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

**In re:**

**HOPEMAN BROTHERS, INC.,**

**Debtor.**

:  
: **Chapter 11**  
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: **Case No. 24-32428 (KLP)**  
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**REPLY IN SUPPORT OF MOTION TO QUASH THIRD-PARTY  
SUBPOENA SERVED ON SPECIAL CLAIMS SERVICES, INC.**

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), hereby submits this reply (ii) in support of the *Debtor’s Motion to Quash Third-Party Subpoena Duces Tecum Served on Special Claims Services, Inc.* [Docket No. 738] (the “Motion to Quash”),<sup>1</sup> and (ii) in response to the *Chubb Insurers’ Response to Debtor’s Motion to Quash Third-Party Subpoena Duces Tecum Served on Special Claims Services, Inc.* [Docket No. 862] (“Chubb Insurers’ Objection”):

**REPLY**

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion to Quash.



1. The Subpoena must be quashed, pursuant to Civil Rule 45(d)(3)(A)(iv), because (a) it places an onerous obligation on a third-party to produce a massive volume of the Debtor's documents that are unrelated to any contested matter in this bankruptcy case, and (b) the Chubb Insurers failed to comply with the mandatory requirements of Bankruptcy Rule 2004.

2. First, the Subpoena is overly broad and places an undue burden on SCS to produce the Debtor's documents that are not relevant to any contested matter in the bankruptcy case. The Chubb Insurers also seek to impose such a burden at a time the Debtor actively is preparing for the confirmation hearing on the proposed Joint 524(g) Plan<sup>2</sup> on July 1, 2025, including, without limitation, diligently responding on an expedited basis to extensive and separate discovery served by the Chubb Insurers on the Debtor that actually relates to confirmation of the Joint 524(g) Plan.<sup>3</sup> The Chubb Insurers, in fact, admit in the Chubb Insurers Objection that the purpose of the Subpoena is to obtain copies of *all* the Debtor's files they *may* want to defend against claims that *may* be filed against the Chubb Insurers if the Joint 524(g) Plan is confirmed. *See* Chubb Insurers Objection, ¶ 13. In other words, the Chubb Insurers are seeking discovery of the Debtor's documents from a third-party that are not related to any pending contested matter in this bankruptcy case (while separately pursuing discovery from the Debtor in connection with confirmation of the Joint 524(g) Plan) and, moreover, the Chubb Insurers only have a speculative need for these documents for matters that may arise in the future.

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<sup>2</sup> The "Joint 524(g) Plan" means the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, dated May 21, 2025 [Docket No. 766].

<sup>3</sup> As of the date hereof, the Debtor has worked diligently to respond to discovery served by the Chubb Insurers on the Debtor in connection with confirmation of the Joint 524(g) Plan by the expedited response deadlines set by the Chubb Insurers, including (a) timely producing over 9,000 pages of documents responsive to the Chubb Insurer's document requests served on May 16, 2025, by June 5, 2025, and (b) timely responding to the nineteen interrogatories served on June 4, 2025, by June 16, 2025.

3. Second, the Subpoena is procedurally improper because the Chubb Insurers failed to comply with the mandatory requirements of Bankruptcy Rule 2004 to seek the Debtor's documents from its prepetition claims agent, SCS. The Chubb Insurers admit in the Chubb Insurers Objection that the purpose of the Subpoena is to broadly discover information "tied to the issues in this Bankruptcy Case." *See* Chubb Insurers Objection, p. 1. This plainly is information that the Chubb Insurers are required to seek in compliance with Bankruptcy Rule 2004.

4. Given that that the Chubb Insurers seek voluminous documents of the Debtor from a third-party that are not proportional to any matter pending in this bankruptcy case and that the Chubb Insurers failed to comply with the clear requirements of Bankruptcy Rule 2004, the Court should overrule the Chubb Insurers Objection and grant the Motion to Quash.

5. To the extent the Joint 524(g) Plan is confirmed, and the Chubb Insurers actually have a real (rather than a speculative) need for some or all of the documents sought by the Subpoena, the Debtor submits that there is nothing in the Joint 524(g) Plan or related documents that would prevent the Chubb Insurers from exercising any rights they have to access the documents at such time. In fact, the Joint 524(g) Plan expressly contains provisions requiring post-effective date compliance with all insurance-related cooperation obligations. As counsel to the Debtor repeatedly has told counsel to the Chubb Insurers, to the extent they disagree that the proposed plan adequately protects those cooperation rights, they should propose language for the Joint 524(g) Plan and/or related documents that will address their concerns. There is plenty of time to resolve such concerns in advance of the confirmation hearing, rather than forcing parties to deal with burdensome discovery that is not relevant to whether the Joint 524(g) Plan is confirmable or any other pending contested matter in this chapter 11 case.

