnify Liberty Mutual, [REDACTED]:

[REDACTED]

Id. at § III.A.3.

23. Liberty Mutual paid the Settlement Funds into the contemplated 2003 Insurance Coverage Trust established with Riggs Bank, N.A. The Settlement Funds, however, were exhausted through the payment of claims, costs and expenses incurred by Hopeman or on its behalf as authorized by the Settlement Agreement. There are no Settlement Funds left.

F. Defense of Liberty Mutual Provisions in the Indemnification Agreement

24. Section III.B of the Indemnification Agreement sets forth the parties' respective obligations in the event Liberty Mutual later were to be sued by claimants on an Indemnified Claim.

25. For example, in section III.B.1, Hopeman has the right, with Liberty Mutual's consent, to select counsel to represent Liberty Mutual in an action involving an Indemnified Claim.

26. Section III.B.2 limits the types of expenses Liberty Mutual can seek to recover from the Trust. Liberty Mutual cannot charge the Trust, for example, for in-house counsel or overhead incurred in managing defense of Indemnified Claims.

27. Section III.B.3 provides that Liberty Mutual controls the defense of an Indemnified Claim, but to the extent the Trust is to provide indemnification or reimbursement for any such Indemnified Claim, Liberty Mutual must obtain Hopeman's consent to settle such Indemnified Claim.

28. Section III.B.4 provides Hopeman with the right, but not the obligation, when permitted by applicable law, to substitute itself for Liberty Mutual and/or seek to intervene in litigation or arbitration as the real party in interest. Regardless of whether Hopeman elects to intervene, Liberty Mutual has [REDACTED]

[REDACTED]

[REDACTED]

29. The Indemnification Agreement also provides protection to Hopeman against the duplication of defense costs that might drain Settlement Funds by stating as follows with respect to direct action claims that might be asserted against Liberty Mutual:

[REDACTED]

See Indemnification Agreement at § III.B.5 (emphasis added).

30. Liberty Mutual relies on the last sentence in section III.B.5 to assert in its Claim that *Hopeman* has liability for costs Liberty Mutual allegedly has incurred, despite the express provisions recited above that only *the Trust* is liable to indemnify or reimburse Liberty Mutual for an Indemnified Claim (which expressly includes defense costs in direct action claims) and that in no circumstances shall Hopeman have any obligation to reimburse or indemnify Liberty Mutual

with respect to Indemnified Claims *or otherwise*. See Indemnification Agreement at §§ III.A.1–3.

G. Defense of Prepetition Claims Asserted Against Liberty Mutual

31. Prior to the Petition Date, and as contemplated by the 2003 Agreements, Hopeman defended Liberty Mutual in Louisiana direct action lawsuits whenever Asbestos Related Claims were filed against both Hopeman and against Liberty Mutual as the insurer for Wayne. Hopeman paid the defense costs out of the Settlement Funds, and presented the defense costs incurred in defending both itself and Liberty Mutual as insurer for Wayne to the applicable excess insurers above Liberty Mutual's coverage in Hopeman's insurance portfolio for partial reimbursement to Hopeman under coverage-in-place agreements.

32. Since the Petition Date, however, Asbestos Related Claims against Hopeman have been stayed by the automatic stay, and direct action lawsuits against Liberty Mutual as insurer for Wayne also have been stayed by this Court's three interim orders extending the stay, the third of which is set to expire June 30, 2025, unless further extended by the Court.

33. Because the direct actions pending against Liberty Mutual are stayed, Liberty Mutual should not be incurring any defense costs at present. Whether Liberty Mutual will incur defense costs after any stay of litigation against Liberty Mutual as insurer for Wayne ends on June 30, 2025, or otherwise, remains to be determined. As for Hopeman, the Debtor intends to reorganize and will be subject to being named as a defendant (at least nominally) in Asbestos Related Claims in accordance with proposed trust distribution procedures.

IV. BASIS FOR RELIEF

A. Liberty Mutual Does Not Have a Claim Against Hopeman or Its Property

34. Section 502(a) of the Bankruptcy Code provides that a claim is deemed allowed unless a party in interest objects. If a claim is objected to, the court determines the amount of that claim as of the petition date, and shall allow the claim in that amount except to the extent that it is unenforceable against the debtor and the property of the debtor under any agreement. § 502(b)(1).

35. By the express terms of the 2003 Agreements, Liberty Mutual does not have any claim *against Hopeman* for any prospective failure of Hopeman to defend Liberty Mutual on an Indemnified Claim. Liberty Mutual's remedy, if any, for any such breach lies exclusively against the Settlement Funds, if any, in the Trust.

