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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	:	**Chapter 11**
HOPEMAN BROTHERS, INC.,	:	**Case No. 24-32428 (KLP)**
Debtor.	:	

PLAN PROPONENTS': (I) MEMORANDUM OF LAW IN SUPPORT OF: (A) FINAL APPROVAL OF THE DISCLOSURE STATEMENT WITH RESPECT TO THE AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, AND (B) CONFIRMATION OF THE AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE; AND (II) OMNIBUS REPLY TO PLAN OBJECTIONS

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Hopeman Brothers, Inc. ("Hopeman" or the "Debtor"), the debtor and debtor-in-possession in the above-captioned chapter 11 case (this "Chapter 11 Case") and the Official Committee of Unsecured Creditors (the "Committee" and together with the Debtor, the "Plan Proponents") hereby submit this Memorandum of Law[1] (this "Confirmation Brief")[2]: (i) in support of (a) final approval of the *Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 767][3] (as may be amended, modified, or supplemented from time to time, the "Disclosure Statement"), and (b) confirmation of the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, dated May 21, 2025 [Docket No. 766] (as may be amended, modified, or supplemented from time to time, the "Plan"),[4] pursuant to section 1129 of the Bankruptcy Code; and (ii) in reply to the Plan Objections (as defined herein).

I. PRELIMINARY STATEMENT[5]

1. Approximately one year ago, Hopeman filed this Chapter 11 Case with the goal of "establish[ing] an efficient and fair process to utilize the Debtor's remaining cash and its

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[1] The Plan Proponents request the Court's indulgence for the length of this Confirmation Brief. It not only addresses the issues required for confirmation under § 1129(a), but also those required under §524(g). In addition, this Confirmation Brief responds to objections filed by the Objecting Insurers (defined below) that collectively total more than one-hundred and eight-one (181) pages, plus approximately seven-hundred and fifty-two (752) pages of exhibits. Simply put, there are numerous arguments to address.

[2] The Debtor and the Objecting Insurers (as defined below) have agreed that all briefs (collectively, the "Supplemental Briefs") as to the Liquidation Analysis (as defined below), the Scarcella Report (as defined below) and any rebuttal report shall be due no later than 4:00 p.m. (Eastern) on August 18th, 2025. The Debtor reserves all rights to address each of these issues in more detail in its Supplemental Brief.

[3] References to: (i) "Docket No." are to filings in this Chapter 11 Case; references to "CI Adv. Docket No." are references to filings in *Century Indemn. Co., et al. v. Hopeman Bros., Inc.*, Adv. Proc. No. 25-03015-KLP (Bankr. E.D. Va. 2025) (the "Chubb Insurers Adversary Proceeding"); and (iii) references to "LMIC Adv. Docket No." are references to filings in *Liberty Mutual Ins. Co., v. Hopeman Bros., Inc., et al.*, Adv. Proc No. 25-03020 (KLP) (Bankr. E.D. Va. 2025) (the "LMIC DJ Action").

[4] Capitalized terms used, but not otherwise defined herein, have the meanings given to such terms in the Plan or, if not defined therein, the Solicitation Procedures Motion (as defined below).

[5] Capitalized terms used, but otherwise defined in this Preliminary Statement, have the meanings given to such terms below.

insurance policies to address the thousands of asbestos-related claims asserted against the Debtor."[6] As the Court is aware, this case has been contentious since the outset, with the Debtor first clashing with the Committee and other claimants over the Insurer Settlement Motions, and now warring with disgruntled insurers over the terms of the Plan. Despite these headwinds, the Debtor is on the brink of accomplishing its goals through confirmation of a Plan that reflects the culmination of extended, arms-length negotiations stewarded by the Court-appointed mediator, Hon. Kevin R. Huennekens, among the Debtor and various parties-in-interest, including the Committee and the Future Claimants' Representative.

2. That the Plan establishes a fair and efficient process to address the Debtor's asbestos-related liabilities is plainly evidenced by its nearly unanimous approval by the Voting Classes and support by the United States Trustee. Indeed, while only one holder of a Claim in Class 3 (General Unsecured Claims) entitled to vote on the Plan voted, that creditor voted to accept the Plan and opted in to the third-party release, and more than 99% of the holders of Claims in Class 4 (Channeled Asbestos Claims) voted in favor of the Plan. In short, the Plan is supported by all relevant stakeholders and the United States Trustee. Because it also complies fully with the Bankruptcy Code, the Plan should be confirmed.

3. Unfortunately, but not surprisingly, the only opposition to the Plan comes from a cadre of the Debtor's historical insurers: Century Indemnity Company ("Century"),[7] Westchester Fire Insurance Company ("Westchester" and together with Century, the "Chubb Insurers"), Liberty Mutual Insurance Company ("LMIC"), The Travelers Indemnity Company ("Travelers Indemnity"), Travelers Casualty and Surety Company ("Travelers Casualty"), St. Paul Fire and

[6] *Motion for Expedited Status Conference* [Docket No. 609] (the "Status Conference Motion"), ¶ 5.

[7] In its capacity as the successor to CCI Insurance Company, as successor to Insurance Company of North America.

Marine Insurance Company ("St. Paul" and together with Travelers Indemnity and Travelers Casualty, collectively, "Travelers"), and Hartford Accident and Indemnity Company and First State Insurance Company ("Hartford" and together with the Chubb Insurers, LMIC, and Travelers, collectively, the "Objecting Insurers"). Each of their Plan Objections[8] is addressed in this Reply, and attached hereto as Exhibit A is a chart that summarizes the filed objections and the Plan Proponents' responses thereto.

4. The Objecting Insurers barrage the Plan Proponents with a host of self-serving, disingenuous assertions in support of their claim that the Plan is unconfirmable. The Objecting Insurers contend, among other things, that: (i) the Plan impermissibly alters their rights under their respective insurance policies; (ii) the Plan was proposed in bad faith because it is the product of collusion; and (iii) the Debtor cannot satisfy section 524(g) of the Bankruptcy Code because it purportedly needs, and lacks, an "ongoing business." As discussed in more detail below, these contentions are meritless.

5. Distilled to their essence, the Objecting Insurers' complaints derive purely from self-interest rather than the best interests of the Debtor's estate and its creditors that the Plan is intended to serve. They are frustrated that Hopeman is no longer capable of serving as a shield

[8] "Plan Objections" means, collectively, (i) *Hartford's Limited Objection to Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 942] (as supplemented by *Hartford's Joinder to Objections to Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 965], the "Hartford Plan Objection"); (ii) the *Objections of the Travelers Indemnity Company, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company to (I) Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code and (II) the Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc.* filed under seal at Docket No. 949 and publicly-available, with redactions, at Docket No. 944 (the "Travelers Plan Objection"); (iii) *Liberty Mutual Insurance Company's Objection to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* filed under seal at Docket No. 954 and publicly-available, with redactions, at Docket No. 953 (the "LMIC Plan Objection"); and (iv) *Chubb Insurers' Objection to (1) Final Approval of Disclosure Statement and (2) Confirmation of Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* filed under seal at Docket Nos. 959-960 and publicly available, with redactions, at Docket No. 958 (the "Chubb Insurers Plan Objection" and together with the Hartford Objection, the Travelers Objection, and the LMIC Objection, collectively, the "Plan Objections").

between the Objecting Insurers and the liabilities they insured by managing the thousands of claims asserted or funding a portion of the settlement of valid claims. That these Objecting Insurers may continue to owe obligations to cover asbestos claims against their insured is simply a function of the contracts they entered years ago, not of the Plan. As the court in *Kaiser Gypsum* aptly noted, "[w]e are here … because decades ago … [the Objecting Insurers] wrote an unlimited insurance policy … and since then, having paid out huge sums of money based on that decision, [the Objecting Insurers] would like to … improve that deal and use this case to limit [their] financial exposure."[9]

6. The Objecting Insurers' objections are animated by the misguided belief that their interests should be prioritized over those of the Debtor's creditors in contravention of the Debtor's fiduciary duties to the Estate. Aware of the Debtor's constrained liquidity, they have engaged in a cynical war of attrition attempting to bludgeon the Plan Proponents into submission. As this Court is aware, they have contested virtually every filing (even routine fee applications) and even gone so far as to initiate adversary proceedings to seek injunctive relief on frivolous grounds and declaratory judgments against thousands of asbestos claimants with the most tenuous of jurisdictional ties. These tactics have significantly increased the administrative expenses in this Chapter 11 Case to the detriment of the thousands of asbestos personal injury claimants.

7. But no amount of bullying and whining by the Objecting Insurers changes the fact that Hopeman's refusal "to accede to [the Objecting Insurers' demands for protections to which they are not entitled] is neither collusive or bad faith or fraud or anything else."[10] The Plan

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[9] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc. (In re Kaiser Gypsum Co., Inc.)*, 135 F.4th 185, 195-96 (4th Cir. 2025) (quoting the bankruptcy court at the confirmation hearing).

[10] *Id.* at 196.

represents the best path forward for the Estate, and the Objecting Insurers' efforts to oppose it are little more than a last-ditch effort to kill the Plan or extract unwarranted concessions in an effort to avoid honoring contractual obligations they *voluntarily* undertook years ago. Importantly, contrary to arguments that the Plan is not "insurance neutral," the Plan and Plan Documents make plain that Reorganized Hopeman will perform remaining ministerial contractual obligations (cooperation, notice, and the like) that may be owed the Non-Settling Asbestos Insurers. The Plan and Plan Documents also preserve all of the Insurers' contractual rights and defenses. Try as they might, the Objecting Insurers simply cannot avoid the fact that the Plan and Plan Documents include the same provisions that courts in other 524(g) bankruptcy cases have relied on to reject similar arguments raised by insurers challenging insurance neutrality.

8. For the reasons set forth herein, their objections should be denied in full and the Plan should be confirmed.

II. BACKGROUND

A. Hopeman's: (I) Corporate History and Prepetition Operations; (II) Asbestos-Related Liabilities, Claims Process, and Insurance Policies; and (III) Filing of this Chapter 11 Case.

9. On June 30, 2024 (the "Petition Date"), Hopeman filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing this Chapter 11 Case in the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Bankruptcy Court" or the "Court"). The *Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 8] (the "First Day Declaration"), which is hereby incorporated by reference as if fully set forth herein, includes a detailed

description of: (i) Hopeman's corporate history and business operations;[11] (ii) Hopeman's: (a) Asbestos-Related Liabilities (as such term is defined in the First Day Declaration),[12] (b) prepetition claims process for addressing such Asbestos-Related Liabilities,[13] and (c) insurance coverage;[14] and (iii) the events, and related circumstances, leading to the filing of this Chapter 11 Case.[15]

10. The Debtor continues to manage its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On July 22, 2024, the Office of the United States Trustee (the "U.S. Trustee") appointed the Committee.[16]

B. The Insurer Settlement Motions and the Original Plan of Liquidation.

11. After commencing this Chapter 11 Case, the Debtor sought the Court's approval of two settlements pertaining to certain of the Debtor's Asbestos Insurance Policies that would have generated nearly $50 million in cash to fund the Original Plan of Liquidation (defined below).

12. First, on the Petition Date, the Debtor filed the Motion of the *Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (III) Approving the Sale of Certain Insurance Policies; (IV) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V)*

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[11] First Day Decl., ¶¶ 9-19; *see also* Disclosure Statement, Art. IV.A (detailing Hopeman's corporate history and formation), IV.B (detailing Hopeman's prepetition business operations), and IV.C (describing Hopeman's board of directors and officers).

[12] First Day Decl., ¶¶ 20-24; *see also* Disclosure Statement, Art. IV.D.

[13] First Day Decl., ¶¶ 25-29; *see also* Disclosure Statement, Art. IV.E.

[14] First Day Decl., ¶¶ 30-36; *see also* Disclosure Statement, Art. IV.F.

[15] First Day Decl., ¶¶ 37-43; *see also* Disclosure Statement, Art. V.A.

[16] Docket No. 69.

Granting Related Relief [Docket No. 9] (the "Chubb Insurers Settlement Motion").

13. Second, on July 10, 2024, the Debtor filed the *Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief* [Docket No. 53] (the "Certain Settling Insurers Motion" and together with the Chubb Insurers Settlement Motion, the "Insurer Settlement Motions"). Each is addressed in turn.

1. The Chubb Insurers Settlement.

14. Prior to the Petition Date, Hopeman advised the Chubb Insurers of its intent to file for bankruptcy in order to seek confirmation of a proposed plan of liquidation pursuant to which Hopeman would be liquidated and a liquidation trust would be established to resolve all pending and future asbestos-related claims that are timely submitted to such liquidation trust.[17] With the goal of monetizing its remaining available insurance proceeds, Hopeman began negotiating with the Chubb Insurers for the purpose of liquidating the insurance policies issued to the Debtor by the Chubb Insurers that cover Asbestos Claims asserted against Hopeman.[18]

15. After extensive, hard-fought, arm's-length negotiations, Hopeman and the Chubb Insurers entered into a Settlement Agreement and Release, dated June 27, 2024, which, if approved, would have "bought out" the remaining agreed-upon limits available to Hopeman under applicable insurance policies—approximately $148,000,000—in exchange for $31,500,000.[19]

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[17] *See* Chubb Insurers Settlement Motion, ¶¶ 18-19.

[18] *Id.*

[19] *See id.* at Ex. A.

2. Certain Settling Insurers Settlement.

16. Similarly, prior to the Petition Date, Hopeman engaged in arm's-length, good faith negotiations with the Certain Settling Insurers[20] for the purpose of liquidating the insurance policies issued to the Debtor by the Certain Settling Insurers that cover Asbestos Claims asserted against Hopeman.[21] These negotiations resulted in a settlement between Hopeman and the Certain Settling Insurers, dated July 10, 2024, that liquidated the remaining coverage available under policies issued to Hopeman by the Certain Settling Insurers in the aggregate amount of $18,395,011.

3. Settlement Procedures Motion.

17. On July 10, 2024, the Debtor also sought approval of proposed procedures for providing notice of the insurance settlement motions and scheduling a hearing on the Insurer Settlement Motions.[22] On September 12, 2024, the Bankruptcy Court entered its order approving the proposed notice procedures and setting the hearing for approval of the Insurer Settlement Motions for November 12, 2024.[23]

4. The Original Plan of Liquidation.

18. On July 12, 2024, the Debtor filed: (i) the *Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 56] (the "Original Plan of Liquidation"); and (ii) the *Disclosure Statement with Respect to the Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 57] (the

[20] "Certain Settling Insurers" means, collectively, Continental Casualty Company, Fidelity & Casualty Company, Lexington Insurance Company, Granite State Insurance Company, the Insurance Company of the State of Pennsylvania, National Union Fire Insurance Company of Pittsburgh, PA, and General Reinsurance Corporation.

[21] Docket No. 53.

[22] Docket No. 54.

[23] *Order (I) Establishing Procedures to Schedule Hearings to Consider the Insurer Settlement Motions; (II) Approving the Form and Manner of Notice Thereof; and (III) Granting Related Relief* [Docket No. 204] (the "Settlement Procedures Order").

"Original Disclosure Statement"). The Original Plan of Liquidation sought to establish a liquidation trust to which Hopeman would transfer the settlement proceeds from the Chubb Insurers Settlement Agreement and the Certain Settling Insurers Agreement along with its other assets and have the trust address the remaining Asbestos Claims asserted against it.[24]

19. On July 16, 2024, the Debtor filed the *Debtor's Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement; (II) Approving the Solicitation Procedures in Connection with the Debtor's Plan of Liquidation; (III) Approving the Forms of Ballots and Notices Related Thereto; (IV) Scheduling a Hearing to Consider Confirmation of the Debtor's Plan of Liquidation; (V) Establishing Certain Deadlines With Respect Thereto; and (VI) Granting Related Relief* [Docket No. 61] (the "Original Solicitation Procedures Motion").

20. The hearing on the Original Solicitation Procedures Motion was originally scheduled for September 24, 2024,[25] but, given ongoing disputes and discovery regarding the Insurer Settlement Motions, on September 12, 2024, the Debtor adjourned the hearing.[26]

5. Adjournment of Hearing to Consider Approval of the Insurer Settlement Motions.

21. On September 24, 2024, the Debtor, the Committee, and the Other Endorsing Parties,[27] filed the proposed *Agreed Order Continuing Hearing on Insurer Settlement Motions and Establishing Discovery/Briefing Schedule* [Docket No. 242] (the "Proposed Agreed Insurer Settlement Continuance Order"), which, *inter alia*, proposed: (i) adjourning the hearing for the Court to consider approval of the Insurer Settlement Motions until December 10, 2024; and (ii)

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[24] *See* Original Plan of Liquidation, pp. ii-iv.

[25] *See Notice of Disclosure Statement Hearing* [Docket No. 62].

[26] *See Notice of Adjournment of Disclosure Statement Hearing* [Docket No. 203].

[27] "Other Endorsing Parties" means, collectively, Boling Law Firm and Law Office of Philip C. Hoffman, Huntington Ingalls Industries, Inc. ("HII"), Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valeria Anne Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza, and Monica Dandry Hallner.

an agreed schedule regarding discovery and briefing on the Insurer Settlement Motions.

22. On September 25, 2025, the Court entered the *Agreed Order Continuing Hearing on Insurer Settlement Motions and Establishing Discovery/Briefing Schedule* [Docket No. 247], approving the Proposed Agreed Settlement Continuance Order.

23. On November 20, 2024, the Debtor, the Committee, and the Other Endorsing Parties filed the proposed *Second Agreed Order Continuing Hearing on Insurer Settlement Motions and Modifying Discovery/Briefing Schedule* [Docket No. 375] (the "Proposed Second Agreed Insurer Settlement Continuance Order"), which, *inter alia*, proposed a further adjournment of the hearing for the Court to consider approval of the Insurer Settlement Motions until December 16, 2024, and related modifications of the discovery and briefing schedule set by the Agreed Insurer Settlement Continuance Order for the Insurer Settlement Motions.

24. Later that same day, the Court entered the *Second Agreed Order Continuing Hearing on Insurer Settlement Motions and Modifying Discovery/Briefing Schedule* [Docket No. 376] (the "Second Agreed Insurer Settlement Continuance Order"), approving the Proposed Second Agreed Insurer Settlement Continuance Order.

C. The November 29 Term Sheet, Entry of the Chubb Insurer Mediation Order and Approval of the Certain Settling Insurers Settlement.

1. November 29 Term Sheet.

25. While still engaged in discovery on the Insurer Settlement Motions, the Debtor and the Committee executed a Settlement Term Sheet for Hopeman Brothers, Inc., effective as of November 29, 2024, a copy of which was attached to the Agreed Chubb Insurers Settlement Continuance Order[28] as Exhibit 1 (the "November 29 Term Sheet"). The November 29 Term Sheet provided, among other things, that (a) Hopeman agreed to adjourn the hearing on the

[28] The proposed *Agreed Order Continuing Hearing and Deadlines Solely as to Chubb Insurers Settlement Motion* [Docket No. 417] (the "Proposed Agreed Chubb Insurers Settlement Continuance Order").

Chubb Insurers Settlement Motion, (b) Hopeman and the Committee agreed to participate in judicial mediation concerning the Chubb Insurers Settlement Motion, and (c) the Committee agreed not to oppose approval of the Certain Settling Insurers Settlement Motion. The November 29 Term Sheet also provided that Hopeman and the Committee agreed to negotiate in good faith over the terms of a chapter 11 plan that would propose to create a trust pursuant to section 524(g) of the Bankruptcy Code.

2. Entry of the Chubb Insurers Mediation Order and Approval of the Certain Settling Insurers Settlement.

26. On December 11, 2024, the Debtor, the Committee, and HII, in accordance with the November 29 Term Sheet, filed the proposed Agreed Chubb Insurers Settlement Continuance Order, which, among other things: (i) informed parties-in-interest and the Court that the Debtor and the Committee had executed the November 29 Term Sheet; and (ii) proposed, by agreement of the Debtor, the Committee, and HII, a further adjournment of the hearing for the Court to consider the approval of the Chubb Insurers Settlement Motion until March 20, 2025; and (iii) the indefinite adjournment of the dates and deadlines, which had not yet passed or expired by November 29, 2024, set forth in the Second Agreed Insurer Settlement Continuance Order solely as to the Chubb Insurers Settlement Motion.

27. That same day, in accordance with the November 29 Term Sheet, the Debtor and the Committee filed the *Joint Motion of the Debtor and Committee for Entry of an Order Authorizing Mediation of the Chubb Insurers Settlement Motion* [Docket No. 419] (the "Chubb Insurers Mediation Motion"), which, among other things, sought entry of an order: (i) appointing a judicial mediator; and (ii) directing the "Mediation Parties" (as such term is defined in the Chubb Insurers Mediation Motion) to participate in the mediation regarding the Chubb Insurers Settlement Motion. From the Debtor's perspective, meditation was intended as a "good faith

effort to provide the Chubb Insurers with a formal mechanism to try to gain Committee and creditor support for the Chubb Insurers [S]ettlement since it appeared to the Debtor the Chubb Insurers were making no efforts informally in that regard."[29]

28. Following a hearing on December 16, 2024, the Court entered: (i) the *Agreed Order Continuing Hearing and Deadlines Solely as to Chubb Insurers Settlement Motion* [Docket No. 437] (the "Agreed Chubb Insurers Settlement Continuance Order"), approving the Proposed Agreed Chubb Insurers Settlement Continuance Order; (ii) the *Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief* [Docket No. 442] (the "CSI Settlement Approval Order") which granted the Certain Settling Insurers Motion, including authorizing the Debtor's entry into the Certain Settling Insurers Agreement and approving the Certain Settling Insurers Settlement; and (iii) the *Order Authorizing Mediation of Chubb Insurers Settlement Motion* [Docket No. 443] (the "Chubb Insurer Mediation Order"), which, *inter alia*, appointed the Honorable Kevin R. Huennekens (the "Mediator") to serve as the mediator and directed the Debtor, the Committee, and the Chubb Insurers to participate in the mediation concerning the Chubb Insurers Settlement Motion (the "Mediation").

29. The CSI Settlement Approval Order was appealed by HII and the Roussel Claimants.[30] Separate settlements were reached with HII and the Roussel Claimants that ultimately led to the voluntary dismissal of their respective appeals of the Certain Settling

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[29] *Objection of Debtor to Chubb Insurers' Motion for Temporary Restraining Order* [CI Adv. Docket No. 12] (the "Debtor's TRO Opposition"), ¶ 5.

[30] "Roussel Claimants" means, collectively, Janet Rivet and Kayla Rivet (surviving spouse and child of Tommy Rivet), Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, and Stephanie Jean Ragusa Connors (surviving spouse and children of Frank P. Ragusa, Jr.), and Erica Dandry Constanza and Monica Dandry Hallner (surviving children of Michael Dandry, Jr.

Insurers Settlement Approval Order, with prejudice. By July 10, 2025, all funds owed to the Debtor pursuant to the CSI Settlement Approval Order had been paid and the Certain Settling Insurers Settlement closed.

D. Mediation of the Chubb Insurers Settlement Motion, Entry Into the Plan Term Sheet, and Pivot to the Plan.

1. The Chubb Insurers' Failure to Engage at the Mediation.

30. The parties contemplated that the Mediation would be completed in January of 2025, but the Mediator exercised his authority under the Chubb Insurer Mediation Order[31] by, ultimately, extending the Mediation through March 2025.[32] In addition to the Debtor, the Committee, and the Chubb Insurers, HII also attended the Mediation after the Debtor and the Committee consented to HII's request for permission to participate in the Mediation.[33]

31. The Debtor hoped that the Chubb Insurers would take advantage of the Mediation by, finally, meaningfully engaging with the Committee on the Chubb Insurers Settlement Motion. While the Chubb Insurers attended the Mediation in person and by video, to the Debtor's knowledge, they ***never*** engaged in active negotiations with ***any party*** to gain support for the Chubb Insurers Settlement Motion. It therefore was obvious to the Debtor that, if the Chubb Insurers were unwilling to attempt to garner support for the Chubb Insurers Settlement Motion, the motion would either fail or leave the Debtor with *neither* sufficient support to confirm a plan *nor* funds to prosecute the motion given pending and anticipated appeals.

32. Without a viable path forward on the Chubb Insurers Settlement Motion, and consistent with the Debtor's fiduciary duties to the Estate, under the guidance of Judge Huennekens, the Debtor engaged in negotiations with the Committee over an alternative exit

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[31] Chubb Insurer Mediation Order, ¶ 5; *see also* Status Conference Motion, ¶ 17.

[32] Status Conference Motion, ¶ 18.

[33] *Id.* at ¶ 17.

plan; namely, a plan proposed pursuant to section 524(g) of the Bankruptcy Code—in accordance with the Debtor's agreement to engage in good-faith negotiations with the Committee on such a plan in, and as disclosed by, the November 29 Term Sheet.

33. Thus, while the Mediation failed to produce an agreement on the Chubb Insurers Settlement Motion, the Mediation nonetheless resulted in a watershed moment in this Chapter 11 Case: entry into the Plan Term Sheet (as defined below).

2. The Debtor, the Committee, and HII Enter Into the Plan Term Sheet.

34. On March 7, 2025, after extensive mediated negotiations supervised by Judge Huennekens, the Debtor, the Committee, and HII entered into a Settlement Term Sheet for § 524(g) Plan of Hopeman Brothers, Inc., a true and correct copy of which was appended to the Status Conference Motion as Exhibit B (the "Plan Term Sheet").

35. Among other things, the Plan Term Sheet provided:[34]

(i) The Debtor and the Committee, as the Plan Proponents, agreed to jointly prosecute a chapter 11 plan that would create a trust pursuant to section 524(g) of the Bankruptcy Code and the Debtor's transfer of its remaining insurance coverage and cash to that trust to allow for the resolution of the thousands of asbestos claims against the Debtor after the effective date of the contemplated plan;[35]

(ii) The Debtor and Committee agreed to jointly move for entry of an order appointing the Future Claimants' Representative for purposes of protecting the rights of persons that might subsequently assert "Demands" (as such term is defined in the Plan Term Sheet) in accordance with section 524(g)(4)(B)(i) of the Bankruptcy Code;[36] and

(iii) Within three business days following execution of the Plan Term Sheet: (a) HII's agreement to voluntarily dismiss its pending appeal of the CSI Settlement Approval Order and consent to the consummation of the

[34] The summary of the Plan Term Sheet is qualified in its entirety by the Plan Term Sheet itself. To the extent of any conflict or inconsistency between the summary and the Plan Term Sheet, the Plan Term Sheet controls in all respects.

[35] Plan Term Sheet, § C; *see also* Status Conference Motion, ¶ 21.

[36] Plan Term Sheet, § B.

transactions contemplated thereunder,[37] (b) the Committee's agreement to voluntarily dismiss its pending appeal of the Second Interim Stay Extension Order[38] and not to oppose the Debtor's motion for a further extension of the stay granted under the Second Interim Stay Extension Order through June 30, 2025;[39] and (c) the Committee's agreement not to oppose the Debtor's motion for a further extension of the exclusivity periods set forth in section 1121 of the Bankruptcy Code, to permit the contemplated plan to be confirmed on the schedule contemplated by the Plan Term Sheet.[40]

36. The parties, in accordance with the Plan Term Sheet, promptly began working on, and negotiating the terms of, the various documents necessary to effectuate the Plan Term Sheet.

3. Filing of the Plan and Appointment of the Future Claimants' Representative.

37. On April 29, 2025, the Debtor and the Committee, in accordance with the Plan Term Sheet and in their capacity as the Plan Proponents, filed the:

(i) *Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 689] (the "Initial Plan") that incorporates the terms of the Plan Term Sheet;

(ii) *Disclosure Statement With Respect to the Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 690] (the "Initial Disclosure Statement");

(iii) *Joint Motion of the Debtor and Official Committee of Unsecured Creditors for Entry of an Order (I) Scheduling a Combined Hearing to Approve the Disclosure Statement and Confirm the Plan; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines; (IV) Approving the Form and Manner of Notice; (V) Approving the Solicitation and Tabulation Procedures; and (VI) Granting Related Relief* [Docket No. 691] (the "Solicitation Procedures Motion"), which sought, *inter alia*, entry of an order: (1) scheduling a combined hearing on the adequacy of the Disclosure Statement and to confirm the Plan, (2) conditional approval of the Disclosure Statement for solicitation purposes, (3) establishing dates and deadlines for the filing of objections and other deadlines with respect to confirmation of the Plan, and (4) approving solicitation procedures regarding votes to accept the Plan, including the form of ballots, and the

[37] Plan Term Sheet, § E., ¶ 8; *see also* Status Conference Motion, ¶ 22.

[38] "Second Interim Stay Extension Order" means the *Second Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 245].

[39] Plan Term Sheet, § E, ¶ 9; *see also* Status Conference Motion, ¶ 22.

[40] Plan Term Sheet, § C, ¶ 12; *see also* Status Conference Motion, ¶ 22.

form and manner of notice of the hearing to consider approval of the Disclosure Statement and confirmation of the Plan; and

(iv) *Joint Application of the Debtor and the Official Committee of Unsecured Creditors for an Order Appointing Marla Rosoff Eskin, Esq. as Future Claimants' Representative* [Docket No. 688] (the "FCR Application"), which sought entry of an order, *inter alia*, appointing Marla Rosoff Eskin, Esq. of Campbell & Levine, LLC to serve as the legal representative to protect the rights of future claimants in accordance with section 524(g)(4)(B)(i) of the Bankruptcy Code.

Id. at ¶ 7.

38. On May 14, 2025, the Court entered the *Order Appointing Future Claimants' Representative* [Docket No. 732] (the "FCR Appointment Order"), which, *inter alia*, appointed the Future Claimants' Representative. The Chubb Insurers' subsequent appeal of the FCR Appointment Order remains pending.[41]

4. Entry of the Solicitation Procedures Order.

39. On May 21, 2025, the Debtor filed the *Notice of Filing of Revised Proposed Order Approving Solicitation Procedures Motion* [Docket No. 765], which included, as Exhibit A thereto, a revised proposed order granting the Solicitation Procedures Motion and, as Exhibit B thereto, a redline reflecting the changes from the proposed order originally appended to the Solicitation Procedures Motion. That same day, the Debtor also filed the Plan and the Disclosure Statement. The Debtor also filed the *Notice of Filing of Redline Versions of (I) Amended Chapter 11 Plan of Reorganization and (II) Related Amended Disclosure Statement* [Docket No. 767], which included redlines reflecting the changes between the Initial Plan and the Plan and the Initial Disclosure Statement and the Disclosure Statement.

40. At the hearing to consider, among other things, the Court's approval of the Solicitation Procedures Motion, counsel to the Debtor explained that the changes made to the

[41] *See Notice of Appeal by Century Indemnity Company and Westchester Fire Insurance Company* [Docket No. 745].

Plan, the Disclosure Statement, and the original proposed order granting the Solicitation Procedures Motion were largely made to address certain concerns of the U.S. Trustee. These included: (i) a voluntary change, solely for the holders of non-asbestos claims, requiring holders to opt-in, rather than opt-out, to the releases under the Plan;[42] and (ii) a voluntary narrowing of the scope of exculpation.[43]

41. On May 21, 2025, the Court entered the *Order (I) Scheduling a Combined Hearing to Approve the Disclosure Statement and Confirm the Plan; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines; (IV) Approving the Form and Manner of Notice; (V) Approving the Solicitation and Tabulation Procedures; and (VI) Granting Related Relief* [Docket No. 782] (the "Solicitation Procedures Order").

42. Among other things, the Solicitation Procedures Order (i) conditionally approved the Disclosure Statement as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (ii) scheduled a combined hearing (the "Combined Hearing") for July 1, 2025, at 10:00 a.m. (prevailing Eastern Time) to consider final approval of the Disclosure Statement and confirmation of the Plan; (iii) established: (a) June 6, 2025, at 11:59 p.m. (prevailing Eastern Time) (the "Plan Supplement Deadline") as the deadline to file the Plan Supplement (b) June 12, 2025, at 4:00 p.m. (prevailing Eastern Time) as the deadline for voting on the Plan and to submit Opt-In Forms (the "Voting and Release Opt-In Deadline"), and (c) June 23, 2025, at 4:00 p.m. (the "Objection Deadline") as the deadline for parties-in-interest to file objections to the final approval of the Disclosure Statement and confirmation of the Plan (iv) approved the form and manner of notice of the Combined Hearing (the "Combined Hearing Notice"), the non-voting notice (the "Non-Voting Notice"), and the opt-in form (the "Opt-In Form") substantially in the

[42] May 21, 2025 Hr'g Tr. at 8:6 – 10:12.

[43] *Id.* at 10:13 – 11:7.

forms annexed to the Solicitation Procedures Order (v) approved the solicitation procedures (the "Solicitation Procedures") with respect to the Plan, and (vi) approved the timing and manner of delivery and publication (as applicable) of the Combined Hearing Notice, the Notice of Non-Voting Status, and the Opt-In Forms.

E. The Solicitation Process and Voting Results.

43. Following entry of the Solicitation Procedures Order, on May 23, 2025, the Debtor caused Kurtzman Carson Consultants, LLC d/b/a Verita Globa, the Bankruptcy Court-appointed claims and noticing agent (the "Claims and Noticing Agent"), to complete the mailing of the notices and solicitation materials in respect of the Plan in accordance with the Solicitation Procedures Order.[44] In addition, in accordance with the Solicitation Procedures Order, the Debtor caused the Combined Hearing Notice to be published (a) in the *Richmond-Times Dispatch* and the national edition of *USA Today* on May 29, 2025, and (b) in *The Times-Picayune/The New Orleans Advocate* on May 30, 2025.[45]

1. The Plan Supplement.

44. On June 6, 2025, in accordance with the Solicitation Procedures Order, the Debtor filed the *Notice of Filing of Plan Supplement Related to Amended Plan of Reorganization of Hopeman Brothers, Inc.* [Docket No. 853] (the "Plan Supplement"), which included copies of: (i) the Asbestos Trust Agreement, Plan Supplement, Ex. A, and a redline reflecting the changes thereto, *id.* at Ex. A-1; (ii) the Asbestos Trust Distribution Procedures, *id.* at Ex. B, and a redline reflecting the changes thereto, *id.* at Ex. B-1; (iii) the Amended By-Laws of Reorganized Hopeman, *id.* at Ex. C, (iv) the Amended Certificate of Incorporation, *id.* at Ex. D; (v) the

[44] *See* Certificate of Service [Docket No. 864].

[45] *See Affidavit of Publication of the Notice of Combined Hearing for Approval of Disclosure Statement and Confirmation of Plan* [Docket No. 844] (the "Publication Affidavit").

Asbestos Personal Injury Claimant Release, *id.* at Ex. E; (vi) the Restructuring Transaction, *id.* at Ex. F; (vii) the list of the Vendor Released Parties, *id.* at Ex. G; (viii) the Asbestos Insurance Policies, *id.* at Ex. H; (ix) the Revised Reorganized Hopeman Projections, *id.* at Ex. I, and a redline reflecting the changes thereto, *id.* at Ex. I-1.

2. The Voting Classes Overwhelmingly Voted in Favor of the Plan.

45. The Debtor, through the Claims and Noticing Agent, completed the solicitation and tabulation of votes following the Voting Deadline. Pursuant to the Solicitation Procedures Order, the only holders of Claims entitled to vote on the Plan are holders of Allowed General Unsecured Clams in Class 3 and Allowed Channeled Asbestos Claims in Class 4.[46]

46. As evidenced by the Vote Certification,[47] the Voting Classes voted overwhelmingly in favor of the Plan as follows:

> **Class 3 Claimants**. Hopeman received 1 acceptance out of 1 vote from holders of Class 3 General Unsecured Claims, with Class 3 claimants who voted in favor of the Plan holding Claims in the amount of $7,005.44 for voting purposes only, such acceptances being 100 percent in number and 100 percent in amount of all ballots received from holders of Class 3 General Unsecured Claims entitled to vote on the Plan;[48] and
>
> **Class 4 Claimants**. Hopeman received 2,409 acceptances out of 2,416 votes from holders of Class 4 Channeled Asbestos Claims, with Class 4 claimants who voted in favor of the Plan holding Claims in the amount of $2,409.00 for voting purposes only, such acceptances being 99.71 percent in number and 99.71 percent in amount of all ballots received from holders of Class 4 Channeled Asbestos Claims.

