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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Case No. 24-32428-KLP

Chapter 11

**CHUBB INSURERS' RESPONSE TO DEBTOR'S MOTION
TO QUASH THIRD-PARTY SUBPOENA DUCES TECUM SERVED ON
SPECIAL CLAIMS SERVICES, INC.**



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Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America (“Century”), and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company) (“Westchester Fire”) (together, the “Chubb Insurers”), parties in interest, by and through their undersigned counsel, hereby submit this response in opposition (the “Response”) to *Debtor’s Motion to Quash Third-Party Subpoena Duces Tecum Served on Special Claims Services, Inc.*¹ filed by the debtor and debtor-in-possession in the above-captioned Chapter 11 bankruptcy case (the “Bankruptcy Case”), Hopeman Brothers, Inc. (“Hopeman” or the “Debtor”), in connection with the Bankruptcy Case on May 14, 2025 (the “Motion to Quash” or “Motion”).²

By the Motion, Hopeman asks this Court to quash, or enter a protective order forbidding the discovery sought by, the subpoena *duces tecum* dated April 29, 2025, that the Chubb Insurers issued to Hopeman’s prepetition third-party claims administrator (“TPA”), Special Claims Services, Inc. (“SCS”), in relation to the Bankruptcy Case (the “Subpoena”). Hopeman has the heavy burden of persuasion in seeking the exceptional relief of quashing and/or entry of a protective order relating to the Subpoena. Hopeman’s Motion falls far short of establishing that extraordinary circumstances exist for granting the relief and should therefore be denied. The Subpoena should be enforced because it was properly issued and seeks relevant, proportional, and non-privileged discovery directly tied to the issues in this Bankruptcy Case.

¹ Debtor’s Mot. to Quash Third-Party Subpoena Directed to Special Claims Services, Inc., *In re: Hopeman Brothers, Inc.*, No. 24-32428-KLP (E.D. Va. filed May 14, 2025), Dkt. No. 738 [hereinafter cited as “Mot. to Quash”].

² The Chubb Insurers respectfully request that the Court regard the facts, arguments, and citations set forth herein as a written memorandum of facts, reasons, and authorities that has been combined with the response herein, as permitted by Local Bankruptcy Rule 9013-1(G)(2).

I. FACTUAL BACKGROUND³

1. This Bankruptcy Case involves a dispute pertaining to the Debtor’s proposed form of bankruptcy relief as it bears upon the Debtor’s claims seeking insurance coverage from its various insurers, including the Chubb Insurers, with respect to pending and anticipated future asbestos-related personal injury claims brought against the Debtor.

A. Background Leading to the Chubb Insurers’ Settlement Agreement with Hopeman

2. The Debtor, Hopeman, was a “ship joiner” subcontractor that contracted with shipbuilders to outfit the interior of ships and, in so doing, supplied and installed shipboard furniture, beds, box berthing, non-structural bulkhead panels, ceilings, insulation, and other interior components.⁴ Hopeman exited the ship joining line of business in the 1980s.⁵ Since 1979, over 126,000 personal injury and wrongful death claims have been asserted against Hopeman by persons alleging that they suffered bodily injuries due to being exposed to asbestos fibers contained in the marine interior materials included within the joiner packages that Hopeman allegedly manufactured, handled, supplied, sold, or distributed in connection with its legacy ship joining

³ The relevant background regarding the Chubb Insurers’ relationship with Hopeman, the Chubb Insurers’ participation in Hopeman’s defense and resolution of Asbestos-Related Claims, and the Chubb Insurers’ settlement 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.* [Dkt. No. 8] and *Disclosure Statement With Respect to the Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 57] filed by Hopeman in the Bankruptcy Case on June 30, 2024 and July 12, 2024, respectively. See Decl. of Christopher Lascell in Supp. of Ch. 11 Pet. & First-Day Pleadings of Hopeman Bros., Inc., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed June 30, 2024), Dkt. No. 8 [hereinafter cited as “Lascell Decl.”]; Disclosure Statement With Respect to Plan of Liquidation of Hopeman Bros., Inc. Under Chapter 11 of Bankruptcy Code, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed July 12, 2024), Dkt. No. 57 [hereinafter cited as “Liquidation Plan Disclosure Statement”].

⁴ Lascell Decl. ¶ 2; see also *id.* ¶¶ 9–16; Liquidation Plan Disclosure Statement at 6.

⁵ See Lascell Decl. ¶ 2; see also *id.* ¶ 17; Liquidation Plan Disclosure Statement at 7.

business (the “Asbestos-Related Claims”).⁶ Approximately 2,700 of those claims were reportedly “unresolved” as of June 23, 2024.⁷

3. Hopeman sold its ship interior business in 2003 and has maintained its corporate existence since then solely to defend and, where appropriate, settle Asbestos-Related Claims.⁸ SCS, Hopeman’s TPA, managed Hopeman’s defense in the Asbestos-Related Claims on Hopeman’s behalf.⁹

4. Hopeman’s liability insurance program applicable to Asbestos-Related Claims consists of primary layer insurance policies issued by Liberty Mutual Insurance Company (“LMIC”) from 1937 through 1984 and multiple layers of umbrella and excess insurance policies issued by LMIC and other insurers, including the Chubb Insurers, from 1965 through 1984.¹⁰ Century issued ten excess and umbrella policies to Hopeman from 1965 through 1984.¹¹ Westchester Fire issued two umbrella policies to Hopeman from 1983 through 1984.¹² (The Century policies and Westchester Fire policies collectively are the “Chubb Insurers’ Policies.”)

⁶ See Lascell Decl. ¶¶ 2, 20–24, 28; Liquidation Plan Disclosure Statement at 8; Mot. of Debtor for Entry of Order (I) Approving Settlement Agreement & Release Between Debtor & Chubb Insurers; (II) Approving Assumption of Settlement Agreement & Release Between Debtor & Chubb Insurers; (III) Approving Sale of Certain Ins. Policies; (IV) Issuing Inj. Pursuant to Sale of Certain Ins. Policies; & (V) Granting Related Relief, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed June 30, 2024), Dkt. No. 9 [hereinafter cited as “Chubb Settlement Mot.”] ¶ 11.

⁷ Lascell Decl ¶ 28; Liquidation Plan Disclosure Statement at 10.

⁸ See Lascell Decl. ¶¶ 1–3, 18–19; Chubb Settlement Mot. ¶¶ 1, 9; Liquidation Plan Disclosure Statement at 1–2, 7–8; Liquidation Plan Disclosure Statement at Ex. 1 (Plan of Liquidation) [hereinafter cited as “Liquidation Plan”].

⁹ Lascell Decl. ¶ 25; *see id.* ¶¶ 27–28, 48.

¹⁰ Lascell Decl. ¶ 30.

¹¹ Chubb Settlement Mot. at 54.

¹² *Id.*

5. There is no duty to defend under any of the Chubb Insurers' Policies.¹³ Of the ten Century policies, only three require reimbursement of Hopeman's covered defense costs.¹⁴ Neither of the Westchester Fire policies requires reimbursement of Hopeman's defense costs.¹⁵ Hopeman's available insurance policies, including the Chubb Insurers' Policies, are reimbursement policies whereby Hopeman pays the costs for its defense and resolution of Asbestos-Related Claims first, then submits covered portions for reimbursement from its insurers, including the Chubb Insurers, for their allocated share of reimbursement of Hopeman's payments.¹⁶

6. The Chubb Insurers and Hopeman are signatories to the Wellington Agreement, which governs the Chubb Insurers' participation in Hopeman's defense in and settlement of the Asbestos-Related Claims (the "Wellington Agreement").¹⁷ The Chubb Insurers and Hopeman also entered into a June 27, 2008 Partial Settlement Agreement, which was subsumed into a December 18, 2009 Settlement Agreement (the "2009 Agreement").¹⁸ The Chubb Insurers and Hopeman performed pursuant to the terms of the Wellington Agreement and the 2009 Agreement for over fifteen years, up until the filing of the Bankruptcy Case.¹⁹

¹³ Compl., *Century Ind. Co. v. Hopeman Bros., Inc.*, No. 25-03015-KLP (Bankr. E.D. Va. filed Apr. 21, 2025), Dkt. No. 1 (also filed at Compl., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed Apr. 21, 2025), Dkt. No. 671) [hereinafter cited as "Chubb Adv. Compl."] ¶ 12.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* ¶ 13 (citing Dec. 16, 2024 Hr'g Tr. at 61:17-24 (Mr. Van Epps) ("Hopeman pays those claims . . . and then submits the[m] for reimbursement to the excess carriers . . . and recovers a portion of the amount that they paid for the underlying claims. Q. So these are reimbursement policies? A. They are. Q. Which means the debtor has to advance money? A. Correct.")).

