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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' SUPPLEMENTAL MEMORANDUM OF LAW REGARDING THE LIQUIDATION ANALYSIS, THE BEST INTERESTS TEST UNDER SECTION 1129(A)(7) OF THE BANKRUPTCY CODE, AND THE SCARCELLA REPORT

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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 Supplemental Memorandum of Law[1] regarding the Liquidation Analysis,[2] the best interests test set forth in section 1129(a)(7) of the Bankruptcy Code (the "Best Interests Test"), and the Scarcella Report.

I. PRELIMINARY STATEMENT

1. The Plan Proponents submit this Supplemental Memorandum to address the Chubb Insurers'[3] contentions regarding the Liquidation Analysis and the Best Interests Test and to explain why the opinions expressed in the Scarcella Report are inapposite and, indeed, of no value to this Court—which is why they should be excluded from evidence pursuant to the Debtor's pending Motion in Limine.[4]

2. With respect to these issues, the Chubb Insurers ask the Court to deny confirmation of the Plan based on a test of their own invention. They maintain that the ***current*** holders of Asbestos Claims would fare better in a hypothetical liquidation of the Debtor in Chapter 7 than they would under the Plan ***if the Plan were subject to a bar date of July 1, 2027***,

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[1] As noted in the Plan Proponents' Confirmation Brief [Docket No. 1076] (the "Confirmation Brief"), at p. 1, n.2, the Plan Proponents and the Objecting Insurers agreed that briefs pertaining to the Liquidation Analysis attached to the Disclosure Statement as Exhibit 2 (the "Liquidation Analysis") and the belatedly submitted expert report of Marc C. Scarcella appended to the 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 [Docket Nos. 959, 960] (the "Chubb Insurers Plan Objection") as Exhibit I (the "Scarcella Report") would be filed no later than August 18, 2025.

[2] Capitalized terms used, but not otherwise defined herein, have the meaning assigned in 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").

[3] "Chubb Insurers" means, collectively, Century Indemnity Company, in its capacity as successor to Insurance Company of North America, and Westchester Fire Insurance Company.

[4] "Motion in Limine" means the Debtor's *Motion in Limine to Exclude the Expert Testimony of Marc C. Scarcella* [Docket No. 1089]. The Motion in Limine, discussed below, is set for a hearing on August 21, 2025, at 10:00 a.m.

which, of course, it is not. The Chubb Insurers' assertion is based entirely on the Scarcella Report, and Mr. Scarcella's attempt at a liquidation analysis (as embodied in Figure 22 of the Scarcella Report, the "Scarcella Liquidation Analysis"). Tellingly, Mr. Scarcella made no effort, and received no instruction, to consider the interests of ***all*** holders of Asbestos Claims to assess whether they would fare better under a hypothetical Chapter 7 liquidation of Hopeman than such claimants would under the ***actual*** Plan. Instead, Mr. Scarcella blindly adhered to the self-serving and incorrect instructions the Chubb Insurers' counsel supplied him and produced a report that is not worth the paper it was written on.

3. By interposing an artificial three-year bar date on the Plan, the Chubb Insurers essentially seek to weaponize the interests of the ***Asbestos Claimants*** in a disingenuous effort to kill the Plan. But the Asbestos Claimants voted overwhelmingly in favor of the Plan that is actually before the Court—not the Chubb Insurers' invention and the Chubb Insurers' contentions are clearly without merit. They are premised on fundamental misunderstandings, or distortions, of the Plan, erroneous applications of the law, and a fatally flawed expert report riddled with erroneous assumptions the Chubb Insurers' counsel fed to an inexperienced "expert" that collapses under scrutiny.

4. As a result, and for the reasons set forth herein, the Court should overrule the Chubb Insurers' objections and confirm the Plan.

II. BACKGROUND

A. General Factual and Procedural Background.

5. The factual and procedural background is set forth in detail in the Confirmation Brief,[5] which the Plan Proponents incorporate by reference as if fully set forth herein.

[5] Confirmation Brief, ¶¶ 10-66.

B. The Scarcella Report.

6. Among their objections to the Plan, the Chubb Insurers argue that the Plan does not satisfy the Best Interests Test.[6] This assertion is grounded entirely in the Scarcella Report, which was attached as Exhibit I to their objection to the Plan.

7. Mr. Scarcella is an economist whose prior experience as an expert witness has primarily been confined to "damages estimation and complex insurance coverage allocation involving a variety of underlying toxic tort and personal injury claims in both a bankruptcy and non-bankruptcy context."[7] Although this was not disclosed to either the Court or the Plan Proponents, the Chubb Insurers engaged Mr. Scarcella in May of 2025[8] to do three things:

> (i) First, to "[e]stimate the value of asbestos personal injury claims that were previously filed against [the Debtor] but remained unresolved as of June 30, 2024, when [the Debtor] filed for bankruptcy petition [sic] (the 'Pending Claims');
>
> (ii) Second, to "[e]stimate the value of asbestos personal injury claims projected to be filed against [the Debtor] ***within three years of the petition date on June 30, 2027, which was the proposed claims bar date under the Debtor's original plan of liquidation*** ('Bankruptcy Claims')."; and
>
> (iii) Third, to "[d]etermine if the Pending Claims and Bankruptcy Claims would financially benefit from a Chapter 7 Plan of Liquidation, as compared to a competing Plan of Reorganization under Section 524(g) that is currently proposed."