**A. The Chubb Insurers' Objection Fails to Overcome that the Subpoena Is Overbroad and Places an Undue Burden on a Third Party to Produce the**

**Debtor's Documents that Are Not Relevant to any Contested Matter in this Bankruptcy Case**

6. The Subpoena demands that SCS produce an extensive volume of the Debtor's documents related to each Asbestos-Related Claim ever asserted against the Debtor. *See* Subpoena, Exhibit 1 to Proposed Order; Motion to Dismiss, ¶ 8 (summarizing the overbreadth of the requests in the Subpoena). The volume of the Debtor's documents sought from a third-party alone supports quashing the Subpoena. *See* Motion to Dismiss, ¶ 19 (summarizing case law that supports that courts should be more sensitive to the undue burden thrust on non-parties).

7. In addition to the breadth of the requests in the Subpoena, the Debtor also submits that the Court should overrule the Chubb Insurers' Objection because the voluminous documents sought by the Chubb Insurers from a third-party are completely irrelevant to any pending matter in this chapter 11 case to which the Chubb Insurers are a party. Such documents are not relevant to the Chubb Insurers' pending adversary proceeding regarding an alleged breach of the prepetition settlement agreement with the Debtor, and the Subpoena was not issued in that adversary proceeding. *See* Adversary Proceeding No. 25-03015. The Debtor, in fact, has a pending motion to dismiss that adversary proceeding that is scheduled to be considered at the same hearing as the Motion to Quash. The documents sought also have no bearing on any issues relevant to whether the Joint 524(g) Plan is confirmable.

8. By the Chubb Insurers' own admission, they issued the Subpoena "because they would be 'Non-Settling Insurers' expected to respond to, defend, and/or pay Asbestos-Related Claims if the Proposed Plan is approved." Chubb Insurers Objection, ¶ 13. This admission makes plain the documents sought are not relevant to any pending contested matter. It also demonstrates the Chubb Insurers do not have a present need for the documents in any matter outside the bankruptcy case – the Chubb Insurers are not presently party to any litigation filed by claimants

asserting an Asbestos-Related Claim involving alleged actions of the Debtor or its dissolved former subsidiary, Wayne Manufacturing Corporation. At best, the Chubb Insurers may have a need for a subset of the documents sought in the Subpoena in the future should they later become a defendant in litigation with claimants or decide to defend the Reorganized Debtor in any such litigation.

9. Accordingly, the Debtor submits that the Court is required to quash the subpoena because it subjects SCS to a burden that is plainly unreasonable under the circumstances. *See* Fed. R. Civ. P. 45(d)(3)(A)(iv) (providing that a court is required to quash a subpoena that “subjects a person to undue burden”); Motion to Quash, ¶¶ 18-19 (summarizing case law that supports quashing a subpoena that seeks irrelevant information, including, in particular, subpoenas served on third-parties).

10. Following the filing of the Motion to Quash, Debtor’s counsel has engaged with counsel to the Chubb Insurers in an attempt to resolve the Debtor’s legitimate concerns with the Subpoena. Namely, Debtor’s counsel explained to counsel to the Chubb Insurers that the Debtor already provided the Chubb Insurers with the database used by SCS to address the open claims months ago. Furthermore, in response to a comment that came up for the first time during such recent communications that the Chubb Insurers needed codes to review the database, Debtor’s counsel promptly identified and provided such codes to the Chubb Insurers. Debtor’s counsel also learned, and reported to counsel to the Chubb Insurers, that information relevant to the more significant open claims involving the Chubb Insurers’ policies already has been provided to the Chubb Insurers or their agents. Debtor’s counsel otherwise can represent to the Court, as it has to the Chubb Insurers, that production of the documents the Chubb Insurers seek is not as simple as handing over “for copying/scanning the documents in the 125 bankers’ boxes,” as the Chubb

Insurers suggest. *See* Chubb Insurers’ Objection, ¶ 17. The Debtor would have an obligation to other insurers and to the estate to review the documents contained therein to ensure no privileges or confidential information are compromised by producing the documents to the Chubb Insurers. Neither SCS nor the Debtor, however, should be compelled to undertake such efforts at this time.

