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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)**
:
:
:
:

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

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (“Hopeman” or the “Debtor”), respectfully submits the following as its reply (the “Reply”)¹ in support of its Objection (the “Objection”)² to Claim No. 10 of Liberty Mutual Insurance Company (“Liberty” or “Liberty Mutual”) (Doc. 694), and in opposition to the Response of Liberty Mutual (Doc. 825) (“Liberty’s Response”):

REPLY

¹ The Debtor is filing an unredacted version of this Reply under seal in accordance with the *Confidentiality Agreement and Protective Order* (Doc. 206) (the “Liberty Mutual Protective Order”).

² Capitalized terms not otherwise defined herein shall have the meanings set forth in the Objection.



1. Under a plain reading of the Indemnification Agreement,³ which even Liberty contends is unambiguous, Liberty has no claim against the Debtor or its property. *See* Liberty's Response, ¶ 11 (stating that "[t]here is no need to look beyond the language as written"). This Court can reach that conclusion simply by reading Article III of the Indemnification Agreement and the definition of "Indemnified Claim" included in Article I.

2. In its Response, Liberty attempts to draw a distinction between indemnity obligations owed to it by the settlement Trust established to hold the settlement proceeds paid by Liberty and the direct action defense obligations Hopeman owes to Liberty under § III.B.5 of the Indemnification Agreement. Liberty's distinction, however, is of no consequence for its claim in this case. What Liberty ignores is that the remedy provisions for a breach by either the Trust or the Debtor of their respective obligations are the same. Liberty's exclusive remedy for any breach by the Trust or the Debtor lies in an "Indemnification Claim" against the Trust. The parties expressly agreed that, [REDACTED]

[REDACTED]

Indemnification Agreement, §III.A.3 (emphasis added).

3. The term "Indemnification Claim" is defined in Article I to include the defense costs Liberty would incur if Hopeman failed to defend it in direct actions consistent with what the Indemnification Agreement requires. Accordingly, even if the Court were to find that the Debtor has breached its prepetition agreement with Liberty, that breach does not give rise to a claim against Hopeman.

³ The Indemnification Agreement is annexed hereto as Exhibit 1 and is being filed under seal in accordance with the Liberty Mutual Protective Order.

The Settlement Agreement is annexed hereto as Exhibit 2 and is being filed under seal in accordance with the Liberty Mutual Protective Order.

A. The Duty to Defend Liberty Mutual

4. Liberty relies exclusively upon § III.B.5 of the Indemnification Agreement for the Debtor's duty to defend it in direct action lawsuits. That section provides:



(Emphasis added.)

5. Hopeman does not dispute that, prior to the Petition Date, Hopeman was defending Liberty, as insurer for Hopeman's dissolved former subsidiary, Wayne Manufacturing Corporation. ("Wayne"), through Hopeman's own counsel, in asbestos direct actions in which both Hopeman and Liberty, as insurer for Wayne, were sued. Those costs were being funded by the Debtor through the use of proceeds of settlement agreements Hopeman had reached with various of its insurers, including use of the Liberty settlement proceeds held by the Trust until those proceeds were exhausted.

6. Because Hopeman is in bankruptcy, the automatic stay has prevented any party from prosecuting claims against Hopeman since the Petition Date. And, until very recently, due to the Interim Stay Orders entered in this case, no party was prosecuting direct action claims against Liberty as insurer for Wayne after the Debtor filed this case. *See* Interim Stay Orders at Doc. 35, 245 and 622. So, the Debtor has not had to defend Liberty, and Liberty has not had to defend itself through at least May 14, 2025, when the Third Interim Stay Order was modified as to insurers (other than the Certain Settling Insurers) with respect to four pending Louisiana direct actions filed by clients of the Roussel firm. *See* Stipulated Order Approving Settlement of Appeal

of Insurance Settlement Order and Granting Limited Relief from Third Interim Stay Order at Doc. 733 (the “Stipulated Order”).

7. Because Hopeman is not defending claims that continue to be stayed against it, Hopeman does not have counsel currently active in those direct actions to defend Liberty and avoid Liberty from having to hire its own counsel. Of course, Hopeman also is not paying any of Liberty’s defense costs, and the Bankruptcy Code would not allow that, even if the Debtor had sufficient funds remaining to do so, which it does not.