Scarcella Report, ¶ 1 (emphasis added).

8. The bulk of the Scarcella Report is devoted to the first two issues.[9] After arriving at estimates of the value of the "Pending Claims" and "Bankruptcy Claims" filed by an assumed three-year bar date, Mr. Scarcella then used those estimates to produce the Scarcella Liquidation

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6 Chubb Insurers Plan Obj., ¶¶ 91-97; 102-112.

7 Scarcella Report, ¶ 6.

8 July 23, 2025 Scarcella Dep. Tr. at 18:22 – 19:5.

9 Scarcella Report, at pp. 8-25.

Analysis (*i.e.*, his ***attempt*** at a liquidation analysis).[10]

9. Importantly, the Scarcella Report also discloses that, for purposes of the Scarcella Liquidation Analysis, the following assumptions were applied:

> (i) "It is my understanding that Pending and Bankruptcy Claims based on allegations of asbestos exposure to HBI's [*i.e.*, Hopeman's] historical operations (*i.e.*, "Non-Product" claims) are anticipated to be pursued directly from available Non-Product insurance limits. Conversely, Pending and Bankruptcy Claims based on allegations of asbestos exposures to HBI installed products after the completion of HBI operations (*i.e.*, "Product" claims) will be pursued by the trust. I have assumed that 14% of the projected Pending and Bankruptcy Claim indemnity will be associated with the Non-Product Claims, which is based on a pre-petition cost-share agreement between HBI and Chubb. The balance of 86% is assumed to be associated with Product Claims."
>
> (ii) "Under the 524(g) option, claim indemnity will be allocated to Chubb per the cost-sharing arrangement prior to HBI's petition that is based on a time-on-the-risk, pro-rata allocation subject to each claim's date of first exposure. Under this arrangement Chubb covered 33.52% of HBI's claim indemnity in 2023, which I have assumed for my analysis."
>
> (iii) Under the Chapter 7 liquidation option, Chubb will contribute $31.5M per the bankruptcy settlement with HBI that is currently pending."
>
> (iv) "Under the 524(g) option, the current Plan proposes to fund the pursuit of non-settled insurance assets from Chubb and other non-settling insurers by imposing a 33.3% contingency fee on the portion claim values that are recovered from insurance."

Scarcella Report, ¶ 45 (footnotes omitted).

10. The Chubb Insurers offer the Scarcella Report for two opinions. First:

> [T]he Scarcella Liquidation Analysis … shows that the holders of unsecured asbestos claims ***either pending or expected to be filed as of June 30, 2027 will be impaired by the proposed 524(g) option while compensated in full under the Chapter 7 liquidation option***.

Scarcella Report, ¶ 46 (emphases added).

11. That opinion is based on a comparison of a hypothetical liquidation of the Debtor under Chapter 7 of the Bankruptcy Code and, ostensibly, the Plan under which Mr. Scarcella

[10] July 23, 2025 Scarcella Dep. Tr. at 70:1 – 71:6.

assumes there will be a three-year bar date that is not actually contained in the Plan.[11]

12. Second, Mr. Scarcella opines that the Plan Proponent's Liquidation Analysis "is incomplete because it does not provide an estimate of the value of the asbestos claims that it is intended to examine."[12] Both of these opinions are disposed of in the Argument section below.

C. The Debtor Moves To Exclude Mr. Scarcella's Testimony.

13. On August 7, 2025, the Debtor filed the Motion in Limine. Through that motion, the Debtor seeks to exclude Mr. Scarcella's testimony because the Scarcella Liquidation Analysis is not, as it must be, a comparison of a hypothetical Chapter 7 liquidation with the Plan under consideration, but a distorted "analysis" that engrafts an imaginary three-year bar date into the Plan which, in addition to being incorrect, is antithetical to the Plan's purpose and function. As such, Mr. Scarcella's testimony would be both irrelevant and unhelpful, rendering it inadmissible under Federal Rule of Evidence 702.[13] Additionally, because Mr. Scarcella lacks specialized knowledge, skill, experience, training, or education that would qualify him to testify as an expert on the Best Interests Test and the Liquidation Analysis, the Chubb Insurers cannot satisfy the requirements set forth by the Supreme Court in *Daubert*[14] nor Federal Rule of Evidence 702.[15]

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[11] Scarcella Report, ¶ 4.

[12] Mr. Scarcella believes that the value of Pending and Bankruptcy Claims as of his assumed bar date of June 30, 2027, will range from $29.6 million to $34.4 million nominal, with a present value of between $27.6 million and $31.9 million. *Id.* at ¶ 5.

[13] Motion in Limine, ¶¶ 18-24.

[14] *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1999).

[15] Motion in Limine, ¶¶ 25-28.

III. ARGUMENT

THE PLAN SATISFIES SECTION 1129(A)(7) OF THE BANKRUPTCY CODE, AND THE CHUBB INSURERS' OBJECTIONS SHOULD BE OVERRULED

14. The Chubb Insurers, driven by self-interest rather than the best interests of the Asbestos Claimants they feign concern for, attempt to leverage the interests of the very Asbestos Claimants who overwhelmingly support the Plan to the Chubb Insurers' own self-serving ends. As set forth below, the Chubb Insurers' arguments are predicated on a fundamental misunderstanding of the Best Interests Test and its application in the context of a plan of reorganization proposed under section 524(g) of the Bankruptcy Code.