¹⁷ See Chubb Settlement Mot. ¶ 13; Chubb Insurers' Mot. for TRO and Prelim. Inj., *Century Ind. Co. v. Hopeman Bros., Inc.*, No. 25-03015-KLP (Bankr. E.D. Va. filed Apr. 21, 2025), Dkt. No. 5 [hereinafter cited as "TRO/PI Mot."] at 5.

¹⁸ See TRO/PI Mot. at 4.

¹⁹ *Id.*; see Lascell Decl. ¶¶ 30–31, 34.

B. The Chubb Insurers' Settlement Agreement with Hopeman

7. In 2024, Hopeman and the Chubb Insurers entered into a buyout agreement in support of the plan of liquidation then being proposed by Hopeman (the “Chubb Insurer Settlement Agreement”).²⁰ Among other things, the agreement called for the Chubb Insurers to buy back the Chubb Insurers' Policies for a purchase price of \$31,500,000.00, and for the settlement proceeds to be used to pay holders of Asbestos-Related Claims.²¹

C. Hopeman's Bankruptcy Case and the Insurance Settlement Motions

8. On June 30, 2024, Hopeman commenced this Bankruptcy Case by filing in this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) for the stated purpose of “pursu[ing] approval of and implementation of” the Chubb Insurer Settlement Agreement.²² That same day, Hopeman filed, *inter alia*, a motion seeking entry of an order approving the Chubb Insurer Settlement Agreement.²³

9. On July 22, 2024, the Office of the United States Trustee appointed an official committee of unsecured creditors (the “Committee”).²⁴ Soon thereafter, the Committee asserted that it needed to vet the Chubb Insurer Settlement Agreement (and a separate agreement between Hopeman and Certain Insurers) because the consideration offered appeared to be ‘unreasonably

²⁰ See Chubb Settlement Mot.

²¹ See *id.*

²² Voluntary Pet. For Non-Individuals Filing for Bankr., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed June 30, 2024), Dkt. No. 1, at Ex. A (Resolutions of Directors & Shareholders of Hopeman Bros. Inc.) [hereinafter cited as “Directors & Shareholders Resolutions”] at 1–2; see Debtor's Mot. to Dismiss Compl., *Century Ind. Co. v. Hopeman Bros., Inc.*, No. 25-03015-KLP (Bankr. E.D. Va. filed May 22, 2025), Dkt. No. 20 [hereinafter cited as “MTD Chubb Adv. Proceeding”] ¶ 10.

²³ Chubb Settlement Mot.; see MTD Chubb Adv. Proceeding ¶ 15.

²⁴ Appointment of Unsecured Creditors Comm., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed July 22, 2024), Dkt. No. 69; see MTD Chubb Adv. Proceeding ¶ 16.

low.”²⁵ Hopeman subsequently pursued a settlement with the Committee without the Chubb Insurers’ knowledge or consent.²⁶ Those efforts culminated in Hopeman and the Committee entering into a settlement term sheet (the “524(g) Term Sheet”)²⁷ and, in connection therewith, jointly proposing a chapter 11 plan of reorganization under 11 U.S.C. § 524(g) (the “Proposed 524(g) Plan” or “Proposed Plan”)²⁸—contrary to the plan of liquidation called for by the Chubb Insurer Settlement Agreement.

10. Under the terms of the Proposed 524(g) Plan and the Trust Distribution Procedures related thereto (the “TDPs”), among other things, a § 524(g) reorganized trust (the “Proposed Trust” or “Trust”) overseen by a “Trust Advisory Committee” comprised of members of the Committee (the “TAC”) would be established and Hopeman would assign its rights in certain tangible and intangible assets, including the Chubb Insurers’ Policies, to that Trust.²⁹ Claimants holding Asbestos-Related Claims would be permitted to sue Hopeman in the tort system “in name

²⁵ MTD Chubb Adv. Proceeding ¶ 16 (quoting Chubb Adv. Compl. ¶ 39).

²⁶ See Decl. of Edward Sluke in Supp. of Chubb Insurers’ Mot. for TRO, *Century Ind. Co. v. Hopeman Bros., Inc.*, No. 25-03015-KLP (Bankr. E.D. Va. filed Apr. 21, 2025), Dkt. No. 5-3 [hereinafter cited as “Sluke Decl.”] ¶¶ 7–12.

²⁷ Mot. for Expedited Status Conf., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed Mar. 7, 2025), Dkt. No. 609 [hereinafter cited as “Mot. Expedited Status Conf.”] at Ex. B [hereinafter cited as “524(g) Term Sheet”]; see Mot. Expedited Status Conf. ¶ 20. Huntington Ingalls Industries, Inc. was also a party to the 524(g) Term Sheet. See 524(g) Term Sheet.

²⁸ See 524(g) Term Sheet; Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of Bankr. Code, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed May 21, 2025), Dkt. No. 766 [hereinafter cited as “Am. Ch. 11 Plan”]; Disclosure Statement With Respect to Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of Bankr. Code, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed May 21, 2025), Dkt. No. 767 [hereinafter cited as “Reorg. Plan Disclosure Statement”]. More specifically, as used herein, “Proposed 524(g) Plan” and “Proposed Plan” refer to the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* filed by the Debtor in the Bankruptcy Case on May 21, 2025 [Dkt. No. 766], which is jointly proposed by the Debtor and Committee and incorporates the Debtor and Committee’s agreement regarding a section 524(g) plan. See MTD Chubb Adv. Proceeding ¶ 21 n.6.

²⁹ See 524(g) Term Sheet at 2–3; Am. Ch. 11 Plan at 31.

only” and those complaints would be “delivered to Non-Settling Insurers for defense/resolution and payment.”³⁰ The Chubb Insurers would constitute “Non-Settling Insurers.”³¹

11. The Proposed Plan and TDPs specifically require that Hopeman “cooperate and use reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things reasonably necessary to effectuate the transfer of” documents of Hopeman to the Proposed Trust “[p]rior to the Effective Date,”³² and do not permit the Trust to disclose materials to the Chubb Insurers *absent prior approval by both the TAC and the Future Claimants Representative*.³³ *The Proposed Plan and TDPs do not require that the Trust comply with Hopeman’s duty of cooperation under the Chubb Policies.*³⁴

³⁰ 524(g) Term Sheet at 16; *see* Am. Ch. 11 Plan at 27.

³¹ 524(g) Term Sheet at 4. Holders of Asbestos-Related Claims would also be permitted to assert direct actions against “Non-Settling Insurers” “in the tort system to obtain the benefit of the Asbestos Insurance Coverage of any Non-Settling Insurer.” Moreover, the Chubb Insurer Settlement Agreement would not be included in the definition of an “Asbestos Insurance Settlement” in the Proposed Plan’s term sheet.”³¹ Therefore, with respect to claimants who have Asbestos-Related Claims against Hopeman, to the extent applicable nonbankruptcy law would allow those claimants to assert direct actions against the Chubb Insurers, the Proposed 524(g) Plan would not bar those claims from being asserted. MTD Chubb Adv. Proceeding ¶18.

³² Reorg. Plan Disclosure Statement at 29 (emphasis added).

³³ *See* Am. Ch. 11 Plan at Ex. A (Asbestos Trust Agreement) [hereinafter cited as “Trust Agreement”] § 2.2(f) (“The Trustee shall be required to obtain the consent of the TAC and the FCR . . . to disclose any information, documents, or other materials to . . . comply with an applicable obligation under an insurance policy . . . pursuant to Section 6.5 of the TDP.”); Am. Ch. 11 Plan at Ex. B (Asbestos Trust Distribution Procedures) [hereinafter cited as “TDP”] § 6.5 (“[W]ith the consent of the TAC and the FCR, the Asbestos Trust may, in specific limited circumstances, disclose information, documents, or other materials reasonably necessary . . . to comply with an applicable obligation under an insurance policy . . . within the Asbestos Insurance Rights; provided, however, that the Asbestos Trust shall take any and all steps reasonably feasible in its judgment to preserve the further confidentiality of such information, documents and materials, and prior to the disclosure of such information, documents or materials to a third party, the Asbestos Trust shall receive from such third party a written agreement of confidentiality that (a) ensures that the information, documents and materials provided by the Asbestos Trust shall be used solely by the receiving party for the purpose stated in the agreement and (b) prohibits any other use or further dissemination of the information, documents and materials by the third party except as set forth in the written agreement of confidentiality.”).

³⁴ *See* Trust Agreement.

