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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

**MOTION OF LIBERTY MUTUAL INSURANCE COMPANY FOR ENTRY OF AN
ORDER TEMPORARILY ALLOWING CLAIM NO. 19
PURSUANT TO BANKRUPTCY RULE 3018(A)**

Liberty Mutual Insurance Company (“Liberty”) hereby files this motion (the “Motion”) pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) temporarily allowing Liberty’s claim [Claim No. 10, as amended by Claim No. 19] (together, collectively, the “Claim”) in the amount of \$354,754.89 against the debtor in the above-captioned case (“Hopeman” or the “Debtor”), for the purpose of voting to accept or reject the *Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 689] (together with



any amendments, modifications, or supplements thereto, collectively, the “Plan”).¹ In support of the Motion, Liberty respectfully states:

JURISDICTION AND VENUE

1. 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(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

3. Liberty hereby seeks entry of an order, substantially in the form of the Proposed Order, temporarily allowing the Claim in the amount of \$354,754.89 for voting purposes.

4. The relief requested herein is predicated on Rule 3018(a) of the Bankruptcy Rules and section 105(a) of the Bankruptcy Code.

BACKGROUND

I. The Claim.

5. On June 30, 2024, 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 is a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code.

6. 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.

¹ Capitalized terms used but not otherwise defined herein will have the meanings given to them in the Plan.

7. Liberty timely filed the Claim, which asserts a partially unliquidated unsecured claim in the amount of \$354,754.89. The Claim is based on Hopeman's liability for damages associated with its failure to honor its obligations under the 2003 Agreements (as defined below).

8. Decades before this chapter 11 filing, Liberty issued certain prepetition primary layer and excess insurance policies (the "Liberty Policies") to Hopeman and/or, in some cases, to Hopeman's affiliate, Wayne Manufacturing Corporation (a wholly owned subsidiary of Hopeman that dissolved in 1985) ("Wayne"). On March 21, 2003, Hopeman² and Liberty entered into *the Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company* (the "Settlement Agreement") and *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").

9. On April 30, 2025, the Debtor filed the *Objection of Hopeman Brothers, Inc. to Claim No. 10 of Liberty Mutual Insurance Company* [Dkt. No. 694] (the "Claim Objection") and the *Notice of Requests for Relief and Notice of Hearing* [Dkt. No. 696] (the "Notice of Hearing"). The Notice of Hearing stated that the deadline for Liberty to respond to the Claim Objection is May 14, 2025, and a hearing on the Claim Objection would take place on May 21, 2025. However, upon communications with the Debtor's counsel, Liberty and the Debtor mutually agreed that Liberty's response deadline would be extended to May 30, 2025. On that date, Liberty filed the *Response of Liberty Mutual Insurance Company to Objection of Hopeman Brothers, Inc. to Claim No. 10 of Liberty Mutual Insurance Company* [Dkt. No. 825] (the "Response"). The hearing on the Claim Objection and the Response is scheduled to take place on June 18, 2025.

² The definition of "Hopeman" in the 2003 Agreements includes Wayne.

10. In the Claim Objection, the Debtor argues that only the Trust, not Hopeman, is obligated under the 2003 Agreements to indemnify *and* defend Liberty against direct action claims. *See* Dkt. No. 694 at ¶ 30. Liberty hereby incorporates by reference as if fully set forth herein all facts and arguments detailed in the Response (a true and correct copy of which is attached to this Motion as **Exhibit B**), which demonstrate why the Debtor’s assertion is incorrect and the Claim should be allowed.

II. The Solicitation Procedures Order.

11. On April 29, 2025 — one day before the Debtor filed the Claim Objection — the Debtor filed the Plan, the accompanying *Disclosure Statement with Respect to the Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 690] (together with any amendments, modifications, or supplements thereto, collectively, the “Disclosure Statement”), and 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; (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* [Dkt. No. 691] (the “Solicitation Procedures Motion”). Liberty filed an objection to the Solicitation Procedures Motion [Dkt. No. 720]. On May 21, 2025, the Court entered an order granting the Solicitation Procedures Motion with certain modifications over Liberty’s objection [Dkt. No. 782] (the “Solicitation Procedures Order”).