A. The Plan Proponents' Liquidation Analysis Properly Accounts for Claims and Demands, and Does Not Rely on Erroneous Assumptions.

15. The Chubb Insurers incorrectly claim that the Liquidation Analysis is "misleading and wrong" because (a) the Best Interests Test "concerns only the impact of the Plan on ***each*** holder of ***current*** Claims or Interests as compared to his or her recovery in a chapter 7 liquidation, not holders of Claims and Demands all together,"[16] and (b) "the Liquidation Analysis is premised on the false construct that converting 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."[17] But, tellingly, the Chubb Insurers fail to offer the Court ***any*** authority to support these assertions, which, unsurprisingly, are resoundingly rejected by contrary caselaw that the Chubb Insures simply ignore.

1. Caselaw Demonstrates That The Best Interests Test Should Account for Claims and Demands.

16. The Chubb Insurers claim that the scope of the Best Interests Test is limited to the

[16] Chubb Insurers Plan Obj., ¶ 94 (emphasis in original).

[17] *Id.* at ¶ 95.

holders of "***current*** Claims." That position is belied by a host of caselaw to the contrary, which the Chubb Insurers fail to acknowledge (much less address).

17. First, courts explicitly have recognized that "it is appropriate to take the value of future Asbestos Personal Injury Claims into account in determining the Claims that would be required to be paid in a liquidation under Chapter 7 of the Bankruptcy Code."[18]

18. Second, the Chubb Insurers ignore that under binding Fourth Circuit precedent, even those Channeled Asbestos Claimants who have yet to manifest an injury ***do*** hold Claims. "'While other courts apply several different tests to determine when a claim arises, in the Fourth Circuit Court of Appeals [courts] apply the conduct test.'"[19] "'The "conduct test" focuses on the actual act that gives rise to a state or federal claim … not the contingency that gives rise to the right of payment.'"[20] The long latency period between asbestos exposure and the manifestation of an asbestos-related injury is precisely why the Future Claimants' Representative has been appointed to represent the interests of these claimants who have incurred, but not yet manifested, bodily injury.

19. The conduct test stems from the Fourth Circuit's decision in *Grady*, in which he Fourth Circuit affirmed the lower court's determination that a claimant whose latent injury was caused prepetition, but manifested itself after the petition date, held a prepetition claim that was subject to the automatic stay.[21] In rejecting the "accrual test"[22] urged by the claimant and the

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[18] *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 275 (S.D. Ohio 1996); *see also In re W.R. Grace & Co.*, 446 B.R. 96, 127 (Bankr. D. Del. 2011) (recognizing, in addressing objecting party's argument the Best Interests Test was not satisfied, that "In this bankruptcy case, in addition to the current Libby claims that remain to be liquidated ***there will be future demands due to the nature of asbestos disease***.") (emphasis added).

[19] *In re Schechter*, No. 10-72175-FJS, 2012 WL 3555414, at *5 (Bankr. E.D. Va. Aug. 16, 2012) (quoting *In re Camellia Food Stores, Inc.*, 287 B.R. 52, 57 n.2 (Bankr. E.D. Va. 2002) (citing *Grady v. A.H. Robins Co.*, 839 F.2d 198, 202 (4th Cir. 1988))).

[20] *In re Schechter*, 2012 WL 355414, at *5 (quoting *In re Boyette*, No. 09-04573-8-RDD, 2010 WL 4777631, at *2 (Bankr. E.D.N.C. Nov. 17, 2010)).

[21] *Grady*, 839 F.2d at 199.

legal representative of future claimants appointed in the Robins bankruptcy, the Fourth Circuit adopted the conduct test, explaining:

> Mrs. Grady's claim, as well as whatever rights the other Future Tort Claimants have, is undoubtedly "contingent." It depends upon a future uncertain event, that event being the manifestation of injury from use of the Dalkon Shield. We do not believe that there must be a right to the immediate payment of money in the case of a tort or allied breach of warranty or like claim, as present here, when the acts constituting the tort or breach have occurred prior to the filing of the petition, to constitute a claim under § 362(a)(1). It is at once apparent that there can be no right to the immediate payment of money on account of a claim, the existence of which depends upon a future uncertain event. But it is also apparent that Congress has created a contingent right to payment as it has the power to create a contingent tort or like claim within the protection of § 362(a)(1). We are of the opinion that it has done so.
>
> ***Not only do we think that a literal reading of the statute requires the result we have reached, our reading is fortified by other considerations. The broad reading of the word "claim" required by the legislative history and cases,*** *see, e.g.*, *Ohio v. Kovacs*, ***is considerable support. That the legislative history contemplates "the broadest possible relief in the bankruptcy court" also enters our reasoning. If Mrs. Grady and the Future Tort Claimants, who had no right to the immediate payment of money at the time of the filing of the petition, were participants in a Chapter 7 proceeding, the chances are that they would receive nothing, for no compensable result had manifested itself prior to the filing***.