12. The Chubb Insurers emailed Hopeman expressing “serious concerns” about the Plan Term Sheet requirement that Hopeman would be turning over all of its claims materials, including privileged defense counsel/claims materials in the possession of SCS, to the Proposed Trust that will be overseen by claimants’ attorneys serving on the TAC, and asked Hopeman to confirm that it would not take any actions that would transfer privileged documents regarding its defense to asbestos claimants, thereby effecting a subject matter waiver of Hopeman’s defenses and defense strategies.³⁵ Hopeman did not respond to that email.³⁶ More recently, Hopeman confirmed by telephone that it will transfer all claims materials to the Trust if the Proposed Plan is confirmed.³⁷

D. The Chubb Insurers’ Subpoena to SCS and Hopeman’s Motion to Quash

13. Subsequent to the foregoing, the Chubb Insurers, among other things, exercised their right to subpoena certain records of SCS, Hopeman’s TPA,³⁸ relating to the defense and settlement of Asbestos-Related Claims.³⁹ The Chubb Insurers subpoenaed these records, which they do not possess, because they would be “Non-Settling Insurers” expected to respond to, defend, and/or pay Asbestos-Related Claims if the Proposed Plan is approved. Because Hopeman, not the

³⁵ See *Declaration of Patricia B. Santelle in Support of Chubb Insurers’ Response to Debtor’s Mot. to Quash Subpoena Served on Special Claims Services, Inc.* filed concurrently herewith [hereinafter cited as “Santelle Decl.”] ¶¶ 2–3.

³⁶ See *id.* ¶ 5.

³⁷ See *id.* ¶ 10.

³⁸ Lascell Decl. ¶ 25.

³⁹ See Mot. to Quash at Ex. A (proposed order), Ex. 1 thereto (Subpoena). Additionally, on April 21, 2025, the Chubb Insurers commenced an adversary proceeding against Hopeman alleging that Hopeman breached the Chubb Insurer Settlement Agreement as well as its cooperation duties under the Chubb Policies by entering into the Committee Settlement Agreement, and that the Chubb Insurer Settlement Agreement, not the Committee Settlement Agreement, should be enforced (the “Adversary Proceeding”). See Chubb Adv. Compl. The Chubb Insurers’ Adversary Proceeding currently remains pending in this Court. See *Century Ind. Co. v. Hopeman Bros., Inc.*, No. 25-03015-KLP (Bankr. E.D. Va.).

Chubb Insurers, was responsible for that role pre-petition such that the Chubb Insurers do not have relevant information regarding Hopeman's defense of Asbestos-Related Claims, the Chubb Insurers are entitled to the documents in SCS's possession relating to those claims.⁴⁰

14. The Subpoena directed to SCS requests the following categories of books and records in or in storage near the offices of SCS in Mount Vernon, Ohio:

1. All Documents Concerning any and all Underlying Claims, including claim files, litigation files (including discovery), medical files, requests for settlement authority, analyses, evaluations, opinion letters, e-mails, reports, settlement agreements, and releases.

2. All Databases Concerning any and all Underlying Claims, in a searchable electronic format, together with any list of fields available in the Databases, and any data dictionary explaining the meaning of each field or code, how it was coded, and how the information in the Databases was obtained.

3. For each Underlying Claim, Documents sufficient to show demographic information of the claimants, including the identity of Asbestos-Containing Products giving rise to exposure, the nature of the exposure, duration of exposure to Asbestos-Containing Products, including years of exposure (if any), gender, age at first exposure, approximate date of first exposure, approximate date of last exposure, plaintiff's counsel, jurisdiction, date of complaint filing, complaint case number, claim status (e.g., settled, resulted in verdict, pending, dismissed, etc.), if resolved, settlement/verdict amount including dollars paid by Debtor, Wayne, their affiliates, and/or other codefendants, whether the claimant is deceased, and if so, date of death, age at date of claim, occupation(s) during period of exposure if relevant, state(s) of residence during period of exposure, place of injury, and nature of injury (e.g., medical diagnosis) allegedly arising from exposure, including information Concerning the first manifestation of the disease or

⁴⁰ See Lascell Decl. ¶¶ 25–36; Liquidation Plan Disclosure Statement at 7–12. In addition, the records maintained by SCS would potentially be relevant to the Chubb Insurers' Adversary Proceeding in that they would potentially reveal facts bearing upon whether Hopeman breached its cooperation duties under the Chubb Insurers' Policies when it, *inter alia*, agreed to the Committee Settlement Agreement.

diseases including date of diagnosis, and exposure history to Asbestos-Containing Products.

4. Documents sufficient to show the top twenty (20) places, locations, shipyards, or sites where the Debtor, Wayne, or their affiliates manufactured, sold, processed, installed, distributed, modified, repaired, or marketed Asbestos-Containing Products, including sales records, invoices, sales statistics, customer lists, product catalogues, and product description sheets.⁴¹

15. On April 29, 2025, the Chubb Insurers filed a notice of their intent to serve the Subpoena upon SCS, with the response due May 16, 2025.⁴² The next day, a private process server retained by the Chubb Insurers delivered the Subpoena to the office of SCS's registered agent in Ohio, Ralph J. Palmisano, Esq., of Hobson Rasnick Fox & Kolligian, LLC ("Hobson Rasnick").⁴³

16. On May 14, 2025, Hopeman filed its Motion to Quash the Subpoena.⁴⁴ Before filing, Hopeman did not seek to meet and confer regarding the Subpoena with the Chubb Insurers.⁴⁵

17. The Chubb Insurers have tried, on multiple occasions, to resolve the issues Hopeman has raised relating to the Subpoena. In fact, having not heard from SCS in response to the Subpoena, on May 14, 2025, the Chubb Insurers asked Hopeman whether it knew if SCS would be responding to the Subpoena; it was only then that Hopeman advised that it would be moving to quash. At that time, the Chubb Insurers offered to take responsibility for copying/scanning the documents in the 125 bankers' boxes at their sole expense without any expense being incurred by Hopeman or SCS. When Hopeman said that would not suffice, and then proceeded to file the

⁴¹ Mot. to Quash at Ex. A (proposed order), Ex. 1 thereto (Subpoena).

⁴² Notice of Intent to Serve Subpoena Duces Tecum, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed May 1, 2025), Dkt. No. 685.

⁴³ See Notice of Filing of Aff. of Service, *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed May 1, 2025), Dkt. No. 697.

⁴⁴ Mot. to Quash ¶ 11.

⁴⁵ See Santelle Decl. ¶ 8.

Motion without making any attempt to resolve the dispute, the Chubb Insurers offered to narrow the proposed production and, while Hopeman agreed to advise on whether that could be done, they have not.⁴⁶

II. ARGUMENT

18. “The burden of persuasion in a motion to quash a subpoena and for a protective order is borne by the movant.”⁴⁷ This burden is a heavy one, as “[l]imiting discovery and quashing subpoenas pursuant to Rule 26 and/or Rule 45 ‘goes against courts’ general preference for a broad scope of discovery.”⁴⁸ Indeed, “[t]he burden is particularly heavy to support a ‘motion to quash as contrasted to some more limited protection.’”⁴⁹ “The quashing of a subpoena is an extraordinary measure, and is usually inappropriate absent extraordinary circumstances.”⁵⁰ “A court should be loath to quash a subpoena if other protection of less absolute character is possible.”⁵¹

19. As demonstrated below, Hopeman fails to sustain the heightened burden of proof required to justify quashing the Subpoena; therefore, its Motion should be denied. Notwithstanding Hopeman’s failure to satisfy its burden, the Chubb Insurers agree to modify the

⁴⁶ See Santelle Decl. ¶ 9.

⁴⁷ *Rapid-Am. Corp. v. Travelers Cas. & Sur. Co. (In re Rapid-Am. Corp.)*, Nos. 13-10687 (SMB), 15-01095 (SMB), 2018 Bankr. LEXIS 378, at *5 (Bankr. S.D.N.Y. Feb. 12, 2018) (quoting *Jones v. Hirschfeld*, 219 F.R.D. 71, 74–75 (S.D.N.Y. 2003)); accord *Trans Union, LLC v. Scroggins*, No. 3:24-mc-2-MHL-SLS, 2024 U.S. Dist. LEXIS 162265, at *11 (E.D. Va. Sept. 9, 2024); *Sziber v. Dominion Energy*, No. 3:20-cv-117, 2021 U.S. Dist. LEXIS 250163, at *6 (E.D. Va. Sept. 14, 2021).

⁴⁸ *U.S. Dep’t of the Treasury v. Pension Benefit Guar. Corp.*, 301 F.R.D. 20, 25 (D.D.C. 2014) (quoting *N.C. Right to Life, Inc. v. Leake*, 231 F.R.D. 49, 51 (D.D.C. 2005)).

⁴⁹ *Truswal Sys. Corp. v. Hydro-Air Eng’g, Inc.*, 813 F.2d 1207, 1210 (Fed. Cir. 1987) (quoting *Westinghouse Electric Corp. v. City of Burlington*, 351 F.2d 762, 766 (D.C. Cir. 1965)); accord *Horizons Titanium Corp. v. Norton Co.*, 290 F.2d 421, 425 (1st Cir. 1961).