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46 *See* Docket No. 782.

47 "Vote Certification" means the *Declaration of Jeffrey R. Miller With Respect to the Tabulation of Votes on the Amended Plan of Reorganization of Hopeman Brothers Inc. Under Chapter 11 of the Bankruptcy Code*, filed substantially contemporaneously herewith.

48 Hopeman also received votes from two (2) holders of Class 3 General Unsecured Claims that were subject to proof-of-claim objections filed by the Vote Objection Deadline and, therefore, were not entitled to vote on the Plan under the Solicitation Procedures Order. *See* Vote Certification; Docket Nos. 694 and 808.

F. The Chubb Insurers Wage War on the Plan.

47. Following the Debtor's transition from its Original Plan of Liquidation to the Plan, the Chubb Insurers have deployed every tool in their arsenal to impede the Debtor's efforts to bring this Chapter 11 Case to a successful resolution.

1. The Chubb Insurers' Objections in the Main Case.

48. First, on March 2, 2025, the Chubb Insurers filed the *Response to Second Motion of Debtor for Entry of an Order (I) Extending the Exclusivity Periods to File and Solicit a Plan and (II) Granting Related Relief* [Docket No. 595] (the "CI Exclusivity Statement"). In the CI Exclusivity Statement, which was filed before the Debtor's entry into the Plan Term Sheet and formal pivot away from the Original Plan of Liquidation, the Chubb Insurers took no position regarding the Debtor's requested extension of the exclusivity period,[49] devoting their brief instead toward inane argument that any plan proposed pursuant to section 524(g) of the Bankruptcy Code could not be approved.[50] The Chubb Insurers even argued that the Committee's efforts to negotiate and pursue such a plan, in accordance with the November 29 Term Sheet, constituted a breach of its fiduciary duties to its constituency.[51]

49. Second, beginning on March 31, 2025—after the Debtor's entry into the Plan Term Sheet—the Chubb Insurers filed a host of objections to the monthly fee statements of the Plan Proponents' professionals.[52] Again, tellingly, the thrust of each of the objections is the Chubb Insurers' ire with the Plan Proponents' pursuit of the Plan: "[t]he Chubb Insurers object to ***the portions of the Debtor's Professionals' Fee Applications reflecting work performed to***

[49] CI Exclusivity Statement, ¶ 1.

[50] *See id.* at pp. 1-3.

[51] *Id.* at 11-18.

[52] *See* Docket Nos. 644 (Objection to Committee's financial advisor's fee statement); 651 (Omnibus Objection to Debtor's professionals' fee statements); 676 (Objection to Committee counsel's fee statement); 684 (Objection to Committee's financial advisor's fee statement).

analyze, and negotiate with the Committee regarding a § 524(g) plan."[53]

2. The Chubb Insurer Adversary Proceeding.

50. As if their opposition to a section 524(g) plan was not sufficiently clear, on April 21, 2025, the Chubb Insurers filed the Chubb Insurers Adversary Proceeding through which they sought a judgment that: (i) (a) the Debtor had breached, or anticipatorily breached, the Prepetition Chubb Insurer Settlement Agreement, (b) would award damages for such breach, and (c) would determine that such damages—though stemming from a ***prepetition*** agreement—were entitled to administrative expense priority treatment; or, (ii) as an alternative to monetary damages, would order the Debtor to specifically perform its obligations to prosecute the Chubb Insurers Settlement Motion and to use its best efforts to obtain approval of the Prepetition Chubb Insurers Settlement.[54]

51. That same day, the Chubb Insurers filed the *Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* [CI Adv. Docket No. 5] (the "CI TRO"), seeking:

> To halt Hopeman's continuing breach of the Chubb Insurers' Settlement Agreement and prevent irreparable harm to the Chubb Insurers, the Chubb Insurers request that this Court (1) enter the proposed TRO, to be in effect until a hearing is held concerning a preliminary injunction, ***restraining Hopeman and its agents from (a) continuing to negotiate or pursue any prosecution of a § 524(g) plan pursuant to the Plan Term Sheet and/or (b) taking any action, or doing or causing to be done, anything to effectuate the transfer of Asbestos Insurance Assets set forth in ¶ D.3 of the Plan Term Sheet, and (2) to [sic] a preliminary injunction pending the resolution of the claims set forth in the Chubb Insurers' Complaint***.

CI TRO, p.2 (emphasis added).

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[53] *Chubb Insurers' Omnibus Objection to Monthly Fee Statements of Debtor's Professionals for Services Rendered and Reimbursement of Expenses Incurred for the Period of February 1, 2025, Through February 28, 2025* [Docket No. 652] at ¶ 1 (emphases added); *see also* Docket No. 644, p. 1 ("The FTI Fee Application, at least with respect to work related to a § 524(g) term sheet and plan, must be denied); Docket No. 676, ¶ 1 ("The Chubb Insurers object to the portions of the Caplin & Drysdale Fee Application reflecting work performed to prepare, analyze, and negotiate with the Debtor and others regarding a § 524(g) plan."); Docket No. 684, ¶ 1 (same).

[54] *Complaint* [CI Adv. Docket No. 1], pp. 1-2.

52. On May 5, 2025, the Debtor filed the Debtor's TRO Opposition, in which the Debtor noted, in addition to the litany of other procedural and substantive defects discussed therein, that:

> Rather than awaiting the confirmation hearing to challenge the Plan, under a pretense of *saving money for the estate*, the Chubb Insurers assert that they are entitled to extraordinary injunctive relief to have the Court force the Debtor to exclusively focus on obtaining approval of a *prepetition* settlement agreement, *at all costs*, and drop all efforts to work with the Committee and creditors to resolve this case.

Debtor's TRO Opposition, ¶ 1 (emphasis in original). The Court summarily denied the Chubb Insurers' request, holding:

> In any event, the case law is clear that in order to secure a temporary restraining order, the plaintiff bears the burden of establishing that it's likely to succeed on the merits, it's likely to suffer irreparable harm in the absence of awarding an injunction, that the balance of equities between the parties favors the plaintiff, and that an injunction is in the public interest. ***And I'm having difficulty finding that any of these elements have been met on the record we have before us.***[55]
>
> ***
>
> So I'm going to find that Chubb has failed to demonstrate the necessary elements for a temporary restraining order. Therefore, the Court will sustain the objection and deny Chubb's motion.

Id. at 27:22-25.

53. On May 22, 2025, the Debtor filed the *Debtor's Motion to Dismiss Complaint* [CI Adv. Docket No. 20]. On June 11, 2025, the Chubb Insurers filed the *Plaintiffs' Objection to Debtor's Motion to Dismiss Complaint* [CI Adv. Docket No. 22] (the "CI MTD Opposition"), and on June 23, 2025, the Debtor filed the *Reply in Support of Debtor's Motion to Dismiss Complaint* [CI Adv. Docket No. 23] (the "Reply ISO MTD").

54. On June 24, 2025, the Court entered the *Order Granting Debtor's Motion to Dismiss Complaint* [CI Adv. Docket No. 28] (the "Chubb AP Dismissal Order"), dismissing the

[55] May 6, 2025, Hr'g Tr. at 26:11-19 (emphasis added).

Chubb Insurers Adversary Proceeding.

G. Disallowance and Expungement of LMIC POC and the LMIC DJ Action.

1. In 2003, Hopeman Relinquished Its Rights Under Policies Issued by LMIC.

55. The primary-layer policies Hopeman purchased from 1937 through 1984 were all issued by LMIC.[56] LMIC also issued certain excess insurance policies to Hopeman.

56. LMIC's insurance coverage issued to Hopeman also covered Wayne Manufacturing Corporation ("Wayne"), a wholly-owned subsidiary of Hopeman that dissolved in 1985.

57. On March 21, 2003, Hopeman and LMIC resolved certain disputes between them as to the coverage provided by LMIC for Asbestos Claims by entering into (i) the Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Settlement Agreement"), and (ii) the Indemnification and Hold Harmless Agreement Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Indemnification Agreement" and together with the Settlement Agreement, the "2003 Agreements").[57]

58. The 2003 Agreements, which were executed concurrently, (i) settled certain disputes between Hopeman (defined to include Wayne) and LMIC that arose under previous agreements concerning the LMIC policies, and (ii) compromised and settled all coverage issues, both present and future, as between Hopeman and LMIC related to the LMIC policies.[58]

59. As a result of the 2003 Agreements, Hopeman released its rights under all of the

[56] First Day Decl., ¶ 30.

[57] LMIC POC Objection (defined below), ¶ 13.

[58] *Id.* at ¶ 14.

primary and excess insurance it purchased from LMIC.[59]

2. LMIC's Claim is Disallowed and Expunged.

60. On November 10, 2024, LMIC filed proof of claim number 10 (as subsequently modified or amended, including as amended by Proof of Claim No. 19, the "LMIC POC"), which asserted a "partially contingent and unliquidated" unsecured claim in the amount of $317,254.89. The LMIC POC was predicated on asserted indemnity obligations purportedly arising under the 2003 Agreements.[60]

61. On April 30, 2025, the Debtor filed the *Objection of Hopeman Brothers, Inc. to Claim No. 10 of Liberty Mutual Insurance Company* [Docket No. 693][61] (the "LMIC POC Objection"),[62] which sought the disallowance and expungement of the LMIC POC.[63] The Debtor sought the expungement and disallowance of the LMIC POC because, among other things: (i) LMIC's "remedy, if any, for any such breach [of the 2003 Agreements] lies exclusively against the Settlement Funds, if any, in the Trust.";[64] and (ii) even assuming *arguendo* that LMIC *did* have a right to assert indemnification claims against the Debtor (it does not) "the type of fees and expenses in the [LMIC POC] do not fit within the definition of 'Indemnified Claim' if they were incurred, as suspected, by [LMIC] to have its counsel monitor the bankruptcy case."[65]

62. On June 23, 2025, the Court entered the *Order Disallowing and Expunging Claim of Liberty Mutual Insurance Company* [Docket No. 907 (the "LMIC POC Expungement Order"),

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59 *Id.*

60 LMIC POC, Attachment, at p. 2.

61 The objection at Docket No. 693 was filed under seal, but a redacted version of the objection is publicly available at Docket No. 694.

62 The Committee also filed a joinder to the LMIC Objection. *See* Docket No. 740.

63 LMIC POC Objection, ¶ 1.

64 *Id.* at ¶ 34.

65 *Id.* at ¶ 50.

which "disallowed and expunged [the LMIC POC] in its entirety."[66] LMIC appealed the LMIC POC Expungement Order, and the appeal remains pending.[67] LMIC also filed a motion for temporary allowance of the LMIC POC, which motion the Debtor opposes, and this motion and the Debtor's objection are scheduled to be considered at the Combined Hearing on August 25, 2025.[68]

3. The LMIC DJ Action.

63. On May 23, 2025, LMIC filed a *Complaint for Declaratory Judgment* [LMIC Adv. Docket No. 1] (as subsequently modified or amended, including by that *First Amended Complaint for Declaratory Judgment* [LMIC Adv. Docket No. 17], the "LMIC DJ Complaint"),[69] initiating the LMIC DJ Action. Through the LMIC DJ Action, LMIC seeks a declaratory judgment that "the 2003 Settlement Agreement and Release [] it entered into with the debtor, [Hopeman], forever extinguished any obligation it might have to pay Hopeman's asbestos victims under policies Liberty issued to Hopeman between 1937 and 1989."[70]

64. The same day it filed the LMIC DJ Complaint, LMIC filed *Plaintiff Liberty Mutual Insurance Company's Motion to Withdraw the Reference and Supporting Memorandum* [LMIC Adv. Docket No. 4][71] (the "LMIC Motion to Withdraw Reference"), seeking to withdraw the reference to have the United States District Court for the Eastern District of Virginia preside

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66 LMIC POC Expungement Order, ¶ 2.

67 *See* Docket No. 918.

68 *See* Docket Nos. 851 and 921.

69 The LMIC DJ Complaint, both as initially filed at LMIC Adv. Docket No. 1 and at LMIC Adv. Docket No. 17, were filed under seal and are not publicly available.

70 *Motion to Dismiss* [LMIC Adv. Docket No. 28] (the "UCC MTD LMIC DJ Action").

71 The LMIC Motion to Withdraw Reference was filed under seal at LMIC Adv. Docket No. 4, but a redacted version of the LMIC Motion to Withdraw Reference is publicly available at LMIC Adv. Docket No. 6.

over the LMIC DJ Action. The Committee, the Debtor, HII, Landry & Swarr Clients,[72] SGP Clients[73] each have filed objections to the LMIC Motion to Withdraw Reference, which will be heard by this Court on August 21, 2025.[74]

65. The R&C Defendants,[75] the Committee, and the Debtor also each filed motions to dismiss the LMIC DJ Action based on lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, and failure to state a claim.[76] In short, as the Debtor argues in its motion to dismiss, there is no conceivable ruling the Bankruptcy Court could issue that would alter Hopeman's rights or liabilities or in any way impact the handling or administration of Hopeman's estate. [77]

66. The motions to dismiss currently are scheduled to be considered at a hearing before this Court on August 21, 2025.

III. MODIFICATIONS TO THE PLAN

67. Prior to the Combined Hearing, the Plan Proponents will make certain non-material modifications to the Plan, including corresponding modifications to the Plan Documents[78] (the "Modifications"), in their continuing review of the Plan and in response to and

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[72] The "Landry & Swarr Clients" are, collectively, Daniel Cantrelle, Jr., Dana Cantrelle, Kelley Cantrelle Ziegler, Monica Koeppel, Paul Cantrelle, Shelley Cantrelle, Zachary Cantrelle, Nolan LeBoeuf, Jr., David Guidry, Shirley Guidry, Sandra Robert and Al Clouatre, Jr.

[73] The "SGP Clients" are, collectively, Rebecca Kirkland, on behalf of the Estate of Jerry Kirkland, Gerlando Castelli, George Zensen, Jr., Sharon Teffeteller, on behalf of the estate of Jerry Teffeteller, Sideny Cheek, Diane Farris, on behalf of the estate of John Gallo.

[74] LMIC Adv. Docket Nos. 30, 32, 34 and 36.

[75] The "R&C Defendants" are, collectively, Janet Rivet and Kayla Rivet (surviving spouse and child of Tommy Rivet), Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, and Stephanie Jean Ragusa Connors (surviving spouse and children of Frank P. Ragusa, Jr.), Erica Dandry Constanza and Monica Dandry Hallner (surviving children of Michael Dandry, Jr.), and Errol Bourgeois, Sr. And Mary Anne Bourgeois Richardson (surviving siblings of Emanuel Bourgeois).

[76] LMIC Adv. Docket Nos. 23, 24, 28, 33. 34 and 35.

[77] LMIC Adv. Docket No. 33.

[78] The Modifications will include, among other things, incorporating certain changes to the Asbestos Trust Distribution Procedures requested by the U.S. Trustee.

in effort to resolve and/or narrow certain of the issues raised in the Plan Objections. Prior to the Combined Hearing, the Debtor will file a notice attaching a clean draft of the Plan and a redline reflecting the Modifications.

68. Additionally, in advance of the Combined Hearing, the Debtor will file declarations in support of final approval and confirmation of the Plan.

IV. THE DISCLOSURE STATEMENT SHOULD BE APPROVED

A. Creditors Received Sufficient Notice of the Combined Hearing and the Objection Deadline for Approval of the Disclosure Statement.

69. Under Bankruptcy Rule 3017(a), a hearing on the adequacy of a disclosure statement generally requires twenty-eight (28) days' notice.[79] Similarly, Bankruptcy Rule 2002(b) provides that parties-in-interest should receive twenty-eight (28) days' notice of the objection deadline and the hearing to consider approval of the disclosure statement.[80] Courts in the Fourth Circuit and elsewhere have adopted the general rule that due process requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[81] In assessing whether notice was sufficient, courts "will examine the contents of the notice as well as the totality of the circumstances in each case in order to determine whether reasonable notice was given to the creditor."[82]

70. As noted above, the Court entered the Solicitation Procedures Order on May 21, 2025, which, among other things, initially scheduled the Combined Hearing for July 1, 2025,

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[79] Fed. R. Bankr. P. 3017(a) ("[T]he court must hold a hearing on a disclosure statement filed under Rule 3016(b) and any objection or modification to it … on at least 28 days' notice … to the debtor; creditors; equity security holders; and other parties in interest.").

[80] Fed. R. Bankr. P. 2002(b).

[81] *Zurich Am. Ins. Co. v. Tessler (In re J.A. Jones, Inc.)*, 492 F.3d 242, 249 (4th Cir. 2007) (quoting *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

[82] *In re Johnson*, 274 B.R. 445, 449 (Bankr. D.S.C. 2001) (internal citation omitted).

initially approved the Objection Deadline for June 23, 2025,[83] and approved the form of the Combined Hearing Notice, Non-Voting Notice, and manner of service thereof.[84] The Combined Hearing Notice and Non-Voting Notice, among other things, informed recipients of (a) the date and time of the Combined Hearing, (b) the Objection Deadline and the procedures for filing objections to final approval of the Disclosure Statement and/or confirmation of the Plan, (c) the manner in which the Plan and Disclosure Statement and related documents could be obtained or viewed electronically, and (d) the discharge, exculpation, release, and injunction provisions contained in the Plan.[85] On May 23, 2025, the Combined Hearing Notice and Non-Voting Notice were served in accordance with the Solicitation Procedures Order.[86]

71. Accordingly, the Plan Proponents submit that parties-in-interest had more than twenty-eight (28) days' notice of the Combined Hearing and Objection Deadline in compliance with both Bankruptcy Rule 3017(a) and Bankruptcy Rule 2002(b).[87]

72. Further and in accordance with the Solicitation Procedures, the Debtor caused the Publication Notice, which is substantively identical to the Combined Hearing Notice, to be published in the national editions of the *Richmond-Times Dispatch* and *USA Today*, and in *The Times-Picayune/The New Orleans Advocate* on May 30, 2025, publicizing the date of the Combined Hearing and the Objection Deadline, and how interested parties could obtain updates and copies of amendments and other documents relating to the Plan.[88]

73. Accordingly, for the reasons set forth above, the Plan Proponents have satisfied

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83 *See* Solicitation Procedures Order, ¶¶ 2-3, 6.

84 *See id.* at ¶¶ 8-16.

85 *Id.* at Ex. 4.

86 *See* Solicitation Affidavit.

87 *Id.*

88 *See* Publication Affidavit.

Bankruptcy Rules 2002(b) and 3017(a).

B. The Disclosure Statement Satisfies the Requirements of the Bankruptcy Code and Should Be Approved.

74. The Disclosure Statement complies with Section 1125(a) of the Bankruptcy Code, which requires that a disclosure statement provide material information, or "adequate information," that allows parties entitled to vote on a plan to make an informed decision about whether to vote to accept or reject the plan.[89] "The determination of whether a disclosure statement has adequate information is made on a case by case basis and is largely within the discretion of the bankruptcy court."[90]

75. Here, the Disclosure Statement is comprehensive. It contains descriptions of, among other things, (a) the Plan; (b) an overview of the Debtor's (1) corporate history, (2) prepetition operations, (3) asbestos liability, (4) prepetition claims process for addressing such asbestos liability, and (5) insurance coverage; (c) financial information relevant to creditors' determinations of whether to accept or reject the Plan; (d) the Liquidation Analysis,[91] which sets forth the estimated recoveries that holders of Claims and Interests addressed in the Plan would receive in a hypothetical chapter 7 liquidation; (e) risk factors affecting the Plan; and (f) tax consequences of the Plan.[92] Moreover, it was subject to review and comment by the Committee (as a Plan Proponent) prior to its filing and by the Future Claimants' Representative prior to solicitation of the Plan and preliminary approval of the Disclosure Statement by the Bankruptcy

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89 11 U.S.C. § 1125(a)(1); *see also In re Mohammad*, 596 B.R. 34, 39 (Bankr. E.D. Va. 2019) (noting that §1125(a)(1) "defines 'adequate information' as 'information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.'") (quoting 11 U.S.C. § 1125(a)(1)).

90 *In re Mohammad*, 596 B.R. at 39 (citing *Matter of Tex. Extrusion Corp.*, 844 F.2d 1142, 1157, *cert. denied*, 488 U.S. 926 (1988); *In re A.H. Robins Co., Inc.*, 880 F.2d 694, 696 (4th Cir. 1989)).

91 "Liquidation Analysis" means the Liquidation Analysis attached to the Disclosure Statement as Exhibit 2.

92 *See* Disclosure Statement.

Court.

1. The Disclosure Statement Contains Adequate Information, and the Chubb Insurers Objection Should Be Overruled On This Issue.

76. The Chubb Insurers claim that the Disclosure Statement cannot be approved because neither the Disclosure Statement nor the Liquidation Analysis disclose that the recoveries of holders of Insured Asbestos Claims "will be significantly diminished by the Litigation Trustee's 33.3% contingency fee."[93] Thus, according to the Chubb Insurers, the Disclosure Statement lacks adequate information, within the meaning of section 1125 of the Bankruptcy Code, and cannot be approved. The Chubb Insurers' assertions are based on a fundamental misunderstanding of the relevant Plan provisions.

77. The Chubb Insurers' contention that the Disclosure Statement lacks adequate information, primarily because of a purported failure to disclose the impact of the Litigation Trustee's contingency fee, is little more than the Chubb Insurers jumping at shadows (purportedly on behalf of the holders of Asbestos Claims who voted overwhelmingly to accept the Plan and did not raise any objections to final approval of the Disclosure Statement or confirmation of the Plan). The Chubb Insurers misunderstand, or misrepresent, how the Plan will function by incorrectly suggesting the holder of an Insured Asbestos Claim's recovery necessarily will be diluted by the Litigation Trustee's Compensation.[94] That is incorrect.

78. Section 8.13(a) of the Plan provides, in relevant part, that:

> ***Except as otherwise permitted under this Section 8.13*** … the Asbestos Trust shall have the exclusive right to pursue, monetize, settle, or otherwise obtain the benefit of the Asbestos Insurance Rights, including with respect to any unpaid insurance Proceeds applicable to a judgment or settlement obtained or entered into by a Channeled Asbestos Claimant … .

[93] Chubb Insurers Plan Obj., ¶ 102.

[94] "Litigation Trustee's Compensation" has the meaning assigned in section 4.5(b) of the Asbestos Trust Agreement.

Plan, § 8.13(a) (emphasis added). Ignoring the lead-in of Section 8.13—which expressly carves out actions otherwise permitted under the rest of Section 8.13—the Chubb Insurers contend that the Disclosure Statement failed to apprise the holders of Insured Asbestos Claims that, by the Chubb Insurers' estimation, the Litigation Trustee's Compensation will lead to "***vastly disparate potential recoveries*** …." for creditors.[95] But, Channeled Asbestos Claimants are free to pursue insurance recoveries without the involvement of the Litigation Trustee.

79. Section 8.12(a) of the Plan expressly permits a Channeled Asbestos Claimant to "initiate, commence, continue or prosecute an action against Reorganized Hopeman … [and] any Non-Settling Asbestos Insurer for Wayne, in a court of competent jurisdiction to obtain the benefit of Asbestos Insurance Coverage."[96] Section 8.13(b), in turn, authorizes a Channeled Asbestos Claimant that "has entered into a settlement agreement with a Non-Settling Asbestos Insurer … [to] commence a breach-of-contract action or other form of collection against such Non-Settling Asbestos Insurer to recover the settlement payment owed."[97] Finally, Section 8.13(c) of the Plan permits "[a]ny Channeled Asbestos Claimant who … has obtained a judgment against Reorganized Hopeman or Wayne in accordance with Section 8.12 hereof" to initiate an Insurance Policy Action through which such Channeled Asbestos Claimant can obtain any recovery such claimant may be entitled to from the applicable Non-Settling Asbestos Insurers.[98] To be clear, for such recoveries, there will be no compensation owed the Litigation Trustee.

80. Thus, while the Plan does provide that the Asbestos Trust otherwise "has the

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95 Chubb Insurers Plan Obj., ¶ 49 (emphasis in original).

96 Plan, § 8.12(a).

97 *Id.* at § 8.13(b).

98 *Id.* at § 8.13(c).

exclusive right to pursue, monetize, settle, or otherwise obtain the benefit of the Asbestos Insurance Rights," the Chubb Insurers disregard the fact that this will, practically speaking, only apply in the limited circumstances in which the Asbestos Trust enters into an Asbestos Insurance Settlement (or, otherwise, successfully prosecutes an action against a Non-Settling Asbestos Insurer). Such Asbestos Insurance Settlement would, by definition,[99] require the Court's approval, and the proceeds of such Asbestos Insurance Settlement would be held by the Asbestos Trust for the benefit of the holders of: (i) any Channeled Asbestos Claimant whose Channeled Asbestos Claim becomes an Uninsured Asbestos Claim by virtue of such Asbestos Insurance Settlement;[100] and (ii) the holders of Demands who, at the time such Demand ripens into an Asbestos Claim, may hold Uninsured Asbestos Claims. The deduction of the Asbestos Trust Expenses—which include the Litigation Trustee's Compensation—from the corpus of the Asbestos Trust is appropriate and consistent with many bankruptcy cases where contingency fees are awarded.[101]

81. The Chubb Insurers' complaint that "[t]he Litigation Trustee and his 33.3% contingency fee were first disclosed in the Amended Trust Agreement filed as part of the Plan Supplement on June 6, 2025, weeks after the Solicitation Packages were transmitted"[102] fares no better. The Solicitation Procedures Order expressly approved "dates and deadlines … with

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99 *Id.* at § 1.14 (defining "Asbestos Insurance Settlement").

100 *See id.* at § 8.16.

101 A bankruptcy court within this circuit previously found that a contingency fee arrangement for a special litigation counsel to a chapter 7 trustee was proper. *See In re Merry-Go-Round Enters., Inc.*, 244 B.R. 327, 338 (Bankr. D. Md. 2000) (approving a 40% contingency fee arrangement negotiated by sophisticated parties at arms-length where the trustee anticipated dealing with "extensive, difficult and complex" legal issues and facing a "vigorous, able and well financed" defense). So too here, as the Litigation Trustee's 33% contingency fee arrangement, smaller than that in *Merry-Go-Round*, was freely entered into by experienced parties in consideration of the Asbestos Trust's anticipated financial situation, and the "extensive, difficult and complex" legal issues the Litigation Trustee is anticipated to litigate against "vigorous, able and well financed" defenses. *See id.*

102 Chubb Insurers Plan Obj., ¶ 104.

respect to the Disclosure Statement, solicitation of votes to accept the Plan, voting on the Plan, and confirming the Plan," *including* a June 6, 2025, deadline to file the Plan Supplement.[103] In fact, the Solicitation Procedures Order merely required the Debtor to "***file*** the Plan Supplement" by the June 6, 2025, deadline, and did so "***without prejudice to Hopeman's rights to amend or supplement the Plan Supplement***."[104]

82. The Chubb Insurers do not dispute that the Plan Supplement was timely filed in accordance with the Solicitation Procedures Order, but they urge the Court to find that the Debtor's compliance with the Solicitation Procedures Order is still insufficient because "[t]he Plan Supplement was not provided to all of the creditors that received Solicitation Packages; rather, it was served only on the Rule 2002 service list."[105] In essence, the Chubb Insurers argue that the Plan Supplement's disclosure of the Litigation Trustee's Compensation amounted to a material modification of the Plan that entitled the holders of Asbestos Claims to a new disclosure statement and a corresponding extension of the Voting and Release Opt-Out Deadline. The Chubb Insurers rely on the Eleventh Circuit's decision in *CV Station*[106] to support that argument. The Chubb Insurers' reliance on *CV Station* is misplaced.

83. In *CV Station*, the Eleventh Circuit reversed an order granting an emergency motion to modify a plan—which was filed "the same day as the deadline to cast a ballot,"[107]—that "stripped [] three [of four equity holders] of the[] equity [that they were entitled to acquire under the proposed plan prior to the modification] and allocated full ownership to the fourth—a

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[103] Solicitation Procedures Order, ¶ 6 (including table of deadlines thereafter with a deadline to file the Plan Supplement of June 6, 2025, by 11:59 p.m. (prevailing Eastern Time)).

[104] *Id.* at ¶ 20 (emphasis added).

[105] Chubb Insurers Plan Obj., ¶ 104.

[106] *Braun v. Am.-CV Station Grp., Inc. (In re Am.-CV Station Grp., Inc.)*, 56 F.4th 1302 (11th Cir. 2023).

[107] *Id.* at 1307.

company controlled by the debtors' Chief Executive Officer."[108] Further compounding the issue, "debtor's counsel, after filing the motion to modify, ***falsely assured the Pegaso Equity Holders*** that he wanted to be helpful and would try to resolve the situation—***all while moving full speed ahead on the modification in the bankruptcy court***."[109]

84. *CV Station* is readily distinguishable because, here the Plan has always provided that "[t]he Asbestos Trust shall pay all Asbestos Trust Expenses from the Asbestos Trust Assets."[110] The initial iteration of the Asbestos Trust Agreement appended to the Initial Plan included placeholders for certain compensation to be paid to certain of the trustees who would administer the Asbestos Trust—thus claimants knew—***at a time when the deadline to object to the Solicitation Procedures Motion had yet to pass***, and well before they would be asked to submit a vote on the Plan—that additional information would be made available at a later date.[111] Indeed, the Initial Plan expressly notes, in defining the Plan Supplement, that it is a supplement to the Plan "to be filed with the Bankruptcy Court ***no later than five (5) Business Days prior to the deadline for filing and service of objections to the Plan*** …."[112] Accordingly, and unlike *CV Station*, the Plan Supplement does not represent a modification of the treatment proposed under the Plan—much less a modification with a material and adverse impact on the holders of Channeled Asbestos Claims (and, further distinguishing these circumstances from those present in *CV Station*, none of the Debtor's professionals have misled *any* claimant regarding the treatment of such claimant's Claim).

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[108] *Id.* at 1305.

[109] *Id.* at 1313 (emphases added).

[110] Initial Plan, § 8.3(n). For the avoidance of doubt, the Initial Plan was filed on April 29, 2025, the same day the Debtor filed the Solicitation Procedures Motion and, by definition, *before* the Court entered the Solicitation Procedures Order.

[111] *See, e.g.*, Initial Plan, Ex. A (Asbestos Trust Agreement) at § 4.5(b).

[112] *Id.* at § 1.86 (emphases added).

85. Tellingly, no party-in-interest—including the Chubb Insurers—objected to conditional approval of the Disclosure Statement and entry of the Solicitation Procedures Order on the basis that the compensation of certain of the trustees administering the Asbestos Trust had not yet been fully disclosed and, thus, additional time was required between the time such information was disclosed and the Voting and Release Opt-Out Deadline. Moreover, by virtue of the Debtor's service of the Combined Hearing Notice and the Solicitation Packages, which notice included *publication* notice, the holders of Claims in the Voting Classes were given notice that the Debtor would file a Plan Supplement and of the deadline for doing so. Furthermore, such notice apprised the holders of Claims in the Voting Classes that they could—and how to—obtain copies of filings in this Chapter 11 Case free of charge on the Claims and Noticing Agent's website.

86. In sum, (i) the Debtor fully complied with the Solicitation Procedures Order, including the Solicitation Procedures approved therein, in soliciting votes on the Plan; (ii) the Debtor timely filed the Plan Supplement in accordance with the Solicitation Procedures Order; (iii) by virtue of the Debtor's service of the Solicitation Package—and the Publication Notice—holders of Claims in the Voting Classes were provided notice of the Plan Supplement, the Debtor's deadline to file such Plan Supplement, and how it could be obtained; (iv) prior to entry of the Solicitation Procedures Order no party-in-interest objected to the failure to include information regarding the compensation of the trustees administering the Asbestos Trust—which by definition constitutes Asbestos Trust Expenses that would reduce the Asbestos Trust Assets—until the filing of the Plan Supplement left the holders of Claims in the Voting Classes without adequate time or information to make an informed decision whether to vote to accept or reject the Plan; and (v) no party, including in particular Asbestos Claimants, has ever raised such

objection, other than the Chubb Insurers. This is to be expected, given the Debtor's complete compliance with the Solicitation Procedures Order.

87. As a result, the Plan Proponents submit that the Disclosure Statement contains adequate information, within the meaning of section 1125(a) of the Bankruptcy Code, in satisfaction of section 1125(b) of the Bankruptcy Code, and therefore the Court should overrule the Chubb Insurers' objections and grant final approval of the Disclosure Statement.

V. THE PLAN SHOULD BE CONFIRMED

A. The Plan Meets Each Requirement for Confirmation Under Section 1129(a) of the Bankruptcy Code.

88. To confirm the Plan, the Court must find that the Plan complies with each of the requirements of section 1129(a) of the Bankruptcy Code.[113] As set forth below, the Plan meets all the requirements of section 1129(a) and, therefore, the Plan should be confirmed.

1. Section 1129(a)(1) — The Plan Complies with the Applicable Provisions of the Bankruptcy Code.

89. Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[t]he plan complies with the applicable provisions of this title."[114]

90. The legislative history of section 1129(a)(1) indicates that the primary focus of this requirement is to ensure that the Plan complies with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a

[113] *See In re Lackawanna Detective Agency, Inc.*, 82 B.R. 336, 337 (Bankr. D. Del. 1988) ("Section 1129(a) of title 11 recites the standards which must be met before a plan can be confirmed."); *see also In re Richard Buick, Inc.*, 126 B.R. 840, 846 (Bankr. E.D. Pa. 1991).

[114] 11 U.S.C. § 1129(a)(1); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 270-73 (Bankr. S.D. Ohio 1996) (examining each requirement of chapter 11 to demonstrate that section 1129(a)(1) was satisfied); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) ("[I]n order for a plan of reorganization to pass muster … it must comply with all the requirements of Chapter 11….").

plan, respectively.[115]

Classification of Claims and Interests

91. Section 1122 of the Bankruptcy Code provides that the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

92. Although section 1122(a) of the Bankruptcy Code prohibits the inclusion of dissimilar claims in the same class, it does *not* require the placement of all similar claims in one class.[116]

93. The Plan meets these requirements. Article III of the Plan classifies Claims and Interests into five separate Classes: Priority Non-Tax Claims (Class 1), Secured Claims (Class 2), General Unsecured Claims (Class 3), Channeled Asbestos Claims (Class 4), and Equity Interests (Class 5).[117] The number of Classes reflects the diverse characteristics of those Claims and Interests, and the legal rights under the Bankruptcy Code of each of the holders of Claims or

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[115] *See* S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5962, 6368; *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) (holding that legislative history indicates that section 1129(a)(1) was intended to require compliance with sections 1122 and 1123).

[116] *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) ("[W]e agree with the general view which permits the grouping of similar claims in different classes."); *In re First Interregional Equity Corp.*, 218 B.R. 731, 738-39 (Bankr. D.N.J. 1997) (same); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together….").

[117] In accordance with section 1123(a)(l) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified.

Interests within a particular Class are substantially similar to other holders of Claims or Interests within that Class.

94. Due to their entitlement to priority status under section 507 of the Bankruptcy Code, Priority Non-Tax Claims have been separately classified in Class 1. Based on their secured status, Secured Claims have been separately classified in Class 2. Channeled Asbestos Claims have been separately classified in Class 4 due to the distinctive bases for such Claims and due to the fact that such claims will receive unique treatment permitted by section 524(g) of the Bankruptcy Code. Class 3 General Unsecured Claims, while also Impaired, are separately classified given the distinctive differences in the underlying bases for such Claims, as contrasted with Class 4 Channeled Asbestos Claims. Class 3 claims also are separately classified from Class 4 claims because they are not subject to certain provisions authorized by section 524(g) of the Bankruptcy Code, which applies to the Class 4 Channeled Asbestos Claims. Finally, the Interests in the Debtor have been separately classified, as Class 5 Equity Interests, to reflect their status as Interests.