Id. at 202-203 (emphasis added).[23]

20. The Third Circuit's decision in *Jeld-Wen, Inc. v. Van Brunt (In re Grossman's Inc.)*, 607 F.3d 114 (3d Cir. 2010), in which the Third Circuit was called upon to review the lower court's holding that certain asbestos-related tort claims had not been discharged, is an instructive application of *Grady's* conduct test in the asbestos context. Adopting *Grady*'s

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[22] The accrual test was adopted by the Third Circuit in *Avellino & Bienes v. M. Frenville Co., Inc. (Matter of M. Frenville Co., Inc.)*, 744 F.2d 332, 335-336 (3d Cir. 1984). Under that test, "a right to payment must exist pre-petition before a claim can exist." *Grady*, 839 F.2d at 200-201 (citing *Frenville*, 744 F.2d at 335-336).

[23] *See also In re Baseline Sports, Inc.*, 393 B.R. 105, 128 (Bankr. E.D. Va. 2008) ("Given the broad definition that the Code gives to the term 'claim,' the Fourth Circuit specifically rejected the concept that a right of payment must exist prior to the bankruptcy filing in order for a claim to arise pre-petition. Instead, it applied a conduct test where it merely required the events giving rise to a claim occur pre-petition. Whether a claim arises pre-petition, therefore, turns on whether the events giving rise to the claim occurred prior to the date the Debtor filed its bankruptcy petition.") (internal citations and quotation marks omitted).

conduct test, the *Grossman* court held "that a 'claim' arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a 'right to payment' under the Bankruptcy Code."[24] The *Grossman* court, in adopting the conduct test, also observed that "various bankruptcy courts have followed a form of the conduct test when considering the existence of an asbestos-related claim."[25] Finally, the Third Circuit explained that the due-process concerns potentially implicated by "discharging future claims of individuals whose injuries were not manifest [on the petition date]" had been accounted for by Congress through many of the requirements of section 524(g) which "are specifically tailored to protect the due process rights of future claimants."[26]

21. Third, and finally, the Chubb Insurers disregard caselaw that recognizes that the Bankruptcy Code's definition of "claims" and section 524(g)(5)'s definition of "demands" are, essentially, overlapping, leading such courts to reject interpretations of the terms as mutually exclusive that would, otherwise, "produce[ ] a result demonstrably at odds with the intentions of its drafters."[27] *Flintkote* is illustrative.

22. In *Flintkote*, Imperial Tobacco Limited (hereinafter, "ITCAN"), the former indirect-corporate parent of Flintkote, objected to confirmation of Flintkote's section 524(g) plan, arguing that Flintkote could not satisfy section 524(g)(2)(B)(ii),[28] which requires a court to determine, among other things, that "the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that give rise to the

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[24] *Grossman*, 607 F.3d at 125 (internal citations omitted).

[25] *Id.* (collecting cases).

[26] *Id.* at 127 (internal citation and quotation marks omitted).

[27] *In re Flintkote Co.*, 486 B.R. 99, 124 (Bankr. D. Del. 2012) (internal citation and quotation marks omitted).

[28] *Id.* at 122-123.

claims that are addressed by the [channeling] injunction."[29] ITCAN argued that, under *Grossman*, individuals exposed to Flintkote's asbestos-containing products prepetition, whether symptomatic or not, all hold "claims," within the meaning of section 101(5) of the Bankruptcy Code.[30] ITCAN then "point[ed] to [section] 524(g)(5), which provides that 'the term "demand" means a demand for payment, present or future, that — (A) was not a claim during the proceedings leading to confirmation of a plan of reorganization.'"[31]

23. Against that backdrop, the *Flintkote* court framed ITCAN's argument as follows:

> [ITCAN's] argument is that if a "demand" cannot be a "claim" per [section] 524(g)(5)(A), and if *Wright*[32] provides that individuals exposed preconfirmation to a debtor's asbestos all hold claims against the debtor under [section] 101(5), then it must follow that the only individuals possibly holding "demands" are those exposed to Debtors' asbestos products *post*-confirmation. According to ITCAN, because Debtors produced no evidence as to amounts or likelihood of post-confirmation exposure, the Debtors cannot show that they are likely to be subject to "substantial future demands," which is required under [section] 524(g)(2)(B)(ii).

Flintkote, 486 B.R. at 123 (emphasis in original).

24. Before turning to the statutory text to address ITCAN's argument, the *Flintkote* court observed that ITCAN's argument had previously been "rejected by this Court in *In re W.R. Grace*, where we held that 'future demand holders are those who have been exposed to asbestos but whose disease or other injury sufficient to prove damages, had not yet manifested.'"[33] Unsurprisingly, the *Flintkote* court, similarly, rejected ITCAN's argument, concluding "ITCAN's interpretation of [section] 524(g) with respect to 'claims' and 'demands' defeats the

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29 11 U.S.C. § 524(g)(2)(B)(ii)(I).

30 *Flintkote*, 486 B.R. at 122-123.

31 *Id.* at 123 (quoting 11 U.S.C. § 524(g)(5)(A)).