⁵⁰ *Colonial Bancgroup, Inc. v. Pricewaterhousecoopers Ltd. Liab. P’ship*, 110 F. Supp. 3d 37, 41 (D.D.C. 2015) (quoting *Pension Benefit Guar.*, 301 F.R.D. at 25).

⁵¹ *Id.* at 39 (quoting *Pension Benefit Guar.*, 301 F.R.D. at 25).

Subpoena to limit the purported burden in responding as previously suggested to Hopeman, which has offered no response.

A. The Subpoena Does Not Violate Federal Rule of Bankruptcy Procedure 2004

20. Hopeman opposes the Subpoena on procedural grounds even as its own Motion to Quash is procedurally deficient. Federal Rule of Civil Procedure 26(c)(1) requires that a motion for a protective order “include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.”⁵² Failure to include such a certification is fatal.⁵³ Hopeman’s Motion, which seeks a protective order under Rule 26(c)(1) in the alternative to quashing the Subpoena pursuant to Federal Rule of Civil Procedure 45, contains no such certification.⁵⁴ That is because Hopeman did not attempt to confer with the Chubb Insurers before filing its Motion to Quash. Hopeman’s request for a protective order is therefore procedurally deficient and should be denied on that basis alone.

21. Further, Hopeman’s contention that the Subpoena “is procedurally deficient and non-compliant with the mandatory requirements of Bankruptcy Rule 2004 because it seeks to compel production of the Debtor’s Documents without an order of this Court”⁵⁵ is incorrect. “Rule 2004 provides a discovery tool for parties in interest to gather information from ‘any entity’ about the ‘acts, conduct, or property’ or the ‘liabilities and financial condition of the debtor,’ or regarding

⁵² Fed. R. Civ. P. 26(c)(1).

⁵³ See *Deutsche Bank Nat’l Tr. Co. v. Fegely*, No. 3:16cv147, 2020 U.S. Dist. LEXIS 6150, at *17 (E.D. Va. Jan. 13, 2020); *Steele v. Goodman*, No. 3:17cv601, 2019 U.S. Dist. LEXIS 124542, at *4 (E.D. Va. July 25, 2019); *Wheeler v. Commonwealth*, No. 7:17-cv-337, 2018 U.S. Dist. LEXIS 235782, at *4 (W.D. Va. Sept. 13, 2018).

⁵⁴ See Mot. to Quash. Nor could Hopeman have so certified since it made no attempt to confer with the Chubb Insurers to resolve the dispute without court action, as established above.

⁵⁵ Mot. to Quash ¶ 11.

the ‘administration of the debtor’s estate’ or the ‘debtor’s right to a discharge’” *when there are no contested matters or adversary proceedings yet pending in a bankruptcy case*.⁵⁶ Once an adversary proceeding or contested matter has been commenced, discovery is made pursuant to Bankruptcy Rules 7026 through 7037 of the Federal Rules of Bankruptcy Procedure, not Rule 2004.⁵⁷ The case law Hopeman cites in its Motion acknowledges as much.⁵⁸

22. The Chubb Insurers issued the Subpoena to SCS in connection with the Bankruptcy Case, which involves a contested matter (the 524(g) Term Sheet and the Proposed 524(g) Plan itself).⁵⁹ The Subpoena is thus governed by Rules 7026 through 7037, not Rule 2004.⁶⁰ Accordingly, no Rule 2004 order was necessary.

⁵⁶ *In re Patel*, No. 16-65074-LRC, 2017 Bankr. LEXIS 216, at *6 (Bankr. N.D. Ga. Jan. 26, 2017) (describing Rule 2004 as “a discovery tool” that “governs the ability of an interested party to issue subpoenas when no ‘action’ is pending in the bankruptcy case” (citation omitted)).

⁵⁷ See *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996); *In re Bakalis*, 199 B.R. 443, 445 (Bankr. E.D.N.Y. 1996); *In re Ecam Publ’ns, Inc.*, 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991); *In re Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988); *In re Valley Forge Plaza Assocs.*, 109 B.R. 669, 674–75 (Bankr. E.D. Pa. 1990); *In re Kipp*, 86 Bankr. 490, 491 (Bankr. W.D. Tex. 1988); *In re Wilcher*, 56 B.R. 428, 434 (Bankr. N.D. Ill. 1985); *In re GHR Energy Corp.*, 35 B.R. 534, 538 (Bankr. D. Mass. 1983); see also *In re Lang*, 107 B.R. 130, 132 (Bankr. N.D. Ohio 1989); *Sweetland v. Szadkowski (In re Szadkowski)*, 198 B.R. 140, 141 (Bankr. D. Md. 1996); *In re French*, 145 B.R. 991, 992–93 (Bankr. D.S.D. 1992); *In re Kipp*, 86 B.R. 490, 491 (Bankr. W.D. Tex. 1988).

⁵⁸ See *In re Murray*, 620 B.R. 286, 287 (Bankr. E.D. Mich. 2020) (“[U]nder a plain reading of Federal Rule 45 and Rules 9002(1), 9016, and 2004, to obtain a subpoena for production of documents, a party in interest must either be a party to an adversary proceeding, contested petition, or contested matter, or, when there is no litigation pending, have obtained a Rule 2004 order.”) (quoting *Patel*, 2017 Bankr. LEXIS 216, at *1); *In re Rochester Drug Coop., Inc.*, No. 20-20230-PRW, 2020 Bankr. LEXIS 2397, at *6–7 (Bankr. W.D.N.Y. Sept. 11, 2020) (quoting same holding in *Patel*, then stating: “This Court agrees with the holding of the *Patel* court. Here, because no adversary proceeding or litigated contested matter was pending, and no order authorizing an examination of the Insurers was granted by this Court under Rule 2004, the subpoenas issued by the Class Claimants were improper and invalid.”).

⁵⁹ “A contested matter is defined as ‘the litigation to resolve’ an ‘actual dispute, other than an adversary proceeding, before the bankruptcy court.’” *Lucas v. Dynegey, Inc. (In re Dynegey, Inc.)*, 770 F.3d 1064, 1069 (2d Cir. 2014) (quoting Fed. R. Bankr. P. 9014 advisory committee’s notes (1983); see also *Gentry v. Siegel*, 668 F.3d 83, 88 (4th Cir. 2012) (“... [A] disputed matter in a bankruptcy case is referred to as a contested matter.” (citing Fed. R. Bankr. P. 9014 advisory committee’s note; *In re Am. Reserve*, 840 F.2d 487, 488 (7th Cir. 1988) (“All disputes in bankruptcy are either adversary proceedings or contested matters”))).

⁶⁰ This conclusion is further compelled by the fact that the Subpoena was issued during the pendency of the Chubb Insurers’ Adversary Proceeding.

B. The Subpoena Seeks Relevant, Proportional Discovery

23. Hopeman fails to carry its burden of demonstrating that the Subpoena seek documents that are not relevant to any pending adversary proceeding or contested matter to which the Chubb Insurers are a party, and that the Subpoena is unduly burdensome.

24. “[T]he scope of discovery for a nonparty litigant under a subpoena duces tecum [is] the same as the scope of a discovery request made upon a party to the action.”⁶¹ With respect to both third-party subpoenas duces tecum and discovery requests made upon parties, discovery “is broad in scope and freely permitted.”⁶² This comports with the intent of the Federal Rules of Civil Procedure, which “contemplate the broadest discovery possible in the search of the truth.”⁶³

25. Federal Rule of Civil Procedure 26, made applicable herein by Federal Rules of Bankruptcy Procedure 7026 and 9014(c),⁶⁴ “delineates the general provisions concerning discovery.”⁶⁵ It defines the scope of discovery as follows:

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or

⁶¹ *Smith v. United Salt Corp.*, No. 1:08cv00053, 2009 U.S. Dist. LEXIS 82685, at *15 (W.D. Va. Sept. 9, 2009); see also *Castle v. Jallah*, 142 F.R.D. 618, 620 (E.D. Va. 1992) (“[T]he scope of discovery from a nonparty by means of a subpoena *duces tecum* under Rule 45 is coextensive with that of a motion for production from a party under Rule 34.” (citing 9 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2457, at 431–32 (1970))).

⁶² *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir. 2003) (“Discovery under the Federal Rules of Civil Procedure is broad in scope and freely permitted.” (citing *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 64 (4th Cir. 1993))).

⁶³ *Addax Energy, SA v. Hulla*, No. 2:17cv641, 2018 U.S. Dist. LEXIS 234871, at *22 (E.D. Va. Nov. 13, 2018) (quoting *Doe v. Old Dominion Univ.*, 289 F. Supp. 3d 744, 749 (E.D. Va. 2018)).

⁶⁴ See Fed. R. Bankr. P. 7026 (“Fed. R. Civ. P. 26 applies in an adversary proceeding.”); Fed. R. Bankr. P. 9014(c) (rule 7026, *inter alia*, applies in a contested matter “[u]nless this rule or a court order provides otherwise”).