11. As set forth above, to the extent the Chubb Insurers may ultimately have an actual need for these documents, they can obtain them from the Reorganized Debtor or the Asbestos Trust under the proposed Joint 524(g) Plan. The following provisions of the proposed Section 524(g) Plan support that (a) the Debtor is obligated to transfer its books and records relating to Asbestos-Related Claims to the Reorganized Debtor, (b) the Debtor’s privilege in such documents will be protected, and (c) the Chubb Insurers will be able to exercise any rights they have to access the documents if and when needed to address any Asbestos-Related Claims, if any, that may be asserted against their policies in the future:

- i. Transfer of Books and Records. Article 8.3(l) of the Joint 524(g) Plan expressly provides that, on the Effective Date, “Hopeman shall transfer to Reorganized Hopeman all of Hopeman’s books and records necessary for the Asbestos Trust to investigate and resolve Channeled Asbestos Claims . . . including the books and records presently stores in Hopeman’s warehouse in Waynesboro, Virginia, and in or in storage near the offices of Hoepman’s prepetition claims administrator Special Claim Services, Inc.”
- ii. Protection of Privilege. Article 8.3(l) of the Joint 524(g) Plan also expressly provides that “privileges belonging to Hopeman on the Petition Date in such books and records shall belong to Reorganized Hopeman as of the Effective Date, and the Asbestos Trust’s access to such books and records shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records.”
- iii. Requirement for Reorganized Debtor and Asbestos Trust to Cooperate with Non-Settling Asbestos Insurers.
  - (a) Cooperation Requirements in the Joint 524(g) Plan and the Hopeman Asbestos Trust Distribution Procedures [Docket No. 853, Exhibit B] (the “TDP”). The Joint 524(g) Plan expressly requires both the Reorganized Debtor and the Asbestos Trust to comply with any cooperation provisions set forth in Asbestos Insurance Policies. Specifically, Article 1.10 of the Joint 524(g) Plan provides

that “Asbestos Insurance Cooperation Obligations” means “collectively, the assistance and cooperation, inspection and audit, and notice of occurrence provisions set forth in the Asbestos Insurance Policies and any other provisions purporting to require the cooperation of the insured party.”

Article 8.12(b) of the Joint 524(g) Plan expressly provides that, if a Channeled Asbestos Claimant commences such an action on account of its Channeled Asbestos Claim, Reorganized Hopeman and the Asbestos Trust shall have no obligation to answer, appear, or otherwise participate in the action, except as “may be necessary to comply with applicable Asbestos Insurance Cooperation Obligations.”

The same language set forth in Article 8.12(b) of the Joint 524(g) Plan regarding compliance with applicable Asbestos Insurance Cooperation Obligations is set forth in Section 5.2(a)(iii) of the TDP, titled “Procedure for Litigating Unliquidated Insured Asbestos Claims.”

b. Cooperation Requirement in the Amended and Restated Bylaws of Hopeman Brothers, Inc. [Docket No. 853, Exhibit C] (the “Restated Bylaws”). Section 7.3 of the Restated Bylaws, filed as part of the Plan Supplement, expressly requires Reorganized Hopeman to “take actions as may be necessary to comply with, or effectuate, the applicable Asbestos Insurance Cooperation Obligations.”

12. As repeatedly explained to counsel to the Chubb Insurers, to the extent the Chubb Insurers have any concerns that the proposed Joint 524(g) Plan and related documents will cut off their access to documents if and when needed to defend against claims, the Chubb Insurers should propose language that will address their concerns. This should be an easy issue to resolve before the confirmation hearing on July 1, and long before the unknown date in the future that the Chubb Insurers may need access to the documents.<sup>4</sup>