32 In *Wright*, the Third Circuit expanded *Grossman* by holding that "a claim arises when an individual is exposed *pre-confirmation* to a product or other conduct giving rise to an injury that underlies a 'right to payment' under the Code." *Wright v. Owens Corning*, 679 F.3d 101, 107 (3d Cir. 2012) (emphasis in original).

33 *Id.* (quoting *In re W.R. Grace & Co.*, 446 B.R. at 130 n.58).

purpose of the statute by removing the protections for 'exposed yet unimpaired' asbestos creditors and depriving them of just compensation for their future injuries and illnesses, which was the primary goal behind the enactment of [section] 524(g)."[34]

25. The *Flintkote* court found "[section] 524(g)(5) … ambiguous and that its literal application produces a result that cannot be reconciled with the intent of its drafters,"[35] because "as ITCAN contends, it appears from a literal reading of [section] 524(g)(5) that the terms 'claim' and 'demand' are meant to be mutually exclusive."[36] The *Flintkote* court concluded, however, that such an interpretation would produce nonsensical results as "the Court cannot fathom a situation where an individual could hold a 'present' demand for payment that is not technically a 'claim' under [section] 101(5)."[37] Accordingly, "if construed as ITCAN suggests, the qualifier, 'present or future [demand],' in [section] 524(g)(5) is superfluous,"[38] which would run afoul of "'a well known canon of statutory construction that courts should construe statutory language to avoid interpretations that would render any phrase superfluous.'"[39]

26. To put a finer point on it, the *Flintkote* court astutely described the problem with ITCAN's proffered interpretation as follows:

> In part because of long latency periods of certain asbestos-related illnesses, Congress enacted § 524(g) to protect the due process rights of the exposed yet unimpaired. The purpose of § 524(g) is to provide those whose illnesses manifest post-petition, regardless of pre- or post-petition exposure, with a fund for recovery equivalent to what currently ill claimants will be paid. Section 524(g) thus removes the risk that the size of payment in compensation for injuries will depend on how quickly a victim gets sick or manifests an injury. It is impossible to include all individuals who are asymptomatic in the "known, exposed"

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34 *Flintkote*, 486 B.R. at 123.

35 *Id*.

36 *Id.* at 124.

37 *Id.*

38 *Id.*

39 *Id.* (quoting *United States v. Cooper*, 396 F.3d 308, 312 (3d Cir. 2005)).

> category because those individuals, themselves, do not know that they may become ill and thus, hold a right to payment, contingent on manifesting an illness. Without the existence of a trust to handle future demands, when asymptomatic individuals eventually manifest an injury the debtor may no longer have available funds with which to compensate them. Section 524(g) requires funds to be placed in trust so that if and when exposed individuals manifest illnesses in the future that are attributable to the debtor, a source of compensation remains available. In the meantime, § 524(g) provides for the appointment of a future claims representative to protect their interests.
>
> Because asbestos production in this country largely ceased many decades ago, the number of individuals who will face first-time, post-petition or post-confirmation exposure will be negligible for almost every debtor facing asbestos liability. Under ITCAN's interpretation of § 524(g)(5), the result of that fact is that no debtor would qualify for protection under § 524(g). No § 524(g) injunctions could ever issue because the requirement that the "actual amounts, numbers, and timing of such future demands cannot be determined" could never be met. Instead, knowing that all those who manifest injury in the future were nonetheless exposed preconfirmation and thus have claims under § 101(5), the court would likely always be in a position of finding that there would be no future demands that were not "claim[s] during the proceedings leading to the confirmation of a plan of reorganization." *See* § 524(g)(5)(A). Thus, congressional effort, supported by courts that have confirmed plans and issued § 524(g) injunctions over the years, would be terminated—all due to the inartful styling of a "future demand for payment" as something that is "not a claim" during the case, rather than as a demand for payment that can be made only after injury manifests and damages can be established.
>
> Moreover, because ITCAN's interpretation of § 524(g)(5) frustrates the statute's purpose of protecting the due process rights of exposed yet unimpaired creditors, ITCAN's interpretation runs contrary to the Bankruptcy Code as a whole, which strives to treat similarly situated creditors equitably. Thus, we find, as we did in *W.R. Grace,* that for purposes of § 524(g), "future demand holders are those who have been exposed to asbestos but whose disease or other injury, sufficient to prove damages, has not yet manifested." *In re W.R. Grace,* 446 B.R. at 130 n. 58.

Id. at 124-126 (footnotes omitted). Accordingly, the *Flintkote* court held:

> Thus, notwithstanding any inartful language in § 524(g)(5), it is clear to this Court that the intent of § 524(g)(2)(B)(ii) is simply that, to qualify for a § 524(g) channeling injunction, there must be, among other things, a likelihood that a substantial number of people, who are not yet able to prove damages from an asbestos-related disease, will eventually demand payment from the debtor as compensation for asbestos-related illnesses contracted through exposure to the debtor's products. Whether referred to as "future demand holders" or "future claimants," the bottom line is that without a channeling injunction in place and an FCR appointed to protect their interests, by the time their injuries manifest there

> will be a high probability that the debtor will lack funds to provide them with just compensation. ITCAN's interpretation of the requirements of § 524(g) would all but ensure that most if not all people holding future demands would receive no compensation for their injuries, because, with asbestos production largely ending decades ago, it is nearly impossible for an asbestos debtor to demonstrate that a substantial number of people have been exposed to the debtor's asbestos products subsequent to the confirmation of their plan of reorganization. A result that would so clearly frustrate the purpose of § 524(g) cannot be accepted by this Court.