⁶⁵ *Evans v. Calise*, No. 92 Civ. 8430 (PKL), 1994 U.S. Dist. LEXIS 6187, at *3 (S.D.N.Y. May 11, 1994).

expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.⁶⁶

26. As discussed further below, the Subpoena seeks documents that fall squarely within the scope of discovery permitted under Rule 26 and is not unduly burdensome.

1. The Documents Sought by the Subpoena Are Relevant

27. “For a relevance objection to be adequate, it must be ‘plain enough and specific enough so that the court can understand in what way the interrogatories or document requests are alleged to be objectionable.’”⁶⁷ Objections to relevance framed in general terms are inadequate.⁶⁸

28. Hopeman alleges in entirely conclusory fashion that the documents sought by the Subpoena are “not relevant to any contested matter or adversary proceeding to which the Chubb Insurers are a party.”⁶⁹ This threadbare, non-specific allegation is insufficient to satisfy Hopeman’s burden of showing that the documents sought are irrelevant. It is also inaccurate.

29. The documents sought are plainly relevant to the Bankruptcy Case. First, since the Chubb Insurers are considered Non-Settling Insurers under Hopeman’s Proposed Plan, they will be called upon to defend, resolve, and/or pay claims in the tort system if the Proposed Plan is confirmed. The Chubb Insurers clearly need and are entitled to documents regarding

⁶⁶ Fed. R. Civ. P. 26(b)(1).

⁶⁷ *Spendlove v. RapidCourt, LLC*, No. 3:18-cv-856, 2019 U.S. Dist. LEXIS 220392, at *11 (E.D. Va. Dec. 20, 2019) (internal alteration marks omitted) (quoting *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1559 (11th Cir. 1985)).

⁶⁸ *See id.* (concluding that party’s objections to document requests on the basis that the information sought “[was] not relevant to Plaintiffs’ contention that [certain entity was] . . . subject to specific personal jurisdiction in the Commonwealth of Virginia,” and “[was] not relevant to the limited scope of permissible discovery . . . [or] proportional to the needs of the case because . . . [the requests were] not limited in temporal scope” were “framed in such general terms” that they were unmeritorious).

⁶⁹ Mot. to Quash ¶ 16; *see also id.* ¶ 11 (“T[he] documents are irrelevant to any pending matter on the docket”); *id.* § IV.A (“the Subpoena . . . Is Not Relevant to Any Pending Adversary Proceeding or Contested Matter to Which the Chubb Insurers Are a Party”); *id.* ¶ 22 (“ . . . the Debtor’s Documents are completely irrelevant to any pending matter to which the Chubb Insurers are a party.”).

pending/outstanding claims so they can prepare to adequately defend claims that will be tendered to them by the Proposed Trust. Moreover, a significant number of the Asbestos-Related Claims have been pending for lengthy periods without payment or resolution, which tends to suggest they are generally lower quality and less likely to be compensable. Under the Proposed Plan, however, those Claims could continue against a reorganized Hopeman in the tort system. Allowing access to the documents sought from SCS will permit the Chubb Insurers to vet such claims for dismissal versus settlement, among other things; without those documents, the Chubb Insurers will be forced to defend claims that may otherwise be stale. This (among other things) would not be a “neutral” result of the Proposed Plan as to the Chubb Insurers. Due process requires that the Chubb Insurers be afforded discovery into that issue, for which the SCS documents are unquestionably relevant.

30. Moreover, the Proposed 524(g) Plan jointly advanced by Hopeman and the Committee would have the requested documents turned over to reorganized Debtor, which will be wholly owned by the Trust and run by person(s) selected by the Committee. Even more troubling, the proposed Trust Agreement and TDPs condition the ability to obtain these documents on the approval of the TAC—which will consist of underlying plaintiffs’ attorneys.⁷⁰ Given that the TAC must *approve* sharing documents with the Chubb Insurers (and any other defending Non-Settling Insurer), the TAC undoubtedly will first *review* the requested documents, which will effectuate an irreversible waiver of Hopeman’s attorney-client privilege and/or work-product protections regarding Hopeman’s defense, at the Non-Settling Insurers’ expense.

31. Hopeman has made repeated representations to the Court that the Proposed Plan is “insurance neutral” and does not affect the Non-Settling Insurers’ rights.⁷¹ The answer cannot be

⁷⁰ See Am. Ch. 11 Plan at 22.

⁷¹ E.g., Am. Ch. Plan at 39.

to “figure it out” after the Proposed Plan is confirmed, given that this issue directly pertains to whether, in fact, the Proposed Plan is “insurance neutral.” The Chubb Insurers advised Hopeman on May 23, 2025, as to their concerns regarding the provisions in the proposed TDPs, including why they are problematic and what would be necessary to address the issue.⁷² The Chubb Insurers have seen nothing further as to a proposed fix.⁷³

2. The Subpoena Is Not Unduly Burdensome

32. A subpoena is not unduly burdensome merely because it requires the individual or entity subpoenaed, or others, to review and/or produce a significant amount of materials.⁷⁴ A party seeking to have a subpoena quashed on the basis of undue burden bears a “heavy burden of establishing that compliance with the subpoena would be ‘unreasonable and oppressive.’”⁷⁵ To

⁷² See Santelle Decl. ¶ 10.

⁷³ See *id.* ¶ 11. Additionally, the documents sought by the Subpoena are relevant to the Chubb Insurers’ Adversary Proceeding, wherein the Chubb Insurers have identified breaches arising from the Proposed Plan, including the breaches that would arise with respect to Asbestos-Related Claims that the Chubb Insurers will be expected to defend and pay. Should Hopeman fail to make documents undisputedly relevant to that defense available to the Chubb Insurers which have requested them, it further establishes Hopeman’s breach of its duty to cooperate under the Chubb Insurers’ Policies. Thus, these documents are directly relevant to the Chubb Insurers’ Adversary Proceeding.

⁷⁴ See *In re S(3) Ltd.*, 242 B.R. 872, 874–75 (Bankr. E.D. Va. 1999) (“Goodman moved to quash this portion of the subpoena on the basis that it, *inter alia*, imposed upon Goodman an undue burden and expense After the conclusion of the evidence introduced at the hearing, the Court overruled Goodman’s objection that the provision of the Workpapers would constitute an undue burden. Notwithstanding that the responsive documents were described as “nine inches” in girth, the Workpapers apparently were already segregated in separate annual files. The Rejection Claim being litigated is in excess of \$ 10,000,000.00; it must be expected that the process to prove or disprove the appropriate amount of this case will be document intensive. Thus, while the amount of Workpapers is extensive, it is not so voluminous as to constitute an undue burden considering the nature of the Rejection Claim.”).

⁷⁵ *Smith v. Devine (In re BK Racing, LLC)*, Nos. 18-30241, 20-03014, 2023 Bankr. LEXIS 1227, at *12 (Bankr. W.D.N.C. May 9, 2023) (quoting *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. Mar. 5, 1998)); accord *Intelligent Verification Sys., LLC v. Microsoft Corp.*, No. 2:12cv525, 2014 U.S. Dist. LEXIS 198819, at *5 (E.D. Va. Jan. 9, 2014); *Tucker v. Ohtsu Tire & Rubber Co.*, 191 F.R.D. 495,498 (D. Md. 2000); *Ohio Valley Envtl. Coal., Inc. v. U.S. Army Corps of Eng’rs*, No. 1:11MC35, 2012 U.S. Dist. LEXIS 4123, at *7 (N.D.W. Va. Jan. 12, 2012); *Veroblue Farms USA, Inc. v. Wulf*, No. 1:21-mc-00016-CMA, 2021 U.S. Dist. LEXIS 94029, at *13–14 (D. Colo. May 18, 2021); *Stokes v. Cenveo Corp.*, No. 2:16cv886, 2017 U.S. Dist. LEXIS 135738, at *4 (W.D. Pa. Aug. 24, 2017).

sustain this burden, the movant must make a “detailed showing of how a request is burdensome,”⁷⁶ supported by “specific facts that indicate the nature and extent of the burden.”⁷⁷ More specifically, the movant “must show how the requested discovery [is] overly broad, burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden.”⁷⁸ Broad-based, non-specific objections . . . fall woefully short” of satisfying a movant’s burden in this regard.⁷⁹ Specificity is key.⁸⁰

33. Hopeman falls well short of establishing that compliance with the Subpoena would impose an undue burden. Hopeman cites only the alleged burden to SCS, asserting, in conclusory terms without citation to any supporting facts:

Compliance with the Subpoena, especially in light of SCS’s third-party status, will require an enormous expenditure of time, money, and effort by SCS and thus constitutes an undue burden. The Subpoena imposes an undue burden on SCS because the Debtor’s Documents are completely irrelevant to any pending matter to which the Chubb Insurers are a party.⁸¹

34. These assertions, in addition to lacking any factual support, miss the mark because, for the reasons discussed above, the documents sought by the Subpoena *are* relevant to the pending

⁷⁶ *SEC v. Brady*, 238 F.R.D. 429, 437 (N.D. Tex. 2006) (citing *Alexander v. FBI*, 192 F.R.D. 50, 53 (D.D.C. 2000)).