8. The Debtor contends that it is not breaching any promise to have its counsel defend Liberty because the Debtor is not currently involved in those direct actions; they are stayed as to the Debtor. However, even if the Court were to conclude that the Debtor has breached a defense obligation owed to Liberty under the prepetition Indemnification Agreement, any claim of Liberty for that breach is expressly limited by the Indemnification Agreement itself. As explained below, any such breach would not give rise to a claim in this case in favor of Liberty.

B. The Indemnification Agreement Limits Liberty Mutual’s Recovery Rights

9. Article III of the Indemnification Agreement, which includes the defense obligation of Hopeman, has only one remedy available to Liberty for any breach of that obligation: a claim for reimbursement against the proceeds of the settlement between Liberty and Hopeman. Those settlement proceeds previously were held in a settlement Trust until those funds were exhausted.

10. The Indemnification Agreement contemplated the possibility that the funds in the Trust might be exhausted when a claim by Liberty for reimbursement of defense costs arose. Nevertheless, the Indemnification Agreement made explicitly clear that Liberty has no right to recover from Hopeman directly for any breach by Hopeman.

11. The Court's analysis should begin with a reading of the definition of "Indemnification Claim" which is the same in either of the 2003 Agreements. An "Indemnified Claim" is defined to include:



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

12. Under the above definition, an Indemnification Claim includes counsel fees, costs and expenses incurred in defending Liberty with respect to direct actions asserted by asbestos claimants against Liberty for which the claimant asserts that Liberty owes any obligation arising out of Hopeman's asbestos-related products, services, or activities, or under the Pre-January 1, 1989 Liberty Mutual Policies.

13. Then, in Article III of the Indemnification Agreement, the parties agree that any such Indemnification Claim is to be paid by the Trust out of settlement proceeds. The Indemnification Agreement provides:



[REDACTED]

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

14. To the extent Liberty had an Indemnified Claim, the Trust was to reimburse, defend, indemnify or hold Liberty harmless for amounts it was owed for the Indemnified Claim out of the Settlement Funds, to the extent the Trust had funds left. The relevant section of the Indemnification Agreement provides as follows:

[REDACTED]

See Indemnification Agreement at § III.A.2.

15. To the extent Settlement Funds became inadequate to reimburse or pay for an Indemnified Claim, the Trust defers payment or reimbursement but is not relieved of the obligation to pay or reimburse Liberty. *Id.* at § III.A.4. Instead, the Trust carries unpaid or unreimbursed amounts as a balance due to Liberty, to be paid at a time Settlement Funds are replenished, if ever. *Id.*

16. The Indemnification Agreement expressly provides that Liberty's right of indemnification and reimbursement for Indemnified Claims comes solely from the Trust. In addition, the Indemnification Agreement expressly states that in no event is Hopeman itself obligated to reimburse or indemnify Liberty Mutual or otherwise. The relevant section of the Indemnification Agreement is §III.A.3, which states:

[REDACTED]



(Emphasis added).

17. Accordingly, any claim by Liberty for indemnification and reimbursement of counsel fees, costs and expenses of defending against direct action asbestos claims brought against it are Indemnification Claims that are to be paid solely from the Trust. To avoid any doubt that Hopeman itself is not liable for those amounts, the parties added a final clause in the above section expressly providing that in no event would the Hopeman or the Trustee (individually) have any obligation to reimburse Liberty with respect to Indemnified Claims or otherwise.” Simply put, the Debtor is not liable on such a claim.

C. The Same Remedy Applies to Liberty Mutual’s Other Alleged Claims of Breach

18. Liberty also argues in its Response, and in its amended Claim, that the Debtor is breaching an obligation in the 2003 Agreements to take “all reasonable actions necessary to minimize” the assertion of Asbestos Related Claims against Liberty, citing to §III.C of the Indemnification Agreement.⁴ See Response, ¶ 23.

⁴ Liberty also cites to §XVI.D of the Settlement Agreement for an alleged breach by the Debtor. That section requires Hopeman not to seek to avoid the transfers or assist others in seeking to avoid the transfers accomplished through the 2003 Agreements. The Debtor has never sought to do so and has repeatedly taken the position in this case that the Debtor is bound by the 2003 Agreement and does not have any remaining coverage through Liberty. It also has done nothing to assist others in attempting to set aside the 2003 Agreements.