Mandatory Contents of the Plan

95. Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a plan of reorganization. Specifically, this section requires that a plan: (a) designate classes of claims and interests; (b) specify unimpaired classes of claims and interests; (c) specify treatment of impaired classes of claims and interests; (d) provide for equality of treatment within each class; (e) provide adequate means for the plan's implementation; (f) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (g) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the

manner of selection of the reorganized company's officers and directors.[118] In analyzing a plan's provisions with respect to the selection of officers and directors, a court is to consider "the shareholders' interest in participating in the corporation, the desire to preserve the debtor's reorganization, and the overall fairness of the provisions."[119]

96. The Plan fully complies with each requirement of section 1123(a) described above. As previously noted with respect to the Plan's compliance with section 1122, Article III of the Plan designates five separate Classes of Claims and Interests, as required by section 1123(a)(1) of the Bankruptcy Code. Section 3.1 of the Plan specifies that Classes 1 and 2 are Unimpaired under the Plan, as required by section 1123(a)(2) of the Bankruptcy Code. Section 3.1 of the Plan specifies that the Claims in Classes 3 and 4, and the Interests in Class 5, are Impaired under the Plan, and Sections 4.3(b) (treatment of Class 3 Claims), 4.4(b) (treatment of Class 4 Claims), and 4.5(b) (treatment of Class 5 Interests) describes the treatment of such Impaired Claims and Interests in accordance with section 1123(a)(3) of the Bankruptcy Code.

97. Further, as required by section 1123(a)(4) of the Bankruptcy Code, the treatment of each Claim or Interest within a Class is the same as the treatment of each other Claim or Interest in such Class, unless the holder of a Claim or Interest has agreed to less favorable treatment on account of its Claim or Interest.[120]

98. In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article VIII, and various other provisions, of the Plan provide adequate means for the Plan's implementation. Specifically, the Plan provides for: (a) except as otherwise provided in the Plan the Plan Documents, or the Confirmation Order, the Debtor's continued corporate

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[118] *See* 11 U.S.C. § 1123(a).

[119] *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1362 (9th Cir. 1986).

[120] The Chubb Insurers' assertions that the Plan violates section 1123(a)(4) of the Bankruptcy Code are addressed below. *See* § IX.A. *infra*.

existence, including, for the avoidance of doubt, by consummation of the Restructuring Transactions, and the vesting of all property, subject to the Asbestos Trust Contribution, of the Debtor's Estate and any property acquired by the Debtor or Reorganized Hopeman under the Plan in Reorganized Hopeman under Section 9.2 of the Plan; (b) the consummation of the Restructuring Transactions under Section 8.10 of the Plan; (c) the adoption of the corporate constituent documents that will govern Reorganized Hopeman and the identification of the initial directors and officers of Reorganized Hopeman under Sections 8.2(b) and 8.7 of the Plan; (e) sufficient cash resources to make all Distributions pursuant to Section 8.5 of the Plan; (f) the creation of, and transfer of certain assets to, the Asbestos Trust under Sections 8.2(a) and 8.3 of the Plan; (g) the appointment of the Asbestos Trustee, the Delaware Trustee, the post-Effective Date Future Claimants' Representative, and the Asbestos Trust Advisory Committee under Sections 8.2(d), 8.2(e), 8.2(f), and 8.2(g), respectively, of the Plan; (h) the vesting of assets in the Asbestos Trust under Sections 8.2(a) and 8.3 of the Plan; (i) the transfer of and preservation of rights of action by the Reorganized Hopeman, and the release of certain rights of action against the Debtor under Section 9.3 of the Plan; (j) the authorization to execute various documents and to enter into various transactions to effectuate the Plan under Section 8.9 of the Plan, and exemption from certain transfer taxes under Section 13.7 of the Plan; (k) the various discharges, releases, injunctions, and exculpations set forth in Article X of the Plan; and (l) the assumption or rejection of executory contracts and unexpired leases to which the Debtor is a party as detailed in Article VI of the Plan.

99. Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate constituent documents prohibit the issuance of nonvoting equity securities. In accordance with that requirement, Section 8.4 of the Plan complies with this section 1123(a)(6) by providing that

the Amended Certificate of Incorporation and Amended By-Laws shall contain such provisions as are necessary to satisfy the provisions of the Plan, including, to the extent necessary, to prohibit the issuance of nonvoting equity securities.

100. Finally, section 1123(a)(7) of the Bankruptcy Code requires that a plan of reorganization "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan…."[121] This provision is supplemented by section 1129(a)(5) of the Bankruptcy Code, which directs courts to scrutinize the methods by which the reorganized corporation's management is to be chosen in order to provide adequate representation of those whose investments are involved in the reorganization— *i.e.*, creditors and equity holders.[122]

101. The Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized Hopeman is consistent with the interests of creditors and equity security holders and with public policy.

Discretionary Contents of the Plan

102. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization but are not required. For example, a plan may impair or leave unimpaired any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases.[123] A plan also may provide for: (a) "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate;" (b) "the retention and enforcement by the debtor, by the trustee, or by a representative of

[121] 11 U.S.C. § 1123(a)(7).

[122] *See* 7 Lawrence P. King *et al.*, COLLIER ON BANKRUPTCY ¶ 1123.01[7] (16th ed. rev. 2019); *see also In re Acequia*, 787 F.2d at 1361-62.

[123] 11 U.S.C. § 1123(b)(l)-(2).

the estate appointed for such purpose, of any such claim or interest,"[124] or (c) "the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests."[125] Finally, a plan may "modify the rights of holders of secured claims … or … unsecured claims, or leave unaffected the rights of holders of any class of claims" and may "include any other appropriate provision not inconsistent with the applicable provisions of [title 11]."[126]

103. As described above, the Plan provides for the impairment of Classes 3, 4, and 5 while leaving all other Classes of Claims and Interests Unimpaired. The Plan thus modifies the rights of the holders of certain Claims and leaves the rights of others unaffected.[127] In particular, Channeled Asbestos Claims will be channeled to the Asbestos Trust for resolution, as set forth in Article VIII of the Plan, the Asbestos Trust Agreement, and the related Asbestos Trust Distribution Procedures.[128] The Plan also provides for (a) the assumption or rejection of executory contracts and unexpired leases to which the Debtor is a party;[129] and (b) the retention and enforcement of certain claims by the Debtor.[130]

104. Finally, in accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes numerous other provisions necessary for its implementation, which are consistent with the Bankruptcy Code, including: (a) Article VIII of the Plan providing for (i) the creation of the

[124] 11 U.S.C. § 1123(b)(3)(A)-(B);

[125] 11 U.S.C. § 1123(b)(4).

[126] 11 U.S.C. § 1123(b)(5)-(6).

[127] *See* Plan, Art. III.

[128] *Id.* at § 4.4.

[129] *See id.* at Art. VI.

[130] *See id.* at § 9.3.

Asbestos Trust, and (ii) the appointment of the Asbestos Trustee,[131] the Delaware Trustee, the Post-Effective Date Future Claimants' Representative, and the Asbestos Trust Advisory Committee; (b) Article V of the Plan governing Distributions on account of Allowed Claims; (c) Article VII of the Plan establishing procedures for resolving Disputed Claims and making Distributions on account of such Disputed Claims once resolved; (d) Article X of the Plan regarding the discharge of Claims and injunctions against certain actions; and (e) Article XII of the Plan regarding retention of jurisdiction by the Court over certain matters after the Effective Date.

105. Accordingly, the Plan fully complies with the applicable provisions of the Bankruptcy Code and, therefore, meets the requirements of section 1129(a)(l) of the Bankruptcy Code.

2. Section 1129(a)(2) — The Plan Proponents Have Complied with the Applicable Provisions of Title 11

106. Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply with applicable provisions of the Bankruptcy Code. The legislative history to section 1129(a)(2) indicates that the principal purpose of this section is to ensure compliance with the disclosure and solicitation requirements set forth in section 1125 of the Bankruptcy Code.[132] The Debtor has complied with the applicable provisions of the Bankruptcy Code, including the provisions of section 1125 regarding disclosure and plan solicitation.

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[131] As discussed in greater detail in § IX.E.b. *infra*, the duties of the Asbestos Trustee are divided between the Administrative Trustee (as defined in the Asbestos Trust Agreement) and the Litigation Trustee.

[132] S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *see also In re Lapworth*, No. 97-34529DWS, 1998 WL 767456, at *3 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of [section] 1129(a)(2) specifically identifies compliance with the disclosure requirements of [section] 1125 as a requirement of [section] 1129(a)(2)."); *Official Comm. of Unsecured Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992); *In re Texaco Inc.*, 84 B.R. 893, 906-07 (Bankr. S.D.N.Y. 1988); *Toy & Sports Warehouse*, 37 B.R. at 149.

107. Section 1125 prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved…by the court as containing adequate information."[133] In this Chapter 11 Case, the Court entered the Solicitation Procedures Order, which, among other things, conditionally approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.[134] In addition, the Court considered and, in the Solicitation Procedures Order, approved (a) the Solicitation Packages and the Non-Voting Package, (b) the timing and method of delivery of the Solicitation Packages and the Non-Voting Package, (c) the Solicitation Procedures, and (d) the timing and method of publication the Combined Hearing Notice.[135]

108. Thereafter, the Debtor transmitted the Solicitation Packages and the Non-Voting Packages to the holders of Claims in the Voting Classes and the holders of Claims and/or Interests in the Non-Voting Classes, respectively. The Solicitation Packages distributed to the holders of Claims in the Voting Classes contained: (a) the Solicitation Procedures Order, (b) the Disclosure Statement (with the Plan attached as an exhibit, along with the Plan's exhibits), (c) the Plan, (d) the Combined Hearing Notice, (e) a copy of the appropriate Ballot and voting instructions, and (f) a pre-addressed, postage pre-paid return envelope.[136] The Non-Voting Packages distributed to holders of Claims and/or Interests in the Non-Voting Classes contained: (a) the Non-Voting Status Notice, and (b) the Combined Hearing Notice.[137]

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133 11 U.S.C. § 1125(b).

134 Solicitation Procedures Order, ¶ 4.

135 *Id.* at ¶¶ 6-19.

136 *See* Solicitation Affidavit, ¶ 4.

137 *Id.* at ¶ 5.

109. These materials, *i.e.,* the Solicitation Packages and the Non-Voting Packages, were distributed promptly after the entry of the Solicitation Procedures Motion Order and in accordance with the Court's instructions.[138] In addition, the Debtor caused the Combined Hearing Notice to be published in certain newspapers and magazines, as authorized by the Solicitation Procedures Order and evidenced by the Publication Affidavit.[139] As attested to in the Voting Certification, after the Solicitation Packages and the Non-Voting Packages were distributed, and after publication of the Combined Hearing Notice, the returned Ballots of parties entitled to vote on the Plan were tabulated in accordance with the Solicitation Procedures. Classes 3 and 4, the only Classes entitled to vote, voted overwhelmingly to accept the Plan.[140]

110. Thus, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including section 1125 of the Bankruptcy Code, and Bankruptcy Rules 3017 and 3018. Accordingly, the Plan meets the requirements of section 1129(a)(2) of the Bankruptcy Code.

3. Section 1129(a)(3) — The Plan Has Been Proposed in Good Faith.

111. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law."[141] A plan is considered proposed in good faith "if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code."[142] The requirement of

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138 *See id.*

139 *See* Solicitation Procedures Order, ¶ 19.

140 *See* Voting Certification.

141 11 U.S.C. § 1129(a)(3).

142 *Hanson v. First Bank of S.D.*, 828 F.2d 1310, 1315 (8th Cir. 1987); *see also In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999) (the good faith standard in section 1129(a)(3) requires that there must be '"some relation'" between the chapter 11 plan and the "reorganization-related purposes" that chapter 11 was designed to serve); *In re Zenith Elecs. Corp.*, 241 B.R. 92, 107 (Bankr. D. Del. 1999) ("The good faith standard requires that the plan be proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code." (quotation marks omitted)); *In re New Valley Corp.*, 168 B.R. 73, 80 (Bankr. D.N.J. 1994) ("It is generally held that a plan is

good faith must be viewed in light of the totality of the circumstances surrounding the formulation of a chapter 11 plan.[143]

112. In determining whether the plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the reorganization plan itself.[144] The plan proponent must show, therefore, that the plan has not been proposed by any means forbidden by law and that the plan has a reasonable likelihood of success.[145]

113. Whether a plan has been proposed in good faith turns on whether it "'will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'"[146] As this Court previously observed at the March 10, 2025, status conference where the Debtor discussed the Plan Term Sheet:

> THE COURT: Well Section [ ] 524(g) was set up for just this type of case. And I have looked at the response filed by Chubb, and I understand some of the challenges associated in this case. But I think the pivot to the 524(g) term sheet makes sense in this case, from my perspective.

March 10, 2025 Hr'g Tr. at 16:8-12. The Court's initial reaction was spot on.

114. Here, the Plan serves valid bankruptcy objectives — it is the product of extensive

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proposed in good faith if there is a reasonable likelihood that the plan will achieve a result consistent with the objectives and purpose of the Bankruptcy Code.").

143 *See McCormick v. Bane One Leasing Corp. (In re McCormick)*, 49 F.3d 1524, 1526 (11th Cir. 1995) ("The focus of a court's inquiry is the plan itself, and courts must look to the totality of the circumstances surrounding the plan … keeping in mind the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start.").

144 *See In re Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (concluding that the good faith test provides the court with significant flexibility and is focused on an examination of the plan itself, rather than other, external factors), *aff'd in part*, *remanded in part on other grounds*, 103 B.R. 521 (D.N.J. 1989), *aff'd*, 908 F.2d 964 (3d Cir. 1990).

145 *See In re Century Glove, Inc.*, Civ. A. Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("A court may only confirm a plan for reorganization if … the 'plan has been proposed in good faith and not by any means forbidden by law … .' Moreover, 'where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied[.]'"); *see also Fin. Sec. Assur. Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 802 (5th Cir. 1997) (same).

146 *In re Am. Capital Equip., LLC*, 688 F.3d 145, 156 (3d Cir. 2012).

mediated negotiations overseen by a distinguished bankruptcy judge among the Debtor, the Committee, the Future Claimants' Representative, and HII. The Plan reflects a consensual resolution of the Debtor's asbestos-related liabilities and is intended to maximize the value of assets available to satisfy Claims.[147] That the Plan maximizes the value of assets is demonstrated by the fact that creditor recoveries are projected to be substantially greater than would be realized if the Debtor was to liquidate.

115. To arrive at this juncture in this Chapter 11 Case, the Debtor actively involved its creditor constituencies in the Plan-formulation process.[148] Indeed, the Debtor transitioned away from the Original Plan of Liquidation to pursue confirmation of the Plan because the Debtor, in accordance with its fiduciary duties, recognized the lack of support from its creditors and the Committee for the Original Plan of Liquidation. The Debtor provided substantial information to all constituencies and, thereafter, reached certain settlements that will be implemented through the Plan. As described above and in the Disclosure Statement, the Debtor engaged in arms'-length negotiations with many parties-in-interest over the course of this Chapter 11 Case, including the Objecting Insurers. The Plan reflects agreements among the Debtor, the Committee, the Future Claimants' Representative, the Settled Asbestos Insurers, HII, and certain other parties-in-interest. The Debtor's good faith in proposing the Plan is evidenced by these negotiations, the consensual settlements reached with certain stakeholders, and the overwhelming support for the Plan by the Voting Classes.[149] The Debtor's decision to explore its alternatives,

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147 *In re Michener*, 342 B.R. 428, 434 (Bankr. D. Del. 2006); *Am. Capital Equip., LLC*, 688 F.3d at 156 (explaining that the two "'recognized' policies, or objectives, [of Chapter 11] are 'preserving going concerns and maximizing property available to satisfy creditors'").

148 *See Stolrow v. Stolrow's, Inc. (In re Stolrow's Inc.)*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988) (holding that good faith in proposing a plan "also requires a fundamental fairness in dealing with one's creditors").

149 *See* Voting Certification; *see also Eagle-Picher*, 203 B.R. at 274 (finding that a plan of reorganization was proposed in good faith when, among other things, it was based on extensive arms'-length negotiations among the plan proponents and other parties in interest).

including, what ultimately became the Plan, in reaction to the Chubb Insurers strategic decision to abstain from meaningful participation at the Mediation, neither undercuts nor negates the good-faith actions of the Plan Proponents.

116. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code have been fully satisfied.

4. Section 1129(a)(4) — All Payments To Be Made by the Debtor in Connection With This Chapter 11 Case Are Subject to Court Approval.

117. Section 1129(a)(4) of the Bankruptcy Code requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4). In essence, this subsection requires that any and all fees promised or received in connection with, or in contemplation of, a chapter 11 case must be disclosed and subject to the court's review.[150]

118. In accordance with section 1129(a)(4) of the Bankruptcy Code, all fees to which parties may be entitled in connection with this Chapter 11 Case, including Professional Fee Claims, are subject to the approval of the Court. Section 2.2 of the Plan provides for the payment of Professional Fee Claims and makes all such payments subject to Court approval and the standards of the Bankruptcy Code. The Court has authorized the interim payment of the fees and expenses incurred by Professionals in connection with this Chapter 11 Case. All such fees and

[150] *See In re Johns-Manville Corp.*, 68 B.R. 618, 623 (Bankr. S.D.N.Y. 1986), *rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, *Kane v. John-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988); *In re Chapel Gate Apartments, Ltd.*, 64 B.R. 569, 573 (Bankr. N.D. Tex. 1986) (before a plan may be confirmed, "there must be a provision for review by the Court of any professional compensation"); *In re S. Indus. Banking Corp.*, 41 B.R. 606, 612 (Bankr. E.D. Tenn. 1984) (even absent challenge, a court has an independent duty to determine the reasonableness of professional fees).

expenses, however, remain subject to final review for reasonableness by the Court. Finally, Article XII of the Plan provides that the Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan.

119. Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. Section 1129(a)(5) — The Plan Discloses All Required Information Regarding Post-Confirmation Management and Insiders.

120. Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the compensation proposed to be paid to such insider.

121. The Plan Proponents have fully satisfied the requirements of section 1129(a)(5) by disclosing all necessary information regarding the Reorganized Hopeman's proposed officer and director, who is highly qualified and experienced.[151]

122. The Chubb Insurers claim that section 1129(a)(5) of the Bankruptcy Code is not satisfied[152] because "nothing in the Plan discloses that the Litigation Trustee/Hopeman's sole director, Mr. Richardson, is currently co-counsel and part of a fee-sharing arrangement[153] with the Committee's co-chair, Mr. Branham – who will also serve as a member of the TAC – in an

[151] *See* Plan, § 8.6 (providing for the Committee and the Future Claimants' Representative to file a joint notice identifying the directors and officers of Reorganized Hopeman by no later than two days prior to the Voting and Release Opt-In Deadline); Plan Supp., Ex. C (disclosing officer and director of Reorganized Hopeman).

[152] The Chubb Insurers, and certain of the other Objecting Insurers, also argue that section 1129(a)(5) is not satisfied because of purported conflicts of interest they claim exist with the governance structure proposed under the Plan which are inconsistent with public policy. Those arguments are disposed of in § IX.E.1.b. *infra*.

[153] As discussed in greater detail below, the Chubb Insurers' characterization of the fee-sharing agreement is little more than a distortion. The fee-sharing agreement at issue is between two law firms, Dean Omar Branham Shirley LLP and Wyche, P.A.—***not Mr. Richardson and Mr. Branham individually***—and it pertains to an ***entirely unrelated*** asbestos suit (***not*** a suit pending against Hopeman).

asbestos-related lawsuit."[154] Section 1129(a)(5)'s disclosure-based requirements are satisfied and the Chubb Insurers' objection falls flat.

123. Section 1129(a)(5)(A)(i) requires disclosing "the identity and affiliations of any individuals proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor … ."[155] As recognized by the preeminent bankruptcy treatise, "[t]he affiliations should be those of interest to creditors and interest holders under the 'adequate information' standard of section 1125 (since such affiliations, if so qualifying, will have to be disclosed in any event)."[156] The Plan Supplement identifies Mr. Richardson, the individual proposed to serve as Reorganized Hopeman's sole officer and director.[157] The Plan Supplement also discloses Mr. Richardson's affiliation with Wyche, P.A., his employer, and, in fact, the address listed for Mr. Richardson is the address for Wyche, P.A.'s Columbia, South Carolina office.[158] Similarly, the email address disclosed for Mr. Richardson is his Wyche, P.A. email.[159] Moreover, although section 1129(a)(5) only requires disclosing "the nature of any compensation for [an] insider," the Plan Supplement further discloses that Mr. Richardson will also serve as the Litigation Trustee and the compensation proposed for his service as such.[160] Thus, the Plan Supplement discloses Mr. Richardson's identity, his affiliation with his employer Wyche, P.A. and proposed service as the Litigation Trustee, and the compensation Mr. Richardson is proposed to receive for his service as the Litigation Trustee. These disclosures satisfy 1129(a)(5)'s requirements because they provide "adequate information," within the meaning of

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154 Chubb Insurers Plan Obj., ¶ 144.

155 11 U.S.C. § 1129(a)(5)(A)(i).

156 7 COLLIER ON BANKRUPTCY ¶ 1129.02[5] (16th ed. rev. 2025).

157 Plan Supplement, Ex. D.

158 *Id.*

159 *Id.*

160 *See* Asbestos Trust Agreement, § 4.5(b).

section 1125 of the Bankruptcy Code.

124. The Chubb Insurers' argument would have this Court transform 1129(a)(5)'s disclosure-based requirements into the "disinterestedness" analysis mandated by section 327 of the Bankruptcy Code. It is not. Nowhere in section 1129(a)(5) does the word "disinterested" appear. Moreover, for purposes of assessing whether an individual holds a materially adverse interest to the interest of the estate, section 101(14)(C) specifically directs courts to consider the "direct and indirect relationship[s]," "connection[s]," and "interest[s]" of the professional to be retained.[161] By contrast, section 1129(a)(5)(A)(i) mandates disclosure of "affiliations." "It is well-established that '[w]here Congress has utilized distinct terms within the same statute, the applicable canons of statutory construction require that we endeavor to give different meanings to those different terms.'"[162] As the Fourth Circuit explained, "[t]his different-terms cannon is grounded in the understanding that Congress acts deliberately—where Congress includes particular language in one section of a statute but omits it in another provision of the same Act, it is generally presumed Congress acts intentionally and purposefully in the disparate inclusion or exclusion."[163] Congress chose to limit the disclosures required by section 1129(a)(5) to "affiliations," as opposed to the relationships, connections, and interests mandated by section 327's disinterestedness requirement; thus there is no basis to engage in the pseudo-disinterestedness analysis that the Chubb Insurers' argument effectively seeks.

125. Moreover, though irrelevant to section 1129(a)(5), the fee-sharing arrangement the Chubb Insurers take issue with is between Mr. Richardson's ***firm***, Wyche, P.A., and Mr. Branham's firm—not some agreement between the two in their individual capacities—and

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[161] 11 U.S.C. § 101(14)(C).

[162] *Peck v. U.S. Dep't of Labor, Admin. Review Bd.*, 996 F.3d 224, 231 (4th Cir. 2021) (quoting *Soliman v. Gonzales*, 419 F.3d 276, 283 (4th Cir. 2005) (internal citation omitted) (alteration in original)).

[163] *Peck*, 996 F.3d at 231 (internal citation and quotation marks omitted).

pertains to an ***unrelated*** asbestos case, not an asbestos-related case currently pending against Hopeman as the Chubb Insurers' argument suggests. The existence of that arrangement has no bearing on Mr. Richardson's service as Reorganized Hopeman's sole officer and director.

126. In sum, the appointment of Mr. Richardson as Reorganized Hopeman's proposed sole director and officer is consistent with public policy and the interests of the holders of Claims and Interests because Mr. Richardson is well-positioned to serve adequately the interests of all parties. Accordingly, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

6. Section 1129(a)(6) — The Plan Does Not Provide for Any Rate Change Subject to Regulatory Approval.

127. Section 1129(a)(6) of the Bankruptcy Code is not applicable here because the Debtor's business does not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after confirmation.[164]

7. Section 1129(a)(7) — The Plan Is in the Best Interests of Creditors.

128. The "best interests of creditors" test is set forth in section 1129(a)(7) of the Bankruptcy Code. This test requires that, with respect to each impaired class of claims or interests, each holder of such claims or interests (a) has accepted the plan or (b) will receive or retain property of a value not less than what such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code.[165] When making this determination, the scope of the Court's inquiry is limited to comparing recoveries projected under the Plan and the dividend projected in a hypothetical liquidation of all the debtor's assets under chapter 7 of the

[164] 11 U.S.C. § 1129(a)(6).

[165] *See Tranel v. Adams Bank & Trust Co. (In re Tranel)*, 940 F.2d 1168. 1172 (8th Cir. 1991); *In re AOV Indus.*, 31 B.R. 1005, 1008-13 (D.D.C. 1983), *aff'd in part*, *rev'd in part*, 792F.2d 1140, 1144 (D.C. Cir. 1986) (if no impaired creditor receives less than liquidation value, a plan of reorganization is in best interests of creditors), *vacated in light of new evidence*, 797 F.2d 1004 (D.C. Cir. 1986); *In re Econ. Lodging Sys., Inc.*, 205 B.R. 862, 864-65 (Bankr. N.D. Ohio 1997); *Eagle-Picher*, 203 B.R. at 266.

Bankruptcy Code.[166]

129. As section 1129(a)(7) itself makes clear, the best interests of creditors test is applicable only to non-accepting holders of *impaired* claims and interests (here, holders of Claims in Classes 3 and 4 of the Plan who voted to reject the Plan and the holders of Interests in Class 5 who are deemed to reject the Plan).[167] The test requires that each holder of a claim either must accept the plan or receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7.

130. To estimate the value that impaired creditors would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code, the Court must first determine the aggregate dollar amount that would be available if this Chapter 11 Case was converted to a case under chapter 7 of the Bankruptcy Code and the Debtor's assets were liquidated by a chapter 7 trustee (the "Liquidation Value"). The Liquidation Value of the Debtor would consist of the net proceeds from the disposition of the Debtor's assets, augmented by any cash held by the Debtor at the commencement of its chapter 7 case.

131. As shown by the Liquidation Analysis, the best interests test is satisfied because a chapter 7 liquidation of the Debtor's Estate would result in recoveries to holders of Class 3 General Unsecured Claims, Class 4 Channeled Asbestos Claims, and Class 5 Equity Interests that are no greater than the potential range of recoveries provided under the Plan.[168] The methodology used to estimate the total liquidation proceeds available for Distribution and the principal assumptions and considerations underlying the liquidation analysis are described in the

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[166] *See, e.g.*, *In re Victory Constr. Co.*, 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984); *see also In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 298 (Bankr. S.D.N.Y. 1990).

[167] *See* 11 U.S.C. § 1129(a)(7).

[168] *See* Liquidation Analysis; Plan, Art. III. (reflecting that Classes 3, 4, and 5 are Impaired under the Plan).

Disclosure Statement and the Liquidation Analysis.

132. Based on the Liquidation Analysis, no non-accepting holder of a Class 3 General Unsecured Claim, Class 4 Channeled Asbestos Claim, or Class 5 Equity Interest will receive less under the Plan than such holder would receive in a liquidation of the Debtor's assets. As a result, the Plan, which was almost unanimously accepted by the holders of Class 3 General Unsecured Claims and Class 4 Channeled Asbestos Claims who voted on the Plan, satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

133. The Chubb Insurers claim that the Plan does not satisfy section 1129(a)(7) because, according to the Chubb Insurers, the Debtor's liquidation analysis is fundamentally flawed in that: (i) it is incorrectly premised on the assertion that the holders of Claims and Demands will receive more under the Plan than in a liquidation under chapter 7 when the correct inquiry should be limited to the holders of Claims *not* Demands;[169] and (ii) the liquidation analysis is premised on the, purportedly, false construct that conversion to chapter 7 "would result in a considerably longer process for resolving all of the Asbestos Claims and in substantially less funds being available to distribute to creditors."[170]

134. The Chubb Insurers' contentions regarding section 1129(a)(7) are wrong. Section 1129(a)(7) requires consideration of the treatment of the creditors addressed in the proposed Plan, which includes both Claims and Demands. In addition, the hypothetical chapter 7 treatment of these same Claims and Demands would require a chapter 7 to remain open for an undetermined period of time to allow all such Claims and Demands to be addressed to the detriment of such holders of Claims and Demands. The Chubb Insurers' incorrect contentions will be addressed in greater detail in the Debtor's Supplemental Brief, which will be filed by no

[169] Chubb Insurers Plan Obj., ¶¶ 93-94.

[170] *Id.* at ¶ 95 (internal citation and quotation marks omitted).

later than August 18, 2025, at 4:00 p.m. (prevailing Eastern Time), after the Plan Proponents have had the opportunity to test the Chubb Insurers' eleventh-hour expert's assertions in discovery. In the interim, the Plan Proponents will leave the Court with the Delaware District Court's view of liquidating an asbestos case under chapter 7:

> ***Thus, a Chapter 7 liquidation would need to be held open for a seemingly indefinite amount of time while all personal injury claimants pursued jury trials and settlements in the tort system***. ***Such a process would result in inevitable delay and disparate—or, even worse, unavailable—recovery amongst personal injury claimants. Such uncertainty is certainly not within the creditors' best interests.*** In comparison, the procedural safeguards and guaranteed recovery mechanisms that are in place under the Joint Plan will allow personal injury claimants to receive at least as much—if not more—than they would in liquidation. ***Thus, it is evident to the Court that the guaranteed certainty of the Chapter 11 Joint Plan, as opposed to the high degree of uncertainty in a hypothetical Chapter 7 proceeding, is in the creditors' best interest***.

In re W.R. Grace & Co., 475 B.R. 144-45 (D. Del. 2012) (emphases added).

8. Section 1129(a)(8) — Although the Plan Has Not Been Accepted by the Requisite Classes of Claims and/or Interest, It May Be Confirmed Because Section 1129(b) is Satisfied.

135. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan has either accepted the plan or is not impaired under the plan. Under section 1126(f) of the Bankruptcy Code, a class of claims or interests that is not impaired under a plan is "conclusively presumed" to have accepted the plan and need not be further examined under section 1129(a)(8).[171]

136. Acceptance of a plan of reorganization by an impaired class of claims or interests is determined by reference to section 1126, which identifies the members of a class that may vote on a plan and the number and amount of votes necessary for the acceptance of a plan by a class of claims or interests, and section 524(g), which specifies the number of votes necessary for the

[171] 11 U.S.C. § 1126(f); *see also Toy & Sports Warehouse*, 37B.R. at 150.

acceptance of a plan by a class of asbestos-related claims where the plan contemplates the entry of a channeling injunction with respect to such claims and related future demands. In particular: (a) section 1126 provides that a plan is accepted (i) by a class of impaired claims if the class members accepting hold at least two-thirds in amount and more than one-half in number of the claims held by the class members that have cast votes on the plan and (ii) by a class of impaired interests if the class members accepting hold at least two-thirds in amount of the interests held by the class members that have cast votes on the plan; and (b) section 524(g) provides that, as part of confirmation, a plan must designate a separate class of claims to be addressed by a 524(g) trust and be accepted by at least 75 percent of those voting in such class. Under section 1126(g) of the Bankruptcy Code, however, impaired classes that neither receive nor retain property under the plan are deemed to have rejected the plan.

137. Here, (i) Class 4 (Channeled Asbestos Claims) has overwhelmingly voted in favor of the Plan, easily satisfying the supermajority-voting requirement imposed for such Class by section 524(g), and Class 3 General Unsecured Claims have, similarly, voted unanimously to accept the Plan; (ii) Classes 1 (Priority Non-Tax Claims) and 2 (Secured Claims) are Unimpaired and, therefore, are deemed to have accepted the Plan; and (iii) Class 5 (Equity Interests) is neither receiving nor retaining property under the Plan and, therefore, is deemed to have rejected the Plan.[172]

138. Accordingly, Section 1129(a)(8) is *not* satisfied.[173] *However*, as set forth below, the Plan is nevertheless confirmable because it satisfies the requirements of Section 1129(b).

[172] *See* Voting Certification.

[173] Nonetheless, it is worth noting that the Equity Interests, which are held by the three members of the Debtor's current board of directors, unanimously support confirmation of the Plan.

9. Section 1129(a)(9) — The Plan Provides for the Payment of Priority Claims.

139. Section 1129(a)(9) of the Bankruptcy Code requires that certain priority claims be paid in full on the effective date of a plan and that the holders of certain other priority claims receive deferred cash payments. In particular, pursuant to section 1129(a)(9)(A) of the Bankruptcy Code, unless otherwise agreed by the holder, holders of claims of a kind specified in section 507(a)(l) of the Bankruptcy Code — administrative claims allowed under section 503(b) of the Bankruptcy Code — must receive cash equal to the allowed amount of such claims on the effective date of the plan. Section 1129(a)(9)(B) of the Bankruptcy Code allows deferred cash payments for certain kinds of employee claims. In addition, section 1129(a)(9)(C) of the Bankruptcy Code provides for the payment of tax priority claims in cash in regular installments.

140. Section 2.1(c) of the Plan provides that, subject to certain bar dates and unless otherwise agreed by the holder of an Administrative Expense Claim and the Debtor, each holder of an Allowed Administrative Expense Claim shall receive, in full satisfaction of its Administrative Expense Claim, cash equal to the unpaid amount of such Allowed Administrative Expense Claim either: (a) as soon as practicable after the Effective Date; (b) the first Business Day that is at least thirty (30) calendar days after the date on which such Administrative Expense Claim becomes Allowed; or (c) on such other date as may be agreed to by the holder of such Allowed Administrative Expense Claim and Reorganized Hopeman.

141. Further, Section 2.3 of the Plan provides that Priority Tax Claims against the Debtor (which include Claims entitled to priority other than Administrative Expense Claims and Priority Non-Tax Claims) will be paid on: (a) the Effective Date, (b) thirty (30) days after the date such Priority Tax Claim becomes an Allowed Claim, or (c) the date such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy law. Accordingly, the

Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code with respect to the payment of priority claims.

10. Section 1129(a)(10) — The Plan Has Been Accepted by at Least One Impaired, Non-Insider Class.

> Section 1129(a)(10) of the Bankruptcy Code provides that:
>
> If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

11 U.S.C. § 1129(a)(10); *see In re Martin*, 66 B.R. 921, 924 (Bankr. D. Mont. 1986) (holding that acceptance by three classes of impaired creditors, exclusive of insiders, satisfied requirement of section 1129(a)(10)). The Plan satisfies this requirement. As indicated in the Voting Certification, Classes 3 and 4 have accepted the Plan, and no "insider," as such term is defined in section 101(31) of the Bankruptcy Code, voted in Classes 3 or 4.

11. Section 1129(a)(11) — The Plan Is Feasible.

142. Pursuant to section 1129(a)(11) of the Bankruptcy Code, a plan of reorganization may be confirmed only if "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."[174] One commentator has stated that this section "requires courts to scrutinize carefully the plan to determine whether it offers a reasonable prospect of success and is workable."[175]

143. Section 1129(a)(11), however, does not require a guarantee of the plan's success;

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[174] 11 U.S.C. § 1129(a)(11).

[175] 7 COLLIER ON BANKRUPTCY ¶ 1129.02[11] (16th ed. rev. 2019); *accord In re Cellular Info. Sys., Inc.*, 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994); *In re Rivers End Apartments, Ltd.*, 167 B.R. 470, 476 (Bankr. S.D. Ohio 1994); *Johns-Manville*, 68 B.R. at 635.

rather, the proper standard is whether the plan offers a "reasonable assurance" of success.[176]

144. Courts have identified a number of factors relevant to evaluating the feasibility of a proposed plan of reorganization, including (a) the prospective earnings or earning power of the debtor's business, (b) the soundness and adequacy of the capital structure and working capital for the debtor's post-confirmation business, (c) the debtor's ability to meet its capital expenditure requirements, (d) economic conditions, (e) the ability of management and the likelihood that current management will continue and (f) any other material factors that would affect the successful implementation of the plan.[177]

145. As reflected in the Plan and the Reorganized Hopeman Projections (*see* Plan Supplement, Ex. I (the "Projections")), Reorganized Hopeman will generate cash flows through the real-estate investment contemplated by the Restructuring Transactions and will be capitalized with an additional $150,000 in Net Reserve Funds which will be invested in high-quality fixed income securities.