Id. at 127.

27. Less than a year after the *Flintkote* opinion was issued, the Third Circuit, in *In re W.R. Grace & Co.*, also rejected the same mutual-exclusivity argument advanced by ITCAN in *Flintkote*,[40] reasoning that the "'mutual exclusivity' theory would effectively read the category of present demands out of the statute."[41]

28. Here too, the overly-literal interpretation of section 524(g)(5) proffered by the Chubb Insurers, which they advance to argue that the Best Interests Test is concerned only with the "***current*** Claims," should be rejected because, as *Flintkote* and the *W.R. Grace* decisions make clear, an interpretation of "claims" and "demands" as mutually exclusive would work absurd results and lead to a profoundly unjust result for the legion of claimants who have incurred but not yet manifested injury as a result of asbestos exposure.

29. The above authority, simply ignored by the Chubb Insurers, makes clear that: (i) courts have ***properly*** found that future Claims, *i.e.*, Demands, should be considered for purposes of the Best Interests Test; (ii) under *Grady*'s conduct test, individuals who were exposed to asbestos-containing products attributable to Hopeman, who have yet to manifest an injury, nonetheless ***do*** hold Claims; and (iii) this result is consistent with the *Flintkote* and *W.R. Grace* decisions in which those courts correctly concluded that an overly-literal application of section

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[40] *In re W.R. Grace & Co.*, 729 F.3d 332, 339-342 (3d Cir. 2013).

[41] *Id.* at 342.

524(g)(5)'s definition of "demands" would frustrate Congress's purpose and intent in enacting section 524(g) in the first place.

30. For these reasons, the Chubb Insurers' objection should be overruled.

2. Conversion to Chapter 7 Would Result in a Considerably Longer Process for Resolving Asbestos Claims and Would Result in Substantially Less Funds Being Available to Distribute to Creditors.

31. Caselaw also makes short shrift of the Chubb Insurers' claim that "[t]he Liquidation Analysis is premised on the false construct that converting 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."

32. In *W.R. Grace*, the Delaware bankruptcy court explained why a chapter 7 liquidation in the asbestos context would necessarily be protracted and inefficient in rejecting one group of claimants' arguments that the debtors' section 524(g) plan did not satisfy the Best Interests Test:

> Libby Claimants' arguments also do not account for the costs of Chapter 7 administration or for the fact that, if these estates were liquidated, there would be a finite amount available for distribution. In addition, the Libby Claimants are not the only creditors with asbestos personal injury claims against Debtors. Thus, their recovery as a group is not the proper gauge of the recovery in a Chapter 7 versus a successful reorganization. ***Rather, as in any Chapter 7, their claims would be put into a pool of general unsecured creditors to await payment until all the claims in the class were liquidated, all the assets reduced to cash, distribution made, and insurance claims resolved. Because of the nature of asbestos disease and the latency period for some asbestos-related diseases, it is unclear what provisions, if any, might have to be made for future demands, inasmuch as "a prerequisite for recognizing a 'claim' is that the claimant's exposure to product giving rise to the claim occurred prepetition***." *In re Grossman's, Inc.*, 607 F.3d at 125. ***The latency period can be decades and if distribution cannot be made until all claims are liquidated, the entire bankruptcy distribution process could be long-delayed while all claimants and future demand holders proved their claims were liquidated***.

In re W.R. Grace, 446 B.R. at 127 (emphases added).

31. In affirming the bankruptcy court's decision in *W.R. Grace*, the district court

similarly observed:

> [T]the Libby Claimants fail to take into account the practical implications of what Chapter 7 liquidation would entail in this case. As the Bankruptcy Court properly noted, valuation of Grace creditors' claims under Chapter 7 is highly speculative due to the uncertainty associated with future claims related to latent pleural disease. These future claims are not and cannot yet be known. The Joint Plan accounts for this uncertainty in its proposed structure, and guarantees all claimants—both current and future—some degree of recovery. ***In contrast, a liquidation under Chapter 7 has no such reassurance in place. Rather, creditors' claims in a Chapter 7 proceeding would be put into a pool that would not distribute payments until all claims in the class were liquidated and all the assets were reduced to cash value***. *See* In re Kiwi Int'l Air Lines, Inc., 344 F.3d 311, 318 n. 6 (3d Cir.2003); *see also* In re Baker & Getty Fin. Servs., Inc., 106 F.3d 1255, 1259 n. 7 (6th Cir.1997). ***Given the latent nature of asbestos-related pleural disease, excessive time could pass until all future claims are ascertained. 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 re W.R. Grace & Co,, 475 B.R. 34, 144-45 (D. Del. 2012) (emphases added) (footnotes omitted).