12. The Solicitation Procedures Order sets forth a deadline of “no later than fourteen (14) calendar days after the mailing of the Solicitation Package” for parties to file motions pursuant to Rule 3018. *See id.* at ¶ 7. Upon information and belief, the Debtor mailed the Solicitation

Package (as defined in the Solicitation Procedures Motion) on May 23, 2025; thereby, the deadline to file this Motion falls on June 6, 2025.

BASIS FOR RELIEF

13. Pursuant to section 1126(a) of the Bankruptcy Code, only holders of allowed claims or interests may cast a ballot to accept or reject a chapter 11 plan. *See* 11 U.S.C. § 1126(a). Section 502(a) of the Bankruptcy Code provides that a claim represented by a timely and properly filed proof of claim “is deemed allowed unless a party in interest . . . objects.” 11 U.S.C. § 502(a).

14. Where a claim is not allowed due to a pending objection, Bankruptcy Rule 3018(a) provides that a court “may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.” Fed. R. Bankr. P. 3018(a). The policy behind Bankruptcy Rule 3018(a) is to “prevent possible abuse by plan proponents” who attempt to ensure acceptance of a plan by strategically objecting to the claims of dissenting creditors. *In re Armstrong*, 292 B.R. 678, 686 (10th Cir. B.A.P. 2003). This case presents that precise scenario. Notwithstanding that the Debtor was well aware of the Claim, it waited 177 days to file the Claim Objection (and did so 24 hours after filing the Plan that prejudices Liberty’s rights) so that Liberty would not have the chance to respond and be heard until the Voting Record Date had already passed.

15. The Claim Objection is without merit, as Liberty has set forth in the Response and will demonstrate at the hearing on June 18. This Court — which has “sound discretion” when determining whether to temporarily allow a claim for voting purposes — should not permit the Debtor to use the Claim Objection as a basis to disenfranchise Liberty. *Pension Benefit Guar. Corp. v. Enron Corp.*, No. 04-5499 (HB), 2004 U.S. Dist. LEXIS 21810, at *16 (Bankr. S.D.N.Y. Nov. 1, 2004). Moreover, “Bankruptcy Rule 3018(a) [] is regularly employed in mass tort cases

with a large number of unliquidated claims.” *In re Lloyd E. Mitchell, Inc.*, 373 B.R. 416, 423 (Bankr. D. Md. 2007).

16. In addition to Bankruptcy Rule 3018(a), section 105(a) of the Bankruptcy Code empowers this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the Bankruptcy Code. 11 U.S.C. § 105(a). Courts have applied section 105(a) in the voting context, as requested here. *See, e.g., Enron Corp.*, 2004 U.S. Dist. LEXIS 21810, at *11 (“Pursuant to section 105(a) of the Bankruptcy Code, the Bankruptcy Court acted well within its power to craft and interpret the Voting Procedures Order and ensure that PBGC would be limited to voting its full economic stake and no more”).

17. Although the Bankruptcy Code and the Bankruptcy Rules provide no guidance as to how a court should calculate a claim for voting purposes, courts have held that the calculation “should ensure that the voting power is commensurate with the creditor’s economic interests in the case.” *In re Quigley Co.*, 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006). The Claim represents Liberty’s economic interest in this bankruptcy case because it asserts defense costs that Liberty has actually incurred in defending its interests. Moreover, as noted in the Response, the Claim is only partially liquidated at this time, as Liberty will continue to incur costs and expenses defending and responding to direct action claims if this Court approves the Plan in its current form and, in any event, on account of the Lift Stay Order (as defined in the Response).