36. By the explicit terms of the 2003 Agreements, an "Indemnified Claim" is expressly defined to include reasonable counsel fees, costs and expenses incurred in defending Liberty Mutual on an Asbestos Related Claim, including a direct action claim, arising out of Hopeman's products, services, or activities, or under Liberty Mutual's policies. *See* Indemnification Agreement at § I.K; Settlement Agreement at § I.K.

37. Liberty Mutual's right to indemnification or reimbursement for an Indemnified Claim, however, exists exclusively against the Settlement Funds in the Trust. *See* Indemnification Agreement at § III.A.3.

38. The Indemnification Agreement further unambiguously provides that [REDACTED]

[REDACTED]

[REDACTED] *Id.* at § III.A.3 (emphasis added).

39. Despite the unambiguous language limiting Liberty Mutual's indemnification and reimbursement rights to the Settlement Funds, Liberty Mutual asserts, by its Claim, that Hopeman

is liable to Liberty Mutual for “all past and future costs incurred by Liberty Mutual in connection with the Liberty Policies.”

40. The Claim relies on Section III.B.5 of the Indemnification Agreement, which provides that “Hopeman agrees that its counsel will defend Liberty Mutual at no cost to Liberty Mutual” where Liberty Mutual is named in a direct action only in its capacity as an insurer for Hopeman in states permitting direct actions against insurers.

41. As an initial matter, all this provision does is provide that Hopeman and Liberty can share counsel, at no cost to Liberty, if Hopeman already has counsel defending it in this small subset of cases and can also defend Liberty on the same claim. It does not require Hopeman to retain counsel or dictate the manner of defense of any such litigation, and it certainly does not require Hopeman to reimburse Liberty if Liberty decides, on its own accord, to retain its own counsel.

42. In advancing its position that Section III.B.5 obligates Hopeman to reimburse legal fees, Liberty Mutual misapplies Virginia law in how to interpret a contract, by “myopically focus[ing] on a word here or a phrase there,” disregarding the context of the 2003 Agreements entirely.

43. Virginia law requires section III.B.5 of the Indemnification Agreement to be interpreted in the context of the Indemnification Agreement as a whole, as well as in the context of the 2003 Agreements more generally.

44. The Virginia Supreme Court recently reiterated the following widely accepted principles of contract interpretation:

Virginia courts interpret insurance policies, like other contracts, in accordance with the intention of the parties gleaned from the words they have used in the document . . . this rule means that a judicial interpretation should conform to the plain meaning reasonable

[parties] . . . likely would have attributed to the words. The search for this plain meaning does not myopically focus on a word here or a phrase there. Instead, it looks at a word in the context of a sentence, a sentence in the context of a paragraph, and a paragraph in the context of the entire agreement. The plain meaning of a word depends not merely on semantics and syntax but also on the holistic context of the word within the instrument. Consequently, every word, clause, and provision of the [contract] should be considered and construed together and seemingly conflicting provisions harmonized when that can be reasonably done, so as to effectuate the intention of the parties as expressed therein. If they are clear and unambiguous, their terms are to be taken in their plain, ordinary and popular sense.

Erie Ins. Exch. V. EPC MD 15, LLC, 822 S.E.2d 351, 354-55 (Va. 2019).

45. When viewed in the proper context, section III.B.5 of the Indemnification Agreement is unambiguous. Liberty Mutual and Hopeman agreed to resolve fully and finally all disputes and coverage issues that then existed or might come into existence in the future. In doing so, Liberty Mutual agreed that the Settlement Funds would be its exclusive source of reimbursement for any Indemnified Claim.

46. Liberty Mutual's Claim in this case ignores that, under the 2003 Agreements, Hopeman does not have [REDACTED] [REDACTED] Indemnification Agreement at § III.A.3 (emphasis added). To now assert that Hopeman is liable to Liberty Mutual "for all past and future costs incurred by Liberty Mutual in connection with the Liberty [Mutual] Policies and/or related claims asserted by direct action claimants" is antithetical to the plain, unambiguous meaning of the 2003 Agreements.

47. Even if Hopeman did have a defense obligation under the 2003 Agreements, and even if Hopeman breached that obligation, Liberty Mutual's only source of recovery would be the Settlement Funds, as provided in section III.A.3 of the Indemnification Agreement.

48. Such a conclusion makes logical sense. Why would Hopeman ever agree to indemnify or reimburse Liberty Mutual for claims or defense costs in an amount greater than the amount Liberty Mutual paid to settle and buy back its policies? In such a scenario, Hopeman would be taking on liabilities it never had to Liberty Mutual. It not only would be contrary to the express terms of the Indemnification Agreement but it also would be illogical since Liberty Mutual (as insurer) was the party obligated to indemnify and reimburse Hopeman (the insured) under the Liberty Mutual Policies for Hopeman's claim and defense costs, not the other way around.