33. The bankruptcy court in *W.R. Grace* also rejected the same contention the Chubb Insurers press here that recoveries for the holders of Asbestos Claims would not be lower in a hypothetical liquidation under Chapter 7. The *W.R. Grace* court explained the negative impact of the unwieldly Chapter 7 process on asbestos-claimants recoveries:

> Libby Claimants also assert rights to non-products insurance coverage and the potential for high jury verdicts to support their contention that they would receive more in Chapter 7 than under the Joint Plan. First, as noted in text, Libby Claimants do not have a right of direct action against Debtors' insurance carriers; they would have to establish the existence and amount of the claims and that Grace was liable for their injuries. Furthermore, ***in Chapter 7 Debtors would simply be liquidated and the assets distributed*** *pro rata* ***in accordance with the Bankruptcy Code. The time delay alone as each of the many thousands of current claimants liquidated their damages would be adverse to claimants' recoveries in Chapter 7. The possibility that treatment of future demands in Chapter 7 would have to be considered in light of Grossman's definition of "claim" would pose its own unique set of issues that may further delay and***

reduce distributions to current claimants.

Id. at 127, n.50 (emphases added).

34. In support of their misguided assertion that liquidation in a hypothetical Chapter 7 liquidation would neither delay claimants' recoveries nor reduce such recoveries with Chapter 7 fees, the Chubb Insurers principally rely on *In re D/C Distribution, LLC*, 617 B.R. 600 (Bankr. N.D. Ill. 2020). But, ironically, *D/C Distribution* ***reinforces*** the Plan Proponents' position that recoveries in a Chapter 7 case would be significantly delayed.

35. The *D/C Distribution* court did, ultimately, lift the automatic stay to permit asbestos claimants to pursue lawsuits against the debtor, in a nominal capacity, to facilitate recovery against available insurance proceeds.[42] The Chubb Insurers fail to advise the Court, however, that the *D/C Distribution* court's order lifting the stay was entered ***thirteen years*** after the Chapter 7 case was first filed.[43] Indeed, a different group of asbestos claimants previously sought, and obtained, an order lifting the automatic stay five years earlier, which order was subsequently reversed and remanded by the district court for further consideration of the factors considered in the Seventh Circuit for granting relief from the stay, but "[s]ince the Prior Motion [in which the asbestos claimants obtained stay relief that was reversed and remanded] was filed, [an additional] ***five years have passed where the Claimants have been unable to seek monetary compensation for their alleged injuries***."[44] Indeed, the *D/C Distribution* court noted that such claimants "are apparently ***no closer to resolving their claims against the Debtor [in 2020] than in 2007***."[45]

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42 *D/C Distribution, LLC*, 617 B.R. at 618.

43 *Id.* at 605 ("This controversy, much like this case, has existed for some time. The Debtor filed for chapter 7 bankruptcy relief ***over thirteen yeas ago, on July 17, 2007***.").

44 *Id.* at 614 (emphasis added)

45 *Id.* (emphasis added).

36. Moreover, the *D/C Distribution* court observed that "[w]hile there may be in excess of $100 million in insurance coverage, the Trustee has been unable to determine the true extent of the coverage or even which of the Policies apply to which claims. At the Hearing, the Trustee's counsel noted that ***discussions with insurers to settle these asbestos claims have not born fruit and that modifying the automatic stay would be consistent with settlement efforts***."[46]

37. There is no basis to assume that a trustee in a hypothetical Chapter 7 liquidation of Hopeman would immediately consent to stay relief rather than pursue settlements with insurers particularly since here, unlike in *D/C Distribution*, Hopeman already was able to reach and consummate a settlement with one group of insurers, the Certain Settling Insurers, and had proposed another settlement with the Chubb Insurers in a liquidation scenario, even though that settlement has not been approved by the Court. In fact, the Scarcella Report, for purposes of the Scarcella Liquidation Analysis, assumes that "[u]nder the Chapter 7 liquidation option, Chubb will contribute $31.5M per the bankruptcy settlement[47] with [Hopeman] that is currently

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[46] *Id.* at 613 (emphasis added).

[47] It should be noted that this assumption of the $31.5 million in settlement proceeds ***only*** being available in a Chapter 7 scenario is misplaced. The current Plan establishes a process for settling insurance policies post-confirmation while providing the benefit of a section 524 injunction. There is no reason to assume a settlement with the Chubb Insurers (or any other insurer) would occur in a Chapter 7 and not in a Chapter 11. Indeed, the Chubb Insurers have already, in a transparent attempt to bolster their appellate standing, signaled an intention to settle post-confirmation, as permitted by the Plan, in their appeal of the FCR Order. *See Appellants' Opening Brief on Appeal of Order Appointing Marla Rosoff Eskin, Esq. As Future Claimants Representative* [Case No. 3:25-cv-00378, Docket No. 11] (the "Chubb Insurers' Brief"), pp. 3-4. Specifically, the Chubb Insurers point to the ability to enter into future settlements under the Plan, and argue that the Future Claimants' alleged disinterestedness could jeopardize the finality the Chubb Insurers would seek, through the Asbestos Permanent Channeling Injunction, as part of such settlement. *See id.* ("Under § 524(g) and the proposed § 524(g) Plan, the Chubb Insurers can obtain the benefit of the § 524(g) channeling injunction *if* the Plan is confirmed and the Chubb Insurers enter into a settlement consistent with the Plan. If the Chubb Insurers agreed to such a settlement, they want certainty that their § 524(g) protection is not subject to collateral attack by future claimants challenging the enforceability of the channeling injunction on the basis that Ms. Eskin was not sufficiently independent and therefore did not adequately represent their interests."). For the avoidance of doubt, the Debtor disagrees (and has asserted its disagreements in pleadings in the FCR Order appeal) that the Chubb Insurers bald assertions are sufficient to establish the particularized injury necessary for the Chubb Insurers' appellate standing, but the Chubb Insurers cannot have their cake and eat it too. They cannot suggest that the Future Claimants' Representative's alleged disinterestedness harms them because it could prevent the Chubb Insurers obtaining finality through a settlement, while, simultaneously attributing no value to potential settlements under the Plan. Such gamesmanship should not be countenanced.