18. To be clear, Liberty files this Motion to assert its right to vote on the Plan as a creditor of the Debtor’s estate. However, even if Liberty was not a creditor (which it is), Liberty would still have standing to object to the Plan because it is a party in interest to these proceedings

under section 1109(b) of the Bankruptcy Code. *See* 11 U.S.C. § 1109(b).³ Liberty's status as a party in interest is entirely distinct from its status as a creditor. Both confer standing upon Liberty to object to the Plan, although it is its status as a creditor that entitles Liberty to vote on the Plan.

19. In sum, there is ample basis under Bankruptcy Rule 3018 and section 105(a) of the Bankruptcy Code for this Court to exercise its discretion to temporarily allow Liberty's Claim for purposes of allowing Liberty to vote on the Plan and thereby recognize Liberty's legitimate economic interest in this case.

WHEREFORE, Liberty respectfully requests that this Court enter an order (i) granting this Motion, (ii) temporarily allowing the Claim in the amount of in the amount of \$354,754.89 for voting purposes, and (iii) granting any other and further relief as is the Court deems just and proper.

Date: June 6, 2025

Respectfully submitted,

/s/ Douglas M. Foley

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³ The Supreme Court, in its recent decision in *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, unanimously affirmed that Truck Insurance, the primary liability insurer of the debtor (which was also facing asbestos liability), had standing as a party in interest to object to the proceedings. *See* 144 S. Ct. 1414, 1423 (2024). The Supreme Court's decision boiled down to pecuniary interest — *i.e.*, when a proposed action in a bankruptcy case “allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed.” *See id.* at 1426-28. To be clear, Liberty is no longer an insurer of Hopeman. Given that Hopeman released Liberty of all liabilities under the Liberty Policies, Liberty should not be designated as a “Non-Settling Asbestos Insurer” under the Plan. Nevertheless, it is. As such, the Plan proposes to put the hands of the 524(g) Trust and the holders of Asbestos Related Claims in Liberty's pockets and, consequently, Liberty is entitled as a party in interest to be heard regarding the Plan. Liberty reserves all rights regarding its standing under *Truck* and similar cases.

– and –

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CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2025, a true copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notification of electronic filing (NEF) to all creditors and parties in interest.

/s/ Douglas M. Foley

Exhibit A

Proposed Order

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

**ORDER GRANTING MOTION OF LIBERTY MUTUAL INSURANCE COMPANY FOR
ENTRY OF AN ORDER TEMPORARILY ALLOWING CLAIM NO. 19
PURSUANT TO BANKRUPTCY RULE 3018(A)**

This matter coming before the Court upon the *Motion of Liberty Mutual Insurance Company for Entry of an Order Temporarily Allowing Claim No. 10 Pursuant to Bankruptcy Rule 3018(A)* (the “Motion”)¹, pursuant to Section 105(a) of the Bankruptcy Code and Rule 3018(a) of the Bankruptcy Rules, for entry of an order: (i) granting the Motion, (ii) temporarily allowing the Claim in the amount of in the amount of \$354,754.89 for voting purposes, and (iii) granting any

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

other and further relief as the Court deems just and proper; and the Court having reviewed the Motion, finds that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (c) notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Claim is temporarily allowed for voting purposes in the amount of \$354,754.89.
3. The Debtor and the Debtor's claims and noticing agent are authorized and directed to take all actions necessary to implement the relief granted in this Order in accordance with the Motion.
4. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation of this Order.

Dated: _____, 2025

Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

/s/ Douglas M. Foley

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Exhibit B

Response

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

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

Liberty Mutual Insurance Company (“Liberty”) hereby files this response (“Response”) to the *Objection of Hopeman Brothers, Inc. to Claim No. 10 of Liberty Mutual Insurance Company* (the “Claim Objection”) seeking to disallow the amended proof of claim filed by Liberty Mutual (the “Claim”). In support of this Response, Liberty respectfully states as follows:

JURISDICTION AND VENUE

1. 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(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

3. Liberty respectfully requests that this Court overrule the Claim Objection, allow the Claim, and grant any other and further relief as the Court deems just and proper. To the extent the Court does not overrule the Claim Objection, Liberty respectfully requests that the Claim Objection be adjourned until commencement of the hearing to consider confirmation of the Debtor's Plan so that Liberty can be afforded sufficient time to conduct discovery in connection with the Claim Objection and Plan confirmation.