49. Liberty Mutual cannot have a claim against Hopeman for reimbursement, indemnification, or otherwise because by the plain, unambiguous terms of the 2003 Agreements, Liberty Mutual has no claim enforceable against Hopeman. Such a claim is enforceable solely against the Settlement Funds to the extent they exist. As the Settlement Funds were exhausted, the Claim must be disallowed under § 502(b)(1).

B. Liberty Mutual's Claim Does Not Fit Within an "Indemnified Claim"

50. Even if this Court were to determine that Liberty Mutual has a right to assert an Indemnified Claim against Hopeman rather than exclusively against the Trust, the type of fees and expenses in the Claim filed by Liberty Mutual do not fit within the definition of "Indemnified Claim" if they were incurred, as suspected, by Liberty Mutual to have its counsel monitor this bankruptcy case.

51. An Indemnified Claim must relate to defense of an Asbestos Related Claim asserted against Liberty Mutual. All of the Asbestos Related Claims against Liberty Mutual arising from alleged conduct of Hopeman have been stayed since the filing of this bankruptcy case under the automatic stay and the three interim stay extension orders by this Court. Accordingly, those fees and expenses should be disallowed because they are not covered by the Indemnification

Agreement and there is no other basis to authorize allowance of those fees and expenses in this case.

V. NOTICE

52. Notice of this Objection will be given pursuant to Local Rule 1075-1 and the procedures set forth in Article II of the “Procedures for Complex Cases in the Eastern District of Virginia.” The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREAS, the Debtor requests that the Court enter the Proposed Order granting the relief sought in the Objection and such other relief as this Court determines just and proper.

Dated: April 30, 2025
Richmond, Virginia

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

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200
Facsimile: (804) 788-8218
Email: tpbrown@HuntonAK.com
hlong@HuntonAK.com

- and -

Joseph P. Rovira (admitted *pro hac vice*)
Catherine A. Rankin (admitted *pro hac vice*)
HUNTON ANDREWS KURTH LLP
600 Travis Street, Suite 4200
Houston, TX 77002
Telephone: (713) 220-4200
Facsimile: (713) 220-4285
Email: josephrovira@HuntonAK.com
crankin@HuntonAK.com

Counsel for the Debtor and Debtor in Possession

Exhibit A

Proposed Order

HUNTON ANDREWS KURTH LLP

Joseph P. Rovira (admitted *pro hac vice*)
Catherine A. Rankin (admitted *pro hac vice*)
600 Travis Street, Suite 4200
Houston, Texas 77002
Telephone: (713) 220-4200

HUNTON ANDREWS KURTH LLP

Tyler P. Brown (VSB No. 28072)
Henry P. (Toby) Long, III (VSB No. 75134)
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
Telephone: (804) 788-8200

Counsel for Debtor and Debtor in Possession

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

:
: **Chapter 11**
:
: **Case No. 24-32428 (KLP)**
:
:
:
:

**ORDER DISALLOWING AND EXPUNGING CLAIM
NUMBER 10 OF LIBERTY MUTUAL INSURANCE COMPANY**

Upon the *Objection of Hopeman Brothers, Inc. to Claim No. 10 of Liberty Mutual Insurance Company* (the “Objection”)¹ of the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”) for entry of an order (this “Order”) disallowing and expunging claim number 10 (the “Claim”) filed by Liberty Mutual Insurance Company; and the Court having jurisdiction to consider the Objection and the relief requested therein in accordance with 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue

¹ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Objection.

of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Objection has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that the legal and factual bases set forth in the Objection and at the hearing on the Objection establish good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The relief requested in the Objection is hereby SUSTAINED.
2. The Claim is hereby disallowed and expunged in its entirety.
3. The Debtor and the Debtor's claims and noticing agent are authorized to take all actions necessary to implement the relief granted in this Order.
4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____, 2025
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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

Tyler P. Brown (VSB No. 28072)

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

HUNTON ANDREWS KURTH LLP

Riverfront Plaza, East Tower

951 East Byrd Street

Richmond, Virginia 23219

Telephone: (804) 788-8200

Facsimile: (804) 788-8218

Email: tpbrown@HuntonAK.com

hlong@HuntonAK.com

- and -

Joseph P. Rovira (admitted *pro hac vice*)

Catherine A. Rankin (admitted *pro hac vice*)

HUNTON ANDREWS KURTH LLP

600 Travis Street, Suite 4200

Houston, TX 77002

Telephone: (713) 220-4200

Facsimile: (713) 220-4285

Email: josephrovira@HuntonAK.com

crankin@HuntonAK.com

Counsel for the Debtor and Debtor in Possession

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

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

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

Henry P. (Toby) Long, III