

**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 JOINT MOTION OF THE
DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY
OF AN ORDER (I) SCHEDULING A COMBINED HEARING TO APPROVE THE
DISCLOSURE STATEMENT AND CONFIRM THE PLAN; (II) CONDITIONALLY
APPROVING THE DISCLOSURE STATEMENT; (III) ESTABLISHING OBJECTION
DEADLINES; (IV) APPROVING THE FORM AND MANNER OF NOTICE; (V)
APPROVING THE SOLICITATION AND TABULATION PROCEDURES; AND
(VI) GRANTING RELATED RELIEF (DOCKET NO. 691)**

COMES NOW Matthew W. Cheney, Acting United States Trustee for Region 4, by counsel, and respectfully submits his Objection to the Joint Motion of the Debtor and Official Committee of Unsecured Creditors for Entry of an Order (I) Scheduling a Combined Hearing to Approve the Disclosure Statement and Confirm the Plan; (III) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines; (IV) Approving the Form and Manner of Notice; (V) Approving the Solicitation and Tabulations Procedures; and (VI) Granting Related Relief (Docket No. 691) (the “Disclosure Statement and Plan Procedures Motion”).

PRELIMINARY STATEMENT

1. The United States Trustee objects to the Disclosure Statement and Plan Procedures Motion to the extent that it seeks approval of documents to be provided to creditors

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and parties in interest in connection with the process of approving the Disclosure Statement and Plan that cannot ultimately be approved by the Court.

2. The United States Trustee’s objections are limited to issues that must be dealt with before notices are provided to creditors and other parties in interest. The United States Trustee does not waive his right to object to other provisions of the Disclosure Statement and/or Plan in due course.

STANDING

3. 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. The United States Trustee is particularly charged with “monitoring plans and disclosure statements filed in cases under chapter 11 of title 11” *See* 28 U.S.C. § 586(a)(3)(B).

4. 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

5. On June 30, 2024, the Debtor filed a chapter 11 petition in this Court.

6. On July 22, 2024, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) (Docket No. 69).

7. On April 29, 2025, the Debtor filed a Chapter 11 Plan of Reorganization (Docket No. 689) and Disclosure Statement (Docket No. 690).

8. Also on April 29, 2025, the Debtor and the Committee filed the Disclosure Statement and Plan Procedures Motion.

9. The Plan contains the following third-party release provision. *See* Plan, Article X, Section 10.6, Docket No. 689.

10.6. Release of Hopeman's Directors and Officers by Releasing Parties. Except as provided in Section 8.13(c) [regarding asbestos claimants who have obtained judgments] and Section 8.15 [regarding Huntington Ingalls Industries, Inc.] of this Plan and in addition to the protections afforded to the Released Parties as Protected Parties under the Asbestos Permanent Channeling Injunction, and in consideration for the obligations of Hopeman and Reorganized Hopeman under the Plan, each Releasing Party and the Asbestos Trust shall waive and release any and all Causes of Action that such holder, did commence or could have commenced against any such Released Party that is based upon, attributable to, or arising from any acts or omissions of Released Party occurring prior to the Effective Date or in any way attributable to Hopeman, Reorganized Hopeman, the Chapter 11 Case, or the Plan; *provided, however*, that, notwithstanding the foregoing, no release of the Released Parties shall diminish, reduce, or eliminate the duties of any Asbestos Insurer under any Asbestos Insurance Policy or any Asbestos CIP Agreement.

10. The Plan includes the following definitions relevant to the third-party release:

1.97. Releasing Party means collectively: (a) all holders of Claims that vote to accept or are presumed to accept the Plan; (b) all holders of Claims that abstain from voting on the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in the Plan in accordance with the procedures set forth in the Solicitation Procedures Order; (c) all holders of Claims and Interests that vote to reject the Plan or are deemed to reject the Plan and who do not affirmatively opt out of the releases provided by the Plan by checking the box on the applicable form indicating that they opt not to grant the releases provided in the Plan in accordance with the procedures set forth in the Solicitation Procedures Order; and (d) with respect to Hopeman and each of the foregoing Entities in clauses (a) through (c), such Entity and its current and former affiliates, and such Entities' and their current and former affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, successors, and assigns.

1.96. Released Parties means current and former directors, officers, or employees of Hopeman, or any past or present Affiliate of Hopeman, except Wayne, solely in their respective capacities as such.