19. The Debtor disputes Liberty's contention that it is doing anything in violation of its settlement obligations. Liberty contends that it bought back all of its insurance obligations from the Debtor in 2003. The Debtor has never disputed that. Merely because certain Louisiana claimants assert that Liberty could not have eliminated their alleged direct action rights in Liberty's buy-back of its coverage from Hopeman does not mean that Hopeman has breached its agreement. Those Louisiana claimants have been asserting direct actions against Liberty for the last 22 years after the settlement was entered into in 2003. Liberty has never argued until now that Hopeman was violating any obligation to minimize direct action claims when it was being sued despite the 2003 Agreements. Nothing about modifying the Third Interim Stay Order through the Stipulated Order with the Roussel firm – which the Debtor sought for its own benefit – creates a breach claim in favor of Liberty. Liberty merely stands in the same shoes as it did prepetition, with no remedy against the Debtor and its sole remedy being to seek recovery from Trust funds that were depleted through their intended use.

20. Despite Liberty's newly articulated claims of a breach by Liberty, Liberty's sole remedy for any such breach comes back to the same remedy provision available to it under the 2003 Agreements, which is exclusively an Indemnification Claim against the Trust. "In no event" does Hopeman have liability for that claim of breach for the same reasons set forth above.

21. Nothing in the case law cited in Liberty's Response addresses the fact that Liberty's remedies for its alleged breach of the 2003 Agreements are expressly limited to an Indemnification Claim against the Trust. The cases Liberty cites only stand for the proposition that a postpetition breach of a prepetition contract creates, at best, a prepetition unsecured claim. None of the cases Liberty cites stands for the proposition that a postpetition breach creates a new remedy that did not exist under the agreement prepetition.

D. The Debtor Contests the Amount Claimed by Liberty Mutual

22. Liberty filed its original Claim on November 4, 2024. It amended the Claim on May 30, 2025, now designated as Claim 19, by among other things, raising its partially-liquidated unsecured claim by \$37,500, from \$317,254.89 to \$354,754.89.⁵

23. No details are provided with the initial Claim as to what fees and expenses comprise the \$317,254.89 originally claimed. The Debtor believes these are non-reimbursable attorneys' fees and costs under the Indemnification Agreement; they are merely the fees and costs Liberty has incurred in having its bankruptcy counsel monitor this case.

24. In its amended Claim, Liberty increases the amount of its claim by \$37,500, an estimate of fees it allegedly has incurred since the Third Interim Stay Order was lifted for four direct action cases pending in Louisiana about one month ago, on May 14.

25. As set forth above, Liberty is not entitled to any claim against the estate. However, if the Court disagrees, Hopeman also objects to the amount claimed by Liberty because at least \$317,254.89 of its claim could not be defense costs incurred in addressing asbestos claims. An Indemnified Claim must relate to defense of an asbestos claim asserted against Liberty. Accordingly, at a minimum, any fees incurred prior to May 14 could not have been incurred in defense of any asbestos claims that would be covered by any breach of a duty to defend Liberty or to take reasonable actions to minimize the assertion of such claims against Liberty. All of those fees and expenses necessarily should be disallowed because they are not covered by the Indemnification Agreement and there is no other basis under bankruptcy law to authorize their allowance in this case.

⁵ Claim No. 10 is annexed hereto as Exhibit 3 and Claim No. 19 is annexed hereto as Exhibit 4, and both Claim No. 10 and Claim No. 19 are being filed under seal in accordance with the Liberty Mutual Protective Order.

26. Furthermore, to be clear, the Debtor seeks by the Objection to disallow and expunge Claim No. 10 and any other amendments to Claim No. 10 filed by Liberty, including, without limitation, Claim No. 19.

CONCLUSION

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

Dated: June 17, 2025
Richmond, Virginia

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

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Counsel for the Debtor and Debtor in Possession

EXHIBIT 1

**Indemnification Agreement
[Filed Under Seal]**

EXHIBIT 2

**Settlement Agreement
[Filed Under Seal]**

EXHIBIT 3

Claim No. 10
[Filed Under Seal]

EXHIBIT 4

Claim No. 19
[Filed Under Seal]