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<sup>4</sup> The Chubb Insurers, for example, indicate that the Plan and TDP do not permit “the Trust to disclose materials to the Chubb Insurers absent prior approval by both the TAC and Future Claimants representative.” See Chubb Insurers’ Objection, ¶ 11 (citing to section 2.2(f) of the Trust Agreement, and section 6.5 of the TDP). The Debtor, however, does not read these sections to impact the Asbestos Insurance Cooperation Obligations. Section 2.2(f)(x) of the Trust Agreement provides that the Trustee is required to obtain the consent of the Future Claimants’ Representative and the TAC in connection with responding to submissions to the Asbestos Trust by holders of Asbestos Claims under Section 6.5 of the TDP. Section 6.5 of the TDP is titled “Confidentiality of Claimants’ Submissions” and is intended to protect confidential and privileged information. The Debtor also notes that Sections 5.7(b) and 6.6(b) of the Trust Agreement expressly provide that the Future Claimants’ Representative and TAC cannot unreasonably withhold consent. Nevertheless, as set forth above, the Debtor is willing to work with the Chubb Insurers on adding language to the Joint 524(g) Plan that will further support the Asbestos Insurance Cooperation Obligations and address the

13. As explained above, the Debtor has been working diligently to respond, on an expedited basis, to separate and extensive discovery from the Chubb Insurers related to confirmation of the Joint 524(g) Plan. That is discovery that relates to a pending contested matter, and it is a better use of everyone's time and resources to focus on that discovery.

14. If circumstances later arise that support production of the some of the documents requested by the Subpoena, there will be adequate means available and adequate incentive for the Reorganized Debtor and/or the Asbestos Trust to comply with reasonable requests for those documents to preserve existing coverage under the applicable cooperation provisions.

**B. The Chubb Insurers' Objection also Should Be Overruled Because the Chubb Insurers Should Not Be Permitted to Circumvent the Requirements of Bankruptcy Rule 2004**

15. The Chubb Insurers' Objection also should be overruled because the Chubb Insurers failed to comply with the requirements of Bankruptcy Rule 2004 and, therefore, the Subpoena is procedurally improper. The documents the Chubb Insurers seek belong to the Debtor. By the Chubb Insurers' own admission, they seek documents allegedly "tied to issues in this Bankruptcy Case," rather than in connection with any specific contested matter. *See* Chubb Insurers' Objection, p. 1 (arguing that the Subpoena should be enforced because it seeks documents "directly tied to the issues in this Bankruptcy Case").

16. A plain reading of Bankruptcy Rule 2004 supports that Bankruptcy Rule 2004 is the device in bankruptcy cases to discover information and documents "tied to issues in the Bankruptcy Case." *See* Fed. R. Bankr. P. 2004(b)(1)(A) (providing that an examination under Bankruptcy Rule 2004(b)(1)(A) may relate to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the

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Chubb Insurers concerns that they will be able exercise any right to access documents following the Effective Date of the Plan, and continues to urge the Chubb Insurers to propose acceptable language.



debtor's estate . . ."). Bankruptcy Rule 2004 permits broad discovery, but that Rule requires that a party seeking such discovery must file a motion for Court authority to proceed with it. *See* Motion to Quash, ¶ 13 (summarizing law providing that an order authorizing a party to issue a subpoena is a statutory prerequisite to issuing a subpoena under Bankruptcy Rule 2004). A party cannot just issue a subpoena in a bankruptcy case to seek discovery related to issues in that bankruptcy case.

17. The purpose of requiring a motion for a Bankruptcy Rule 2004 examination is to ensure that the process is not used for frivolous or abusive purposes and that it is limited to information relevant to the administration of the bankruptcy estate. Moreover, Bankruptcy Rule 2004 provides the Debtor and all other parties in interest in the bankruptcy case with an opportunity to object to the relief sought in the motion before the subpoena is issued and, thus, acts as a safeguard to prevent the discovery abuse that is present in the Chubb Insurers Subpoena on SCS.

18. The Chubb Insurers moved forward with service of the Subpoena on SCS without ever filing a motion under Bankruptcy Rule 2004 for the requisite order to do so. The Chubb Insurers should not be permitted to ignore the applicable rules.<sup>5</sup>

### **CONCLUSION AND RESERVATION OF RIGHTS**

19. Accordingly, the Debtor submits that the Court should overrule the Chubb Insurers Objection and grant the Motion to Quash.

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<sup>5</sup> The Chubb Insurers complain in their objection that the Debtor did not confer with the Chubb Insurers before filing the Motion to Quash or include such certification with the Motion to Quash. While Rule 26(c)(1) requires a meet and confer for a motion for a protective order, Rule 45 has no such requirement for filing a motion to quash a subpoena. Nevertheless, as the Chub Insurers admit in their objection, the Debtor advised the Chubb Insurers of its intention to file the Motion to Quash and why it believed the Subpoena was overbroad, unreasonable, and improper.

Dated: June 17, 2025  
Richmond, Virginia

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