RESPONSE

4. A properly filed proof of claim constitutes *prima facie* evidence of the validity of such claim unless a party-in-interest, such as a debtor, objects to the claim. 11 U.S.C. § 502(a); Fed. R. Bankr. P. 3001(f). The objecting party "has the initial burden of presenting sufficient probative evidence to overcome the *prima facie* effect of the filed proof of claim." *In re Haymarket Transp., Inc.*, Case No. 09-20389-SSM, 2011 Bankr. LEXIS 1814, at *6 (Bankr. E.D. Va. May 13, 2011). Liberty asserts a partially-liquidated claim, as amended, for the Debtor's post-petition breach of contract.¹ The Debtor has failed to present any probative evidence to overcome the presumptive validity or amount of Liberty's claim. Accordingly, the Claim Objection should be overruled.

¹ Liberty has filed an amended Claim updating its original claim [Claim No. 10 filed November 4, 2024] to reflect additional defense costs incurred to date and to assert a breach of contract claim against Hopeman relating to the Plan and the Lift Stay Order (each as defined herein). These claims are described in greater detail in paragraphs 21-24 herein.

I. The Indemnification Agreement Unambiguously Requires Hopeman to Defend Liberty Against Direct Action Claims.

5. The Indemnification Agreement² is not ambiguous. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Claim Objection goes to great lengths to argue that the Trust, and not Hopeman, is required to *indemnify* Liberty for Indemnified Claims. But, through its Claim, and for the avoidance of doubt, Liberty is seeking damages for Hopeman's failure to *defend* Liberty against direct action claims. These two separate and distinct obligations, which are intended to work in tandem, are not mutually exclusive.

6. Through the Claim Objection, Hopeman asks this Court to disregard the plain meaning of the Indemnification Agreement and instead interpret that agreement "in the proper context[.]" Dkt. No. 693 at ¶ 45. But Hopeman offers no evidence to overcome the presumptive validity of Liberty's Claim, which is based on the plain meaning of the Indemnification Agreement.

7. Indeed, Hopeman's invitation to consider the "proper context" and "logical" interpretation of the Indemnification Agreement is wholly unnecessary and should not be countenanced by this Court. *Id.* at ¶¶ 45, 48. That is because, "where the parties' intent is clear and contractual language amenable to only one reasonable interpretation, courts are to construe contractual language according its plain and ordinary meaning." *E.g., Foothill Cap. Corp. v. E. Coast Bldg. Supply Corp.*, 259 B.R. 840, 844 (E.D. Va. 2001). Whether a contract is ambiguous

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Claim Objection or the *Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 766] (together with any amendments, restatements, modifications, or supplements thereto, collectively, the "Plan"), as applicable.

is a matter of law and can be determined by reviewing the “four corners of the instrument in question.” *Christopher Assocs., L.P. v. Sessoms*, 245 Va. 18, 22 (1993). Contracts are not ambiguous merely because the parties disagree on the meaning of the language in question. *See Doswell Ptnr. v. Va. Elec. & Power Co.*, 251 Va. 215, 222 (1996). Rather, ambiguity exists when language can be “understood in more than one way or refers to two or more things at the same time.” *Id.*

8. As a matter of law, the Defense Obligation (as defined herein) is not ambiguous. It does not refer to two things at the same time, and it can be understood only one way. *See id.* ■

It is that simple.

9. [REDACTED]

[REDACTED]

[REDACTED]

11. The Defense Obligation is wholly distinct from the Trust’s indemnification and defense obligations. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] There is no need to look beyond the language as written.