146. Thus, as the Projections demonstrate, Reorganized Hopeman will have the ability to fund its ongoing operations from cash flow generated by the investment acquired through the Restructuring Transactions and through interest earned on the Net Reserve Funds (as well as through the Asbestos Trust Assets, which will be used to satisfy Reorganized Hopeman's obligations to the holders of Channeled Asbestos Claims, including to provide notice, cooperate, and take whatever actions are necessary to maintain insurance coverage). The Restructuring Transaction, as evidenced by the Projections, ensures that Reorganized Hopeman generates

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[176] *See Johns-Manville*, 843 F.2d at 649 (a plan may be feasible although its success is not guaranteed); *Prudential Ins. Co. of Am. v. Monnier (In re Monnier Bros.)*, 755 F.2d 1336, 1341 (8th Cir. 1985) (same); *Rivers End*, 167 B.R. at 476 (to establish feasibility, a "plan proponent must demonstrate that its plan offers a reasonable prospect of success and is workable"); *In re Drexel Burnham*, 138 B.R. at 762 ("'Feasibility does not, nor can it, require the certainty that a reorganized company will succeed.'").

[177] *See*, *e.g., Sound Radio*, 93 B.R. at 856; *Texaco*, 84 B.R. at 910; *Toy & Sports Warehouse*, 37 B.R. at 151.

positive cash flow into the future.

147. Thus, the Debtor through cash on hand, by virtue of the Net Cash Reserves, the revenue that will be generated by the Restructuring Transactions, and the Asbestos Trust Assets available to the holders of Class 4 Channeled Asbestos Claims will be able to fund the obligations imposed by the Plan.

148. Overall, the Projections demonstrate that: (a) the Plan provides a feasible means of completing the Debtor's reorganization; and (b) Reorganized Hopeman will have more than sufficient funds to satisfy its obligations under the Plan. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

12. Section 1129(a)(12) — The Plan Provides for the Payment of Fees.

149. Section 1129(a)(12) of the Bankruptcy Code requires that "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan."[178] The Plan complies with section 1129(a)(12) by providing that all fees payable pursuant to 28 U.S.C. § 1930 will be paid in cash on or before the Effective Date.[179]

13. Section 1129(a)(13) — Is Not Applicable Because the Debtor Does Not Maintain Retiree Benefits.

150. Section 1129(a)(13) of the Bankruptcy Code is applicable only to debtors that maintain retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code. Section 1129(a)(13) of the Bankruptcy Code is not applicable because the Debtor does not maintain any retiree benefits, as defined in section 1114 of the Bankruptcy Code.

[178] 11 U.S.C. § 1129(a)(12).

[179] *See* Plan, Art. II.

14. Section 1129(a)(14), (15), and (16) — Domestic Support Obligations; Unsecured Claims Against Individual Debtors; Transfers by Nonprofit Organizations.

151. The Debtor does not have domestic support obligations, and the Debtor is neither an individual nor a nonprofit organization. Therefore, sections 1129(a)(14), (15), and (16) are not applicable to this Chapter 11 Case.

15. Section 1129(b) — The Plan Does Not Unfairly Discriminate and it is Both Fair and Equitable.

152. As set forth above, the Plan was accepted by all of the Voting Classes, and Classes 1 (Priority Non-Tax Claims) and 2 (Secured Claims) are Unimpaired and, therefore, deemed to accept the Plan. Class 5 (Equity Interests), however, is neither receiving nor retaining property under the Plan, and accordingly, is deemed to reject the Plan.

153. Pursuant to Section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed despite the fact that Class 5 has not accepted the Plan because the Plan meets the "cramdown" requirements for confirmation under Section 1129(b) of the Bankruptcy Code. Other than the requirement in Section 1129(a)(8) of the Bankruptcy Code with respect to Class 5, all of the requirements of Section 1129(a) have been met. The Plan does not discriminate unfairly and is fair and equitable with respect to Class 5. No Class or Claims or Interests junior to Class 5 exists,[180] thus no Class or Claim of Interests junior to Class 5 is receiving or retaining any property on account of their Claims or Interests, and no Class of Claims or Interests senior to Class 5 is receiving more than full payment on account of their Claims and/or Interests in such Class. The Plan, therefore, is fair and equitable, does not discriminate unfairly with respect to Class 5, and complies with section 1129(b) of the Bankruptcy Code.

[180] *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) (recognizing the Bankruptcy Code's priority-distribution scheme "places equity holders at the bottom of the priority list.").

16. Section 1129(c) — The Plan is the only plan.

154. Other than the Plan (including any previous versions thereof), no other plan has been filed which any party is seeking to confirm in this Chapter 11 Case. As a result thereof, the requirements of section 1129(c) have been satisfied.

17. Section 1129(d) — The Plan's Purpose Is Consistent with the Bankruptcy Code.

155. Section 1129(d) of the Bankruptcy Code provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of section 5 of the Securities Act of 1933. The Plan meets these requirements because the principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, and there has been no filing by any governmental agency asserting otherwise.

VI. THE ASSUMPTION OR REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN SHOULD BE APPROVED

156. The Plan provides that all Executory Contracts to which Hopeman is a party shall be rejected, except those which (a) have been previously rejected, (b) are the subject of a separate rejection motion filed by the Debtor prior to the Confirmation Date, (c) are an Asbestos Insurance Policy or Asbestos CIP Agreement,[181] or (d) are a Non-Asbestos Insurance Policy.[182]

157. To be clear, the Plan Proponents do not believe that the Asbestos Insurance Policies nor the Asbestos CIP Agreements are executory contracts. It is well-settled that insurance policies do not constitute executory contracts where the premiums have been paid in full and the

[181] The Modifications will, among other things, expressly provide that the Agreement Concerning Asbestos-Related Claims, dated June 19, 1985 (including any schedules, exhibits, and appendices thereto, and as the same may be amended, modified, or supplemented from time to time, the "Wellington Agreement") constitutes an Asbestos CIP Agreement and, to the extent any of the Asbestos CIP Agreements are Executory Contracts (which the Plan Proponents, as set forth herein, disputes) will be assumed under the Plan.

[182] Plan, § 6.1.

coverage period has expired prepetition.[183] All of the Asbestos Insurance Policies fit those criteria: the Debtor fully paid the premiums under the policies prior to the Petition Date, and their coverage periods expired prior to the Petition Date. The Asbestos Insurance Policies are therefore not Executory Contracts.

158. The fact that certain notice and cooperation obligations may exist under the Asbestos Insurance Policies does not render the policies executory. "Ministerial obligations," such as "ongoing obligations of cooperation, retrospective premiums, deductibles, and notice," cannot transform an otherwise non-executory insurance policy into an executory contract.[184]

159. Similarly, the Asbestos CIP Agreements are not Executory Contracts. The Plan defines an "Asbestos CIP Agreement" as, among other things, "an agreement between Hopeman and an Asbestos Insurer" that "is based on, arises from, or is attributable to an Asbestos Insurance Policy" and which "establishes a framework or formula for the Asbestos Insurer's payment of indemnity, liability, or defense costs to Hopeman with respect to Asbestos Personal Injury Claims."[185] In *In re Babcock & Wilcox, Co.*, the court found that coverage-in-place agreements were not executory where the premiums had been paid and the agreements did not any material obligations.[186] Although the coverage-in-place agreements in *Babcock* had continuing notification

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[183] *See, e.g.*, *Daileader v. Certain Underwriters at Lloyd's London - Syndicate 1861*, 670 F. Supp. 3d 12, 47 (S.D.N.Y. 2023), *aff'd*, No. 23-690-CV, 2023 WL 7648381 (2d Cir. Nov. 15, 2023); *In re Fed.-Mogul Glob., Inc.*, 385 B.R. 560, 575 (Bankr. D. Del. 2008) ("[W]here the insured party 'has fulfilled the central agreement to such contract, such as the obligation of the insured to pay the premium in exchange for the insurer's defense, the contract is no longer executory.'"), *aff'd sub nom. In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355 (3d Cir. 2012) (citation omitted); *In re Firearms Import & Export Corp.*, 131 B.R. 1009, 1014 (Bankr. S.D. Fla. 1991) (noting a debtor's continuing obligation to make premium payments is the "sole basis" for holding an insurance policy to be executory).

[184] *Fed.-Mogul*, 385 B.R. at 575; *see also In re Ames Dep't Stores, Inc.*, No. 93 CIV. 4014 (KMW), 1995 WL 311764, at *3 (S.D.N.Y. May 18, 1995) ("Courts considering insurance policies in which the policy periods have expired and the initial premiums have been paid routinely find that they are not executory contracts despite continuing obligations on the part of the insured.").

[185] Plan, § 1.7.

[186] No. 00-10992, 2004 WL 4945985, at *31-32 (Bankr. E.D. La. Nov. 9, 2004), *vacated on other grounds*, No. CIV. A. 05-232, 2005 WL 4982364 (E.D. La. Dec. 28, 2005).

and cooperation obligations, those obligations were "ancillary" and any breach of those obligations would not be material.[187] So too here, the Asbestos CIP Agreements contain no continuing material obligations and cannot be deemed executory.

160. Nevertheless, the Plan, out of an abundance of caution, provides that, "**[*t*]*o the extent that any of the Asbestos Insurance Policies or Asbestos CIP Agreements are Executory Contracts***," the Plan constitutes a motion to assume such Asbestos Insurance Policies and Asbestos CIP Agreements.[188] Moreover, to the extent any Designated Insurance Agreements,[189] including the Travelers 2005 Agreement, are Executory Contracts, the Debtor intends to, and the Plan (as modified by the Modifications) will constitute a motion to, reject such Designated Insurance Agreements,[190] and that "the Confirmation Order shall constitute the Bankruptcy Court's approval of the rejection of the contracts and leases rejected hereby."[191]

161. Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease."[192] Courts routinely approve motions to assume, assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an

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187 *See id.* at *31.

188 Plan, § 6.2 (emphasis added).

189 "Designated Insurance Agreement" means any prepetition settlement agreement or any prepetition coverage-in-place agreement (including any related indemnity obligations thereunder) between Hopeman and one or more Asbestos Insurers (a) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds or (b) as to, or on account of, which the Debtor did not receive any payment of insurance proceeds within the period of one year immediately preceding the Petition Date. For the avoidance of doubt, the term "Designated Insurance Agreement" (i) includes the Travelers 2005 Agreement, but (ii) does not include the Wellington Agreement. This defined term, or a substantially similar term, will be included in the Modifications.

190 *Id.*

191 *Id.* at § 6.1.

192 11 U.S.C. § 365(a).

exercise of sound business judgment.[193]

162. The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate.[194] Because the Debtor has reviewed its Executory Contracts and made the determination, in the exercise of its sound business judgment, to assume—solely to the extent such agreements constitute Executory Contracts—the Asbestos Insurance Policies and/or the Asbestos CIP Agreements, and to, otherwise, reject the Executory Contracts to which the Debtor is a party, the rejection and, potential, assumption of Executory Contracts provided for in the Plan should be approved.

163. The Debtor will adduce evidence demonstrating that its decision to assume or reject the Executory Contracts discussed above, and solely to the extent any such agreements constitute Executory Contracts, is a sound exercise of the Debtor's business judgment.

VII. THE ASBESTOS TRUST'S ACCESS TO CERTAIN DOCUMENTS IN THE DOCUMENT REPOSITORY DOES NOT DESTROY OR WAIVE ANY PRIVILEGES OR PROTECTIONS

164. Section 8.3(l) of the Plan provides that, on the Effective Date, the Debtor shall transfer to Reorganized Hopeman all of the Debtor's books and records necessary for the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with Sections 8.3 and 8.16 of the Plan, the Asbestos Trust Agreement, and the Asbestos Trust

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193 *See*, *e.g., NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Grp. of Inst'l Invs. v. Chi., M., St. P., & P.R. Co.*, 318 U.S. 523, 550 (1943); *City of Covington v. Covington Landing Ltd. P'ship*, 71 F.3d 1221, 1226 (6th Cir. 1995); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (the "resolution of th[e] issue of assumption or rejection will be a matter of business judgment by the bankruptcy court").

194 *See Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc.*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) ("As long as assumption of a lease appears to enhance a debtor's estate, Court approval of a debtor in possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code…."); *see also Borman's, Inc. v. Allied Supermarkets, Inc.*, 706 F.2d 187, 189 (6th Cir. 1983); *NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff'd*, 465 U.S. 513 (1984).

Distribution Procedures. Moreover, Section 8.3(l) of the Plan expressly provides that "privileges belonging to [the Debtor] 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***."[195] Both the Chubb Insurers and Travelers object, arguing this arrangement will result in privilege waivers.[196] As explained herein, the Asbestos Trust's access to Reorganized Hopeman's books and records is appropriate for numerous reasons and the privilege-based concerns Travelers and the Chubb Insurers raise are misplaced.

165. Reorganized Hopeman will be a successor in interest to the Debtor and will own the privileges currently owned by the Debtor. In addition, the Asbestos Trust, which will own the Reorganized Debtor, also is the Debtor's successor in interest with respect to the Debtor's asbestos personal injury liabilities, and the law is clear that a successor in interest retains and may assert any applicable privileges.[197] The Court also has the authority under sections 105(a) and 1123(b)(6) of the Bankruptcy Code to order that privileges applicable to the debtor's books and records are retained notwithstanding the Asbestos Trust's access to such books and records.[198] Thus, in analogous situations, courts have held that liquidating trusts established by confirmed plans can assert the attorney-client privilege of their predecessor debtor corporations.[199]

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195 Plan, § 8.3(l) (emphasis added).

196 *See, e.g.*, Travelers Plan Obj., ¶ 95; Chubb Insurers Plan Obj., ¶¶ 126-28.

197 *See Owens-Illinois Inc. v. Rapid Am. Corp (In re The Celotex Corp.)*, 124 F.3d 619, 624 (4th Cir. 1997) ("Under the Confirmed Plan, the Asbestos Claims Trust is deemed the successor for all purposes to the liabilities of Celotex with respect to allowed amounts of asbestos related claims."); *see also* Del. R. Evid. 502(c) (stating that "[t]he privilege under this rule may be claimed by the client … or the successor, trustee or similar representative of a corporation, association or other organization, whether or not in existence") (the Asbestos Trust is a statutory trust under Delaware law).

198 11 U.S.C. §§ 105(a), 1123(b)(6).

199 *See, e.g.*, *Official Comm. of Unsecured Creditors of Hechinger Inv. Co. of Del, Inc. v. Fleet Retail Fin. Grp.*, 285 B.R. 601, 613 (D. Del. 2002) (holding that the liquidating trust could assert and waive the attorney-client privilege of the debtor corporation); *Whyte v. Williams (In re Williams)*, 152 B.R. 123, 129 (Bankr. N.D. Tex.

166. Reorganized Hopeman and the Asbestos Trust, which will be a Delaware statutory trust, will also have a common interest in the privilege attaching to the documents in the repository. Rule 502(b) of the Delaware Uniform Rules of Evidence ensures that the attorney-client privilege will protect confidential communications involving separate clients so long as the clients share a common interest sufficient to justify invocation of such privilege.[200] Thus, the transfer of privileged information between two parties that share a common interest does not waive or destroy privilege.

167. Further, the work-product doctrine protects the transfer of any privileged material from Reorganized Hopeman and/or the Debtor to the Asbestos Trust. The work-product doctrine protects the confidentiality of papers prepared by or on behalf of attorneys in anticipation of litigation. Most courts hold that to waive the protection of the work-product doctrine, the disclosure must enable an adversary to gain access to the information.[201] Here, the Asbestos Trust and Reorganized Hopeman will be non-adverse with respect to the subject Claims and share a common interest. Thus, providing the Asbestos Trust access to the Debtor's books and records to enable the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with the Plan will not destroy, impair or waive the work-product privilege or any

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1992) (holding that the liquidating trustee had the power to invoke or waive evidentiary privileges in connection with the causes of action transferred to the trust under the confirmed plan).

200 *See* Del. R. Evid. 502(b)(3) (stating that "[a] client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client … by the client or the client's representative or the client's lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another in a matter of common interest"); *see, e.g.*, *United States v. Doe*, 429 F.3d 450, 453 (3d Cir. 2005) (stating that the common interest privilege allows for two clients to discuss their affairs "so long as they have an 'identical (or nearly identical) legal interest as opposed to a merely similar interest'"); *U.S. Bank Nat'l Ass'n v. U.S. Timberlands Klamath Falls, L.L.C.*, C.A. No. 112-N, 2005 WL 2037353, at *1 (Del. Ct. Ch. June 9, 2005) (stating that the common-interest privilege extends to the protection of confidential communications involving separate clients "so long as the clients share a 'common interest' sufficient to justify invocation of the privilege"); *see also In re Grand Jury Subpoenas 89-3 & 89-4, John Doe 89-129 (Under Seal)*, 902 F.2d 244, 249 (4th Cir. 1990) (holding that "persons who share a common interest in litigation should be able to communicate with their respective attorneys and with each other to more effectively prosecute or defend their claims").

201 *See Westinghouse Elec. Corp. v. Republic of the Philippines*, 951 F.2d 1414, 1428 (3d Cir. 1991).

other privileges that may exist with respect to the documents.

168. Moreover, the Asbestos Trust Agreement appropriately qualifies both the Asbestos Trust Advisory Committee's and the Future Claimants' Representative's access to Reorganized Hopeman's books and records in a manner that guards against privilege waivers. Specifically, the Asbestos Trust Advisory Committee, and its professionals, are entitled to "complete access to all information generated by [the Asbestos Trust's officers, employees, agents, and professionals employed by the Asbestos Trust] or otherwise available to the Asbestos Trust or the Trustees ***provided that any information provided by the Trust Professionals shall not constitute a waiver of any applicable privilege***."[202] The Asbestos Trust Agreement qualifies the Future Claimants' Representative's entitlement to such information an identical manner.[203] Thus, the Asbestos Trust Agreement already includes sufficient provisions to prevent privilege waivers that might, otherwise, result from either the Asbestos Trust Advisory Committee or the Future Claimants' Representative obtaining access to Reorganized Hopeman's books and records.

169. It is essential to the Plan's implementation that the Asbestos Trust have the ability to evaluate the merits of Channeled Asbestos Claims to preserve assets for all such Claim holders. Thus, it is necessary and appropriate for the Confirmation Order to contain language holding that the Asbestos Trust's access to the Debtor's books and records will not result in the destruction or waiver of any privileges or protections applicable thereto.

[202] Asbestos Trust Agreement, § 5.5(a) (emphasis added).

[203] *Id.* at § 6.4(a).

VIII. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 524(G) OF THE BANKRUPTCY CODE AND THE OBJECTIONS ASSERTED WITH RESPECT TO SECTION 524(G) SHOULD BE OVERRULED

A. The Asbestos Trust Satisfies the Structure and Funding Requirements of Section 524(g)(2)(B)(i) of the Bankruptcy Code.

170. Section 524(g)(l)(A) authorizes a court to issue, in connection with confirmation of a plan of reorganization, an injunction to enjoin entities from taking legal action to recover, directly or indirectly, payment in respect of asbestos-related claims or demands if the plan of reorganization establishes a trust to resolve and pay such claims.[204] To obtain an injunction, the trust to which such claims and demands are channeled must meet the structure and funding requirements of section 524(g)(2)(B)(i) of the Bankruptcy Code. As described below, the Asbestos Trust comports with those requirements.

1. The Plan Satisfies Section 524(g)(2)(B)(i)(I).

171. Section 524(g)(2)(B)(i)(I) requires that an asbestos trust assume the liabilities of a debtor that, as of the petition date, has been named as a defendant in actions to recover damages for asbestos-related claims.[205] The Plan plainly satisfies this requirement by its terms, which provide that "the Asbestos Trust shall assume all liabilities and responsibility for all Channeled Asbestos Claims … ."[206]

172. That the Channeled Asbestos Claimants are permitted to commence or continue litigation in the tort system to pursue available insurance coverage does not alter the fact that the Asbestos Trust is fully assuming the Debtor's liability for the Channeled Asbestos Claims. Indeed, multiple courts have confirmed plans that allow asbestos claimants to return to the tort

[204] 11 U.S.C. § 524(g)(l).

[205] 11 U.S.C. § 524(g)(2)(B)(i)(I).

[206] Plan, § 8.3(a).

system.[207] Courts have even expressly found that section 524(g) "does not suggest … that asbestos claims may not be returned to the tort system, where appropriate, as a part of the reorganization [p]lan."[208] By assuming the Debtor's liability for the Channeled Asbestos Claims, the Asbestos Trust will be responsible for the payment of all Uninsured Asbestos Claims and any Channeled Asbestos Claims which become Uninsured Asbestos Claims before obtaining payment in full on account of: (i) a judgment obtained against either Reorganized Hopeman or a Non-Settling Asbestos Insurer, or (ii) a settlement reached with a Non-Settling Asbestos Insurer.

173. The plain language of section 524(g) requires only that the Asbestos Trust assume the liabilities of the Debtor. That requirement is clearly met here.

2. The Plan Satisfies Section 524(g)(2)(B)(i)(II).

174. The Plan also satisfies section 524(g)(2)(B)(i)(II) of the Bankruptcy Code, which requires that the trust "be funded in whole or in part by the securities of one or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II). Section 101(49) of the Bankruptcy Code provides that, among other things, stock constitutes a "security."[209] The Plan satisfies both requirements of section 524(g)(2)(B)(i)(II).

175. Pursuant to Section 8.6 of the Plan, one-hundred percent (100%) of the

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[207] *See*, *e.g., In re Thorpe Insulation Co.*, Case No. 07-19271(BB) (Bankr. C.D. Cal. May 8, 2013) (providing that asbestos claimants can commence actions in the tort system, consistent with the other provisions of the plan and distribution procedures); *In re Plant Insulation Co.*, 485 B.R. 203, 213 (N.D. Cal. 2012), *rev'd on other grounds*, 734 F.3d 900 (9th Cir. 2013), and *aff'd*, 544 F. App'x 669 (9th Cir. 2013) ("Alternatively, under the Plan, asbestos injury claimants retain their right to pursue Plant and Non–Settling Insurers by filing a tort action, subject to several conditions."); *In re Burns & Roe Enters., Inc.*, Nos. 00-41610, 05-47946 (RG) 2009 WL 438694, at *4 (D.N.J. Feb. 23, 2009) ("The Trust may authorize individual claimants, whose claims are potentially covered by policies issued by CNA, to commence litigation in the tort system.").

[208] *See*, *e.g., In re Plant Insulation Co.*, 485 B.R. at 231.

[209] 11 U.S.C. § 101(49)(A)(ii).

Reorganized Hopeman's Common Stock will be transferred to the Asbestos Trust.[210] This satisfies the requirement that the Asbestos Trust be funded, at least, in part by "securities" of 1 or more debtors. The transfer of Reorganized Hopeman's Common Stock also satisfies the second requirement of section 524(g)(2)(B)(i)(II), that the Asbestos Trust be funded, at least in part, by the obligation of Reorganized Hopeman to make future payments, including dividends. Courts routinely confirm plans establishing 524(g) trusts that are funded by the transfer of a reorganized debtor's securities.[211] Moreover, Reorganized Hopeman is obligated to contribute any Excess Net Reserve Funds to the Asbestos Trust.[212] Thus, the funding requirements of section 524(g)(2)(B)(i)(II) are satisfied.

176. The Objecting Insurers, nonetheless, contend that the Debtor cannot satisfy section 524(g)(2)(B)(i)(II), pointing to a purported "ongoing business" requirement that appears nowhere in the statute.[213] The objections on these grounds should be overruled because (i) section 524(g)(2)(B)(i)(II) does *not* impose an ongoing-business requirement; and (ii) even if

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210 Plan, § 8.6.

211 *See, e.g.*, *In re Pittsburgh Corning Corp.*, No. BR 00-22876 JKF, 2013 WL 2299620, at *71 (Bankr. W.D. Pa. May 24, 2013) ("The Asbestos PI Trust is to be funded in whole or in part by the securities of the Debtor and by the obligation of the Reorganized Debtor to make future payments, including dividends."); *In re W.R. Grace & Co.*, 475 B.R. 34, 93 (D. Del. 2012) ("The second element [of 524(g)] is satisfied because the PD Trust is funded in part by its own securities. Specifically, the PD Trust is largely funded by the Class 7A Deferred Payment Agreement, which constitutes a note for deferred payment. A note, in turn, meets the definitional requirements of a 'security' under the Bankruptcy Code." (citing § 101(49)(A)(I))); *In re USG Corp.*, No. 01-2094, *Findings of Fact and Conclusions of Law Regarding Confirmation of the First Amended Joint Plan of Reorganization of USG Corporation and Its Debtor Subsidiaries, as Modified*, § I(G)(2)(d) (Bankr. D. Del. June 16, 2006) [Docket No. 11687] ("The Asbestos Personal Injury Trust is to be funded in whole or in part by securities of one or more of the Reorganized Debtors and by the obligation of such Reorganized Debtor or Reorganized Debtors to make future payments, including dividends."); *In re Flintkote Co.*, 486 B.R. 99, 131 (Bankr. D. Del. 2012) ("Section 524(g)(2)(B)(i)(II) requires that the trust be funded 'in whole or in part by the securities of 1 or more debtors' and that the debtor 'make future payments, including dividends to the trust, but it does not specify the manner in which this must be accomplished. In this case, all the stock of Reorganized [Hopeman] will be transferred to the [Asbestos] Trust. Thus, the Debtor's securities are being used to fund the [Asbestos] Trust and any dividends declared will be paid to the [Asbestos] Trust.").

212 Plan, §§ 1.23 (defining the Asbestos Trust Contribution to include, among other things, the Excess Net Reserve Funds); 8.2(a)(ii) (providing for the "making of the Asbestos Trust Contribution, notwithstanding that the contribution of the Excess Net Reserve Funds ***may occur after the Effective Date*** … .") (emphasis added).

213 *See* Chubb Insurers Plan Obj., ¶¶ 55-77; LMIC Plan Obj., ¶¶ 26-44; Travelers Plan Obj., ¶¶ 87-91.

there were such a requirement, it is satisfied by the Plan.

a. There Is No "Ongoing Business" Requirement Under Section 524(g)(2)(B)(i)(II).

177. Contrary to the Objecting Insurers' assertions, section 524(g) does not impose an "ongoing-business" requirement. Section 524(g)(2)(B)(i)(II) requires that the Asbestos Trust:

> be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends.

11 U.S.C. § 524(g)(2)(B)(i)(II). The text of section 524(g)(2)(B)(i)(II) is devoid of any purported "ongoing-business" requirement, and "where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms."[214] In keeping with this bedrock principle, the Fourth Circuit observed that section "524(g)'s ***funding requirement*** … mandates that the trust (1) be funded in whole or in part by the securities of one or more involved debtors, and (2) by obligation of such debtor or debtors to make future payments, including dividends."[215]

178. The notion that section 524(g) imposes a so-called ongoing-business requirement stems from *dicta* in the Third Circuit's decision in *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004). In *Combustion*, the Third Circuit was called upon to address a number of challenges to a debtor's section 524(g) plan, including arguments by a group of objecting insurers that the requirements of section 524(g)(2)(B)(i)(II) were not satisfied by the debtor's plan.[216] In reviewing section 524(g)(2)(B)(i)(II), the Third Circuit mused that "[t]he ***implication*** of [section 524(g)(2)(B)(i)(II)'s funding] requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an

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214 *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (internal citation and quotation marks omitted).

215 *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 198 (internal citation and quotation marks omitted).

216 *Id.* at 248.

'evergreen' funding source for future asbestos claimants."[217] Noting that "Combustion Engineering's post-confirmation business operations would be, at most, minimal" the *Combustion Engineering* court observed that "it [was] ***debatable*** whether Combustion Engineering could satisfy § 524(g)(2)(B)(i)(II)," but declined to address the issue because "[w]hile the Objecting Insurers argue that § 524(g)(2)(B)(i)(II) is not satisfied, ***they do not have standing to raise this matter***. ***Therefore, we need not address it***."[218]

179. The Third Circuit's observation that section 524(g)(2)(B)(i)(II) "implies" that the reorganized debtor must be a going concern—the linchpin of the Objecting Insurers' argument—is textbook *dicta* because the statement could have been deleted from the opinion without even ***affecting***, much less "seriously impairing," the Third Circuit's holding that the objecting insurers lacked standing to raise the issue.[219]

180. Thus, even in the Third Circuit, *Combustion*'s *dicta* regarding a so-called ongoing-business requirement is not binding on lower courts, and it certainly does not bind this Court.[220] Moreover, the Third Circuit's *dicta* is not persuasive, as better-reasoned decisions by other courts illustrate the problematic, duplicative inquiries that courts would be forced to

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[217] *Id.* at 248 (emphasis added).

[218] *Id.* (emphases added).

[219] *City of Mansville, Va. v. Express Scripts, Inc.*, 128 F.4th 265, 271 n.5 (4th Cir. 2025) ("Generally [ ] a '[d]ictum is a "statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding."'") (quoting *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (quoting *Pittston Co. v. U.S.*, 199 F.3d 694, 703 (4th Cir. 1999))).

[220] LMIC in footnote 49 of its objection cites to the bankruptcy court's remark in *In re Lloyd E. Mitchell, Inc.*, No. 06-13250-NVA, 2012 WL 5988841, at *3 n.6 (Bankr. D. Md. Nov. 29, 2012) that "LEM cannot satisfy what has been described as the 'ongoing business requirement' which is a predicate to the establishment of such a trust because LEM has no ongoing business," but this too is *dicta* within the footnote of an unpublished opinion adjudicating a lift stay motion, not confirmation of a 524(g) plan. Moreover, none of the cases cited by the *Lloyd E. Mitchell* court—*In re American Capital Equipment, LLC and Skinner Engine Cos.*, 688 F.3d 145, 156 (3d Cir. 2012), *Combustion*, 391 F.3d at 248, or *Quigley*, 437 B.R. at 123—stand for the proposition that 524(g) requires a debtor to continue its prepetition business post-bankruptcy. The Chubb Insurers raise *American Capital Equipment, LLC* as evidence of this purported requirement, *see* Chubb Plan Obj. ¶ 65 n.130, but the Third Circuit made clear the bankruptcy court's oral finding that the proposed § 524(g) plan was nonviable was not before it on appeal, and the Third Circuit expressed no opinion on the matter. 688 F.3d at 151 & n.2. It thus does not even rise to the level of *dicta*.

undertake by an overly-broad interpretation of section 524(g)(2)(B)(i)(II)'s funding requirement.

181. In *Quigley*, the United States Bankruptcy Court for the Southern District of New York, correctly recognized that the *Combustion* court's musings about an implicit ongoing-business requirement were *dicta*.[221] The *Quigley* court observed that section 524(g)(2)(B)(i)(II) "implies an ability to make payments into the future—an 'evergreen' source of funding" and reasoned "that this is what the Third Circuit in *Combustion Engineering* undoubtedly meant when it referred to an 'ongoing business' requirement."[222] The *Quigley* court held that § 524(g)(2)(B)(i)(II) should be read "narrowly" in concluding that the plan before it satisfied "the ***funding*** requirements."[223] In support of its holding, the *Quigley* court reasoned that "a broad interpretation that imposes an ***ongoing business requirement*** could transform the ***funding requirement*** into a feasibility test, duplicating the requirement imposed under 11 U.S.C. § 1129(a)(11)."[224] Thus, the *Quigley* court properly concluded that section 524(g)(2)(B)(i)(II) merely imposes a funding requirement—*not* an ongoing-business requirement, which, in any event, would appear to implicate issues already properly addressed in connection with section 1129(a)(11)'s feasibility requirement.[225]

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221 *In re Quigley Co., Inc.*, 437 B.R. at 140 ("In ***dicta***, the *Combustion Engineering* Court stated the provision [section 524(g)(2)(B)(i)(II)] implied that the reorganized debtor must be a going concern, such that it is liable to make future payments into the trust to provide an evergreen funding source for future asbestos claimants.") (emphasis added) (internal citation and quotation marks omitted); *see also In re Flintkote Co.*, 486 B.R. 99, 129 ("The Court of Appeals in *Combustion Engineering* stated, in dicta, that the "implication of [§ 524(g)(2)(B)(i)(II)] is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants." (citation omitted)).

222 *Id.* at 141.

223 *Id.* (emphasis added).

224 *Id.* (emphases added).

225 That the *Quigley* court ***correctly*** concluded that section 524(g)(2)(B)(i)(II)'s requirement is simply a ***funding*** requirement—and not an ongoing-business requirement—is bolstered by the fact that "[n]umerous Chapter 11 debtors, including those who have successfully established section 524(g) trusts, ***were holding companies with non-debtor operating subsidiaries***." *In re Bestwall, LLC*, 605 B.R. 43, 50 (Bankr. W.D.N.C. 2019) (emphasis added).

182. The *Flintkote* court, which elected to "assume without deciding that § 524(g)(2)(B)(i)(II) contains an 'ongoing business' requirement," also observed that:

> *Combustion Engineering* itself contains language suggesting that while § 524(g)(2)(B)(i)(II) may imply that the debtor must be a "going concern" in order to meet its funding requirements, in certain situations the funding requirements may be met in other ways. *Combustion Engineering*, 391 F.3d at 248 n.70 ("From the claimants' perspective, ***it may make little economic difference whether the source of future funds comes from the debtor or a third-party so long as a sufficient and reliable pool of assets remains available to pay their claims***.").

In re Flintkote Co., 486 B.R. at 129-130 (emphasis added).

183. The Fourth Circuit's decision in *Kaiser* is consistent with the reasoning of *Quigley* and *Flintkote*. On remand from the Supreme Court, the Fourth Circuit addressed the merits of an insurer's challenges to a section 524(g) plan, including arguments that the plan failed to satisfy section 524(g)'s funding requirements.[226] The plan at issue in *Kaiser* provided that the underlying trust would be "funded by three main sources: the rights to non-eroding coverage under the Truck policy; a one-time $49 million contribution from the Debtor's parent company; and a secured five-year, $1 million note issued by the Debtors."[227] The debtors argued that section 524(g)'s funding requirements were met by the note, which both constituted a "security" under the Bankruptcy Code and created an obligation for the reorganized debtors to make future payments to the trust.[228] The objecting insurer—relying on the Third Circuit's *dicta* from *Combustion*—disagreed "arguing primarily that the single $1 million note doesn't provide what it terms an 'evergreen' source of funding for the Trust, and is therefore pretextual."[229]

184. The Fourth Circuit concluded that "[t]he Debtor's reading of § 524(g)(2)(B)(i)(II)

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[226] *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 198.

[227] *Id.*

[228] *Id.*

[229] *Id.* (citing *In re Combustion Eng'g, Inc.*, 391 F.3d at 248).

is the correct one[,]" explaining:

> To reiterate, § 524(g)(2)(B)(i)(II) sets forth ***two funding-related requirements: that the trust be funded—in whole or in part—by the "securities" of one or more involved debtors,*** *and* **that such funding stems from "obligation of such debtor or debtors to make future payments, including dividends."** The Trust plainly comports with the text of this provision. It is funded in part by the Debtors' security: the $1 million note. And by its very nature, that $1 million note obliges the Debtors to make future payment(s).

Id. (bolded emphasis added). Notably, the Fourth Circuit rejected the objecting insurer's argument "that the note is pretextual because it does little to *actually* fund the Trust[,]"[230] reasoning:

> That may be true on a percentage basis, but it's not particularly troubling here because most of the funds that will be used to pay asbestos claims ***will come from insurance proceeds***. And those proceeds will be contributed by Truck—not the Trust. These insurance proceeds (including excess coverage proceeds) will thus provide the "evergreen" source of funding for the asbestos liabilities that Truck contends is necessary. Moreover, the statute doesn't expressly require *indefinite* future payments or a minimum payment amount.

Id. (bolded emphasis added).

185. Furthermore, the Supreme Court has previously rejected efforts to read an ongoing business requirement into the Bankruptcy Code, which further undermines the Objecting Insurers' attempt to engraft such a requirement into section 524(g) here:

[230] *Id.* (emphasis in original).

> In *Toibb v. Radloff*, 501 U.S. 157 (1991), the [Supreme] Court enforced the plain language of the bankruptcy statute defining the class of debtors permitted to file under Chapter 11, reversing the lower courts. The lower courts relied on legislative history, policy considerations, and the structure of the Code to ***engraft an "ongoing business" requirement*** for debtors who sought to file under Chapter 11. The Court stated: when "the resolution of a question of federal law turns on a statute and the intention of Congress[,] we look first to the statutory language and then to the legislative history if the statute is unclear."