⁷⁷ *Sziber v. Dominion Energy*, No. 3:20-cv-117, 2021 U.S. Dist. LEXIS 250163, at *8 (E.D. Va. Sept. 14, 2021); accord *Veroblue Farms USA, Inc. v. Wulf*, No. 1:21-mc-00016-CMA, 2021 U.S. Dist. LEXIS 94029, at *13 (D. Colo. May 18, 2021); *City of St. Petersburg v. Total Containment, Inc.*, Nos. 07-191, 06-20953-CIV-LENARD, 2008 U.S. Dist. LEXIS 36735, at *8 (E.D. Pa. May 1, 2008).

⁷⁸ *CSS, Inc. v. Herrington*, 354 F. Supp. 3d 702, 706 (N.D. Tex. 2017) (citing *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 449 (N.D. Tex. 2015)).

⁷⁹ *Brady*, 238 F.R.D. at 437 (citing *Harding v. Dana Transport Inc.*, 914 F. Supp. 1084, 1102 (D. N.J. 1996)).

⁸⁰ See *Stokes v. Cenveo Corp.*, No. 2:16cv886, 2017 U.S. Dist. LEXIS 135738, at *4 (W.D. Pa. Aug. 24, 2017) (“A successful demonstration of undue burden requires more than ‘generalized and unsupported allegations.’ . . . Mere assertions that compliance would be burdensome without any showing of specificity will not suffice.” (citations omitted)).

⁸¹ Mot. to Quash ¶ 22.

Bankruptcy Case.⁸² As for Hopeman’s claim that compliance with the Subpoena “will require an enormous expenditure of time, money, and effort by SCS and thus constitutes an undue burden,” neither the foregoing allegation nor any other portion of Hopeman’s Motion establishes with specificity *how much* time, money, and effort by SCS compliance with the Subpoena would require.⁸³

35. Even if Hopeman could provide adequate support for these bald claims, “the Federal Rules of Civil Procedure are flexible enough to allow for alternate means of production to avoid large burdens” where such burdens exist.⁸⁴ Compliance with the Subpoena would not necessarily require searching for, reviewing, and copying or imaging the responsive documents. SCS can simply provide access to the locations where the boxes are stored and make them available for inspection and copying solely at the Chubb Insurers’ expense, as has been proposed. This remains “a viable option” that could be used to reduce the time Hopeman contends would be necessary to comply with the Subpoena.⁸⁵

36. Hopeman’s Motion to Quash fails to demonstrate that responding to the Subpoena would be disproportionate to the needs of the case as required by Rule 45(d)(3), Rule 26, and the applicable jurisprudence.

37. Given Hopeman’s representation that the SCS documents are held in storage and the Chubb Insurers’ proposal to copy the responsive documents at the Chubb Insurers’ expense,

⁸² See section II.B.1 *supra*.

⁸³ Cf. *Stokes v. Cenveo Corp.*, No. 2:16cv886, 2017 U.S. Dist. LEXIS 135738, at *5 (W.D. Pa. Aug. 24, 2017); *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 696 (D. Nev. 1994).

⁸⁴ *CSX Transp., Inc. v. Peirce*, No. 5:05-cv-202, 2012 U.S. Dist. LEXIS 198981, at *19 (N.D.W. Va. July 18, 2012).

⁸⁵ *Id.*; see also *Black & Veatch Int’l Co. v. Foster Wheeler Energy Corp.*, No. 00-2402-KHV, 2002 U.S. Dist. LEXIS 990, at *14 (D. Kan. Jan. 21, 2002) (“Reviewing, or making available for review, thousands of documents all stored in one location does not constitute an undue burden.”).

compliance with the Subpoena would not disrupt SCS's business operations and does not rise to the level of an undue burden. The burden of production is minimal compared to the relevance and importance of the information sought, and Hopeman has not offered anything other than lawyer argument to meet its burden to show otherwise.

C. Hopeman's Allegations Regarding Privilege and Confidentiality Are Unsupported

38. As noted above, the sole stated "Basis for Relief" in Hopeman's Motion is that the Subpoena is procedurally deficient and unduly burdensome. Hopeman also makes certain assertions about privilege and confidentiality, but as demonstrated below, they are unsupported and similarly fail to justify quashing the Subpoena.⁸⁶

39. "Federal Rule of Bankruptcy Procedure 9016 incorporates Federal Rule of Civil Procedure 45,"⁸⁷ which provides, in part: "On timely motion, the court for the district where compliance [with a subpoena] is required *must* quash or modify [the] subpoena" if the subpoena "requires disclosure of privileged or other protected matter, if no exception or waiver applies."⁸⁸ Rule 45 further states, in part: "To protect a person subject to or affected by a subpoena, the court for the district where compliance is required *may*, on motion, quash or modify the subpoena if it

⁸⁶ Hopeman also asserts in passing that the Subpoena was improperly served because the process server did not hand it directly to SCS's registered agent, Ralph J. Palmisano, Esq. of Hobson Rasnick, but instead handed it to another attorney at the agent's firm. That assertion is incorrect as a matter of law. Federal Rule of Civil Procedure 4(h) provides that a corporation may be served "in the manner prescribed by Rule 4(e)(1) for serving an individual". Fed. R. Civ. P. 4(h). Under Rule 4(e)(1), an individual may be served by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). SCS is an Ohio corporation with its principal place of business in Ohio. In Ohio, process "may be served upon the corporation by delivering a copy of it to its agent, if a natural person, *or by delivering a copy of it at the address of its agent in this state*, as such address appears upon the record in the office of the secretary of state." Ohio Rev. Code § 1702.06(H) (emphasis added). Because a copy of the Subpoena was delivered at the address of SCS's registered agent, service was proper.

⁸⁷ *S(3)*, 242 B.R. at 876.

⁸⁸ Fed. R. Civ. P. (d)(3)(A)(iii) (emphasis added).

requires . . . disclosing a trade secret or other confidential research, development, or commercial information.”⁸⁹

40. In an attempt to invoke these provisions, Hopeman asserts that the documents sought by the Subpoena include:

confidential documents relating to Asbestos- Related Claims asserted against the Debtors [*sic*], including defense counsel summaries of claims and defenses, recommendations for settlement, and other privileged documents, many of which are stored together with non-privileged documents in the claim files such as copies of releases, settlement checks, expense records, and other documents relating to the claims process.⁹⁰

Hopeman also alleges that “the Subpoena imposes an ‘undue burden’ by purporting to compel a third-party, SCS, to produce voluminous documents of the Debtor, many of which are privileged. . . .”⁹¹ Additionally, Hopeman complains that “[t]he unfettered discovery sought by the Subpoena essentially requests every document SCS holds on the Debtor’s behalf, without regard to confidentiality [or] privilege,” among other things.”⁹²

41. These allegations are insufficient to permit withholding of the requested documents on the grounds of privilege or confidentiality. It is well-established that a person asserting privilege or confidentiality over a given set of documents bears the burden of demonstrating that the documents are protected.⁹³ To satisfy this burden, the proponent of the privilege or confidentiality must “expressly make the claim and describe the nature of the withheld documents . . . in a manner

⁸⁹ Fed. R. Civ. P. 45(d)(3)(B)(i) (emphasis added).

⁹⁰ Mot. to Quash ¶ 6.

⁹¹ *Id.* ¶11.

⁹² *Id.* ¶ 21.

⁹³ See *United States v. Bolander*, 722 F.3d 199, 222 (4th Cir. 2013); *Hawkins v. Stables*, 148 F.3d 379, 383 (4th Cir. 1998); *McCarthy v. Wells Fargo Bank, N.A. (In re El-Atari)*, Nos. 09-14950-BFK, 11-01427, 2013 Bankr. LEXIS 589, at *6 (Bankr. E.D. Va. Feb. 14, 2013); *Jonathan Corp. v. Prime Comput., Inc.*, 114 F.R.D. 693, 695 (E.D. Va. 1987); *S(3)*, 242 B.R. at 876.

that . . . will enable the parties to assess the claim.”⁹⁴ Conclusory allegations of privilege and/or confidentiality are insufficient.⁹⁵

42. Hopeman’s conclusory allegations pertaining to privilege and confidentiality do not satisfy that requirement. Indeed, Hopeman has offered zero evidence of any particular claim file relating to any of the 2,700 Asbestos-Related Claims reportedly pending against Hopeman that contains privileged documents. Hopeman’s argument fails on that basis alone.