12. Hopeman attempts to argue that “all this provision does is provide that Hopeman and Liberty can share counsel . . . and can also defend Liberty on the same claim.” Dkt. No. 693 at ¶ 41. This argument fails on its face. [REDACTED]

[REDACTED]

[REDACTED]

13. Because the language establishing the Defense Obligation is unambiguous, this Court does not need to consider the broader context of the Indemnification Agreement. *See Sessoms*, 245 Va. at 22. However, to the extent that this Court considers the Defense Obligation within the context of the broader Indemnification Agreement, it should properly consider it in its *entire* context as one of two operative 2003 Agreements.

14. Hopeman asks, “[w]hy 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?” Dkt. No. 693 at ¶ 48. Once again, Hopeman conflates the duty to *indemnify* Liberty (which is borne by the Trust alone) with a duty to *defend* Liberty (which is borne by the Trust and, in the case of lawsuits against Liberty asserting direct action

claims, Hopeman, necessarily at Hopeman's expense, because the defense is provided at no cost to Liberty). [REDACTED]

[REDACTED] Liberty has asserted the Claim to seek reimbursement from Hopeman on account of Hopeman breaching the Defense Obligation, forcing Liberty to defend itself and to incur the cost of that defense.

15. [REDACTED]

[REDACTED]

[REDACTED] See Dkt. No. 693 at ¶ 49. To the contrary, it was intended to, and does, apply in precisely this scenario.

16. In sum, the Defense Obligation is unambiguous and does not need to be considered in its wider context. However, to the extent that this Court considers the context of the Indemnification Agreement, it should also consider the context of the 2003 Agreements as a whole. See *Foothill Capital*, 259 B.R. at 846-47 ("the language of the documents contemplates that both must be read together to set forth the full understanding of the parties"). [REDACTED]

[REDACTED]

[REDACTED] When viewed in its entire context, the structure of the Defense Obligation makes

perfect sense. To be clear, however, the burden does not rest on Liberty to substantiate its Claim with evidence. Hopeman, as the objecting party, carries that burden, which it has failed to satisfy.

II. Hopeman Has Breached Its Obligations Under the 2003 Agreements.

17. Hopeman has willfully breached its Defense Obligation and has further breached the 2003 Agreements by failing to minimize direct action claims against Liberty. These breaches have established actual damages and given rise to the Claim. That Claim is only partially liquidated, as the consequence of Hopeman's breaches will result in Liberty incurring additional defense costs.

18. By Hopeman's own admission, the Settlement Funds that Liberty paid to the Trust "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." Dkt. No. 693 at ¶ 23. Upon information and belief, those Settlement Funds were exhausted years prior to the Petition Date. Nevertheless, Hopeman states that "[p]rior 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." *Id.* at ¶ 31. Hopeman claims that Liberty can have no Claim because it (Hopeman, not the Trust) continued to defend Liberty up until the Petition Date and that "Liberty Mutual should not be incurring any defense costs at present" on account of the automatic stay. *Id.* at ¶ 33.

19. On the one hand, Hopeman alleges that Liberty was only entitled to defense from the Trust to the extent of available Settlement Funds. On the other hand, upon information and belief, Hopeman continued to defend (or associate in the defense of) Liberty against direct action claims well after the Trust exhausted the Settlement Funds provided by Liberty. Hopeman's continued defense of direct action claims filed against Liberty long after the Trust exhausted the

Settlement Funds establishes a course of dealing between the parties and provides the true “context” for interpreting the 2003 Agreements.

20. Liberty has propounded discovery on Hopeman to establish, among other things, what role Hopeman was obligated to play, and did in fact play, in defending Liberty against such claims prior to the Petition Date. Regardless of whether the 2003 Agreements are executory, Hopeman is not excused from fulfilling its contractual obligations.³

21. Hopeman has breached its contractual obligations. Hopeman sought and obtained this Court’s approval of a settlement that provides for a limited lifting of the automatic stay for the sole purpose of allowing certain holders of Asbestos Related Claims (the “Asbestos Claimants”) to assert direct action claims against Liberty Mutual. *See Stipulated Order Approving Settlement of Appeal of Insurance Settlement Order and Granting Limited Relief from Third Interim Stay Order* [Dkt. No. 733] (the “Lift Stay Order”).