In re S. California Edison Co., Civ. A. No. 6:16-CV-57, 2018 WL 949223, at *4 (S.D. Tex. Feb. 15, 2018) (emphasis added).[231] Noting that "[t]he language of section 109 is ***not unclear,"*** the Supreme Court explained that "***although a court may appropriately refer to a statute's legislative history to resolve statutory ambiguity, there is no need to do so here***."[232]

186. Because section 524(g)(2)(B)(i)(II) is similarly unambiguous, this Court's charge is to enforce the plain language of the statute, which plainly does not impose, or even suggest, an ongoing-business requirement. As *Toibb* makes clear, consideration of section 524(g)'s legislative history is both unnecessary and inappropriate because there is no statutory ambiguity that calls for it. Indeed, while the Supreme Court elected to briefly address why, in any event, arguments regarding section 109(d)'s legislative history were unpersuasive, and addressed and rejected certain policy-based arguments, it made clear that: "the foregoing analysis [that section 109(d) plainly and unambiguously imposes no ongoing business requirement] ***is dispositive of the question presented*** … ."[233]

187. Accordingly, here, as in *Kaiser*, the Asbestos Trust will be funded by: (i) a one-time contribution of the proceeds remaining from the Certain Settling Insurers Settlement; (ii)

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[231] *See also In re Lucido*, 655 B.R. 355, 365 (Bankr. N.D. Cal. 2023) ("[11 U.S.C. § 1141(d)(3)(B)] is stated in the present tense, is forward-looking, and simply requires that the debtor 'engage in business' post-consummation. The court declines to insert a business continuity requirement into the statute where none exists.").

[232] *Toibb v. Radloff*, 501 U.S. 157 at 162 (emphasis added).

[233] *Id.* at 163 (emphasis added).

the Asbestos Insurance Rights; and (iii) dividends from Reorganized Hopeman—which the Asbestos Trust will have the right to cause by virtue of its ownership of all of Reorganized Hopeman's Common Stock—and, if any such proceeds exist, the Excess Net Reserve Funds.[234]

188. Thus, properly construed, section 524(g)(B)(i)(II) mandates a funding source that will enable the Asbestos Trust to satisfy future Demands and current Asbestos Claims. The Plan satisfies that requirement.

b. To the Extent Section 524(g)(2)(B)(i)(II) Imposes an "Ongoing Business" Requirement, It is Satisfied Here.

189. Even if section 524(g)(2)(B)(i)(II) imposed an ongoing-business requirement it is satisfied here. As the Third Circuit suggested in *Combustion*, albeit in *dicta*, if there were a purported ongoing-business requirement, its apparent intent would be to ensure that an "evergreen funding source" is available to the Asbestos Trust. Other courts, in engrafting an ongoing-business requirement to a debtor's eligibility to seek relief under chapter 11 before the Supreme Court's clarified in *Toibb* that the Bankruptcy Code has no such requirement,[235] similarly observed "the requirement of an 'ongoing business' may be viewed as a shorthand expression for the requirement of being able to repay debts and to effectuate a plan."[236]

190. Here, pursuant to the Restructuring Transactions:

> Reorganized Hopeman will acquire a minority ownership interest, and receive net cash flows on account of that interest, in a multifamily property near Houston, Texas … [While] Reorganized Hopeman may sell its membership interests in the Property; it is anticipated that Reorganized

[234] Travelers' assertion that Reorganized Hopeman has no obligation to fund the Asbestos Trust, in contravention of § 524(g)(2)(B)(i)(II), is based on their own misunderstanding of the Plan and Plan Documents. Section 1.23 of the Plan contemplates that Reorganized Hopeman shall contribute to the Asbestos Trust "all Cash held by Hopeman," and section 8.5 provides that "[a]ny Excess Net Reserve Funds shall be contributed by Reorganized Hopeman to the Asbestos Trust." There is no room for alternative interpretations of this language.

[235] *Toibb*, 501 U.S. at 166 (finding that courts could not engraft an "ongoing business" requirement into the Bankruptcy Code to prevent nonbusiness debtors from filing under chapter 11 since section 109(d) of the Bankruptcy Code contained no such restriction).

[236] *In re Markunes*, 78 B.R. 875, 879 (Bankr. S.D. Ohio 1987).

> Hopeman will continue holding its membership interest in the Property and will receive quarterly common equity cash flow distributions ***for the foreseeable future***. From time to time, Reorganized Hopeman may periodically set aside and reserve any dividends or distributions from the Property that are or will be sufficient to fully satisfy (as and when due) all franchise taxes and other expenditures necessary to maintain Reorganized Hopeman's corporate existence in good standing under applicable law ***and to fulfill the Asbestos Insurance Cooperation Obligations and conduct other business***. ***The balance of any dividends or distributions that remains (after the Net Reserve Funds is funded) may be transferred by Reorganized Hopeman to the Asbestos Trust and will become part of the Asbestos Trust Assets***.

Plan Supplement, Ex. F, at 1 (emphases added). Furthermore, even where courts have assumed for argument's sake that an ongoing business requirement exists, they have imposed a low bar for its satisfaction and have found that it is not necessary for a debtor to have operated a viable, ongoing business at the time if filed for bankruptcy. As the *Flintkote* court observed:

> Nothing in § 524(g) plainly and unambiguously requires a debtor to continue in a pre-petition business, let alone a viable pre-petition business…. In light of the many express requirements laid out in § 524(g), the Court finds that had Congress intended § 524(g) to require a debtor to operate a viable, ongoing, pre-petition business, it would have included statutory language to that effect in § 524(g)(2)(B). However, such a specification is plainly absent, and thus the Court should not consider the legislative history or statutory purpose in the face of unambiguous statutory language. Even if the Court were to give weight to the legislative history behind § 524(g), the history does not contain this requirement. The House Committee Report discussing § 524(g) states that "[t]he asbestos trust/injunction mechanism established in the bill is available for use by *any asbestos company facing a similarly overwhelming liability*."

In re Flintkote, 486 B.R. at 131 (emphasis in original) (internal citations omitted).

191. The Objecting Insurers' contention that § 524(g) mandates an ongoing business flies in the face of § 524(g) precedent where debtors acquired interests in a business for purposes of reorganization during the pendency of the bankruptcy.[237]

[237] *E.g.*, *Order Confirming the Second Amended Plan of Reorganization, as Modified, for Sepco Corporation Under Chapter 11 of the Bankruptcy Code, and Report and Recommendation to the District Court*, at 63, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Mar. 24, 2020), Docket No. 732 ("As of the Effective Date,

192. Indeed, other courts have confirmed section 524(g) plans where the debtor(s) had a substantially similar business as that contemplated here: owning and managing a real estate interest.[238] The Objecting Insurers' attempts to invent a "passive investment" carveout onto section 524(g)(2)(b)(i)(II)'s purported ongoing-business requirement ignore contrary section 524(g) precedent and stand on flawed analogies.[239]

Reorganized Sepco will purchase from SGC 33.33% of the membership interests of Moores for $400,000 . . . . Reorganized Sepco will own 33.33% of the membership interest of Moores and will be the non-managing member of Moores."); *Memorandum Opinion Overruling Objections to the Amended Joint Plan of Reorganization, Confirming Plan and Recommending the Affirmation of Confirmation and of the § 524(g) Injunction*, at 8-9, *In re Flintkote Co.*, No. 04-11300 (Bankr. D. Del. Dec. 21, 2012), Docket No. 7253 ("Flintkote's real estate operations consist of owning and managing the leasing of six 'quick-service restaurant properties,' which Flintkote purchased with portions of its recovered insurance assets, upon Court approval, during the course of the bankruptcy proceedings . . . . Flintkote intends to allocate $10 million of the working capital it will hold under the Plan for the purchase of seven additional properties by the end of the second year, post-effective date, with the goal of securing similar long-term, triple-net leases for each property." (footnote omitted)).

238 *See*, *e.g., In re Yarway Corp.*, Case No. 13-11025 (Bankr. D. Del. 2013), *Findings of Fact and Conclusions of Law in Support of Order Confirming the Plan of Reorganization for Yarway Corporation Under Chapter 11 of the Bankruptcy Code Proposed by Yarway Corporation and TYCO International PLC* [Docket No. 860], at pp. 10 (noting that debtor Yarway owned an interest in an entity, which, in turn, owns an interest in a joint venture which owns and operates a five-story commercial office building), p. 38 (finding "After the Effective Date, Reorganized Yarway will continue to own and manage its interest in STI Properties. STI Properties, in turn, is a member of a joint venture which owns and operates a commercial office building near Cleveland, Ohio. Accordingly, the Debtor will have an ongoing business after the Effective Date.") (internal citation omitted); *In re Flintkote Co.*, No. 04-11300 (Bankr. D. Del. Dec. 21, 2012), *Memorandum Opinion Overruling Objections to the Amended Joint Plan of Reorganization, Confirming Plan and Recommending the Affirmation of Confirmation and of the § 524(g) Injunction* [Docket No. 7253], at 8-9 ("Flintkote intends to allocate $10 million of the working capital it will hold under the Plan for the purchase of seven additional properties by the end of the second year, post-effective date, with the goal of securing similar long-term, triple-net leases for each property." (footnote omitted)); *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Mar. 24, 2020), *Order Confirming the Second Amended Plan of Reorganization, as Modified, for Sepco Corporation Under Chapter 11 of the Bankruptcy Code, and Report and Recommendation to the District Court* [Docket No. 732], at Ex. A (Plan), § 8.10 (describing "Restructuring Transactions" under which the debtor would acquire a minority ownership interest in, and receive rents from, an entity that owns an office building in Pennsylvania).

239 The Objecting Insurers further contend that Reorganized Hopeman's real estate ownership is not a true business and is instead merely a "passive investment" that cannot be considered a going concern. *See* LMIC Plan Obj. ¶¶ 34-36, 38, 40-41; Chubb Plan Obj. ¶¶ 66-68, 71, 73, 77, 80. The Objecting Insurers make this bald assertion despite the Bankruptcy Code not defining the term "business," and "Black's Law Dictionary defin[ing] 'business' very broadly, as '[a] commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain.'" *Lucido*, 655 B.R. at 365 (quoting Black's Law Dictionary (11th ed. 2019)). LMIC attempts a thin analogy to a separate provision, § 524(g)(2)(B)(i)(III), *see* LMIC Plan Obj. ¶¶ 33-34 (citing *Fireman's Fund Insulation Co. v. Plant Insulation Co.* (*In re Plant Insulation Co.*), 734 F.3d 900, 917 (9th Cir. 2013)), and the Chubb Insurers seek to have § 524(g) interpreted through the lens of the Internal Revenue Code. *See* Chubb Plan Obj. ¶ 68 & nn. 138-39 (citing *Comm'r of Internal Rev, v. Groetzinger*, 480 U.S. 23, 27-32 (1987), *In re Voelker*, 123 B.R. 749, 752–53 (Bankr. E.D. Mich. 1990), and *Whipple v. Comm'r of Internal Rev.*, 373 U.S. 193, 202 (1963)). LMIC contends the ongoing-business requirement, and the fact that it excludes so-called "passive investments" can be understood through the Ninth

193. The Objecting Insurers make much ado about purported distinctions between the present situation and the situation in *Flintkote*.[240] But while *Flintkote* is an informative case, it is not the standard by which all other proposed section 524(g) plans are judged. Instead, Reorganized Hopeman's business, which involves obtaining an interest in an operating entity and receiving correspondent cash flows from such entity, is the functional-equivalent of a debtor whose business consists of owning non-debtor operating subsidiaries. A number of courts have confirmed chapter 11 plans of reorganization, including section 524(g) plans, where the debtor was a holding company whose business involved owning operating non-debtor subsidiaries.[241]

194. Indeed, while the Debtor no longer carried on its former ship-joining or cabinet-making operations at the time of the Petition Date, and had not for nearly 20 years, the Debtor did assert claims against its insurance policies and manage its insurance assets, ***including investing its cash and proceeds of insurance settlements in low-risk assets to generate a return***

Circuit's analysis of the "specified contingencies" language in § 524(g)(2)(B)(i)(III), LMIC Plan Obj. ¶¶ 34 (citing *Plant Insulation*, 734 F.3d at 915-17), but this is a separate subsection that no Objecting Insurer has asserted is otherwise at issue here. This is not how statutory interpretation works. The language of a statute must be ascertained in its own context, not through analogy to opinions interpreting different language in different statutory provisions. *See, e.g.*, *N.C. All. for Retired Americans v. Hirsch*, 741 F. Supp. 3d 318, 342 (E.D.N.C. 2024) (noting that courts interpret "the words of a statute . . . in their context and with a view to their place in the overall statutory scheme" (quoting *King v. Burwell*, 576 U.S. 473, 492 (2015))). The Chubb Insurers' tax cases are inapposite for the same reason: they are entirely unrelated to § 524(g)(2)(B)(i)(II). That one bankruptcy court found a provision of the tax code useful by analogy 35 years ago in a chapter 12 family farm bankruptcy, *see Voelker*, 123 B.R. at 752-53, does not warrant this practice in a complex chapter 11 reorganization. The Court need not humor these arguments.

240 *See* LMIC Plan Obj., ¶¶ 36-41; Chubb Insurers Plan Obj., ¶¶ 73-77.

241 *See*, *e.g., In re Gulfmark Offshore, Inc.*, No. 17-11125 (Bankr. D. Del. June 27, 2017), *Disclosure Statement for Amended Chapter 11 Plan of Reorganization of Gulfmark Offshore, Inc.* [Docket No. 173], § II.C ("The Debtor is a holding company, the sole assets of which (other than bank accounts and the intercompany notes receivable), are shares and LLC interests in its immediate subsidiaries."); *In re Specialty Prods. Holding Corp.*, No. BR 10-11779-JKF, 2013 WL 2177694, at *1-2 (Bankr. D. Del. May 20, 2013) (noting the 524(g) debtors' history as holding companies); *In re XO Commc'ns, Inc.*, 330 B.R. 394, 400 (Bankr. S.D.N.Y. 2005) ("[Debtor] was a holding company formed under the laws of the State of Delaware (which changed its name to XO Communications, Inc. … on October 20, 2000) whose subsidiaries provide telecommunication services in several states."); *In re Williams Commc'ns Grp., Inc.*, 281 B.R. 216, 218 (Bankr. S.D.N.Y. 2002) ("[Debtor] is a non-operating holding company whose principal asset is its ownership of Williams Communications, LLC[.]"); *In re Mercury Finance Co.*, 224 B.R. 380, 381 (Bankr. N.D. Ill. 1998) ("The Debtor, Mercury Finance Company, is a holding company whose shares of stock have been publicly traded since 1989.").

to be used to satisfy claims, which is exactly what the Reorganized Debtor will do after the Effective Date. Section 524(g) does not require anything more.[242]

195. Accordingly, even if section 524(g)(2)(B)(i)(II) imposed an ongoing-business requirement, it is satisfied here.

3. The Plan Satisfies Section 524(g)(2)(B)(i)(III).

196. The Plan also satisfies section 524(g)(2)(B)(i)(III)'s "ownership requirement"—*i.e.*, that the Asbestos Trust "own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares" of each Debtor. In particular, the Plan provides that "100% of the Reorganized Hopeman Common Stock shall be authorized and issued to the Asbestos Trust." Plan, § 8.6. Thus, the Plan plainly complies with section 524(g)(2)(B)(i)(III).

4. The Plan Satisfies Section 524(g)(2)(B)(i)(IV).

197. Finally, section 524(g)(2)(B)(i)(IV) requires an asbestos trust "to use its assets or income to pay claims and demands." 11 U.S.C. § 524(g)(2)(B)(i)(IV). Here, the Asbestos Trust will assume the liability and responsibility for all Channeled Asbestos Claims[243] and will use its assets (*i.e.*, the Asbestos Trust Assets, which include the Asbestos Insurance Rights) to pay and satisfy Channeled Asbestos Claims in accordance with the Plan, the Asbestos Trust Agreement, and the Asbestos Trust Distribution Procedures, *id.*, thus satisfying the requirements of section 524(g)(2)(B)(i)(IV).

5. The Debtor Is Entitled to a Discharge.

198. The Chubb Insurers and LMIC contend that Hopeman is not entitled to a

[242] "[A]ll that [§ 524(g)(2)(B)(i)(II)] must accomplish is to ensure that the Trust receives a stake, of some value, in the reorganized debtor. The Trust must get a piece of the "goose that lays the golden eggs[.]" *Plant Insulation*, 734 F.3d at 914 (finding this subsection satisfied even where the trust paid $2,000,000 for a $500,000 share in the reorganized debtor along with a $250,000 note).

[243] Plan, § 8.3(a).

discharge under section 1141(d) of the Bankruptcy Code, relying on essentially the same arguments that they erroneously contend demonstrate that section 524(g)(2)(B)(i)(II)'s requirements are not satisfied.[244] Here too, the Chubb Insurers and LMIC are wrong.

199. The Debtor is entitled to a supplemental discharge under section 524 of the Bankruptcy Code because it is entitled to a discharge under section 1141 of the Bankruptcy Code. Pursuant to section 1141(d)(3) of the Bankruptcy Code, "[t]he confirmation of a plan does not discharge a debtor if – (A) the plan provides for the liquidation of all or substantially all of the property of the estate; (B) the debtor does not engage in business after consummation of the plan; and (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title."[245] Section 1141(d)(3)'s requirements are *conjunctive*, but two of the three requirements are not satisfied here.

200. The Plan does *not* liquidate all or substantially all of the property of the Debtor's estate. Instead, the Plan provides for the Debtor to survive as Reorganized Hopeman, which will receive the Net Cash Reserve, which Reorganized Hopeman will use to consummate the Restructuring Transactions, including investing in a business and capitalizing the reorganized entity. The Debtor also will transfer to Reorganized Hopeman the Debtor's books and records necessary to resolve the asbestos-related claims that will be channeled to the Asbestos Trust.[246] The Debtor, furthermore, will make the Asbestos Trust Contribution—which will ***transfer***, not ***liquidate***, the Asbestos Insurance Rights to the Asbestos Trust, the newly-formed owner of Reorganized Hopeman, to maintain the Debtor's Asbestos Insurance Rights in their existing unliquidated form for the benefit of the holders of Channeled Asbestos Claims. The plain

[244] Chubb Insurers Plan Obj., ¶¶ 55-65; LMIC Plan Obj., ¶¶ 24-26.

[245] 11 U.S.C. § 1141(d)(3).

[246] Plan, § 8.3(l).

language of section 1141(d)(3)(A) restricts a debtor's entitlement to discharge where "***the plan provides for the liquidation***."[247] Thus, the Objecting Insurers repeated reference to the fact that substantially all of Hopeman's assets were sold in 2003 is irrelevant.[248]

201. Similarly, Reorganized Hopeman *will* engage in business after the Effective Date. Through the Restructuring Transactions, Reorganized Hopeman will make investments that will result in it obtaining a minority interest in an operating entity which will generate cash flow through distributions and/or dividends for the foreseeable future. A number of courts have concluded this arrangement suffices in addressing the purported ongoing-business requirement the Objecting Insurers beseech this Court to read into section 524(g). As the *Flintkote* court correctly observed:

> [T]here is no requirement under § 1141(d) that a debtor continue the same business lines and activities that it engaged in pre-petition. The requirement under the statute in order to a receive a discharge, is simply to "engage in business after consummation of the plan." § 1141(d)(3)(B). ***There is no qualification in the statute that the business must be a pre-petition business, nor any language qualifying what level of business activity is sufficient.***

In re Flintkote, 486 B.R. at 132 (emphases added). Here, "engaging in business after consummation of the [P]lan," is *precisely* what Reorganized Hopeman, in keeping with the Plan, will do. Accordingly, the Debtor *does* qualify for a discharge pursuant to section 1141(d)(3) because two of the three requirements are not met and such requirements are conjunctive.

202. Nonetheless, the Objecting Insurers, in re-hashing the same issues raised with respect to the purported ongoing-business requirement under section 524(g), argue that Hopeman

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247 11 U.S.C. § 1141(d)(3)(A).

248 The Chubb Insurers' citation to *In re Berwick Black Cattle Co.*, 394 B.R. 448, 461 (Bankr. C.D. Ill. 2008), a non-524(g) bankruptcy, fails to move the needle. There, multiple debtors filed a joint chapter 11 plan that contemplated the formation of a Liquidating Trust and substantive consolidation of the estates. *Id.* at 456, 461. The court denied confirmation of the plan because the plan's blanket third-party release provisions were outside of the court's jurisdiction and inappropriate under sections 105(a) and 1123(a)(6). *Id.* at 462-63. Moreover, the opinion did not analyze § 1141(d)(3)(A) of the Bankruptcy Code at all. *See generally id.*

is not entitled to a discharge under section 1141(d) because it is not a going concern. In support of their erroneous contention, the Objecting Insurers rely on the Fourth Circuit's decisions in *Carolin*[249] and *Grausz*[250] claiming that the Fourth Circuit's holdings in those cases stand for the proposition that "a 'reorganization' under Chapter 11 requires the reorganization/rehabilitation of business that existed as of the petition date."[251] Both *Carolin* and *Grausz* are inapposite.

203. The Fourth Circuit's decision in *Carolin* involved the classic single-asset real-estate debtor embroiled in a two-party dispute with its lender, and is off-point. As the Fourth Circuit summarized:

> This case sounds in bankruptcy, but it is fundamentally a dispute over the fate of valuable property. Carolin Corporation (Carolin) is a real estate holding company. Its principal assets are a 5.56-acre parcel of land located in Lexington, North Carolina, and the 80,000 square foot industrial building situated thereon. Robert J. Miller, Jr. is Carolin's only secured creditor. He is the successor beneficiary of a purchase money deed of trust on the Lexington property and successor payee under the $650,000 purchase money promissory note which Carolin executed to finance its original purchase of the land and building.
>
> Carolin defaulted on the note in the summer of 1986. On December 3, 1986—fifty minutes before a scheduled foreclosure under the deed of trust—the company filed for Chapter 11 protection. The filing automatically stayed foreclosure, 11 U.S.C. § 362(a), triggering the present dispute between Carolin and Miller over the company's ultimate eligibility for protection under the bankruptcy statutes.

Carolin Corp., 886 F.2d at 695. Notably, *Carolin* addressed an issue of first impression: "[w]e have not before had occasion to consider whether a bankruptcy court may properly dismiss a Chapter 11 petition for want of good faith on the debtor's part, nor if so, under what standards."[252]

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249 *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989).

250 *Grausz v. Sampson (In re Grausz)*, 63 Fed. App'x. 647 (4th Cir. 2003).

251 Chubb Insurers Plan Obj., ¶ 59 (internal citation omitted).

252 *Carolin*, 886 F.2d at 698.

204. *Carolin* does *not* speak to whether a debtor is entitled to a discharge under section 1141; in fact, ***section 1141 is never cited or discussed in Carolin***. The Objecting Insurers rely on *Carolin*'s discussion of the objective-futility prong of a bad-faith dismissal, latching on to language that such inquiry should "concentrate on assessing whether there is no going concern to preserve … and … no hope of rehabilitation, except according to the debtor's terminal euphoria."[253] *Carolin* does not apply here, where the Debtor filed this Chapter 11 Case to address its asbestos-related liability, and, through the Plan, seeks to avail itself of section 524(g) for that purpose. And, as the *Flintkote* court observed, Congress intended "[t]he asbestos trust/injunction mechanism established in the bill is available for use by *any asbestos company facing a similarly overwhelming liability*." *In re Flintkote*, 486 B.R. at 131 (emphasis in original) (internal citations omitted).

205. The *Flintkote* court also summarily dismissed and distinguished *Grausz* as "clearly inapposite" in this setting:

> *Grausz* is ***an unpublished case*** involving an individual Chapter 11 debtor whose plan called for ***the liquidation of his prepetition businesses***. The debtor argued that because, post-consummation, he would be working as a consultant for an entity unrelated to the bankruptcy, he was engaged in business sufficient to satisfy § 1141(d) and receive a discharge. The Court of Appeals noted that the business Dr. Grausz worked for post-consummation was unrelated to the entities in bankruptcy, and that § 1141(d)(3)(B) "does not refer to basic employment by an individual debtor but to *continuation* of a *pre-petition* business. Thus, Dr. Grausz's prepetition business was liquidating; there was no ongoing business at all. Instead, Dr. Grausz simply became an employee for an entirely unrelated entity. The circumstances here are clearly inapposite, as Flintkote is: (1) not an individual debtor, (2) not liquidating, and (3) continuing to engage in business post-confirmation.

[253] *Id.* at 701-02 (internal citations and quotation marks omitted). Moreover, the court in *Carolin* suggested that equally important to the analysis was whether the debtor "could conduct business activities," *see id.* at 703 (emphasis in original), not whether it had been conducting that business immediately prepetition.

Id. at 132 (bolded emphasis added) (internal citations omitted).[254] The same is true here, Hopeman is: (1) not an individual debtor, (2) not liquidating, and (3) will continue to engage in business, vis-à-vis the Restructuring Transactions, post-confirmation.

206. Furthermore, the Objecting Insurers' claim that "well-established law throughout the country that a 'reorganization' under Chapter 11 requires the reorganization/rehabilitation of business that existed as of the petition date," is demonstrably inaccurate.[255]

207. The Objecting Insurers' discharge arguments are meritless and should be overruled.

B. The Debtor's History, the Nature of Asbestos-Related Litigation and the Facts of This Chapter 11 Case Support the Findings Required for Issuance of the Asbestos Permanent Channeling Injunction.

208. Section 524(g)(2)(B)(ii) of the Bankruptcy Code requires the Court to make certain factual findings to support the issuance of a channeling injunction under section 524(g)(1)(A). As set forth below, the Debtor's history, the nature of asbestos-related litigation and the facts of this Chapter 11 Case all support the findings required for the issuance of the Asbestos Permanent Channeling Injunction under section 524(g)(l)(A) of the Bankruptcy Code.

209. To support entry of a channeling injunction under section 524(g)(l)(A), a court must find that "the debtor is likely to be subject to substantial future demands for payment

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[254] *In re Um*, cited by both the Chubb Insurers and LMIC, is similarly inapposite. No. 10-46731, 2015 WL 6684504 (Bankr. W.D. Wash. Sept. 30, 2015). It too was a consumer bankruptcy, *see id.* at *5 ("The issue is whether this provision refers to employment by an individual debtor after plan consummation, or instead to continuation of the prepetition business."), and the court made clear in its analysis that it "f[ound] most helpful those cases involving individual chapter 11 debtors with liquidating plans." *Id.* at *7 (collecting cases). The *Um* court also declined to adopt the reasoning in *Flintkote*, because that case, like the one here, "addressed the issue in the context of a § 524(g) determination." *Id.*

[255] *See, e.g.*, *In re Honx, Inc.*, Case No. 22-90035, 2022 WL 17984313, at *3 (Bankr. S.D. Tex. Dec. 28, 2022) ("The Committee's contention that HONX has no ongoing business and therefore cannot be said to have a goal of 'rehabilitation' misses the point. ***There is no ongoing business requirement in the Code***.") (citing *Toibb v. Radloff*, 501 U.S. 157, 166 (1991) (finding that courts could not engraft an "ongoing business" requirement into the Code to prevent nonbusiness debtors from filing under chapter 11 since section 109(d) of the Bankruptcy Code contained no such restriction) (emphasis added)).

arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction."[256]

210. Since 1979, over 126,000 asbestos claims have been asserted, both through the filing of lawsuits naming the Debtor and through out-of-court claims asserted through agreed procedures put in place with various law firms under "Administrative Agreements" against the Debtor.[257] As of June 30, 2024, over 2,700 unresolved asbestos claims had been asserted against the Debtor.

211. Based on the substantial number of asbestos-related personal injury lawsuits that were filed in the past and were continuing to be filed prior to the Petition Date, the Debtor would likely be subject to substantial future Demands for payment arising from the same or similar conduct or events that gave rise to the Channeled Asbestos Claims. Accordingly, section 524(g)(2)(B)(ii)(I) is satisfied.

212. Section 524(g)(2)(B)(ii)(II) of the Bankruptcy Code requires a court to find that "the actual amounts, numbers, and timing of such future demands cannot be determined."[258] The Debtor is unable to predict the amounts, numbers and timing of future Demands in respect of alleged asbestos-related personal injuries. While the Debtor undoubtedly was continuing to receive new claims just before the Petition Date, and has learned of additional claims since filing for bankruptcy, precisely how many demands will be made, in what amounts, and when they will be asserted cannot be known due in large part to the uncertain manifestation of disease that may arise over 40 years or more after asbestos exposure. Accordingly, this factual predicate is likewise satisfied.

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256 11 U.S.C. § 524(g)(2)(B)(ii)(I).

257 *Id.* at Art. IV.D.

258 11 U.S.C. § 524(g)(2)(B)(ii)(II).

213. Section 524(g)(2)(B)(ii)(III) of the Bankruptcy Code requires a finding that "pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands."[259] Such a threat is real in this case absent the Plan. Under the Plan, Channeled Asbestos Claimants, current and future, will receive equitable treatment in accordance with the Asbestos Trust Distribution Procedures. Thus, the Plan resolves two issues of paramount importance: (i) the Plan ensures, consistent with section 524(g), that future claimants' interests are adequately protected by, among other things, the appointment of the Future Claimants' Representative charged with a fiduciary duty to represent such future claimants' interests; and (ii) relatedly, the Plan, by virtue of section 524(g), provides a mechanism to bind future claimants to the treatment provided under the Plan, including the process and procedure for asserting and recovering on account of claims held by future claimants (vis-à-vis the Plan Documents, including the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures). Without the Plan confirmed under section 524(g): (i) future claimants' interests would not be protected at *all*; and (ii) future claimants, which would not be bound for due-process and other issues that section 524(g) resolves, could pursue Reorganized Hopeman, including coverage under the Asbestos Insurance Policies, in a manner that could wreak havoc on *any* attempt to establish an orderly process for the fair and equitable distribution of assets to asbestos claimants. Accordingly, the requirements of section 524(g)(2)(B)(ii)(III) are met.

214. Section 524(g)(2)(B)(ii)(IV) of the Bankruptcy Code requires a court to find that, as part of the confirmation process, the terms of the channeling injunction proposed, including "any provisions barring actions against third parties," are set forth in the plan of reorganization

[259] 11 U.S.C. § 524(g)(2)(B)(ii)(III).

and the disclosure statement in support of the plan.[260] A court must also find that "a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan."[261] As part of the Plan confirmation process, the Debtor included the terms of the Asbestos Permanent Channeling Injunction, including provisions therein barring actions against any Protected Party, in both the Plan and the Disclosure Statement.[262] The Debtor also designated Class 4 (Channeled Asbestos Claims) under the Plan for all Channeled Asbestos Claims.[263] The holders of Class 4 Channeled Asbestos Claims voted overwhelmingly to accept the Plan.

215. Finally, section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code requires a court to find that:

> the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

11 U.S.C. § 524(g)(2)(B)(ii)(V). Here, the Asbestos Trust will pay Channeled Asbestos Claims, in accordance with the Asbestos Trust Distribution Procedures, which contain mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay present Uninsured Asbestos Claims and future asbestos-related Demands that involve similar claims in substantially the same manner.

216. Specifically, the Asbestos Trust Distribution Procedures provide for the processing and payment of the Uninsured Asbestos Claims, including the uninsured portions of

[260] 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(aa).

[261] 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).

[262] *See* Plan, Art. X; Disclosure Statement, Art. VIII.H.

[263] *See* Plan, Arts. III, IV; Disclosure Statement, Art. VIII.

Insured Asbestos Claims, that would have been paid by the Debtor prepetition, on an impartial, first-in-first-out basis, while also permitting the Channeled Asbestos Claimants whose claims are Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system.[264] To ensure substantially equivalent treatment of all present and future Uninsured Asbestos Claims, the Asbestos Trustee will be required to determine, with the consent of the Asbestos Trust Advisory Committee and the Future Claimants' Representative, the percentage of value that holders of present and future Uninsured Asbestos Claims are likely to receive from the Asbestos Trust (the "Payment Percentage").[265]

217. This determination will take account of, among other things, estimates of the Asbestos Trust's assets and liabilities (including projected expenses).[266] Further, at least once every three years, the Administrative Trustee will be required to reconsider the then-applicable Payment Percentage based on current information.[267] In determining whether to adjust the Payment Percentage, the Administrative Trustee is obligated to assess whether the then-applicable Payment Percentage is based on accurate, current information, and, if after reconsideration, the Administrative Trustee believes a change to the Payment Percentage is necessary, then the Administrative Trustee may effectuate such change with the consent of the Asbestos Trust Advisory Committee and the Future Claimants' Representative.[268] Each Distribution made to an asbestos claimant will reflect the Payment Percentage in effect at the time of such Distribution.[269] To further ensure equitable treatment of similarly-situated claims,

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264 Asbestos Trust Distribution Procedures, § 2.2.

265 *Id.* at § 4.1.

266 *Id.* at § 2.2.

267 *Id.* at § 4.2.

268 *Id.*

269 *Id.* at § 4.3.

in the event the Administrative Trustee determines it appropriate to increase the Payment Percentage, and such proposed increased Payment Percentage is subsequently adopted in accordance with the terms of the Asbestos Trust Distribution Procedures, the Administrative Trustee will be required to make supplemental payments to all asbestos claimants who previously liquidated their Asbestos Personal Injury Claims based on a lower Payment Percentage.[270]

218. Accordingly, the Asbestos Trust Distribution Procedures provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Asbestos Personal Injury Claims and future asbestos-related Demands in substantially the same manner. The Plan and the Asbestos Trust Distribution Procedures contemplated therein satisfy the requirements in section 524(g)(2)(B)(ii)(V).

C. The Court May Extend the Asbestos Permanent Channeling Injunction to Third Parties.

219. Section 524(g)(4)(A)(ii) provides that a channeling injunction entered pursuant to section 524(g)(1)(A):

> may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—
>
> (I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;
>
> (II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

[270] *Id.* at § 4.3.

> (III) the third party's provision of insurance to the debtor or a related party; or
>
> (IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to —
>
> > (aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or
> >
> > (bb) acquiring or selling a financial interest in an entity as part of such a transaction.

11 U.S.C. § 524(g)(4)(A)(ii). As required by section 524(g)(4)(A)(ii), each Protected Party under the Plan is either identifiable from the terms of the Asbestos Permanent Channeling Injunction or is a member of an identifiable group.[271] In addition, the Plan defines Protected Party to include those parties that fit within the categories listed in section 524(g)(4)(A) of the Bankruptcy Code.[272] Accordingly, the Court should extend the Asbestos Permanent Channeling Injunction to protect all of the Protected Parties from liability for any Channeled Asbestos Claims.

D. The Court Has Appointed a Legal Representative to Protect the Rights of Persons Who Might Subsequently Assert Demands.

220. Section 524(g)(4)(B)(i) provides that a channeling injunction will be valid and enforceable with respect to future demands only if "as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind."[273] During the proceedings leading to the issuance of the Asbestos Permanent Channeling Injunction, the Court appointed Marla Rosoff Eskin as the Future Claimants' Representative[274] for the purpose of

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[271] Plan, § 1.95.

[272] *Id.*

[273] 11 U.S.C. § 524(g)(4)(B)(i).

[274] *See* FCR Appointment Order.

protecting the rights of persons that might subsequently assert Demands against the Debtor. As such, the requirements of section 524(g)(4)(B)(i) of the Bankruptcy Code are met here.

E. Entry of the Asbestos Permanent Channeling Injunction Is Fair and Equitable With Respect to Future Channeled Asbestos Claimants.

221. Section 524(g)(4)(B)(ii) requires a court to determine that entry of the channeling injunction, and the protection from liability that is afforded to the parties named therein, "is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party."[275] In accordance with that section, the Debtor and/or Reorganized Hopeman, on behalf of all of the Protected Parties, are contributing certain assets to the Asbestos Trust.[276] On the Effective Date, (a) the Debtor and/or the Reorganized Debtor will contribute the Asbestos Trust Assets to the Asbestos Trust; (b) one-hundred percent (100%) of Reorganized Hopeman's Common Stock will be issued to the Asbestos Trust; and (c) Reorganized Hopeman will contribute the Excess Net Reserve Funds, if any, to the Asbestos Trust.