43. Moreover, to the extent that the documents sought by the Subpoena may be privileged and/or confidential, the Chubb Insurers are entitled to them by virtue of having participated in reimbursement of settlements and/or defense costs for the majority of the time that SCS has been involved in the claims administration, including by reimbursing Hopeman’s defense costs for over fifteen years (as well as the fact that the Proposed 524(g) Plan will require the Chubb Insurers to defend Hopeman in the tort system). (The costs which the Chubb Insurers reimbursed included SCS’s fees and expenses for administering the claims.) The “common interest” doctrine, which is followed in the Fourth Circuit,⁹⁶ “has been recognized in the insured/insurer context when

⁹⁴ Fed. R. Civ. P. 45(e)(2); *see S(3)*, 242 B.R. at 876 (a claim of confidentiality over a given set of documents “must be expressly made and supported by a sufficient description of the nature of the documents, communications or things not produced so as to enable the demanding party to contest the claim” (citing *Diamond State*, 157 F.R.D. at 693)).

⁹⁵ *See In re Mobley*, 580 B.R. 453, 458 n.5 (Bankr. D.S.C. 2017) (“Vanderbilt’s Motion to Quash indicates that its case file for Debtors’ LM/MM review includes proprietary documents, work product and trial preparation materials. However, at the hearing, Vanderbilt did not elaborate on these arguments. Without an explanation as to how the case file involves proprietary documents, work product or trial preparation materials, the Court cannot conclude that Debtors are prohibited from reviewing the case file.”); *Walker v. Blitz USA, Inc.*, No. 5:08MC15, 2008 U.S. Dist. LEXIS 100592, at *9 (N.D.W. Va. Dec. 12, 2008) (motion that “mention[ed] proprietary matters” but failed to “discuss” “that issue” “to any degree” failed to raise “the issue of privilege or protection . . . with the specificity required under Rule 45(d)(2)(A)” (citing Fed. R. Civ. P. 45(d)(2)(A))); *In re Symington*, 209 B.R. 678, 691 (Bankr. D. Md. 1997) (party’s assertion that responsive documents “include[d] numerous documents which [were] subject to the attorney-client privilege” was “too vague to be meritorious”).

⁹⁶ *See Hunton & Williams v. United States DOJ*, 590 F.3d 272, 283 (4th Cir. 2010).

counsel has been retained or paid for by the insurer, and allows either party to obtain attorney-client communications related to the underlying facts giving rise to the claim, because the interests of the insured and insurer in defeating the third-party claim against the insured are so close that ‘no reasonable expectations of confidentiality’ is said to exist.”⁹⁷ Notably, courts have specifically found that the common interest doctrine applies in the context where, as is the case with the Chubb Insurers here, an insurer does not retain defense counsel on its insured’s behalf but consents to the insured’s engagement of defense counsel and reimburses its insured’s defense costs accordingly.⁹⁸

44. The Chubb Insurers have a common interest in the requested documents, which entitles them to copies of same. Hopeman’s cooperation obligations to the Chubb Insurers require it. Hopeman cannot assert that defense counsel reports, summaries, and settlement recommendations are privileged as to the Chubb Insurers; they are precisely what the Chubb Insurers were and are entitled to if they are being called upon to defend Hopeman in the tort system post-confirmation and the Chubb Insurers should not have to await confirmation to request authorization from the Trust for documents that comprise work product which the Chubb Insurers paid for.⁹⁹

⁹⁷ *N. River Ins. Co. v. Phila. Reinsurance Corp.*, 797 F. Supp. 363, 366–67 (D.N.J. 1992) (emphasis added) (quoting *Carey-Canada, Inc. v. Aetna Cas. & Sur. Co.*, 118 F.R.D. 250, 251 (D.D.C. 1987)); accord *Joe Gibson’s Auto World, Inc. v. Zurich Am. Ins. Co. (In re Joe Gibson’s Auto World, Inc.)*, Nos. 08-04215-HB, 09-80052-HB, 2010 Bankr. LEXIS 2295, at *11 (Bankr. D.S.C. July 30, 2010).

⁹⁸ See, e.g., *Vicor Corp. v. Vigilant Ins. Co.*, 674 F.3d 1, 19 (1st Cir. 2012); *Lionbridge Techs., LLC v. Valley Forge Ins. Co.*, No. 20-10014-PBS, 2021 U.S. Dist. LEXIS 260063, at *11-12 (D. Mass. May 18, 2021); *Waste Mgmt., Inc. v. Int’l Surplus Lines Ins. Co.*, 579 N.E.2d 322, 328-29 (Ill. 1991); see also, e.g., *Century Indem. Co. v. Marine Grp., Ltd. Liab. Co.*, No. 3:08-CV-1375-AC, 2015 U.S. Dist. LEXIS 170034, at *15 (D. Or. Dec. 21, 2015); *RPM, Inc. v. Hartford Acc. & Indem. Co.*, No. 1:03CV1322, 2006 U.S. Dist. LEXIS 101684, at *18 (N.D. Ohio Apr. 11, 2006).

⁹⁹ As noted above, the Chubb Insurers were called upon to reimburse SCS’s fees and expenses in administering Hopeman’s claims. Furthermore, it is incredible for Hopeman to claim that the claims materials are privileged as to the Chubb Insurers, whose interests are aligned with its insured in defense of underlying claims, but can be turned over to a Trust to be administered by counsel for underlying claimants, whose interests are anything but aligned with those of the insured.

D. If the Court Finds the Subpoena Objectionable, the Subpoena Should Not Be Quashed, But Instead Should be Modified or Conditions Should be Specified

45. For all the reasons discussed above, the Subpoena should be enforced as written. Assuming *arguendo* that the Court disagrees, though, the Court should not outright quash the Subpoena. Federal Rule of Civil Procedure 45(d)(3) authorizes a district court where compliance with a subpoena is required to “quash or modify a subpoena” or, “as an [a]lternative,” “order appearance or production under specified conditions.”¹⁰⁰ The Fourth Circuit and other courts have consistently found that modifying a subpoena and/or specifying conditions relative to the subpoena is preferable to quashing the subpoena.¹⁰¹ Respectfully, this Court should follow suit in the unlikely event it determines that certain of the discovery sought by the Subpoena should not be had. More specifically, in the event the Court finds the Subpoena objectionable, respectfully, the Court should enter an Order consistent with the Federal Rules of Civil Procedure, requiring SCS to make the requested documents available to the Chubb Insurers for copying, subject to an agreement that there is no privilege waiver and the ability of Hopeman or reorganized Hopeman to claw the documents back.

III. RESERVATION OF RIGHTS

46. The Chubb Insurers reserve all rights to move for entry of an order compelling compliance with the SCS Subpoena if circumstances warrant. Moreover, the Chubb Insurers reserve all rights to amend, modify, or supplement this Response and to raise any additional

¹⁰⁰ Fed. R. Civ. P. 45(d)(3) (emphasis added); see *Cook v. Howard*, 484 F. App’x 805, 827 (4th Cir. 2012) (Diaz, J., dissenting) (emphasizing same).

¹⁰¹ See, e.g., *Va. Dep’t of Corr. v. Jordan*, 921 F.3d 180, 190 n.4 (4th Cir. 2019); *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004); *Walker v. Blitz USA, Inc.*, No. 5:08MC15, 2008 U.S. Dist. LEXIS 100592, at *8–17 (N.D.W. Va. Dec. 12, 2008); *Colonial Bancgroup*, 110 F. Supp. at 41 (quashing of subpoena is extraordinary measure, and movant’s burden is greater for motion to quash than for more limited protection).

arguments and present additional evidence at any hearing concerning the Debtor's Motion to Quash and the Chubb Insurers' instant Response thereto.

IV. CONCLUSION

47. For the reasons stated herein, the Chubb Insurers respectfully request, *inter alia*, that this Court deny the Debtor's Motion to Quash the Chubb Insurers' Subpoena to SCS. Additionally, the Chubb Insurers respectfully pray that this Court issue an order declaring that (1) the materials requested in the Subpoena are discoverable, (2) SCS must produce the documents requested in the Subpoena; and (3) the Chubb Insurers are permitted to question SCS, Hopeman, and any other persons with relevant knowledge about documents produced in response to the Subpoena.

Dated: June 11, 2024

By:

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*Counsel for Century Indemnity Company and
Westchester Fire Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that, on the date indicated below, I caused a true and correct copy of the within *Chubb Insurers' Response to Debtor's Motion to Quash Third-Party Subpoena Duces Tecum Served On Special Claims Services, Inc.* to be electronically filed via the Court's Case Management/Electronic Case Files ("CM/ECF") System, which will serve a copy of the filing upon all counsel or parties receiving electronic notice through the Court's CM/ECF notification system.