22. Hopeman argues that, in the event this Court determines that Liberty has the right to assert a Claim against Hopeman (not just the Trust), the Claim must nevertheless be denied because any claim against Hopeman “must relate to defense of an Asbestos Related Claim asserted against Liberty.” Dkt. 693 at ¶ 51. By consequence of the Lift Stay Order, certain state court

³ Hopeman maintains that the 2003 Agreements are not executory. *See* Tr. of Mar. 13, 2025 Hr’g [Dkt. No. 741] at 17:12-14. Even if the 2003 Agreements were not executory, Hopeman’s rights and obligations thereunder would not simply disappear. As reaffirmed by the Supreme Court in *Mission Product Holdings v. Tempnology, LLC*, “[a] debtor’s property does not shrink by happenstance of bankruptcy, but it does not expand, either.” 587 U.S. 370, 381 (2019). Hopeman’s rights and obligations under the 2003 Agreements therefore constitute property of Hopeman’s estate under § 541 of the Bankruptcy Code. *See* 11 U.S.C. § 541(a). Moreover, in this Circuit, a non-executory contract remains valid and enforceable upon a debtor’s filing for bankruptcy, and the debtor must continue to perform its obligations thereunder. *See Stewart Foods v. Broecker (In re Stewart Foods)*, 64 F.3d 141, 145 (4th Cir. 1995) (“Because § 365 applies only to executory contracts, a debtor-in-possession does not have the option of rejecting or assuming non-executory contracts and remains bound by the debtor’s obligations under those contracts after the bankruptcy filing”); *Meiburger v. Endeka Enters., L.L.C. (In re Tsiaoushis)*, 383 B.R. 616, 621 (Bankr. E.D. Va. 2007) (“The court concludes that the Endeka operating agreement is not an executory contract. Thus, § 365(e)(1) of the Bankruptcy Code is not applicable and PP9.1 and 9.2 of the operating agreement are valid and fully enforceable”).

litigation has resumed against Liberty, with at least one matter (Rivet) scheduled for trial in July 2025. Since the entry of the Lift Stay Order, Liberty has incurred no less than \$35,000 in defense costs in connection with the four lawsuits that were the subject of the Lift Stay Order. Because Hopeman has failed to honor its Defense Obligation, Liberty must defend against the Asbestos Related Claims that have been asserted against it. Consequently, and as reflected by the Claim (as amended), Hopeman's breach of its obligations under the Indemnification Agreement has resulted — and will continue to result — in direct economic damages to Liberty, including, as Hopeman recognizes, for expenses “relate[d] to defense of an Asbestos Related Claim asserted against Liberty.” *Id.*

23. Hopeman has breached more than just its Defense Obligation under the Indemnification Agreement. [REDACTED]

[REDACTED] By seeking (and obtaining) approval of the Lift Stay Order, Hopeman has breached that obligation.

24. Furthermore, Hopeman has filed a Plan that directs Asbestos Claimants to file Asbestos Related Claims — including direct action claims, which Hopeman is contractually obligated to defend — against Non-Settling Asbestos Insurers to obtain the benefit of insurance coverage. *See* Plan at §§ 8.12 and 8.13.⁴ Hopeman is prosecuting its Plan that provides an avenue for Asbestos Claimants to file lawsuits against Liberty despite Hopeman having acknowledged that all insurance coverage issued, or allegedly issued, by Liberty to Hopeman has been

⁴ The Plan expressly identifies Liberty as a “Non-Settling Asbestos Insurer” despite Hopeman having admitted that the Liberty Mutual Policies are fully exhausted. *See* Plan, § 1.80 (“For the avoidance of doubt, notwithstanding any provision herein to the contrary, the term ‘Non-Settling Asbestos Insurer’ shall include Liberty Mutual Insurance Company.”).