222. Critically, each Protected Party is *not* required to make an independent contribution to the Asbestos Trust for the Court to find that the Asbestos Permanent Channeling Injunction is fair and equitable. To the contrary, the Bankruptcy Code expressly permits an injunction barring third-party claims against certain entities, so long as the injunction is "fair and equitable."[277] Whether the protection granted to non-debtors is fair and equitable is judged "in light of the benefits provided, or to be provided, to such trust *on behalf of* such debtor or debtors or such third party."[278] Here, Section 8.3(k), titled "*Consideration* for Asbestos Permanent

[275] 11 U.S.C. § 524(g)(4)(B)(ii).

[276] Plan, § 8.3.

[277] 11 U.S.C. § 524(g)(4)(A)(ii).

[278] 11 U.S.C. § 524(g)(4)(B)(ii) (emphasis added).

Channeling Injunction," provides that "[t]he assignment, transfer, and conveyance of the Asbestos Trust Assets to the Asbestos Trust on the Effective Date ***supports the imposition of the Asbestos Permanent Channeling Injunction in favor of all Protected Parties as of the Effective Date***."[279] In other words, the Plan makes clear that the contribution of the Asbestos Trust Assets to the Asbestos Trust serves as the consideration for the extension of the Asbestos Permanent Channeling Injunction to *all* of the Protected Parties.

223. The contribution of the Asbestos Trust Assets, including the contribution of Asbestos Insurance Rights, will enable the Asbestos Trust to make substantial, meaningful distributions to the holders of Channeled Asbestos Claims. In light of these benefits, the Asbestos Permanent Channeling Injunction is undoubtedly fair and equitable.

IX. REPLY TO THE PLAN OBJECTIONS

224. In a tale as old as time, a cadre of insurance companies fight tooth and nail to avoid doing the only thing they are paid to do: make payments on account of the liabilities of their insured to deserving claimants. Eager to avoid the bargain they long-ago struck, the Objecting Insurers vigorously oppose the Plan, conjuring strawmen—like unsubstantiated allegations of collusion in a judicially-supervised mediation—in an effort to characterize the fair, insurance-neutral Plan as a patently unconfirmable monstrosity. Their objections should be overruled.

225. The Plan is the result of good-faith, hard-fought, arm's-length negotiations amongst the Plan Proponents and the FCR. Nothing in the Plan impermissibly modifies, impairs, or alters the rights of any Non-Settling Asbestos Insurers' under their policies, including the Objecting Insurers. And the Plan certainly is not the product of collusion. The Objecting

[279] Plan, § 8.3(k) (emphasis added).

Insurers' failure to point to any evidence that even supports an ***inference*** of collusion—despite the extensive discovery undertaken by the Objecting Insurers to date—tellingly demonstrates that reality.

226. Notwithstanding a plethora of self-serving, disingenuous assertions to the contrary, the Objecting Insurers real objection to the Plan is that it is not their preferred plan—*i.e.*, one which would minimize, or eliminate altogether, the liability they voluntarily undertook when they issued insurance policies to the Debtor decades ago. The Objecting Insurers' prior conduct in this Chapter 11 Case makes that clear. The Chubb Insurers would be supporting the Plan today if the Chubb Insurers Settlement had been approved, as they would benefit from the protections of the Asbestos Permanent Channeling Injunction which would fulfill their long-held objective of extinguishing once and for all their liability under their Asbestos Insurance Policies. Similarly, LMIC, takes issue with the Plan because it believes expressly defining Non-Settling Asbestos Insurer to include LMIC is the equivalent of painting a target on its back in violation of the Debtor's obligation to minimize its exposure under the 2003 Agreements. Indeed, LMIC is actively seeking a declaratory judgment that third-party asbestos claimants are bound by the 2003 Agreements and have no recourse against LMIC for their Asbestos Claims.

227. As is often the case, the simplest explanation is the correct one: the Objecting Insurers simply want to avoid paying, but any payments the Objecting Insurers may be required to make in the future are nothing more than the result of the contractual obligations the Objecting Insurers voluntarily undertook ***decades*** ago. Nothing in the Plan impermissibly alters or impacts their liability. The Plan also provides for future settlements (that would not be available to the Objecting Insurers outside the context of a 524(g) plan) which, if approved in accordance with the terms of the Plan, would provide the Objecting Insurers the finality they desire through the

Asbestos Permanent Channeling Injunction. It is the Objecting Insurers who have chosen not to avail themselves of these protections, electing instead to pursue a scorched-earth opposition to the Plan in an effort to enhance their leverage against the Plan Proponents in the hopes of extracting concessions.

228. Fortunately, the Objecting Insurers' objections are without merit and should be overruled.

A. The Plan Satisfies Section 1123(a)(4) of the Bankruptcy Code, Because It Does Not Provide for Disparate Treatment for the Holders of Class 4 Channeled Asbestos Claims.

229. The Chubb Insurers and Travelers both argue that the Plan violates section 1123(a)(4) of the Bankruptcy Code because it fails to provide the same treatment to all holders of Class 4 Channeled Asbestos Claims. These objections are without merit and should be overruled. Notably, none of the holders of Class 4 Channeled Asbestos Claims has raised any concerns with their proposed treatment under the Plan, and the handful of Channeled Asbestos Claimants who voted to reject the Plan have ***not*** filed objections.

230. Section 1123(a)(4) of the Bankruptcy Code provides that a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[280] "'[N]either the Code nor the legislative history precisely defines the standards of equal treatment,'"[281] but "courts have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the same opportunity' for recovery."[282] Indeed, "[s]ection

[280] 11 U.S.C. § 1123(a)(4).

[281] *In re W.R. Grace & Co.*, 729 F.3d at 327 (quoting *In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986)).

[282] *In re W.R. Grace & Co.*, 729 F.3d at 327 (quoting *In re Dana Corp.*, 412 B.R. 53, 62 (S.D.N.Y. 2008)).

1123(a)(4) does not require precise equality, only approximate equality."[283] Ultimately, "[w]hat matters, then, is not that claimants recover the same amount but that they have equal opportunity to recover on their claims."[284] And the Bankruptcy Court has discretion in determining whether this standard is met.[285]

231. Thus, courts have recognized that "[c]ertain procedural differences, such as a 'delay in receipt of distributions' for some claims, 'do[ ] not alone constitute unequal treatment.'"[286] "In fact, § 524(g) 'clearly envisions that asbestos claims will be paid periodically as they accrue and as they are allowed,' since it requires courts to ensure that there will be sufficient funds available for both future demands and present claims to receive similar treatment."[287] Accordingly, "differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant's opportunity to recover."[288]

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[283] *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) (citing *In re Dow Corning Corp.*, 255 B.R. 445, 497 (E.D.Mich.2000), *aff'd in part and remanded in part,* 280 F.3d 648 (6th Cir. 2002), *and In re Resorts Int'l, Inc.*, 145 B.R. 412, 447 (Bankr. D.N.J. 1990) ([Section 1123(a)(4)] "is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure since there is no statutory obligation upon plan proponents to quantify exactly what each class member is relinquishing by a release."); *see also In re LATAM Airlines Grp. S.A.*, No. 20-11254 (JLG), 2022 WL 2206829, at *35 (Bankr. S.D.N.Y. June 18, 2022) ("[B]y its terms, [§ 1123(a)(4)] does not mandate that members of the same class receive the same treatment on account of their claims." (citing *Quigley*, 377 B.R. at 116)); *In re Mesa Air Grp., Inc.,* No. 10-10018 MG, 2011 WL 320466, at *7 (Bankr. S.D.N.Y. Jan. 20, 2011) ("Without question, the 'same treatment' standard of section 1123(a)(4) does not require that all claimants within a class receive the same amount of money.") (quoting *In re Joint Eastern and Southern Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992))).

[284] *In re W.R. Grace & Co.*, 729 F.3d at 327.

[285] *In re Multiut Corp.*, 449 B.R. 323, 335 (Bankr. N.D. Ill. 2011) ("[B]ankruptcy courts have some discretion in deciding whether class members are receiving the same treatment.").

[286] *Id.* (quoting *In re New Power Co.*, 438 F.3d 1113, 1122-23 (11th Cir. 2006)).

[287] *Id.* (quoting *In re W. Asbestos Co.*, 313 B.R. 832, 842-43 (Bankr. N.D. Cal. 2003)).

[288] *Id.* (internal citation omitted); *see also In re W.R. Grace & Co.*, 729 F.3d at 330 ("[T]he District Court rightly determined that the Joint Plan satisfies the equal treatment provisions of § 1123(a)(4) and § 524(g). Although there may, at the margins, be some differences in recovery for direct and indirect claims, those differences do not amount to disparate treatment of creditors."); *Quigley*, 377 B.R. at 118 (holding that the Court could not "determine as a matter of law that the non-settling PI Claimants are receiving unequal treatment in violation of 11 U.S.C. § 1123(a)(4)" when certain claimants had settled with the debtor's nondebtor affiliate for an additional payment that was paid outside of the plan); *Dow Corning*, 255 B.R. at 498 (affirming bankruptcy

232. Against this backdrop, the Chubb Insurers claim that the Plan violates section 1123(a)(4) because, according to the Chubb Insurers, Channeled Asbestos Claims are neither subject to the same process for claims satisfaction nor of equal value. Relatedly, the Chubb Insurers contend that the holders of Channeled Asbestos Claims are not giving up the same degree of consideration for their distribution under the Plan. None of the Chubb Insurers' assertions is correct.

233. Particularly, the Chubb Insurers contend that not all Channeled Asbestos Claims are subject to the same process because Uninsured Asbestos Claims are paid directly by the Asbestos Trust while Insured Asbestos Claims are resolved in the tort system.[289] And, with respect to Insured Asbestos Claims, the Chubb Insurers further complain that those holders of Insured Asbestos Claims with direct-action rights sue and recover from Non-Settling Asbestos Insurers directly while those without such rights must engage in a two-step litigation process.[290] There are a host of problems with this argument.

234. First, nothing in the *Plan*—which is the relevant inquiry for purposes of section 1123(a)(4)—provides a different process for the holders of Insured Asbestos Claims to liquidate and obtain recovery on account of their claims. That the holders of Insured Asbestos Claims may be required to proceed under a two-step process is merely the result of different procedural rights afforded under applicable non-bankruptcy law.

235. Second, the thrust of the Chubb Insurers' complaint here is that the allegedly different process provided for under the Plan will result in delayed recoveries. As noted above,

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court's finding that § 1123(a)(4) was satisfied when each tort claimant's primary treatment was to enter a Litigation Facility notwithstanding claimants' subsequent choice of litigating his or her disputed and unliquidated claims or settling, i.e., agreeing to less favorable treatment).

289 Chubb Insurers Plan Obj., ¶ 90(a).

290 *Id.*

mere delay in recovery is not enough to violate section 1123(a)(4) because it does not change Channeled Asbestos Claimants' substantive rights, and "[i]t would be wholly unreasonable to require asbestos victims … to continue to wait indefinitely" until all Channeled Asbestos Claims are liquidated and at the distribution stage.[291] Indeed, the *Boy Scouts* bankruptcy court held that there was a "rational basis" for placing all unliquidated personal injury claims in the same class, notwithstanding the fact that certain claimants had "a procedural right to sue BSA's insurers directly," because that procedural right "[did] not change the character of their claims against BSA."[292] The district court, in affirming the bankruptcy court, similarly noted: "[T]he Bankruptcy Court correctly concluded that Lujan Claimants' direct action rights do not warrant separate classification because those rights are procedural in nature and do not give the Lujan Claimants extra substantive rights [over claimants who cannot]."[293]

236. Third, this structure of holders of Insured Asbestos Claims seeking payment for their claims from Non-Settling Asbestos Insurers while holders of Uninsured Asbestos Claims proceed against the Asbestos Trust is the same structure as the *Kaiser Gypsum* § 524(g) plan that was recently affirmed by the Fourth Circuit.[294] The *Kaiser Gypsum* plan classified holders of insured and uninsured asbestos personal injury claims in the same class for voting and treatment purposes.[295] The district court found that this plan structure satisfied § 1123(a)(4).[296]

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[291] *In re W.R. Grace & Co.*, 729 F.3d at 328-29.

[292] *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504, 634 (Bankr. D. Del. 2022).

[293] *In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. 87, 163 (D. Del. 2023)*, aff'd in part, rev'd in part on other grounds, dismissed in part on other grounds sub nom. In re Boy Scouts of Am.*, 137 F.4th 126 (3d Cir. 2025).

[294] *In re Kaiser Gypsum Co., Inc.*, 135 F.4th 185, 190-91 (4th Cir. 2025) ("A key feature of the Plan relates to its separate treatment of insured and uninsured asbestos personal injury claims. The Plan provides that holders of insured asbestos personal injury claims—i.e., claims that fall within the scope of the Truck policy—would continue to assert actions against the reorganized Debtors, in name only, in the tort system. … Holders of uninsured asbestos personal injury claims—i.e., claims that fall outside the scope of the Truck policy—would submit their claims directly to the Trust for resolution through an administrative process.").

[295] *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW), 2021 WL 3215102, at *10 (W.D.N.C. July 28, 2021) (subsequent history omitted).

237. Next, the Chubb Insurers claim that the Channeled Asbestos Claims are not of equal value because: (i) Uninsured Asbestos Claims will be paid by the Asbestos Trust subject to the Payment Percentage; (ii) Insured Asbestos Claimants with direct-action rights will recover directly from Non-Settling Asbestos Insurers with recoveries undiminished by the Litigation Trustee's Compensation; and (iii) Insured Asbestos Claimants without direct-action rights will have their recoveries reduced by the Litigation Trustee's Compensation.[297] That contention also is wrong.

238. At the outset, the Chubb Insurers' assertions depend on two erroneous premises: (i) the fact that some holders of Asbestos Claims may later be determined to be Uninsured Asbestos Claims while others are Insured Asbestos Claims impacts whether their treatment under the Plan is disparate, and (ii) that the Litigation Trustee's Compensation automatically will diminish the recoveries of the holders of Insured Asbestos Claims without direct-action rights.

239. First, while the Debtor is not currently aware of the existence of ***any*** Uninsured Asbestos Claims, the Plan, nonetheless, wisely, includes a number of provisions specifically addressing Uninsured Asbestos Claims to the extent such claims later arise. The reason it does so is easily explained. Because the Plan expressly provides for the ability of the Asbestos Trust to enter into future Asbestos Insurance Settlements and the applicable limits of the Debtor's Asbestos Insurance Policies may be subject to erosion, it was essential, particularly given the lengthy lifespan of asbestos trusts, that the Plan address the possibility that Uninsured Asbestos Claims either now or may one day exist. It is also possible that there will be Uninsured Asbestos Claims in the future even without future Asbestos Insurance Settlements, and the Plan accordingly includes as part of the procedures applicable to all Class 4 Channeled Claims, a

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296 *Id.*

297 Chubb Insurers Plan Obj., ¶ 90(b).

process to address such Uninsured Asbestos Claims.

240. The fact that some Channeled Asbestos Claimants may not recover, or recover in full, from insurance does not render their treatment disparate from other class members. Each Channeled Asbestos Claimant may resort to the tort system to recover on their claim to the extent they have the ability to recover on their claim from insurance or others under applicable non-bankruptcy law. To the extent Channeled Asbestos Claimants find that they hold an Uninsured Asbestos Claim, they can pursue a claim against the Asbestos Trust in accordance with the Asbestos Trust Distribution Procedures. All holders of Channeled Asbestos Claims may pursue those same avenues of recovery.

241. Second, as set forth in § IV.B.1 *supra*, the Chubb Insurers misapprehend how the Plan works. Unless the Litigation Trustee initiates litigation against a Non-Settling Asbestos Insurer (and obtains some recovery on account of such litigation) or an Asbestos Insurance Settlement is entered into with Bankruptcy Court approval under section 524(g), with notice and an opportunity for claimants to oppose and be heard on the proposed settlement, the Litigation Trustee's Compensation will not be deducted from—or have any impact on—the recoveries of holders of Insured Asbestos Claims with or without direct-action rights. Said differently, except as set forth above, holders of Insured Asbestos Claims will pursue their own claims in the tort system, and the Litigation Trustee, therefore, will not be imposing a 33.3% fee (*i.e.* the Litigation Trustee's Compensation) for litigation work the Litigation Trustee is not undertaking. Having disposed of those faulty premises, the Plan's treatment of the Channeled Asbestos Claims plainly does not result in such Claims having unequal value. Any inequality in the value of their claims is not dictated by any differing treatment provided to the holders of Class 4 Channeled Asbestos Claims under the Plan but merely by applicable non-bankruptcy law.

242. The Chubb Insurers' reliance on *City Homes*, a non-asbestos liquidation case, is misplaced.[298] There, the court initially found that equal treatment was lacking where insured lead paint claimants could bring suit in the tort system, for a potentially full recovery, while uninsured claimants had to file for a *pro rata* share of a finite $300,000 trust that was unlikely to receive additional funding.[299] Here, the amount that may become available to make distributions to the holders of any Uninsured Asbestos Claims has not been determined. Reorganized Hopeman is projected to have the ability to issue dividends to its parent, the Asbestos Trust, after the Effective Date, increasing the Asbestos Trust's initial assets.[300] In addition, the Plan contemplates that the Asbestos Trust could enter into an Asbestos Insurance Settlement[301] or take actions in accordance with Section 8.3(c) of the Plan to increase the funds the Asbestos Trust will have to address Uninsured Asbestos Claims.[302] And, despite the *City Homes* court's initial concern that the insured and uninsured claimants would not receive "equal value under the proposed plan," *see* 564 B.R. at 868, that is not a requirement under section 1123(a)(4).[303]

243. Moreover, exactly three months after denying confirmation of the second amended plan, the *City Homes* court confirmed the substantially similar third amended plan.[304]

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298 Chubb Insurers Plan Obj., ¶¶ 88-90(a).

299 *See In re City Homes III LLC,* 564 B.R. 827, 861-62, 868 (Bankr. D. Md. 2017).

300 *See* Plan § 11.1(g)(ix).

301 *Id.* § 8.17.

302 *Id.* § 8.3(c) ("As of the Effective Date, without any further action of the Bankruptcy Court or any Entity, except as otherwise expressly set forth in the Plan including, without limitation, the rights reserved to HII under Section 8.15, the Asbestos Trust shall be empowered to initiate, prosecute, enforce, sue on, defend, settle, compromise, and resolve (or decline to do any of the foregoing) all claims, rights, Causes of Action, suits and proceedings, whether in law or in equity, whether known or unknown, related to or arising from any asset, liability, or responsibility of the Asbestos Trust, including any actions arising from or related to the Asbestos Insurance Rights, in any court of competent jurisdiction consistent with applicable law.").

303 *See Mesa Air*, 2011 WL 320466, at *7 ("Without question, the 'same treatment' standard of section 1123(a)(4) does not require that all claimants within a class receive the same amount of money." (citation omitted)).

304 Order Confirming Third Amended Chapter 11 Plan Jointly Proposed by the Debtors and the Official Committee of Unsecured Creditors, *In re City Homes III LLC*, No. 13-25370-RAG (Bankr. D. Md. Apr. 13, 2017), Dkt. No. 849 ("*City Homes* Confirmation Order"); Line Submitting Blacklined Version of Third Amended Chapter 11

Indeed, the third amended plan renamed the "Uninsured Lead-Paint Claim Fund" to a "Voluntary Lead-Paint Claim Compensation Fund" and increased the size of the fund.[305] Notably, the plan classifications *did not change*: both insured claims and uninsured claims were placed in the same class, as before.[306] And the court confirmed the third amended plan while remaining silent about classification.[307] Because satisfying § 1123(a)(4) is mandatory to confirm any chapter 11 plan, the *City Homes* court implicitly found that classifying insured and uninsured claims together was appropriate.

244. The Chubb Insurers' final objection on this issue, that the holders of Channeled Asbestos Claims are not giving up the same degree of consideration, fails because it relies on the Chubb Insurers' same misapprehension of the Plan with respect to the Litigation Trustee's Compensation addressed above.

245. Travelers, for its part, argues that the Plan violates section 1123(a)(4) because "Uninsured Asbestos Claims are limited only to compensatory damages and cannot recover punitive or exemplary damages … [but] there is no similar limitation on Insured Asbestos Claims."[308] Travelers' argument fails for a number of reasons.

246. First, section 1123(a)(4)'s requirements need not be satisfied where "the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest."[309] Here, no holder of a Channeled Asbestos Claim has ***objected*** to the Plan. Moreover,

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Plan Showing Revisions to Previously Filed Second Amended Chapter 11 Plan Jointly Proposed by the Debtors and the Official Committee of Unsecured Creditors (Modified), *In re City Homes III LLC*, No. 13-25370-RAG (Bankr. D. Md. Apr. 13, 2017), Dkt. Nos. 811, 811-1 ("*City Homes* Plan Blackline").

[305] *City Homes* Plan Blackline at 9-10, 21-22. The amended plan increased the fund to $400,000, and the confirmation order increased it to $450,000. *Id.* at 21; *City Homes* Confirmation Order ¶ 7.

[306] *City Homes* Plan Blackline at 13, 17, 21-22.

[307] *See generally City Homes* Confirmation Order.

[308] Travelers Plan Obj., ¶ 104.

[309] 11 U.S.C. § 1123(a)(4).

the Roussel Claimants—the only holders of Channeled Asbestos Claims that did not vote to accept the Plan—do *not* hold Uninsured Asbestos Claims (indeed, as noted herein, the Debtor does not believe *any* Uninsured Asbestos Claims currently exist). As a result, section 1123(a)(4)'s requirements are satisfied.

247. Second, section 7.2 of the Asbestos Trust Distribution Procedures, which provides that "[p]unitive or exemplary damages … shall not be considered or paid by the Asbestos Trust on any Uninsured Claim" is substantively identical to the analogous provision in the *Kaiser Gypsum* trust distribution procedures.[310] And both the Asbestos Trust Distribution Procedures in this case and the *Kaiser Gypsum* trust distribution procedures contemplate treatment of insured and uninsured claims alike.[311] Channeled Asbestos Claimants can pursue whatever claims they may have in the tort system to the extent available to them under applicable non-bankruptcy law, but if a claim is presented to the Asbestos Trust because the holder of that claim is determined to hold an Uninsured Asbestos Claim, the Asbestos Trust will only allow for payment of the compensatory claim, not any punitive damages. As explained above, the Fourth Circuit recently affirmed the *Kaiser Gypsum* 524(g) plan, and by extension, its trust distribution procedures that are similar to those in the Plan in this case.[312]

248. Third, it is entirely consistent with the purpose of asbestos trusts that Uninsured Asbestos Claims satisfied through the Asbestos Trust Distribution Procedures would be limited to compensatory damages, because the function of such trusts is to compensate injured individuals, not to punish any alleged bad actors. Setting aside the procedural impossibilities of

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[310] Kaiser Gypsum Asbestos Personal Injury Trust Distribution Procedures § 7.2, *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW) (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481.

[311] *Compare* Kaiser Gypsum Asbestos Personal Injury Trust Distribution Procedures §§ 5.3, 5.5, *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW) (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481, *with* Asbestos Trust Distribution Procedures §§ 5.1-5.3.

[312] *See Kaiser Gypsum*, 135 F.4th at 201.

providing for the award of punitive or exemplary damages through the Asbestos Trust Distribution Procedures, such awards would jeopardize the Asbestos Trust's goal of protecting the interests of future claimants by disproportionately diminishing the corpus of the trust in a manner to the detriment of ***all*** Channeled Asbestos Claimants.

249. Fourth, on these facts the idea that alleged differences exist in treatment between Uninsured Asbestos Claims and Insured Asbestos Claims is a misnomer. The Debtor is not aware that any Uninsured Asbestos Claims currently exist. But, because future Asbestos Insurance Settlements, exhaustion of coverage, or successful coverage defenses could cause ***any*** Insured Asbestos Claim to subsequently become an Uninsured Asbestos Claim—the treatment applies equally to ***all*** Channeled Asbestos Claims. Because the treatment applies equally to ***all*** Channeled Asbestos Claims, the fact that some Channeled Asbestos Claimants could recover in full from coverage available under Asbestos Insurance Policies before their claims become Uninsured Asbestos Claims is merely the result of delay in distribution for other Channeled Asbestos Claims.

250. For the reasons set forth above, the Court should overrule the Chubb Insurers' and Travelers' objections and find that the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

B. The Plan Satisfies the Requirements of Section 524(g) of the Bankruptcy Code.

251. The Objecting Insurers' contentions that the Plan fails to satisfy section 524(g)(2)(B)(i)(II) and, relatedly, that the Asbestos Permanent Channeling Injunction cannot be issued because the Debtor is not entitled to a discharge under section 1141(d) of the Bankruptcy Code, are addressed above.[313] The Chubb Insurers, however, further argue that the Plan "turns

[313] *See* §§ VIII.A.2. *supra* (addressing arguments that section 524(g)(2)(B)(i)(II) is not satisfied); VIII.A.5. *supra* (addressing the Debtor's entitlement to a discharge under section 1141(d) of the Bankruptcy Code).

the purpose and intent of § 524(g) upside down," because the Plan requires the holders of Channeled Asbestos Claims to continue suing Reorganized Hopeman.[314] The Chubb Insurers' argument may be quickly disposed of.

252. The Chubb Insurers argue that the purpose of section 524(g) is to channel claims away from the reorganized entity, in order to protect and preserve such entity for purposes of ensuring the trust's ability to honor its obligations.[315] The Chubb Insurers cursorily conclude that the Plan, which directs Channeled Asbestos Claimants (without direct-action rights) to prosecute actions against Reorganized Hopeman to obtain Asbestos Insurance Coverage, directly contravenes the requirement of section 524(g)(1)(B) that Channeled Asbestos Claims "be paid in whole or in part by a trust," and section 524(g)(5)(C) that Demands "likewise be paid by a trust."[316] The Fourth Circuit's decision in *Kaiser* forecloses these arguments.

253. As the Fourth Circuit recognized, "bankruptcy courts routinely allow claimants to pursue insured claims through the tort system."[317] Thus, nothing about the pass-through claim adjudication process employed under the Plan is impermissible. Moreover, as the Fourth Circuit reasoned in rejecting an argument that section 524(g)'s assumption-of-liabilities requirement was not met because insured claims would be resolved in the tort system, "as a practical matter, the Trust—by way of its coverage *through* Truck—'assumes' the Debtors' asbestos-related liabilities."[318] The Chubb Insurers' argument is the mirror-image of the same issue. For the same reason the Fourth Circuit found section 524(g)'s assumption-of-liabilities requirement met despite claims being resolved in the tort system and satisfied by insurance, the Asbestos Trust—

314 Chubb Insurers Plan Obj., ¶¶ 78-79.

315 *Id.* at 78.

316 *Id.* at ¶ 79 (internal citations omitted).

317 *Kaiser Gypsum Co.*, 135 F.4th at 195.

318 *Id.* at 197.

which will hold the Asbestos Insurance Rights—is "as a practical matter" paying such Claims and Demands by virtue of the Asbestos Insurance Rights it will hold.

C. Nothing in the Bankruptcy Code Requires the Plan to be Insurance Neutral, But, Nonetheless, the Plan is Insurance Neutral.

254. Before addressing the Objecting Insurer's erroneous assertions regarding the impact of the Plan on their rights under their respective insurance policies, the threshold question is what, if any, viability the so-called insurance-neutrality doctrine has after the Supreme Court's decision in *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024).

1. The Insurance-Neutrality Doctrine Post-Truck.

255. In *Truck*, the "question [before the Supreme Court was] whether an insurer with financial responsibility for a bankruptcy claim is a 'party in interest' under [section 1109(b) of the Bankruptcy Code.]"[319] The issue came to the Supreme Court after the Fourth Circuit concluded that Truck Insurance Exchange (hereinafter, "*Truck*") lacked standing as a party-in-interest because the plan at issue was insurance neutral.[320] Specifically, the Fourth Circuit, in affirming the district court, found that Truck was not a "party in interest" under section 1109(b) because:

[319] *Id.* at 271.

[320] *Id.*

> the Plan did not "increase [Truck's] pre-petition obligations or impair [Truck's] pre-petition policy rights." In other words, the Plan was "insurance neutral" because it did not "alte[r] Truck's pre-bankruptcy 'quantum of liability'" given that Truck was "not entitled" to the fraud-prevention measures it sought.

Id. at 276-277 (internal citation omitted). The Supreme Court held that the Fourth Circuit had applied an unduly narrow reading of section 1109(b), holding that Truck qualified as a party-in-interest, within the meaning of section 1109(b), and, thus, had standing to challenge the plan.[321]

256. In reaching its conclusion, the Supreme Court discussed the insurance-neutrality doctrine, under which "courts ask if the plan increases the insurer's prepetition obligations or impairs the insurer's pre-petition policy rights"[322] as a proxy for a standing analysis under section 1109(b). The Supreme Court found that the insurance-neutrality doctrine "is conceptually wrong and makes little practical sense" because it "conflates the merits of an objection with a threshold party in interest inquiry," and, from a practical-perspective, the insurance-neutrality doctrine is "too limited in scope" because it "wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers."[323] Thus, the Supreme Court concluded that:

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321 *Id.* at 285.

322 *Id.* at 283.

323 *Id.*

> The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck (and other insurers with financial responsibility for bankruptcy claims) a right to voice its objections in reorganization proceedings. The Debtors' and Claimants' arguments also ignore the practical and legal consequences of the Debtors' bankruptcy proceedings and reorganization plan. They transformed the Debtors' asbestos liabilities into bankruptcy claims that Truck will now have to indemnify through the Trust without the protections of disclosure requirements in place for uninsured claims filed directly with the Trust.

Id. at 284. Critically, while *Truck* may endow insurers with standing under certain circumstances, its eradication of the "insurance neutrality" doctrine accentuates that nothing in the Bankruptcy Code requires a plan to be "insurance neutral" for it to be confirmed.[324]

257. Before turning to the Objecting Insurers' contentions regarding the impact of the Plan on their rights and obligations under their insurance policies, one further issue must be addressed: Even post-*Truck*, LMIC lacks standing to object to approval of the Disclosure Statement and confirmation of the Plan.

a. LMIC Lacks Standing Even Under *Truck*.

258. Even under the Supreme Court's more expansive interpretation of "parties in interest," for purposes of section 1109 of the Bankruptcy Code, LMIC lacks standing to object to the Plan. As the court in *In re AIO US, Inc.*, Case No. 24-11836, 2025 WL 1617477 (Bankr. D. Del. June 6, 2025) observed:

> In substance, *Truck Insurance*, resolved the fairly easy question whether the inclusion of "neutrality" language in a plan is sufficient to shut down all participation in a bankruptcy case by an insurer that is going to be asked to pay the claims that are ultimately allowed in the case. A unanimous Supreme Court held that the answer to that question is no. ***But the case certainly not need be read to say that an insurer has an unlimited right to be heard on every and any issue that might arise in [] its insured's bankruptcy case***. In this Court's view, the question a bankruptcy court faces after *Truck Insurance* is fundamentally the same one that many bankruptcy courts faced before it – how to calibrate an

[324] *In re Boy Scouts of Am. and Del. BSA, LLC*, 650 B.R. 87, 189 (D. Del. 2023), *aff'd in part, rev'd in part, dismissed in part*, 137 F.4th 126 (3d Cir. 2025).

> insurer's right to participate and be heard in its insured's bankruptcy case so as to ***permit the insurer to protect its legitimate interests, without permitting an insurer (or any party in interest, for that matter) to weaponize its procedural rights so that they can be used for tactical advantage in other disputes.***

Id. at *1. Nonetheless, LMIC, perhaps out of concern, devotes more than seven pages of its objection insisting it has standing. But LMIC's insistence cannot change that LMIC seeks to do precisely what the *AIO* court cautions against: LMIC seeks to weaponize its procedural rights, *i.e.,* its purported standing to challenge the Plan, to force the Plan Proponents to expend further administrative costs in the hope of extracting inappropriate concessions from the Plan Proponents.

259. The Court can dispose of LMIC's claim of standing for two simple reasons: (i) LMIC is *not* a creditor of the Debtor by virtue of the LMIC POC Expungement Order, in which the Court disallowed and expunged the LMIC POC in its entirety after agreeing with the Debtor that LMIC's claims, if any, are properly asserted against the trust established pursuant to the 2003 Agreements;[325] and (ii) the Debtor does not assert that it has, and does not purport to transfer, rights under any policies issued by LMIC.

260. These are distinctions ***with a difference***, as these distinctions—even under *Truck*—demonstrate that LMIC lacks standing to press its objections to the Plan. First, unlike Truck, which held an unsecured claim that, *arguably*, conferred standing to object to the plan,[326] the LMIC POC has been disallowed and expunged in its entirety (the Plan Proponents submit that LMIC's appeal of the LMIC POC Expungement Order will fail, and, in any event, the LMIC

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[325] *See* Section II.G. *supra*.

[326] In its initial decision, prior to being reversed by the Supreme Court, the Fourth Circuit held that, irrespective of whether Truck's unsecured claim which was being paid in full under the plan, gave it standing (as the debtors' asserted the claim was insufficient to confer standing on Truck because standing on account of its unsecured claim did not extend to issues that do not legally affect its protected interests—thus Truck's unsecured claim standing, if any, would not have entitled it to object to the insurance issues of which it complained) that Truck lacked Article III standing. *See In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 87-88 (4th Cir. 2023).

POC Expungement Order has not been stayed and remains the operative decision). Thus, LMIC cannot invoke creditor status for standing under section 1109(b) of the Bankruptcy Code.

261. Second, and more importantly, neither LMIC *nor* the Debtor assert that the Debtor has any rights or claims against LMIC under the insurance policies it issued.[327] The Supreme Court, in reaching its holding that insurers, generally, constitute parties-in-interest for purposes of section 1109(b) of the Bankruptcy Code, emphasized that "[w]here a proposed plan allows a party to put its hands into other people's pockets, the ones with pockets are entitled to be fully heard and to have their legitimate objections addressed."[328] Here, the *Plan* does no such thing. Instead, the Plan provides:

> In addition to the rights and remedies set forth in this Section 8.13, on and after the Effective Date, ***Channeled Asbestos Claimants may, only to the extent permitted or provided under applicable nonbankruptcy law***, bring such Insurance Policy Actions against a Non-Settling Asbestos Insurer of Hopeman or Wayne with respect to potential liability of any Designated Person, subject to the terms and conditions set forth in Section 8.13(c) ….

Plan, § 8.13(d) (emphasis added). Furthermore, the Insurance-Neutrality Provisions (as defined below), expressly provide that none of the Asbestos Insurance Policies "are being ***rejected, altered, or otherwise modified pursuant to this Plan, and all parties' respective rights, duties, defenses, obligations and liabilities thereunder are hereby preserved***," Plan, § 6.2 (emphasis added), and:

> ***Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order shall limit the right of any insurer to assert any coverage defense*** ….

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[327] *See* § II.G.1. *supra*.

[328] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. at 282 (internal citation and quotation marks omitted).

Id. at § 8.18. In other words, the Plan merely preserves the status quo vis-à-vis LMIC and third-party claimants. It provides that such claimants may sue Non-Settling Asbestos Insurers, like LMIC, but only to the extent such claimants may do so under applicable nonbankruptcy law. Whatever rights claimants have to LMIC's coverage exist under state law. The Plan neither enhances nor diminishes those rights, nor does the Plan impair or otherwise alter any defenses LMIC may have to such claimants' claims.

262. LMIC, nonetheless, disregards the express language above, opting instead to launch into a tirade about how it is being singled out and targeted under the Plan.[329] The so-called targeting of LMIC is nothing more the definition of Non-Settling Asbestos Insurer including language clarifying LMIC's status. Yet LMIC would have this Court believe that this accurate description of LMIC in the definition of Non-Settling Asbestos Insurer—one out of over a ***hundred and thirteen*** defined terms in the Plan—is tantamount to the Debtor taking out Super Bowl advertisements naming LMIC liable for the Debtor's asbestos-related liabilities. ***It is not***. While LMIC's inclusion in the defined term was driven—in part—by requests for clarity from certain creditors, that does not transform the "innocuous" reference into anything nefarious. On the contrary, the inclusion of LMIC in the definition of "Non-Settling Asbestos Insurer" merely clarifies—justifiably—that LMIC, with whom the Debtor *does* have a prepetition settlement agreement and which sought to have itself included at the eleventh hour in the Certain Settling Insurers Settlement (and such request was denied by the Debtor)[330]—is not a Settling Asbestos Insurer within the meaning of the Plan. That simply makes clear that LMIC is not getting a release as part of the Plan and that claimants continue to have whatever rights they have against LMIC, if any, under applicable nonbankruptcy law. Indeed, as LMIC acknowledges,

[329] LMIC Plan Obj., ¶ 17.