Dated: June 11, 2025

/s/ Dabney J. Carr
Dabney J. Carr

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Case No. 24- 32428-KLP

Chapter 11

**DECLARATION OF PATRICIA B. SANTELLE IN SUPPORT OF CHUBB INSURERS'
RESPONSE TO DEBTOR'S MOTION TO QUASH THIRD-PARTY SUBPOENA
DUCES TECUM SERVED ON SPECIAL CLAIMS SERVICES, INC.**

Patricia B. Santelle declares as follows under penalty of perjury:

1. I am an attorney at law of the Commonwealth of Pennsylvania and the State of New Jersey and a member of the firm of White and Williams LLP. I represent Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America ("Century"), and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company) ("Westchester Fire") (together, the "Chubb Insurers"), parties in interest, in connection with the above-captioned Chapter 11 bankruptcy case (the "Bankruptcy Case") of Hopeman Brothers, Inc. ("Hopeman" or "Debtor").

I am submitting this Declaration to provide certain facts in support of the Chubb Insurers' response in opposition to *Debtor's Motion to Quash Third-Party Subpoena Served on Special Claims Services, Inc.* (the "Motion")¹ filed concurrently herewith (the "Response").

2. On April 1, 2025, I emailed Hopeman's counsel expressing the Chubb Insurers' concerns regarding the *Settlement Term Sheet for § 524(g) Plan of Hopeman Brothers, Inc.* entered into between Hopeman, the Official Committee of Unsecured Creditors (the "Committee"), and Huntington Ingalls Industries, Inc. in relation to this Bankruptcy Case as of March 7, 2025 (the "524(g) Term Sheet")²—specifically, the provisions that, should the Effective Date for Hopeman's proposed plan of reorganization pursuant to 11 U.S.C. § 524(g) (the "Proposed Plan") occur:

- "the Debtor shall transfer all its assets, both tangible and intangible, to the [contemplated reorganized § 524(g) trust (the "Trust"),] such that "[a]fter the Effective Date [] the Trust will own everything, including the Reorganized Debtor;"
- (ii) "the Debtor will [] transfer the Debtor's books and records to the Trust. . . including the books and records presently stored in the Debtor's ware house in Waynesboro, Virginia, and in or in storage near the offices of the Debtor's pre-petition claims administrator, Special Claim Services, Inc. ["SCS"]; and
- "[t]ort claimants file complaints in the tort system, suing the Reorganized Debtor in name only. Complaint delivered to Non-Settling Insurers for defense/resolution and payment[.]"³

3. In my April 1, 2025 email, among other things, I said that the above provisions:

raise serious concerns regarding Hopeman's duty to cooperate with the Chubb Insurers. More significantly, those provisions reflect the likelihood of an irreparable, irreversable [*sic*] subject matter waiver of Hopeman's defenses and defense strategies as a result of providing attorney-client privileged and/or work product-protected

¹ Debtor's Mot. to Quash Third-Party Subpoena Served on Special Claims Services, Inc., *In re: Hopeman Brothers, Inc.*, No. 24-32428-KLP (E.D. Va. filed May 14, 2025), Dkt. No. 738.

² Mot. for Expedited Status Conf., *In re: Hopeman Bros., Inc.*, No. 24-32428-KLP (Bankr. E.D. Va. filed Mar. 7, 2025), Dkt. No. 609, at Ex. B (Settlement Term Sheet For § 524(g) Plan of Hopeman Bros., Inc.).

³ A true and correct copy of this April 1, 2025 email is attached hereto as Exhibit "A".

materials to the Committee, the Committee members and their counsel, and/or other asbestos claimants or their counsel whose interests in obtaining recoveries are directly adverse to those of Hopeman and its insurers.

4. I therefore asked Hopeman's counsel to:

Please immediately confirm that Hopeman has not and will not waive its privileges or work product protections by providing defense-related materials to the Committee or any other asbestos claimant or their counsel, now or as part of any plan Hopeman may propose (including by transferring them to the Trust that will be overseen by the Trust Advisory Committee, consisting of current Committee members). Please further confirm that Hopeman will (i) preserve all such defense-related materials, including those maintained by Hopeman, Special Claim Services, Inc., the Courington firm or other law firms responsible for defending Hopeman against asbestos claims over time, and (ii) avoid taking any action (or avoid any inaction) that may be construed as waiving Hopeman's attorney client privilege and/or work product protections vis-à-vis defending against liability for asbestos claims.⁴

5. Despite my request for a "prompt response," Hopeman did not respond to my April 1, 2025 email.

6. The Chubb Insurers' subpoena to SCS (the "Subpoena") was served on SCS on April 30, 2025, with a response date of May 16, 2025. Having heard nothing from SCS, on May 14, 2025, I inquired of Hopeman's counsel as to whether they knew if SCS would be responding to the Subpoena. It was only then that Hopeman advised that it would be moving to quash the Subpoena within the next day or so.

7. Upon first being apprised of Hopeman's intent to move to quash the Subpoena, the Chubb Insurers offered to take responsibility for copying and/or scanning the documents sought by the Subpoena—which documents Hopeman represented took up 125 bankers' boxes—at their

⁴ *Id.*

sole expense without any expense being incurred by Hopeman or SCS. Hopeman responded saying that would not suffice.

8. Before filing its Motion on May 14, 2025, Hopeman did not seek to meet and confer regarding the Subpoena with the Chubb Insurers.

9. On May 23, 2025, I participated in a call with Hopeman's counsel to discuss outstanding issues, including the Subpoena. During that call, among other things, I reiterated our prior offer to copy/scan the documents at the sole expenses of the Chubb Insurers; I also offered, on behalf of the Chubb Insurers, to limit the production called for by the Subpoena to documents relating to claims pending at the time of Hopeman's filing of the Bankruptcy Case. Hopeman did not agree to that but agreed to find out whether there was a subset of SCS files more accessible than the ones in the reported 125 bankers' boxes in storage. I have followed up with Hopeman's counsel on that offer and they have said that they are reviewing our proposal with SCS.

10. Also during the May 23, 2025 call, I reminded Hopeman of our previously expressed concerns about waiver of privilege and their lack of response to my April 1 email. Hopeman's counsel responded that, if the Proposed Plan were approved, all of SCS's files would be turned over to the Trust, at which time Chubb Insurers could request them from the Trust (which would not be required to produce them).

11. Hopeman has not proposed any alternative language to address the serious concerns expressed by the Chubb Insurers, as set forth above.

12. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 11, 2025


By: 
Patricia B. Santelle, Esq.

EXHIBIT “A”

From: Santelle, Patricia <Santellep@whiteandwilliams.com>
Sent: Tuesday, April 1, 2025 11:10 AM
To: Long, Toby; Brown, Tyler
Cc: Rovira, Joseph; Rankin, Catherine; Davis, Leslie A.; Briganti, Paul
Subject: RE: Hopeman - Proposed Transfer of Debtor's Books and Records [WWLLP-PHLDMS1.FID393692]

I am writing regarding the March 7, 2025 Settlement Term Sheet for Section 524(g) Plan of Hopeman Brothers, Inc. and specifically the provisions therein that, should the Effective Date for such a plan occur:

- “the Debtor shall transfer all its assets, both tangible and intangible, to the Trust;” such that “[a]fter the Effective Date [] the Trust will own everything, including the Reorganized Debtor;”
- “the Debtor will [] transfer the Debtor’s books and records to the Trust. . . including the books and records presently stored in the Debtor’s ware house in Waynesboro, Virginia, and in or in storage near the offices of the Debtor’s pre-petition claims administrator, Special Claim Services, Inc.,” and
- “Tort claimants file complaints in the tort system, suing the Reorganized Debtor in name only. Complaint delivered to Non-Settling Insurers for defense/resolution and payment;”

The foregoing term sheet provisions exemplify that the agreement between Hopeman and the Committee raise serious concerns regarding Hopeman’s duty to cooperate with the Chubb Insurers. More significantly, those provisions reflect the likelihood of an irreparable, irreversable subject matter waiver of Hopeman’s defenses and defense strategies as a result of providing attorney-client privileged and/or work product-protected materials to the Committee, the Committee members and their counsel, and/or other asbestos claimants or their counsel whose interests in obtaining recoveries are directly adverse to those of Hopeman and its insurers.

Please immediately confirm that Hopeman has not and will not waive its privileges or work product protections by providing defense-related materials to the Committee or any other asbestos claimant or their counsel, now or as part of any plan Hopeman may propose (including by transferring them to the Trust that will be overseen by the Trust Advisory Committee, consisting of current Committee members). Please further confirm that Hopeman will (i) preserve all such defense-related materials, including those maintained by Hopeman, Special Claim Services, Inc., the Courington firm or other law firms responsible for defending Hopeman against asbestos claims over time, and (ii) avoid taking any action (or avoid any inaction) that may be construed as waiving Hopeman’s attorney client privilege and/or work product protections vis-à-vis defending against liability for asbestos claims.

Thank you for your prompt response.

Patti



Patricia B. Santelle, Chair Emeritus

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