1.34. Causes of Action is intended to be read as broadly as possible and includes, but is not limited to, any Claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, crossclaims, counterclaims, defenses, offsets, or set offs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law,

federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, crossclaim, third party action, action for indemnity, contribution, or otherwise.

11. The term “Affiliate” is not a defined term in the Plan or the Disclosure Statement.

Under Article I.B of the Plan it is to be given the meaning ascribed to it in the Bankruptcy Code.

See 11 U.S.C. § 101(2).

12. The Plan also contains a provision enjoining parties from bringing released claims. *See* Plan, Article X, Section 10.8, Docket No. 689.

10.8. No Actions on Account of Released Claims. Except as provided in the Plan, as of the Effective Date, all Entities that have held, currently hold or may hold any claims, commitments, obligations, suits, judgments, damages, demands, debts, Causes of Action or liabilities that are released pursuant to the Plan shall be permanently enjoined from taking any of the following against a released Entity, or any of its property, on account of such released claims, commitments, obligations, suits, judgments, damages, demands, debts, Causes of Action or liabilities: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree, or order; (iii) creating, perfecting or enforcing any Encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any released Entity; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of this Plan.

13. The Plan also contains an exculpation provision:

10.4. Exculpation. None of the Exculpated Parties shall have or incur any liability to any Entity for any act or omission in connection with, related to, or arising out of: (a) the Chapter 11 Case; (b) negotiation, formulation and preparation of the Plan and the other Plan Documents, and any of the terms and/or settlements and compromises reflected in the Plan and the other Plan Documents; (c) pursuit of confirmation of the Plan; (d) consummation of the Plan, or administration of the Plan or the property to be distributed under the Plan or the Asbestos Trust Distribution Procedures; (e) the releases and injunctions contained in the Plan; or (f) the management or operation of Hopeman during the Chapter 11 Case. Without limiting the generality of the foregoing, the Exculpated Parties shall be entitled to and granted the protections and benefits of section 1125(e) of the Bankruptcy Code.

14. “Exculpated Parties” is defined as follows in the Disclosure Statement:

1.63. Exculpated Parties means, collectively, (a) Hopeman, (b) the Committee, solely

in its capacity as such, (c) the Future Claimants' Representative, solely in her capacity as such, and (d) Professionals of any of the foregoing Entities, solely in their capacity as such.

OBJECTIONS

15. As is relevant here, the Disclosure Statement and Plan Procedures Motion seeks approval of ballots and a notice of non-voting status that are to be sent to creditors and parties in interest as part of the Disclosure Statement and Plan approval process. A summary of the ballots and notices and how they treat the third-party releases is set out on Exhibit A hereto.

16. Those documents mandate that general unsecured creditors and asbestos creditors may only avoid the third-party releases at Article X, Section 10.6 of the Plan by either by voting to reject the Plan and opting out of the third-party releases or by not voting and opting out of the releases.¹ If a voting creditor votes for the Plan, votes to reject the Plan but fails to check the opt out box on the Ballot, or fails to return a ballot for any reason, then the creditor is deemed to have consented to the third-party releases. Under the proposed documents and procedures, priority creditors, secured creditors and equity holders are not entitled to vote, are not provided any mechanism to opt out and so must affirmatively object to the Plan to avoid the third-party releases.

17. As is typical for such things, the third-party release and its nested definitions sweep up a remarkably broad number of people and potential legal claims. By its terms, the third-party release provision would bar claims (of any type) by creditors (and their officers and

¹ The Bankruptcy Code provides for injunctions barring actions against non-debtors in asbestos cases under 11 U.S.C. § 524(g). *See Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204, 222 (2024) (explaining that “the code does authorize courts to enjoin claims against third parties without their consent, but does so in only one context,” asbestos-related bankruptcies). The United States Trustee is objecting to the use of third-party releases against non-asbestos creditors and parties in interest and to asbestos claimants for non-asbestos related claims. The Plan’s section 524(g) injunction, Article X, Section 10.3, is not at issue in the United States Trustee’s Objection.

affiliates) against any current or former director, officer or employee of the Debtor and any Affiliates of Hopeman.