[330] *See* HBI136848.

similar language was also added to the CSI Settlement Approval Order ***at the request of asbestos claimants:***[331]

> Notwithstanding any provision in this Order or the Certain Settling Insurer Settlement Agreement, the relief provided herein, including, but not limited to, any releases and injunctive relief, ***shall not apply in favor of Liberty Mutual Insurance Company or any of its affiliates, subsidiaries, or related entities. Liberty Mutual Insurance Company shall not be considered a beneficiary of this Court Order or the Certain Settling Insurer Settlement Agreement and shall have no rights or entitlements arising therefrom***.

CSI Settlement Approval Order, ¶ 18 (emphases added). There was nothing inappropriate about the clarifying language added to the CSI Settlement Approval Order, and there is nothing nefarious about clarifying that LMIC constitutes a Non-Settling Asbestos Insurer in the Plan.

263. LMIC points to Sections 8.12(a) and 8.13 of the Plan and claims that the Plan expressly permits Channeled Asbestos Claimants to prosecute actions against Reorganized Hopeman and Non-Settling Asbestos Insurers, respectively, "without regard to whether such a claimant has the right under applicable nonbankruptcy law."[332] Neither provision authorizes such action.

264. LMIC's complaint is merely that those two provisions do not *expressly* state that a Channeled Asbestos Claimant's right to prosecute actions is limited by applicable nonbankruptcy law. Numerous other provisions of the Plan do, and, even setting that reality aside, those two provisions of the Plan *at most* are merely silent on the issue—they certainly do not purport to *create* an entitlement to prosecute actions if a claimant, otherwise, lacks the right to do so. Thus, yet again, nothing in the Plan changes what applicable nonbankruptcy law already permits. If state law permits third-party claimants to sue LMIC, then the Plan does not prohibit them from

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331 *See* Dec. 16, 2024 Hr'g Tr. at 133:18 – 134:1.

332 *Id.*

doing so. Similarly, if state law does not permit third-party claimants to sue LMIC, the Plan does not give them a right to do so. And LMIC's rights, claims, and defenses as to the issues are all unimpacted by the Plan.

265. LMIC also ignores provisions in the Disclosure Statement—which the Voting Classes received and would have reviewed before voting on the Plan—that expressly reference Hopeman's release of its insurance rights and coverage to LMIC and that disclose LMIC's positions with respect to Hopeman's alleged breaches of the 2003 Agreement.[333] In assuming that parties will fail to undertake necessary diligence to ascertain the validity of their claims before asserting them, LMIC also ignores the reality that litigants, and their attorneys, have obligations under federal and state law to undertake appropriate diligence before asserting claims.

266. Accordingly, LMIC is neither a creditor of the Debtor that has any rights or claims against the Debtor nor an insurer against which the Debtor asserts rights or claims. Nothing in the Plan alters LMIC's liability or the rights of the holders of Channeled Asbestos Claimants against LMIC, or vice-versa.

267. Thus, LMIC is neither a creditor nor a "party with financial responsibility," for purposes of *Truck*, and lacks standing to object to the Plan (and, for the reasons set forth above,[334] LMIC's allegations of targeting are absurd and do not alter this conclusion). While the Court can—and should—find that LMIC lacks standing, for the sake of LMIC's inevitable appeal, the Debtor respectfully requests that the Court, in the alternative, also address and, for the reasons set forth below, reject LMIC's objections on the merits as well.

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[333] *See*, *e.g.*, Disclosure Statement, Art. VI.C.

[334] *See* § V.A.3. *supra*.

2. The Plan is Insurance Neutral.

268. As the Third Circuit observed in *Boy Scouts*,

> Insurance policies are property of the estate, and bankruptcy law—save for exceptions not relevant here—does not alter rights under those contracts. So, under § 363(b), a debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts' rights.

In re Boy Scouts of Am., 137 F.4th 126, 164-65 (3d Cir. 2025) (internal citations omitted). The Plan is crystal-clear on this point, it does *not* impact the Objecting Insurers' rights under their policies:

> **6.2. Asbestos Insurance Agreements**. For the avoidance of doubt, none of the Asbestos Insurance Policies or Asbestos CIP Agreements are being ***rejected, altered, or otherwise modified pursuant to this Plan, and all parties' respective rights, duties, defenses, obligations and liabilities thereunder are hereby preserved***, except to the extent of an Asbestos Insurance Policy or Asbestos CIP Agreement that is the subject of ***and only to the extent contemplated by and provided for in*** an Asbestos Insurance Settlement ***and only to the extent approved pursuant to entry of an order by the Bankruptcy Court or the District Court***.[335]
>
> ***
>
> **8.18. Insurance Neutrality**. ***Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order shall limit the right of any insurer to assert any coverage defense***; *provided, however*, that (a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the Asbestos Insurance Rights as Hopeman or Reorganized Hopeman ***may have***, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent any such insurer is a Settled Asbestos Insurer. Notwithstanding anything in this Section 8.18 to the contrary, nothing in this Section 8.18 shall affect or limit, or be construed as affecting or limiting, (1) the binding effect of the Plan and the Confirmation Order on Hopeman,

[335] Plan, § 6.2 (emphases added).

> Reorganized Hopeman, the Asbestos Trust, or the beneficiaries of the Asbestos Trust or (2) the protection afforded to any Settled Asbestos Insurer by the Asbestos Permanent Channeling Injunction. Further, nothing in this Section 8.18 is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any insurer with respect to any issue that is actually litigated by such insurer as part of its objections to confirmation of the Plan.

Id. at § 8.18 (emphases added) (hereinafter, Plan §§ 6.2 and 8.18 will be referred to, collectively, as the "Insurance-Neutrality Provisions"). The Insurance-Neutrality Provisions are consistent with provisions in other section 524(g) plans that courts have concluded were insurance neutral.[336] Thus, the Plan neither increases the Objecting Insurer's prepetition obligations nor impermissibly impairs their prepetition rights.

D. The Plan Does Not Impermissibly Impair the Objecting Insurers' Rights Under Their Respective Policies, Nor Their Obligations.

269. The Chubb Insurers and Travelers both claim that the Plan is *not* insurance neutral, and argue that the Plan improperly impairs their rights under their respective insurance policies. Although, as noted above, the Plan *is* insurance neutral, "[t]here is ***nothing*** that requires Debtors to negotiate a plan that is 'insurance neutral,' ***which is not a concept in the Bankruptcy Code***."[337] Thus, the fact that the Chubb Insurers or Travelers want the Plan to include their different, preferred language with respect to insurance neutrality is irrelevant. The operative question is whether the Plan *impermissibly* impairs the rights of the Chubb Insurers or Travelers, and the answer to that question is a resounding no.

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[336] *See, e.g.*, *In re Pittsburgh Corning Corp.*, 453 B.R. 570, 84 (Bankr. W.D. Pa. 2011) (citing cases); *see also Combustion Eng'g*, 391 F.3d at 202 (describing "neutrality" provisions as "protect[ing] the debtors' and insurers' prepetition rights under certain insurance policies"); *Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 518 B.R. at 329 (explaining that plan was insurance neutral where it "did not dramatically increase the 'quantum of liability,' harm … [the insurer's] contractual rights, or increase its administrative burdens.").

[337] *In re Boy Scots of Am. and Del. BSA, LLC*, 642 B.R. 504, 648 (Bankr. D. Del. 2022) (emphasis added), *aff'd* 650 B.R. 87 (D. Del. 2023), *aff'd in part, rev'd in part, dismissed in part*, 137 F.4th 126 (2025).

1. The Transfer of the Asbestos Insurance Rights to the Asbestos Trust is Permissible.

270. The Plan provides for the transfer of the Asbestos Insurance Rights to the Asbestos Trust on the Effective Date.[338] The Chubb Insurers and Travelers challenge the transfer of the Asbestos Insurance Rights to the Asbestos Trust on two grounds: First they claim that the structure of the contemplated transfer violates the *cum onere* principle. Second they take issue with certain provisions of the Plan which they characterize as impermissibly seeking declaratory judgments regarding the impact, *inter alia*, of the transfer of the Asbestos Insurance Rights. The Chubb Insurers and Travelers are wrong on both fronts.

a. The Transfer of the Asbestos Insurance Rights to the Asbestos Trust Does Not Violate The *Cum Onere* Principle.

271. The Chubb Insurers and Travelers object to the fact that the Plan would transfer the Asbestos Insurance Rights to the Asbestos Trust while leaving the ministerial obligations under the Asbestos Insurance Policies (e.g., providing notice and cooperation) with Reorganized Hopeman.[339] They argue that separating the insurance rights from the obligations harms them and violates the principle of *cum onere*, under which the burdens of an assigned contract must accompany the contract's benefits.[340] They cite cases for the proposition that the *cum onere* principle applies to transfers of property under section 363 of the Bankruptcy Code as well as to the assumption and assignment of executory contracts under section 365.[341] The *cum onere* argument misses the mark.

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338 *See* Plan, § 8.2(a)(ii)-(iii) (providing for the making of the Asbestos Trust Contribution and the vesting of the Asbestos Trust Assets in the Asbestos Trust on the Effective Date).

339 Chubb Insurers Plan Obj., ¶¶ 124-25; Travelers Plan Obj., ¶¶ 24-31.

340 Chubb Ins. Obj. ¶ 125; Travelers Ins. Obj. ¶ 29. Generally, under the *cum onere* principle, "[w]hen an executory contract or lease is assumed, it must be assumed cum onere, with all of its benefits and burdens." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 49 (Bankr. M.D.N.C. 2003) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 53 (1984)).

341 *See* Chubb Ins. Obj. ¶ 125 & nn. 250-51; Travelers Ins. Obj. ¶ 29.

272. First, the Plan's contemplated transfer of the Asbestos Insurance Rights to the Asbestos Trust does not alter the coverage defenses, if any, that Non-Settling Insurers could assert due to failures of Reorganized Hopeman to perform its ministerial obligations under the policies. The Plan does not extinguish the Debtor's obligations under the Asbestos Insurance Policies; those obligations apply to Reorganized Hopeman, which will be owned and controlled by the Asbestos Trust. In addition, the Plan expressly preserves those obligations as the "Asbestos Insurance Cooperation Obligations" and preserves any coverage defenses that the Non-Settling Asbestos Insurers may have, *see* Plan, § 8.18, including any defenses to coverage that might arise from a possible future failure by Reorganized Hopeman to comply with conditions precedent to coverage. Said differently, the owner of the Asbestos Insurance Rights, which will be the Asbestos Trust, is subject to coverage defenses. The proposed transfer of the Asbestos Insurance Rights under the Plan is therefore proper.

273. Second, the *cum onere* principle's application is limited to sections 363 and 365 of the Bankruptcy Code, but the Chubb Insurers and Travelers ignore that section 1123(a)(5) of the Bankruptcy Code controls here. Section 1123(a)(5) provides, in relevant part, that "***Notwithstanding any otherwise applicable nonbankruptcy law***, a plan shall— … (5) provide adequate means for the plan's implementation, such as— … ***(B) the transfer of all or any part of the property of the estate to one or more entities***, whether organized before or after the confirmation of the plan."[342] Courts, including the Fourth Circuit, have held that section 1123(a)(5) broadly preempts applicable state law.[343] Indeed, in analyzing section 1123(a)(5)'s

[342] 11 U.S.C. § 1123(a)(5)(B) (emphases added).

[343] *Universal Coop., Inc. v. FCX, Inc. (In re FCX, Inc.)*, 853 F.2d 1149, 1154 (4th Cir. 1988) ("In 1984, the opening clause of § 1123(a) was amended to read: 'Notwithstanding any otherwise applicable nonbankrutpcy law, a plan shall … .' ***By its plain language then, § 1123(a)(5)(D) overrides nonbankruptcy law restrictions on the distribution of collateral to satisfy a claim secured by the same***. Accordingly, § 1123(a)(5)(D) supersedes the discretionary power over surrender of the patronage certificates bestowed on Universal's board

scope, the Fourth Circuit recognized that:

> [Section] 1123(a)(5) is ***an empowering statue*** … "That is, the ***plan may propose such actions notwithstanding nonbankruptcy law or agreements***" … Section 1123(a)(5)(D) then does not simply provide a means to exercise the debtor's pre-bankruptcy rights***; it enlarges the scope of those rights, thus enhancing the ability of a trustee or debtor in possession to deal with property of the estate***.

Universal Coop., Inc. v. FCX, Inc. (In re FCX, Inc.), 853 F.2d 1149, 1155 (4th Cir. 1988) (emphases added) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1123.01, at 1123-10). Instructive here, the Fourth Circuit explained the import of section 1123(a)(5) being an "empowering" statute in rejecting an argument that attempted to limit the scope of section 1123(a)(5) to that of section 363(b) a mere "enabling" statute:

> For its part, Universal reminds us of *In re Schauer*, 62 B.R. 526 (Bkrtcy.D.Minn.1986), *aff'd*, 835 F.2d 1222 (8th Cir.1987), which held that state law restrictions on the transfer of patronage certificates similar to those at issue here were not preempted by the Bankruptcy Code. In re Schauer, however, is distinguishable on two grounds. ***First, the trustee there did not rely on § 1123(a)(5)(D), but argued that § 363(b)(1)*** and § 7049 provided authority for the trustee to sell patronage certificates without the issuing cooperative's approval as required under the cooperative's by-laws. ***Second, and more importantly, § 363(b)(1) and § 704 are substantively different from § 1123(a)(5)(D). Neither § 363(b)(1), nor § 704, is an empowering statute in the sense that new rights or powers for dealing with the property of the estate are created***. Section 704 is simply a directive to the trustee of its duties; ***§ 363(b)(1) permits the trustee to "use, sell, or lease" property of the estate but evinces no intent to enlarge the trustee's rights to take such actions***

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by its by-laws.") (emphasis added); *see also In re LandAmerica Fin. Grp.*, 470 B.R. 759, 780 (Bankr. E.D. Va. 2012) ("The Fourth Circuit has held that the scope of preemption under § 1123(a) of the Bankruptcy Code ***is broad enough to preempt any state law that would restrict the objectives and operation of a debtor's reorganization plan***.") (emphases added) (citing *In re FCX*, 853 F.2d 1149); *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) (observing that courts have generally interpreted similar "notwithstanding" language as superseding all other laws); *In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355, 370 (3d Cir. 2012) (agreeing with the district court that § 1123(a)(5)'s preemptory clause encompassed private contracts and recognizing that "[t]he Fourth Circuit endorsed this view when it held that § 1123(a) preempts the contractual provisions of patronage certificates [in *In re FCX*].") (internal citation omitted); *Norfolk & W. Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117, 130 (1991) (concluding the phrase "all other law" in a preemption provision preempts private contracts, and reasoning "[Since a] contract has no legal force apart from the [state] law that acknowledges its binding character … [the preemptive language at issue] effects an override of contractual obligations … by suspending application of law that makes the contract binding.").

> ***beyond the debtor's pre-bankruptcy rights. As the Eighth Circuit noted in In re Schauer, § 363(b)(1)*** and § 704 ***are no more than "enabling statutes that give the trustee the authority to sell or dispose of property if the debtor[ ] would have had the same right under state law.***" *In re Schauer*, 835 F.2d at 1225. ***Stated differently, these sections provide a means within the context of a bankruptcy proceeding for the exercise of a debtor's pre-bankruptcy rights to dispose of its property.***

Id. at 1154-55 (emphases added) (alterations in original).

274. It, thus, comes as no surprise that courts have held that the transfer of rights under a debtor's insurance policies to a trust is valid and enforceable under section 1123(a)(5), notwithstanding any anti-assignment provisions contained in the policies themselves. *See, e.g.*, *In re Fed.-Mogul Glob. Inc.*, 684 F.3d at 369-381 (holding that a chapter 11 plan may provide for the transfer of "insurance rights" to a 524(g) trust in accordance with section 1123(a)(5)).[344] In fact, in a brief recently filed in the *AIO* (Avon) bankruptcy, the Chubb Insurers' *own counsel* asserted the following: "*In typical Chapter 11 reorganizations* involving the assignment of insurance policies, the insurance policies themselves are not assigned. Rather, the benefits under the policies are assigned to a trust, as is done in the Plan, *and the reorganized debtor remains responsible for performing its obligations under the policies*. A reorganized debtor can perform its contractual duties, *thereby preventing any prejudice to its insurers*."[345] By transferring the Asbestos Insurance Rights to the Asbestos Trust while leaving the obligations with Reorganized Hopeman, the Plan is following the approach taken in "typical Chapter 11 reorganizations." The objections of the Chubb Insurers and Travelers to the "typical" approach should be overruled.

275. Neither the Chubb Insurers nor Travelers even address section 1123(a)(5). Moreover, other courts have cast doubt on whether section 363 even applies when the sale or

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[344] *See also In re Boy Scouts of Am. and Del. BSA, LLC*, 650 B.R. 87, 144 (D. Del. 2023) ("*BSA II*") (observing that "[d]ebtors routinely assign their insurance policy interests to a settlement trust"), *aff'd in part, rev'd in part, and dismissed in part on other grounds*, 137 F.4th 126 (3d Cir. 2025) ("*BSA III*").

[345] Insurers' Objection to the Debtors' Plan of Reorganization at 49, *In re AIO US, Inc.*, Case No. 24-11836 (CTG) (Bankr. D. Del. July 1, 2025) (Docket No. 1233) (emphasis added and footnote omitted).

transfer of estate property is provided for in a chapter 11 plan,[346] and neither the Chubb Insurers nor Travelers adequately explain why either section 363 or section 365 of the Bankruptcy Code should apply under these circumstances.[347]

276. The insurers' failure to explain section 365's relevance here is a particularly glaring omission, given, as explained above, that neither the Asbestos Insurance Policies nor the Asbestos CIP Agreements are Executory Contracts governed by section 365.[348] In any event, *FCX* demonstrates that it would be inappropriate for the Court to apply the *cum onere* principle, applied in connection with transfers made pursuant to section 363 (a mere ***enabling*** statute), to restrict the transfer of the Asbestos Insurance Rights made pursuant to section 1123(a)(5), an ***empowering*** statute.

277. Finally, even if section 363 was the operative section here (it is not), a relatively

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346 *See In re Ditech Holding Corp.*, 606 B.R. 544, 593 (Bankr. S.D.N.Y. 2019) (noting that "the Court is aware of cases that support the contrary proposition that section 363 is inapplicable in the plan sale context" and collecting cases); *Ultimate Opportunities, LLC v. Plan Adm'r*, No. 20-CV-4927 (AMD), 2021 WL 5205630, at *2 (E.D.N.Y. Nov. 9, 2021) (applying § 363 to a plan sale because the plan specifically called for § 363 to apply, while noting that the plan in *Ditech* only called for § 1123(a) to apply); *see also In re Tex. Extrusion Corp.*, 844 F.2d 1142, 1165 (5th Cir. 1988) ("There is a definite implication that [section 363(m)] concern[s] the trustee's authority during the administration of the estate and not at the final disposition of the property of the estate pursuant to a plan of reorganization."); *cf. also In re New 118th Inc*., 398 B.R. 791, 794 (Bankr. S.D.N.Y. 2009) ("A trustee may sell property *prior to confirmation*, 11 U.S.C. § 363, or through a plan." (emphasis added)); *In re Smurfit-Stone Container Corp.*, No. BKR. 09-10235 (BLS), 2010 WL 2403793, at *10 (Bankr. D. Del. June 11, 2010) ("A sale pursuant to a plan of reorganization [under section 1123(a)] frankly provides greater protections for affected parties than a sale pursuant to section 363 of the Bankruptcy Code.") (citing *In re ORFA Corp. of Phila.*, 1991 Bankr. LEXIS 1952, *16 (Bankr. E.D. Pa. Oct. 30, 1991)).

347 With the exception of *In re Boy Scouts of America*, which involved an appeal of a prior § 363(b) sale that the confirmation order authorized, *BSA III*, 137 F.4th at 153, none of cases cited by the Chubb Insurers or Travelers in support of their *cum onere* argument address the *cum onere* principle at the plan confirmation stage. *See In re Pin Oaks Apartments*, 7 B.R. 364 (Bankr. S.D. Tex. 1980) (trustee's application to assume a lease); *In re Stewart Foods, Inc*., 64 F.3d 141 (4th Cir. 1995) (determination as to whether a prepetition contract created an allowable claim); *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252 (3d Cir. 2000) (whether the sale of bankruptcy property at auction was proper); *In re Superior Air Parts, Inc.*, 486 B.R. 728 (Bankr. N.D. Tex. 2012) (adversary proceeding involving state law claims); *In re Badlands Energy, Inc.*, 608 B.R. 854 (Bankr. D. Colo. 2019) (same); *In re Tsiaoushis*, 383 B.R. 616 (Bankr. E.D. Va. 2007) (same); *In re Weinstein Co. Holdings LLC*, 997 F.3d 497 (3d Cir. 2021) (appeal over whether a contract could be assumed as executory); *In re Am. Home Mortg. Holdings*, *Inc*., 402 B.R. 87 (Bankr. D. Del. 2009) (objection to sale) *In re BearingPoint, Inc.*, No. 09-10691 (REG), 2009 WL 8519983 (Bankr. S.D.N.Y. Feb. 18, 2009) (establishing procedures for sale of bankruptcy property). These cases are therefore inapposite.

348 *See* § VI. *supra*.

recent decision in the *Boy Scouts* bankruptcy rejects the insurers' argument under that section. There, the district court stated: "Under the Bankruptcy Code, if a contract is not executory, a debtor may assign, delegate, or transfer rights ***and/or*** obligations under section 363 of the Bankruptcy Code, provided that the criteria of that section are satisfied."[349] In *Boy Scouts*, the bankruptcy court approved the plan's transfer of the debtor's insurance rights, without the obligations under the policies, to a plan-created settlement trust, recognizing that the transfer necessarily preserved any coverage defenses that the insurers might have as a result of any potential future failure to comply with conditions precedent to coverage.[350] The district court affirmed that holding.[351] And the Third Circuit affirmed it again on appeal, rejecting arguments that the transfer of the insurance rights without the obligations rewrote the insurance policies.[352] The Third Circuit held that the plan adequately preserved the insurers' rights and defenses and explained that a coverage court in the future "can interpret the Plan in light of the background principles of bankruptcy law."[353]

278. The rulings and rationale in *Boy Scouts* apply with equal force here.

279. For the foregoing reasons, the Chubb Insurers' and Travelers' *cum onere* argument is unavailing and should be rejected.

b. <u>The Plan Proponents Do Not Seek Impermissible Declaratory Judgments</u>.

280. The Chubb Insurers and Travelers next take issue with certain provisions of the Plan they claim seek impermissible declaratory judgments, which primarily deal with the transfer

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349 *BSA II*, 650 B.R. at 144 (bold emphasis added).

350 *See In re Boy Scouts of Am. and Del. BSA, LLC*, 642 B.R. 504, 668 (Bankr. D. Del. 2022).

351 *See BSA II*, 650 B.R. at 144-47 (holding that debtors could transfer their rights under insurance policies without obligations under section 363, and that the question of consequences was for another court to decide)

352 *See BSA III*, 137 F.4th at 166.

353 *Id*.

of the Asbestos Insurance Rights to the Asbestos Trust.

281. First, they take issue with carve-outs, *see* (a)-(b) emphasized below, to Section 8.18 of the Plan:

> 8.18. Insurance Neutrality. Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order shall limit the right of any insurer to assert any coverage defense; provided, however, that ***(a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the Asbestos Insurance Rights as Hopeman or Reorganized Hopeman may have, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected Parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent any such insurer is a Settled Asbestos Insurer*** … .

Plan, § 8.18 (emphasis added). The Chubb Insurers claim that these "carveouts … threaten to swallow protections that [the Insurance-Neutrality Provisions] otherwise may provide," and characterize the carveouts as tantamount to the Debtor seeking "a declaration as to the impact, discharge, release, and injunctions set forth in the Plan."[354] Travelers, similarly, claims that the carveouts "impair[] Travelers' right to assert defenses that it may have to provide insurance coverage for a Channeled Asbestos Claim … [and that] [t]here is no basis for the Court to determine what, if any, impact the transfer, discharge, release, or injunction has on Travelers' coverage defenses."[355] That is not accurate.

282. The carve-outs to Section 8.18 above are necessary because the Plan *does* provide for the transfer of the Asbestos Insurance Rights to the Asbestos Trust. The Chubb Insurers and Travelers have objected to that transfer as an impermissible violation of the *cum onere* principle,

[354] Chubb Insurers Plan Obj., ¶ 115.

[355] Travelers Plan Obj., ¶ 42.

putting the issue squarely before the Court. That said, the Plan Proponents are *not* seeking a declaratory judgment, instead the Court's authority to rule on the appropriateness of the Plan, including the transfer of the Asbestos Insurance Rights provided for thereunder, stems from the fact that this is a "core" issue, not from the Declaratory Judgment Act.[356] It is, of course, black-letter law that the Debtor's insurance policies and rights thereunder constitute property of the estate.[357] And as the *Babcock* court observed:

> To the extent that a determination need be made of whether the Plan is capable of confirmation, or whether it is incapable of confirmation because its provisions run afoul of certain contractual rights of insurers, that determination is at the very heart of the function of the bankruptcy court, that is to determine whether the Plan is confirmable under the Bankruptcy Code. To the extent that confirmation involves issues regarding the workings of a § 524(g) injunction, that too is a core matter.

In re Babcock & Wilcox Co., 2004 WL 4945985, at *5.

283. As explained above, *see* § IX.D.1.a. *supra*, the transfer of the Asbestos Insurance Rights to the Asbestos Trust is plainly permissible. Because, however, the Chubb Insurers and Travelers have challenged the permissibility of that transfer, confirmation of the Plan requires the Court to rule on whether the transfer of the Asbestos Insurance Rights is authorized under the Bankruptcy Code, and the Court can address the issue, and make the finding contemplated in subclause (a) of Section 8.18 of the Plan, in the context of this contested matter (an adversary proceeding is not required).

284. Similarly, there is absolutely nothing improper about the second of the two carve-outs (*i.e.*, (b) in Section 8.18) which merely provides that the discharge, release, and injunction provisions of the Plan do not impact the liability of any insurer. In fact, that is merely a

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[356] *See, e.g.*, 28 U.S.C. §§ 1334(e), 157(b)(1); *see also Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) ("Bankruptcy courts have exclusive jurisdiction over a debtor's property, wherever located, and over the estate.").

[357] *In re Boy Scouts of Am.*, 137 F.4th at 164-65.

restatement of black-letter law: "Generally, however, a discharge operates only for the benefit of the debtor against its creditors and '***does not affect the liability of any other entity***.'"[358]

285. The Chubb Insurers are also wrong that Section 11.1(g)(xxvii) of the Plan improperly seeks a declaratory judgment. The Plan Proponents disagree that Section 11.1(g)(xxvii) of the Plan is unlawful. This provision of the Plan is important to prevent the Objecting Insurers from arguing that the Debtor breached the Asbestos Insurance Cooperation Obligations, especially given the various assertions that the Plan was not proposed in good faith contained in the Plan Objections, and is consistent with language in the *Kaiser Gypsum* plan recently confirmed by the Fourth Circuit.[359]

286. Section 11.1(g)(xxvii) merely seeks to maintain the status quo, as it existed prior to the Petition Date, by making clear that this Chapter 11 Case itself, and actions taken during this Chapter 11 Case and in pursuit of confirmation, do not alter the Debtor's coverage under the Asbestos Insurance Policies. The Chubb Insurers, predictably, complain about the language precisely because they intend to pursue these sorts of "gotcha" arguments that would negate the entire purpose of the Plan.

287. For the reasons set forth above, Travelers and the Chubb Insurers objections should be overruled.

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358 *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 215 (2024) (quoting 11 U.S.C. § 524(e)) (emphasis added).

359 *See In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), *Third Amended Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc.*, Art. VIII.A.3.u (requiring as condition precedent to confirmation that the bankruptcy and district courts find that debtors have not been in violation of their cooperation obligations or any express or implied covenant of good faith and fair dealing) (Bankr. W.D.N.C. Sept. 24, 2020) [Docket No. 2481]; *In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), *Order Recommending Entry of Proposed Findings of Fact and Conclusions of Law and Order Confirming Joint Plan of Reorganization*, § J.2.v (finding that debtors did not violate their cooperation obligations or any express or implied covenant of good faith and fair dealing) (Bankr. W.D.N.C. Sept. 28, 2020) [Docket No. 2486]; *In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), *Findings of Fact and Conclusions of Law Regarding Confirmation of the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., as Modified*, § J.2.v (district court finding the same) (Bankr. W.D.N.C. July 28, 2021) [Docket No. 2745].

2. The Plan Does Not Impose Additional Obligations On Asbestos Insurers.

288. The Chubb Insurers and Travelers both contend that the Plan impairs their rights under their respective Asbestos Insurance Policies by, allegedly, relieving Reorganized Hopeman of any obligation it may, otherwise, have to defend against Channeled Asbestos Claims, although the Chubb Insurers and Travelers frame the issue slightly differently.

289. The Chubb Insurers contend that, although they have no duty to defend under their insurance policies, "[t]he Chubb Insurers and other similar-situated insurers [ ] are faced with a Hobson's choice of incurring the expenses and resources to defend against Insured Asbestos Claims despite expressly contracting with Hopeman ***not*** to have such an obligation, or risking default judgments that will significantly increase the amounts that Non-Settling Asbestos Insurers will be asked to pay … ."[360] The Chubb Insurers claim this is the result of section 5.2(a)(ii) of the Asbestos Trust Distribution Procedures, because the Chubb Insurers claim that section of the Asbestos Trust Distribution Procedures provides "such lawsuits will be tendered to ***all*** Non-Settling Asbestos Insurers for defense and payment[,]"[361] and that Reorganized Hopeman will not answer, appear, or otherwise participate in actions where it is sued. Yet again, the Chubb Insurers deliberately ignore the terms of the Plan.

290. As an initial matter, section 5.2(a)(ii) of the Asbestos Trust Distribution Procedures does ***not*** provide for the "tender" of lawsuits to the Non-Settling Asbestos Insurers for defense and payment. Instead, section 5.2(a)(ii) of the Asbestos Trust Distribution Procedures provides that the Asbestos Trust "shall provide notice of such action, as appropriate, to all Non-Settling Asbestos Insurers."[362]

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360 Chubb Insurers Plan Obj., ¶ 117 (emphasis in original).

361 Chubb Insurers Plan Obj., ¶ 117.

362 Asbestos Trust Distribution Procedures, § 5.2(a)(ii).

291. Section 8.12(b) provides, in relevant part, that "Reorganized Hopeman, the Asbestos Trust, and Wayne shall have no obligation to answer, appear, or otherwise participate in [actions commenced by Channeled Asbestos Claimants against them] in any respect other than as set forth in this Plan ***and as may be necessary to comply with applicable Asbestos Insurance Cooperation Obligations***."[363] Section 8.12(b) of the Plan does not *relieve* Reorganized Hopeman from complying with the Asbestos Insurance Cooperation Obligations—which are little more than ministerial obligations to provide notice and cooperate. Instead, the Chubb Insurers, like any other Non-Settling Asbestos Insurer, will be free to assert defenses to coverage should Reorganized Hopeman fail to comply with the Asbestos Insurance Cooperation Obligations, or whatever other policy obligations may continue to exist.[364]

292. Travelers, similarly, complains that it may be forced to defend against suits out of self-interest to avoid default judgments against Reorganized Hopeman. Travelers frames its objection by arguing that the Plan impermissibly strips Travelers of its ability to assert contribution claims against Hopeman's other insurers to the extent it is forced to incur defense costs.[365] The Plan, however, provides insurers such as Travelers with protection against the loss of contribution rights against Settled Asbestos Insurers.

293. First, Travelers argues that that the Plan deprives it of claims it has against the proceeds of the Certain Settling Insurers Settlement. Travelers asserts that the potential

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[363] Plan, § 8.12(b) (emphasis added).

[364] Travelers similarly objects that section 6.5 of the Trust Distribution Procedures may "authorize the Asbestos Trust's non-compliance with obligations under Travelers Policies and Travelers CIP Agreements, including, *e.g.*, cooperation obligations and audit rights, so long as the TAC or FCR does not consent to the Trust's compliance with such obligations … [allegedly] impair[ing] Travelers' rights … ." Travelers Plan Obj., ¶ 57. For the same reasons discussed with respect to alleged impairment from Reorganized Hopeman not defending against actions, Travelers is wrong. If Reorganized Hopeman fails to comply with its obligations under the Asbestos Insurance Policies then Travelers, like every other Non-Settling Asbestos Insurer, may assert applicable coverage defenses and deny coverage on account of such failures.

[365] Travelers Plan Obj., ¶¶ 43-45.

contribution claims it had against the Certain Settling Insurers attached to the proceeds of the Certain Settling Insurers Settlement pursuant to the CI Settlement Approval Order. It claims it is losing the benefit of its contribution claim because the settlement proceeds are being transferred to the Asbestos Trust free and clear of claims pursuant to Section 8.3 of the Plan.[366]

294. Travelers' argument is incorrect for two reasons. Initially, Travelers incorrectly presupposes an entitlement to adequate protection; as a mere unsecured creditor (if it is a creditor at all), Travelers has no entitlement to adequate protection.[367] In addition, the judgment reduction provision in the Plan compensates Travelers for any claim it arguably may have had against the proceeds of the Certain Settling Insurers Settlement.

295. Despite Travelers' assertion to the contrary, the judgment reduction provision in the Plan contained in section 8.13(c)(i) protects Travelers from the loss of any contribution rights arising from the Certain Settling Insurers Settlement. That section provides:

> If any Non-Settling Asbestos Insurer against whom an Insurance Policy Action is brought asserts as a defense that it would have a claim as a result of contribution rights against one or more Settled Asbestos Insurers with respect to the Channeled Asbestos Claimant's claim that it could have asserted but for the Asbestos Permanent Channeling Injunction ("**Contribution Claim**"), the liability, if any, of the Non-Settling Asbestos Insurer to the Channeled Asbestos Claimant shall be reduced dollar-for-dollar by the amount, if any, of any judgment establishing the Contribution Claim in accordance with Section 8.13.

Plan, § 8.13(c). The Certain Settling Insurers are "Settled Asbestos Insurers" under the Plan. While the Certain Settling Insurers Settlement was approved prior to confirmation of the Plan, the Certain Settling Insurers are within the protection of the Asbestos Permanent Channeling Injunction in section 10.3 of the Plan as a "Protected Party" defined in Section 1.95 of the Plan.

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366 *Id.* at ¶ 47.

367 *In re SunEdison, Inc.*, 562 B.R. 243, 252 (Bankr. S.D.N.Y. 2017) ("Unsecured creditors … do not have an interest in property of the estate that merits adequate protection, and ***there is no express statutory requirement that unsecured creditors receive adequate protection***.") (emphasis added).

Accordingly, Travelers will have the benefit of the judgment reduction provision in section 8.13(c)(i) should it have liability to a Channeled Asbestos Claimant. Travelers thus loses nothing by the transfer of the settlement proceeds to the Asbestos Trust.

296. Travelers also complains, among other complaints, that the judgment reduction provided by the Plan is too narrow because it is limited to "contribution rights" and would not compensate Travelers in the event it resolves a Channeled Asbestos Claim through settlement.[368] Travelers has not articulated how it would have any other rights against a Settled Asbestos Insurer that is lost through settlement with the Debtor. In addition, if Travelers elects to settle a Channeled Asbestos Claim, that will be its choice. And, as stated above, those complaints are irrelevant because Travelers is not entitled to adequate protection or compensation for such claims.

297. In any event, what the Chubb Insurers and Travelers really have an issue with is the loss of Reorganized Hopeman as a buffer between such insurers and the tort system. The Chubb Insurers and Travelers, however, are entitled to no redress for that problem which is merely the result of the Bankruptcy Code. As the *Flintkote* court observed:

> ITCAN also complains that it will not have "Flintkote, its hundreds of millions of dollars or its insurance coverage by its side at the defense table" to help it defend against asbestos creditors in the tort system. ***Again, Flintkote will not be at the defense table by virtue of its discharge, supplemented by the § 524(g) channeling injunction, not because of any unique provision in this Plan***.