“exhausted” and “released.”⁵ Taken together, these actions demonstrate that Hopeman is failing to honor its obligation to minimize Asbestos Related Claims against Liberty.

25. It is black-letter law that, when a debtor breaches a prepetition settlement agreement, the non-breaching counterparty is entitled to assert a claim for damages against the debtor. *See, e.g., In re Camellia Food Stores*, 287 B.R. 52, 57-58 (Bankr. E.D. Va. 2002) (applying the “conduct” test endorsed by the Fourth Circuit to hold that an insurance company’s right to payment of postpetition insurance premiums due under a prepetition insurance contract constituted a postpetition claim against the debtor’s estate); *In re Mallinckrodt PLC*, No. 20-12522, 2021 Bankr. LEXIS 2887, at *31-32 (Bankr. D. Del. Oct. 19, 2021) (“The policy of the ‘fresh start’ does not give a debtor immunity to continue to violate the law at the expense of captive creditors”).

26. Indeed, Hopeman recently reaffirmed this very principle in its motion to dismiss the adversary complaint filed against it by Century Indemnity Company and Westchester Fire Insurance Company (together, collectively, “the Chubb Insurers”). *See Debtor’s Motion to Dismiss Complaint, Century Indemnity Company and Westchester Fire Insurance Company v. Hopeman Brothers, Inc.*, A.P. No. 25-03015 (KLP) [Dkt. No. 20] at ¶ 28 (the “Chubb MTD”) (“To the extent the Chubb Insurers seek payment from the Debtor’s bankruptcy estate for an alleged breach of the Prepetition Chubb Insurers Settlement Agreement, they must file a proof of claim in the chapter 11 case, not an adversary proceeding against the Debtor”). The relief that Hopeman claims is available to the Chubb Insurers is the same relief that Liberty seeks through the filing

⁵ *See, e.g., Disclosure Statement with Respect to the Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 767] at § IV.F (“As a result of such agreements and payments, all of the primary layer and excess insurance that Hopeman purchased from LMIC was released by Hopeman”); *Declaration of Christopher Lascell In Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.* [Dkt. No. 8] at ¶ 34 (“[A]ll of the primary layer and excess insurance that Hopeman purchased from LMIC is exhausted and released, such that only excess insurance from certain other Insurers remains available to pay the Asbestos-Related Claims”).

and prosecution of its Claim. This Court should not allow Hopeman to use the provisions of the Bankruptcy Code and Bankruptcy Rules as a sword against the Chubb Insurers, yet conveniently ignore those protections when it comes to Liberty.

27. [REDACTED]

[REDACTED]

[REDACTED] Following the Petition Date, Hopeman has chosen not to honor either of those obligations. Liberty therefore asserts a presumptively valid, partially liquidated Claim reflecting damages actually incurred by Liberty as a result of Hopeman's intentional breaches of the 2003 Agreements. Hopeman has failed to provide any probative evidence to overcome the *prima facie* validity of the Claim. Accordingly, the Claim Objection should be overruled.

WHEREFORE, Liberty respectfully requests that this Court (i) overrule the Claim Objection, (ii) allow the Claim, and (iii) grant any other and further relief as the Court deems just and proper. In the alternative, solely to the extent the Court does not overrule the Claim Objection, Liberty respectfully requests that the Claim Objection be adjourned until commencement of the hearing to consider confirmation of the Debtor's Plan so that Liberty can be afforded sufficient time to conduct discovery in connection with the Claim Objection and Plan confirmation.

Date: May 30, 2025

Respectfully submitted,

/s/ Douglas M. Foley

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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2025, a true copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notification of electronic filing (NEF) to all creditors and parties in interest.

/s/ Douglas M. Foley