18. This leads to absurd situations that reflect how far afield the released claims are from the bankruptcy case. For example, if Christopher Lascell (the Debtor's president) got into a car accident with a creditor tomorrow, the creditor's personal injury and property damage claims against Mr. Lascell would be barred by the third-party release.

19. The ballots and notice that the Disclosure Statement and Plan Procedures Motion seek to approve are based on a flawed application of the law regarding "consensual" third-party releases and should not be approved without modification. The legal authorities supporting the United States Trustee's Objection on these issues are contained in his *Memorandum in Support* filed contemporaneously herewith.

20. In addition to the Plan contains an injunction provision regarding released third-party claims that cannot be approved. The legal authorities supporting the United States Trustee's Objection on this issue is contained in his *Memorandum in Support* filed contemporaneously herewith.

21. Finally, the Exculpation Provision included in the Plan (which is included in the ballots and notice to be approved under the Disclosure Statement and Plan Procedures Motion) cannot be approved as it departs from the standards for exculpation clauses announced in *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 701-02 (E.D. Va. 2022) and applies to activities taken in the ordinary course of running the Debtor's business, not just the chapter 11 case.

22. In particular, the Exculpation Provision in the Plan should be limited to claims arising between the Petition Date and the Effective Date, should contain a carve-out for gross

negligence, actual fraud or willful misconduct, should contain a gatekeeping provision and should only apply to activities related to the chapter 11 case.

CONCLUSION

23. For the reasons set forth herein and in the *Memorandum in Support*, the Court should:

- A. Require that the Debtor modify the Plan and Disclosure Statement to provide that parties in interest may only grant the third-party releases by affirmatively opting in to granting the releases;
- B. Require the Debtor to strike Article X, Section 10.8 of the Plan (the injunction provision);
- C. Require the Debtor to modify Article X, Section 10.4 of the Plan (the exculpation provision) as set forth herein;
- D. Require that the Debtor modify the Ballots and Notice of Non-Voting Status in conformity with the changes to the Plan and Disclosure Statement, particularly to provide that parties receiving those documents may only grant the third-party releases by affirmatively opting in to granting the releases.

WHEREFORE, the United States Trustee requests that the Court grant his objection as set forth herein and in the *Memorandum in Support* and that the Court award such other and further relief as may be just and proper.

Respectfully Submitted,

Dated: May 9, 2025

MATTHEW W. CHENEY
Acting United States Trustee Region 4

By: /s/ Kathryn R. Montgomery
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via CM/ECF on this 9th day of May, 2025 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.

/s/ Kathryn R. Montgomery

EXHIBIT A

Class	Description	Impaired? Voting?	Document to be provided under the Disclosure Statement and Plan Procedures Motion	How to Avoid the Third-Party Releases?
Class 1	Priority Non-Tax Claims	Unimpaired and non-voting. Deemed to accept.	Notice of Non-Voting Status – Docket No. 961, Exhibit 3.	No mechanism to opt out of the third-party releases. Not stated, but it would appear that the only way to avoid the third-party release is to object to the Plan.
Class 2	Secured claims	Unimpaired and non-voting. Deemed to accept.	Notice of Non-Voting Status – Docket No. 961, Exhibit 3.	No mechanism to opt out of the third-party releases. Not stated, but it would appear that the only way to avoid the third-party release is to object to the Plan.
Class 3	General Unsecured Claims	Impaired and voting	Ballot -- Docket No. 961, Exhibit 2A.	Only if the creditor rejects the Plan and checks the box to opt out of the third-party releases. If a creditor votes for the Plan, returns a ballot without voting for or against the Plan or fails to return a timely ballot the creditor is deemed to consent to the third-party releases.
Class 4	Channeled Asbestos Claims	Impaired and voting	Ballot -- Docket No. 961, Exhibit 2B (individual claimant) or Exhibit 2A (Master ballot sent to counsel for claimants).	Only if the creditor rejects the Plan and checks the box to opt out of the third-party releases. If a creditor votes for the Plan, returns a ballot without voting for or against the Plan or fails to return a timely ballot the creditor is deemed to consent to the third-party releases.
Class 5	Equity interests	Impaired and non-voting. Deemed to reject.	Notice of Non-Voting Status – Docket No. 961, Exhibit 3.	No mechanism to opt out of the third-party releases. Not stated, but it would appear that the only way to avoid the third-party release is to object to the Plan.