In re Flintkote Co., 486 B.R. at 118 (emphasis added) (citing *In re W.R. Grace & Co.*, 475 B.R. 34, 161 (D. Del. 2012) (noting that impairment must be the result of what the plan itself does, not of the operation of the Bankruptcy Code)).

298. Accordingly, the Court should overrule the Chubb Insurers and Travelers

[368] Travelers Plan Obj., ¶ 53.

objections.

E. The Plan is Proposed in Good Faith.

299. The Objecting Insurers each contend that the Plan was not proposed in good faith, in violation of section 1129(a)(3) of the Bankruptcy Code, and thus cannot be confirmed. The Objecting Insurers' objections are devoid of merit and should be overruled.

300. As set forth above, the Plan satisfies section 1129(a)(3) of the Bankruptcy Code because it was "proposed in good faith and not by any means forbidden by law."[369] A number of the Circuit Courts of Appeal have held that "a plan is proposed in good faith where it 'fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code.'"[370] "The two recognized objectives of the Code, in turn, are preserving going concerns and maximizing property available to satisfy creditors."[371] While compliance with the objectives of the Bankruptcy Code, standing alone, may not "conclusively establish[] good faith, we agree it provides strong evidence of the standard being met."[372] Finally, "in determining whether a plan is consistent with these objectives and purposes, courts must consider the totality of the circumstances."[373] The Objecting Insurers' self-serving assertions that the Plan was not proposed in good faith are meritless.

1. The Plan is Not the Product of Collusion.

301. Both the Chubb Insurers and LMIC claim that the Plan is the result of collusion amongst the Plan Proponents and Asbestos Claimants and, as a result, cannot be confirmed.

302. Specifically, the Chubb Insurers and LMIC contend that the Plan is the product of

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369 11 U.S.C. § 1129(a)(3).

370 *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 193 (internal citations omitted).

371 *Id.* at 194 (internal citations and quotation marks omitted).

372 *Id.*

373 *Id.* (internal citations omitted).

collusion for the same reasons: (i) the Plan is merely the result of Hopeman's capitulation to the Committee and the Asbestos Claimants; and (ii) governance of Reorganized Hopeman by the same individual who will serve as the Litigation Trustee creates a fundamental conflict of interest.[374] Neither claim is availing.

a. The Pivot to the Plan Is Not Evidence of Collusion.

303. Both the Chubb Insurers and LMIC re-hash their erroneous assertions that Hopeman cannot satisfy the non-existent ongoing-business requirement, and argue that Hopeman's agreement to pursue the Plan, and pivot away from the Original Plan of Liquidation, despite its inability to confirm such a Plan, is evidence that Hopeman merely acceded to the Committee's wishes. Moreover, they claim that the Plan is plainly the product of collusion amongst the Plan Proponents and the Asbestos Claimants intended to leverage recoveries out of the Non-Settling Asbestos Insurers. LMIC, unable to help itself, also reiterates its absurd position that the Plan *targets* LMIC, apparently further evidencing collusion.

304. These assertions are belied by the record. The Debtor indisputably filed this Chapter 11 Case to establish a fair and efficient process through which its remaining cash and insurance policies may be used to resolve the thousands of asbestos-related claims asserted against it. To that end, shortly after the Petition Date, the Debtor filed the Insurer Settlement Motions, which sought the approval of settlements under which the applicable insurers would effectuate a buyback of their policies, providing the Estate the benefit of the cash consideration contemplated in the settlements, in exchange for providing the applicable insurers protections, including injunctions enjoining the holders of Asbestos Claims from asserting claims against them. Indeed, the Chubb Insurers Settlement Motion sought approval of a settlement with the

[374] *See* Chubb Insurers Plan Obj., ¶¶ 134-145; LMIC Plan Obj., ¶¶ 58-72.

Chubb Insurers.

305. The Debtor's made a good-faith effort to obtain approval of the Chubb Insurers Settlement Motion, even obtaining the Court's authorization for the Mediation in an effort to consensually resolve disputes around the motion. Ironically, as set forth above, the Debtor's decision to pivot away from the Original Plan of Liquidation was largely necessitated by the Chubb Insurers' refusal to meaningfully engage with the Committee, both prior to, during or after the Mediation, to garner the necessary support for approval of the Chubb Insurers Settlement Motion.

306. Indeed, it was only after entry into the November 29 Term Sheet and through participation in the judicially supervised Mediation—that the Debtor and the Committee, following hard-fought, arm's-length, good-faith negotiations agreed to the Plan Term Sheet that memorialized the Debtor's intention to pivot away from the Original Plan of Liquidation to pursue confirmation of what, ultimately, became the Plan. The notion that the Debtor acted in bad faith because it engaged with its creditors and took stock of its available liquidity (both for purposes of being able to prosecute a plan to confirmation *and* with regard to the impact excessive administrative expenses would have on creditor recoveries), and in consultation with the judicial mediator, is absurd.

307. In any event, these allegations are merely an effort to obfuscate the truth: the Chubb Insurers and LMIC are upset because they believe the Original Plan of Liquidation was better for them. In the case of the Chubb Insurers, the Original Plan of Liquidation contemplated funding a trust with the proceeds of the Insurer Settlement Motions, including the Chubb Insurers Settlement. Thus, under the Original Plan of Liquidation the Chubb Insurers would have obtained the protections afforded to the Settling Asbestos Insurers. LMIC's ire with the Plan

stems from its belief that the Plan, by specifically identifying LMIC as a Non-Settling Asbestos Insurer, put a target on its back and, otherwise, purportedly breached the Debtor's prepetition contractual obligation to minimize LMIC's exposure. Practically speaking, it appears the Chubb Insurers and LMIC also believe that by Hopeman reorganizing, instead of liquidating as was contemplated under the Original Plan of Liquidation, the Plan makes it more likely that the holders of Asbestos Claims will assert claims and pursue available Asbestos Insurance Coverage (because such claimants would be more likely to assume that there was no recovery to be had if Hopeman was liquidated and ceased to exist).

308. These arguments all suffer from a fundamental flaw: they presume an entitlement to a plan of their choice and/or one that affords them their desired protections. But "the fact that a plan proposed by a debtor is ***not the one that the creditors [or in this case the Objecting Insurers purportedly trying to protect the holders of Channeled Asbestos Claims who voted overwhelmingly in favor of the Plan] would have proposed does not make the plan one that has not been filed in good faith***."[375]

309. Similarly, the Chubb Insurers' assertions that they were excluded from all plan-related mediation efforts (*i.e.*, their argument that the Plan is the product of negotiations solely amongst the Plan Proponents which they claim they were wrongfully excluded from) fares no better. The Third Circuit "reject[ed] AMH's implication that [the debtor's] failure to negotiate directly with AMH undercut the overall Plan's fundamental fairness, particularly when AMH declined to provide comments on drafts of the Plan when they were circulated during the negotiation process."[376]

310. Tellingly, besides the baseless inferences the Chubb Insurers and LMIC invite the

[375] *In re Barnes*, 309 B.R. 888, 893 (Bankr. N.D. Tex. 2004) (emphasis added).

[376] *In re W.R. Grace & Co.*, 729 F.3d at 347.

Court to draw about the transition away from the Original Plan of Liquidation, the Objecting Insurers fail to point to any other evidence of collusion (as discussed above, LMIC's allegations that it is being targeted by being included in a defined term are ridiculous)—because none exists. In cases in which similar assertions of collusion gained traction, the record *did* contain some evidence supporting the assertions.[377]

311. Critically, neither the Chubb Insurers nor LMIC can claim that they were denied access to the information necessary to substantiate any alleged collusion. The Debtor's entirely appropriate assertion of common-interest privilege with respect to discovery requests seeking information about communications between the Plan Proponents *after* the Plan was filed changes nothing. The Third Circuit observed that it would be inappropriate to draw a negative inference because a debtor chose to protect privileged information:

> [W]e reject AMH's contention that direct testimony from [the debtor's] negotiators was required to demonstrate [the debtor's] honesty and good intentions in proposing the Plan. Subjective intent, to the extent that it is one factor in determining that a Plan is not being used for purposes contrary to the Code's objectives, is routinely established by circumstantial evidence. ***A negative inference should not be drawn against [the Debtor] merely because it chose to protect the privacy of attorney-client communications. For a variety of privilege and evidentiary reasons, divining the subjective intent of a corporate actor through the testimony of the negotiators and other key people will often prove problematic and less than enlightening. In any event, it would be an extraordinary circumstance where an objectively fair plan must be set aside because of mere suspicions concerning the subjective intent of the parties***.

In re W.R. Grace & Co., 729 F.3d at 348 (emphasis added).

312. Thus, the Objecting Insurers' circumstantial evidence—*i.e.*, the pivot from the Original Plan of Liquidation under the watchful eye of Judge Huennekens—does not, as set forth

[377] *See id.* at 348 (discussing improprieties evidenced by the record in other cases that resulted in determinations that those plans were not, or might not have been, proposed in good faith).

above, support claims of collusion. And, it would require "an extraordinary circumstance where an objectively fair plan must be set aside because of ***mere suspicions concerning the subjective intent of the parties***," and no such extraordinary circumstances exist here.

313. More to the point, the Objecting Insurers' allegations of collusion ring hollow when viewed in light of their own actions. The Chubb Insurers chose not to negotiate during the Mediation. LMIC, the other Objecting Insurer, has not sought or attempted to discuss a potential resolution of its issues and policies despite the fact that the Plan expressly provides for future settlements to be negotiated (and if such settlement(s) are approved in accordance with the terms of the Plan, such parties would become Settling Asbestos Insurers entitled to the same protections afforded to the Protected Parties). Rather, the Objecting Insurers are making a strategic decision to try and defeat the Plan in hopes that doing so will improve their negotiating position and/or lower their financial risk profile for future payments under their respective policies. That is a strategic decision that they are entitled to make, but it does not constitute evidence of collusion by the Plan Proponents or any other party.

b. The Governance Authorized By The Plan Is Permissible.

314. The Chubb Insurers and LMIC both contend that the Plan was not proposed in good faith because it puts in place a governance structure bereft with conflicts of interest.[378] Their assertions do not withstand scrutiny.

315. Before addressing their contentions, it is worth parsing the relevant provisions of the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures which set forth purpose of the Asbestos Trust and the ***actual*** duties of the relevant fiduciaries. A plain reading of these provisions demonstrates that conflicts of interest of which the Chubb Insurers and LMIC

[378] Chubb Insurers Plan Obj., ¶¶ 139-145; LMIC Plan Obj., ¶¶ 63-72.

complain do not exist.

316. With respect to the purpose of the Asbestos Trust:

> Subject to the provisions of the Plan, the purpose of the Asbestos Trust is to assume liability and responsibility for all Channeled Asbestos Claims, and, among other things to: (a) direct the processing, liquidation and payment of Channeled Asbestos Claims in accordance with the Plan, the [Asbestos Trust Distribution Procedures], and the Confirmation Order, including allowing claimants with Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system; (b) preserve, hold, manage, and maximize the assets of the Asbestos Trust for use in paying and satisfying Channeled Asbestos Claims; and (c) qualify at all times as a qualified settlement fund. The Asbestos Trust is to use the Asbestos Trust's assets and income to pay holders of Channeled Asbestos Claims in accordance with this [Asbestos] Trust Agreement and the [Asbestos Trust Distribution Procedures] in such a way that such holders of Channeled Asbestos Claims are treated fairly, equitably, and reasonably in light of the finite assets available to satisfy such claims, and to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

Asbestos Trust Agreement, § 1.2. The Asbestos Trust, in turn, will be "administered, maintained, and operated at all times through [the Asbestos Trust Distribution Procedures] that provide reasonable assurance that the Asbestos Trust will satisfy all Channeled Asbestos Claims," and such distribution procedures expressly denote their purpose as being "designed to provide fair, equitable and substantially similar treatment for all Channeled Asbestos Claims that may presently exist or may may arise in the future."[379]

317. In short, the purpose of the Asbestos Trust is to treat all holders of Channeled Asbestos Claims fairly, equitably and reasonably in accordance with the Asbestos Trust Agreement, the Asbestos Trust Distribution Procedures, and applicable law.

318. Furthermore, both the Administrative Trustee[380] and the Litigation Trustee are

[379] Asbestos Trust Distribution Procedures, § 1.1.

[380] "Administrative Trustee" has the meaning assigned in the introductory paragraph of the Asbestos Trust Agreement.

expressly required to act as fiduciaries to the Asbestos Trust and are also prohibited from acting as an attorney to a Channeled Asbestos Claimant. Specifically, the Administrative Trustee and the Litigation Trustee will both "act as fiduciaries to the Asbestos Trust in accordance with the provisions of this [Asbestos] Trust Agreement and the Plan,"[381] with "[t]he Litigation Trustee … be[ing] responsible for all matters relating to Trust Litigation," and the "Administrative Trustee … be[ing] responsible for all duties and responsibilities … other than those relating to litigation."[382] Finally, neither the Administrative Trustee nor the Litigation Trustee may "act as an attorney for any person who holds a Channeled Asbestos Claim."[383] Thus, both the Administrative Trustee and the Litigation Trustee have a fiduciary duty to act on behalf of the holders of the Asbestos Trust as a whole and to avoid conflicts of interest with that role.

319. By contrast and to protect against conflicts, the Asbestos Trust Advisory Committee is charged with representing the interests of the holders of present Channeled Asbestos Claims. Accordingly, the Asbestos Trust Agreement expressly provides that the Asbestos Trust Advisory Committee "shall serve in a fiduciary capacity representing all holders of ***present*** Channeled Asbestos Claims."[384] The members of such committee, "have no fiduciary obligations or duties to ***any party other than the holders of present Channeled Asbestos Claims***."[385]

320. Similarly and to protect the interests of Demands (i.e., future Channeled Asbestos Claims), the Asbestos Trust Agreement provides that the Future Claimants' Representative, "shall serve in a fiduciary capacity, representing the interests of the holders of ***future*** Channeled

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381 Asbestos Trust Agreement, § 2.1(a).

382 *Id.* at § 4.1.

383 *Id.* at § 4.9.

384 *Id.* at § 5.2 (emphasis added).

385 *Id.* (emphasis added).

Asbestos Claims for the purposes of protecting the rights of such persons."[386] And, likewise, the Future Claimants' Representative does not have any "***fiduciary obligations or duties to any party other than holders of future Channeled Asbestos Claims***."[387]

321. Despite the existence of this framework, which includes mechanisms designed to avoid conflicts amongst the various fiduciaries to protect the interests of all Channeled Asbestos Claimants (both the holders of present Channeled Asbestos Claims and future Demands), LMIC first argues that while the Asbestos Trust Agreement expressly forbids either the Administrative Trustee or the Litigation Trustee from representing the holder of a Channeled Asbestos Claim, "[t]he Trustees must obtain the consent of the TAC and FCR before taking ***virtually any action*** within their job descriptions[, and] the members of the TAC are ***exactly what the Trustees are not allowed to be:*** attorneys for Asbestos Claimants."[388] Not so.

322. As an initial matter, LMIC initially, ***correctly*** observes that the Asbestos Trust Agreement requires that the Administrative Trustee and the Litigation Trustee ***consult***, in some instances, with the Asbestos Trust Advisory Committee and the Future Claimants' Representative, and obtain their ***consent*** in other instances. Nonetheless, after paying lip service to that distinction, LMIC makes the broad assertion that the ***consent*** of the Asbestos Trust Advisory Committee and the Future Claimants' Representative is required for "taking ***virtually any action*** … ." That is inaccurate. The Asbestos Trust Agreement only requires the Administrative Trustee and the Litigation Trustee to obtain ***consent*** on the sort of mission-critical items one would expect to protect the divergent interests of their constituencies, including issues that inherently implicate the, potentially, divergent interests of the holders of current

386 *Id.* at § 6.1 (emphasis added).

387 *Id.* (emphasis added).

388 LMIC Plan Obj., ¶ 64 (emphasis in original).

Channeled Asbestos Claims and future Demands (and, thus, the Asbestos Trust Agreement appropriately requires the consent of the fiduciaries to ***both*** constituencies for such items).[389]

323. Next, LMIC takes issue with the fact that proposed members of the Asbestos Trust Advisory Committee "are not independent because they have a vested interest in funding payments to their own clients."[390] More specifically, LMIC frets that "[t]he beneficiaries of the Asbestos Trust should not have the right to ***influence*** the timing, procedures, and conditions under which they may receive a distribution from the Asbestos Trust, nor should they be permitted to represent Asbestos Claimants as a whole when they have vested interests in maximizing the recoveries of certain Asbestos Claimants to the detriment of others."[391]

324. LMIC, however, fails to point out how this is any different than every official committee of unsecured creditors ever appointed in a chapter 11 case, which committees, by definition, are comprised of creditors ***with their own vested interests in maximizing their own recoveries***. LMIC, apparently, asks this Court to predetermine that parties are likely to fail to act in accordance with their fiduciary duties—but there is no legal or factual basis to do so here. To the contrary, as set forth above, the applicable documents (*i.e.*, the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures) and applicable law already impose appropriate fiduciary duties with which these fiduciaries are required to comply, and there is no reason to presume these fiduciaries will not act consistent with their respective obligations.

325. Furthermore, LMIC ignores the fact that the Asbestos Trust Agreement establishes processes for consulting with, and where required, obtaining the consent of each of the Asbestos Trust Advisory Committee and the Future Claimants' Representative which guard

389 *See* Asbestos Trust Agreement, § 2.2(f).

390 LMIC Plan Obj., ¶ 65.

391 *Id.* (emphasis added).

against the hypothetical risk of a true conflict of interest arising.[392]

326. Specifically, both the Asbestos Trust Advisory Committee and the Future Claimants' Representative are required to "consider ***in good faith and in a timely fashion*** any request for consent by the Trustees[,]"[393] and neither the Asbestos Trust Advisory Committee nor the Future Claimants' Representative may "***withhold its consent unreasonably***."[394] Furthermore, if either the Asbestos Trust Advisory Committee or the Future Claimants' Representative decide to withhold consent, they are required to "explain ***in detail its objections to the proposed action***."[395] If either the Asbestos Trust Advisory Committee or the Future Claimants' Representative maintain their objection to an action requiring their consent after following those procedures, the parties are obligated to resolve the dispute pursuant to an alternative dispute resolution process mutually agreeable to the involved parties.[396] And, if those safeguards are not enough, "[s]hould any party to the ADR process be dissatisfied with the decision of the arbitrator(s), that party may apply to the Bankruptcy Court for a judicial determination of the matter[,]" with any such review "conducted by the Bankruptcy Court [being] *de novo*."[397] Accordingly, the Asbestos Trust Agreement: (i) includes sufficient provisions to guard against conflicts of interest, (ii) prohibits the Asbestos Trust Advisory Committee and the Future Claimants' Representative from unreasonably withholding consent where their consent is required; and (iii) in the event a dispute arises with respect to an action proposed by the

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[392] Asbestos Trust Agreement, §§ 5.7 (a) (setting forth consultation process with Asbestos Trust Advisory Committee), 5.7(b) (setting forth process for obtaining consent of Asbestos Trust Advisory Committee), 6.6 (a) setting forth process for consulting with the Future Claimants' Representative), and 6.6(b) (setting forth process for obtaining consent of the Future Claimants' Representative).

[393] *Id.* at § 5.7(b)(ii) (emphasis added); *see id.* § 6.6(b)(ii) (same with respect to Future Claimants' Representative).

[394] *Id.* at § 5.7(b)(ii) (emphasis added); *see id.* § 6.6(b)(ii) (same with respect to Future Claimants' Representative).

[395] *Id.* at § 5.7(b)(ii) (emphasis added); *see id.* § 6.6(b)(ii) (same with respect to Future Claimants' Representative).

[396] *Id.* at § 7.13.

[397] *Id.*

Administrative Trustee or the Litigation Trustee for which the consent of the Asbestos Trust Advisory Committee and the Future Claimants' Representative is required, it sets forth an appropriate procedure for ensuring such conflicts are resolved with the oversight of an impartial decisionmaker while preserving the parties' rights to seek review of such third-party decisionmaker's decision with the Bankruptcy Court *de novo*.

327. LMIC points to an email from Mr. Austin, one of the proposed members of the Asbestos Trust Advisory Committee, as purportedly evidencing Mr. Austin is incapable of acting as a fiduciary for all Channeled Asbestos Claimants (whom LMIC claims he will disregard in favor of his clients), in part based on views expressed about potential settlements with LMIC. Mr. Austin's email, however, can be swiftly disposed of for a simple reason: There is nothing inappropriate about it. Mr. Austin's email was sent at a time when he was ***not acting as a member of a committee with fiduciary duties to anyone***. Thus, Mr. Austin's email is entirely consistent with the duties he had at the time of the email (***which duties are solely to his clients***[398]), and his email is not indicative in the slightest of whether Mr. Austin will adhere to his fiduciary duties as a member of the Asbestos Trust Advisory Committee (which the Plan Proponents submit he ***will***).

328. Next, both the Chubb Insurers and LMIC take issue with Mr. Richardson's simultaneous service as Reorganized Hopeman's sole officer and director and as the Litigation Trustee. The Chubb Insurers and LMIC, essentially, argue that the fiduciary duties Mr. Richardson will owe in his two, separate capacities will result in "an irreconcilable conflict which renders it impossible for the Trustees to cooperate with the Asbestos Insurers as required

[398] One of Mr. Austin's clients is a member of the Committee. Mr. Austin, however, is not a member and has other clients who hold Asbestos Claims against the Debtor.

by the applicable Asbestos Insurance Policies,"[399] and both base this contention on the purported conflict created by Mr. Richardson's supposed "perverse incentive to sabotage Reorganized Hopeman's defense that is created by his contingency fee compensation in his role as Litigation Trustee."[400] There are a litany of issues with their claims.

329. First, as explained above, the Chubb Insurers operate under the erroneous assumption that the Litigation Trustee's Compensation will dilute the recoveries of Insured Asbestos Claims *in every instance*. Not so. As explained above, unless the Litigation Trustee enters into an Asbestos Insurance Settlement or initiates and recovers against a Non-Settling Asbestos Insurer in an action against them—the Litigation Trustee's Compensation will *not* apply to or impact, in any way, the recoveries of Channeled Asbestos Claimants with Insured Asbestos Claims.[401]

330. Second, and more importantly, both the Chubb Insurers and LMIC assume a nonsensical premise: that the Litigation Trustee would take ***any*** action inconsistent with, or violative of, the Asbestos Insurance Cooperation Obligations. On the contrary, the Litigation Trustee will have ***every*** motivation to do no such thing.

331. It cannot seriously be disputed that the Asbestos Trust's most significant asset is the Asbestos Insurance Rights. The Asbestos Trust has a ***duty*** to ***maximize*** the value of its assets, but taking action in violation of the Asbestos Insurance Cooperation Obligations risks giving Non-Settling Asbestos Insurers—like the litigious cadre of Objecting Insurers—coverage defenses that could render ***worthless*** the Asbestos Trust's chief asset. The Bankruptcy Court may rest assured—neither the Administrative Trustee, the Asbestos Trust Advisory Committee, the

[399] LMIC Plan Obj., ¶ 71; *see also* Chubb Insurers Plan Obj., ¶ 143.

[400] Chubb Insurers Plan Obj., ¶ 144; *see also* LMIC Plan Obj., ¶ 71.

[401] *See* § IV.B.1 *supra.*

Litigation Trustee, the Future Claimants' Representative, Reorganized Hopeman, nor any holder of a Channeled Asbestos Claimant would intentionally do ***anything*** that could result in the loss of coverage under the Asbestos Insurance Policies. Taking any action that could jeopardize coverage under the Asbestos Insurance Policies – the Asbestos Trust's most valuable asset – would be the antithesis of the Administrative Trustee's and Litigation Trustee's fiduciary duties.

332. The Chubb Insurers implicitly concede as much in recognizing that "the law of Virginia is clear that corporate directors have a fiduciary duty to the corporation and its shareholders, and they must govern themselves accordingly."[402] What the Chubb Insurers, apparently, forget is that the sole shareholder of Reorganized Hopeman is none other than the ***Asbestos Trust***. The Asbestos Trust, in turn, exists for the benefit of the holders of ***Channeled Asbestos Claims***. These parties all have in common a ***vested interest*** in ensuring that ***no action*** is taken that jeopardizes the Asbestos Insurance Policies through which the vast majority of the Channeled Asbestos Claims, if meritorious and entitled to payment, will be satisfied.

333. The Chubb Insurers further, erroneously, contend that the only means of the Litigation Trustee carrying out his duties is by "***maximizing the amount of Reorganized Hopeman's liabilities***."[403] Not so. Coverage under Asbestos Insurance Policies is either available or it is not. If it is available, the Litigation Trustee is not required to increase, much less maximize, Reorganized Hopeman's liability to obtain it. The Litigation Trustee may, in accordance with the terms of the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures, elect to initiate litigation against Non-Settling Asbestos Insurers or intervene in Insurance Policy Actions to obtain coverage under Asbestos Insurance Policies for the benefit of all Channeled Asbestos Claimants, but that merely facilitates access to coverage or the proceeds

[402] Chubb Insurers Plan Obj., ¶ 143.

[403] *Id.* (emphasis in original).

of the Asbestos Insurance Policies for the benefit of all Channeled Asbestos Claimants. The Litigation Trustee will not increase or maximize Reorganized Hopeman's liability for that purpose, because only Channeled Asbestos Claims that have either been liquidated (and thus validated) in the tort system or that pass muster under the Asbestos Trust Distribution Procedures are entitled to compensation. The Litigation Trustee has no need, and every incentive not to take any action that could jeopardize coverage under the Asbestos Insurance Policies.

334. Accordingly, the Court should overrule the Objecting Insurers' objections and conclude that the Plan Proponents proposed the Plan in good faith in accordance with section 1129(a)(3) of the Bankruptcy Code.

X. REQUEST FOR AUTHORITY TO CONSUMMATE AND IMPLEMENT THE PLAN NOTWITHSTANDING 14-DAY STAY OF THE CONFIRMATION ORDER IMPOSED BY OPERATION OF BANKRUPTCY RULE 3020(E)

335. Notwithstanding the 14-day stay imposed by operation of Bankruptcy Rule 3020(e), the Plan Proponents respectfully request that the Confirmation Order be effective immediately upon entry of an order by the District Court adopting the Bankruptcy Court's report and recommendation regarding the Plan's compliance with the requirements of section 524(g) of the Bankruptcy Code and issuing and affirming the Asbestos Permanent Channeling Inunction in accordance with section 524(g)(3) of the Bankruptcy Code.[404]

336. Given the overwhelming support for the Plan, it is appropriate for the Court to exercise its discretion and order that the Plan may become effective immediately, permitting the Debtor to consummate the Plan and commence its implementation without delay after the entry

[404] *See* 11 U.S.C. § 524(g)(3)(A) ("If the requirements of paragraph 2(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case…."); Fed. R. Bankr. P. 3020(e) ("An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise."); *see also* Advisory Committee Note ("The court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately.").

of the Confirmation Order. The Plan Proponents submit that this relief is in the best interests of the Debtor's Estate and creditors and will not prejudice any party in interest.

XI. CONCLUSION

For the reasons set forth in this Confirmation Brief, the Plan Proponents submit that (a) the Disclosure Statement contains adequate information, within the meaning of section 1125 of the Bankruptcy Code, and, otherwise, satisfies all applicable requirements of the Bankruptcy Code and should be approved on a final basis; (b) the Plan, as will be modified by the Modifications, fully satisfies all applicable requirements of the Bankruptcy Code and should be confirmed by the Court; and (c) the Debtor should be permitted to consummate the Plan immediately following entry of an order by the District Court adopting the Bankruptcy Court's report and recommendation and issuing and affirming the Asbestos Permanent Channeling Inunction.

Dated: July 25, 2025
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Exhibit A
(Summary of Plan Objections and Plan Proponents' Response Thereto)

The following chart, succinctly, identifies the objections asserted in each of the Plan Objections,[405] and the location of the Plan Proponents' responses to each such objection in the Confirmation Brief.

Objecting Party(ies)	Summary of Objection	The Plan Proponents' Response
The Chubb Insurers	The Disclosure Statement lacks adequate information. Chubb Insurers Plan Obj., ¶¶ 102-104.	The Disclosure Statement contains adequate information. Confirmation Brief, ¶¶ 76-87.
The Chubb Insurers	The Plan Proponents have not satisfied section 1129(a)(5) because the Plan fails to disclose the affiliations of the proposed Litigation Trustee and the sole director of Reorganized Hopeman, Mr. Richardson. Chubb Insurers Plan Obj., ¶ 144.	The Chubb Insurers' argument distorts section 1129(a)(5)'s requirements, and section 1129(a)(5) is satisfied. Confirmation Brief, ¶¶ 122-26.
The Chubb Insurers	The Plan Proponents have not satisfied section 1129(a)(7) because the liquidation analysis should be limited to "Claims," and not include "Demands," and the liquidation analysis depends on faulty premises. Chubb Insurers Plan Obj., ¶¶ 93-95.	The Chubb Insurers are incorrect that the liquidation analysis should be limited to Claims, and caselaw supports the reality that conversion to chapter 7 would result in a far lengthier process. Confirmation Brief, ¶¶ 133-134. The Chubb Insurers eleventh-hour expert's contentions will be addressed in the Supplemental Brief.
LMIC	The Plan seeks to transfer property to the Asbestos Trust that is not property of the estate because Hopeman released and sold its rights under the policies issued by LMIC prior to the Petition Date. LMIC Plan Obj., ¶¶ 45-57.	The Modifications will include language clarifying that the Debtor released its rights under the policies issued by LMIC. Confirmation Brief. *See, e.g.*, Confirmation Brief, § II.G.1.

[405] Capitalized terms used, but not otherwise defined in this Exhibit A, have the meanings assigned in the Confirmation Brief.

Objecting Party(ies)	Summary of Objection	The Plan Proponents' Response
The Chubb Insurers, Travelers, and Hartford	The Plan is impermissibly vague regarding whether the Wellington Agreement constitutes an Asbestos CIP Agreement. Chubb Insurers Plan Obj., ¶¶ 119-20; Travelers Plan Obj., ¶¶ 12-23; *see, e.g.*, Hartford Plan Obj.	The Modifications will include language expressly providing that the Wellington Agreement constitutes an Asbestos CIP Agreement.
The Chubb Insurers and Travelers	The Plan is impermissibly vague regarding whether the "Chubb Insurers' 2009 Settlement Agreement" or the Travelers 2005 Agreement constitute Asbestos CIP Agreements. Chubb Insurers Plan Obj., ¶¶ 119-20; Travelers Plan Obj., ¶¶ 12-23.	The Plan is clear on the definition of what constitutes an Asbestos CIP Agreement. The Modifications will include language expressly providing that the Designated Insurance Agreements (including the Travelers 2005 Agreement) are not Asbestos CIP Agreements and, solely to the extent such agreements are executory contracts, will be rejected. Confirmation Brief, ¶¶ 156-163.
The Chubb Insurers and Travelers	The Asbestos Trust's access to Reorganized Hopeman's books and records will result in privilege waivers. Chubb Insurers Plan Obj., ¶¶ 126-28; Travelers Plan Obj., ¶ 95.	The Asbestos Trust's access to Reorganized Hopeman's books and records is appropriate and will not result in privilege waivers. Confirmation Brief, ¶¶ 164-69.
The Chubb Insurers, LMIC, and Travelers	Hopeman is not eligible for relief under section 524(g) of the Bankruptcy Code because the Plan Proponents cannot satisfy the purported "ongoing business" requirement of section 524(g)(2)(B)(i)(II) of the Bankruptcy Code. Chubb Insurers Plan Obj., ¶¶ 55-77; LMIC Plan Obj., ¶¶ 26-44; Travelers Plan Obj., ¶¶ 87-91.	Section 524(g)(2)(B)(i)(II) does not impose an "ongoing business" requirement, and, even if it did, the requirement is satisfied under the Plan. Confirmation Brief, ¶¶ 177-188.
Chubb Insurers and LMIC	The Debtor is not entitled to a discharge under section 1141(d). Chubb Insurers Plan Obj., ¶¶ 56-65; LMIC Plan Obj., ¶¶ 26-44.	Hopeman is entitled to a discharge under section 1141(d) of the Bankruptcy Code because the Plan does not provide for the liquidation of Hopeman and Hopeman will continue to engage in business post-confirmation. Confirmation Brief, ¶¶ 189-95.

Objecting Party(ies)	Summary of Objection	The Plan Proponents' Response
The Chubb Insurers	The Plan is inconsistent with the purpose and intent of section 524(g). Chubb Insurers Plan Obj., ¶¶ 78-80.	The Plan, including the fact that it permits Channeled Asbestos Claimants to initiate suits against Reorganized Hopeman for purposes of obtaining Asbestos Insurance Coverage, is consistent with the purpose and intent of section 524(g) plans and also consistent with section 524(g) plans that have been confirmed by other bankruptcy courts. Confirmation Brief, ¶¶ 251-253.
The Chubb Insurers	The Plan violates section 1123(a)(4) of the Bankruptcy Code because it provides disparate treatment to the holders of Channeled Asbestos Claims. Chubb Insurers Plan Obj., ¶¶ 87-90; Travelers Plan Obj., ¶¶ 102-104.	The Plan does not violate section 1123(a)(4) of the Bankruptcy Code, because it provides for equal treatment of the holders of Channeled Asbestos Claims. Confirmation Brief, ¶¶ 229-250.
The Chubb Insurers	The Plan's "insurance neutrality" does not adequately protect the insurer's rights. Chubb Obj., ¶¶ 102-04.	Nothing in the Bankruptcy Code requires the Plan to be insurance neutral, but, nonetheless, the Plan is insurance neutral. Confirmation Brief, ¶¶ 254-256 and 268-298.
LMIC	LMIC has standing to object to the Plan. LMIC Plan Obj., ¶¶ 15-25.	LMIC does not have standing to object to the Plan. Confirmation Brief, ¶¶ 258-268.
The Chubb Insurers and Travelers	The transfer of the Asbestos Insurance Rights to the Asbestos Trust while the Asbestos Insurance Cooperation Obligations remain with Reorganized Hopeman violates the *cum onere* principle. Chubb Insurers Plan Obj., ¶¶ 124-25; Travelers Plan Obj., ¶¶ 24-31.	The *cum onere* principle is inapplicable, and the transfer of the Asbestos Insurance Rights to the Asbestos Trust is plainly permitted under section 1123(a)(5). ¶¶ 272-280.
The Chubb Insurers and Travelers	The Plan seeks impermissible declaratory judgments. Chubb Insurers Plan Obj., ¶¶ 115-117, 131-133; Travelers Plan Obj., ¶¶ 60-67.	The Plan does not seek impermissible declaratory judgments. Confirmation Brief, ¶¶ 281-288.

Objecting Party(ies)	Summary of Objection	The Plan Proponents' Response
The Chubb Insurers and Travelers	The Plan impermissibly impairs the rights of Non-Settling Asbestos Insurers under their policies and attempts to impose additional obligations on such insurers. Chubb Insurers Plan Obj., ¶¶ 114-128; Travelers Plan Obj., ¶¶ 43-59.	The Plan neither impermissibly impairs the Non-Settling Asbestos Insurers' rights nor impermissibly imposes obligations. Confirmation Brief, ¶¶ 281-299.
The Chubb Insurers and LMIC	The Plan was not proposed in good faith because it is the product of collusion. Chubb Insurers Plan Obj. ¶¶ 134-45; LMIC Plan Obj., ¶¶ 58-72.	The Plan is not the product of collusion and was proposed in good faith, and no evidence supports a different conclusion. Confirmation Brief, ¶¶ 304-314.
The Chubb Insurers and LMIC	The Plan was not proposed in good faith because the governance structure contemplated is bereft with conflicts of interest. Chubb Insurers Plan Obj., ¶¶ 139-45; LMIC Plan Obj., ¶¶ 63-72.	The governance structure proposed by the Plan is permissible and protects against conflicts of interest, and there is no legal or factual basis on which to assume fiduciaries will fail to comply with their fiduciary duties. Confirmation Brief, ¶¶ 315-335.