pending."[48]

38. Importantly, in this case as well, the chapter 7 trustee in a hypothetical liquidation of the Debtor would need to resolve all creditors' claims, many of which would be latent claims for unmanifested diseases, before deciding how to distribute ***any*** of the remaining proceeds of the settlement with the Certain Settling Insurers. That exercise will take many years and delay any distributions since there would be no claimants' trust (which cannot be established in a Chapter 7 liquidation) and no future claimants' representative to agree on amounts such trustee could safely distribute to claimants in advance of a final decree.

39. Accordingly, *D/C Distribution* does little more than ***demonstrate*** the sort of unworkable delay that the holders of Asbestos Claims would face in a hypothetical liquidation under Chapter 7. It does not support that such a hypothetical liquidation would be resolved by immediately lifting the stay as to virtually all Asbestos Claims, nor does it address how future claims included in the Plan will be addressed by a chapter 7 trustee, which may take decades to resolve.

40. For these additional reasons, the Chubb Insurers' objection should be overruled.

B. The Liquidation Analysis Contains Adequate Information.

41. Next, the Chubb Insurers argue that the Liquidation Analysis lacks adequate information for two reasons. Neither is availing.

42. First, the Chubb Insurers argue that "[i]t is impossible to discern from the Liquidation Analysis how 'each holder' of a pending Asbestos Claim, whether an Insured Asbestos Claim or an Uninsured Asbestos Claim, would fare under the Plan compared to a chapter 7 liquidation because the Liquidation Analysis contains no information that would allow

[48] Scarcella Report, ¶ 45.

the Court or any holder of a Claim to make that determination."[49] The Chubb Insurers assert that this purported deficiency warrants denying final approval of the Disclosure Statement.[50]

43. In support of that position, the Chubb Insurers cite — in a footnote and without any argument or application, *In re Radco Props., Inc.*, 402 B.R. 666, 683 (Bankr. E.D.N.C. 2009) — for the proposition that "[a] disclosure statement should provide the average unsecured creditor 'what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.'"[51] Comically, the Chubb Insurers themselves demonstrate that the holders of Channeled Asbestos Claims ***were*** provided such information. As the Chubb Insurers state, the holders of Uninsured Asbestos Claims "will be filed against the Trust and [their] recoveries (if any) will be obtained from the Trust."[52] Thus, the holders of such Uninsured Asbestos Claims were informed that they would receive payment from the Asbestos Trust out of the Asbestos Trust Assets (*i.e.*, the "what"), if and when they submit a claim to the Asbestos Trust that establishes the Debtor's liability in accordance with the Asbestos Trust Distribution Procedures (*i.e.*, the "when," once a claim is submitted and approved by the Asbestos Trust, and the "contingency," the possibility that the claim submitted is not approved by the Asbestos Trust).

44. The Chubb Insurers next purport to carry the cause of holders of ***Uninsured*** Asbestos Claims, arguing that "*current* holders of Uninsured Asbestos Claims are ***worse off*** under the Plan, since proceeds of the Certain Insurers' settlement that otherwise would be available to pay their claims in a chapter 7 will be siphoned off for Trust [sic] 'Asbestos Trust

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[49] Chubb Insurers Plan Obj., ¶ 99.

[50] *Id*.

[51] *Id.*, ¶ 99 n.209 (quoting *In re Radco Props., Inc.*, 402 B.R. at 683).

[52] *Id.*, ¶ 100.

Start-up Costs,' Reorganized Hopeman's 'Ongoing Business Investment,' and to fund Reorganized Hopeman's 'working capital,' among other things."[53] Yet again, the Chubb Insurers improperly limit the inquiry to "***current*** Uninsured Asbestos Claims."[54] That is incorrect, as discussed at length above.[55]

45. Moreover, as discussed in greater detail in the Confirmation Brief,[56] the Plan Proponents do not believe ***any*** Uninsured Asbestos Claims currently exist, so the Chubb Insurers' argument is little more than an attempt to manufacture issues based on an inaccurate premise. In actuality, the Plan, by virtue of the Asbestos Trust Distribution Procedures, ensures that ***if*** and ***when*** Uninsured Asbestos Claims exist, the holders of such claims will, necessarily, do better than in a chapter 7 by virtue of the protections, including the Payment Percentage,[57] imposed on payments from the Asbestos Trust, for the protection of future claimants.

46. Second, the Chubb Insurers assert that "[t]he Liquidation Analysis and Disclosure Statement are also flawed because they do not disclose the claim projections prepared by Debtor's and the Committee's respective experts in this bankruptcy case reflecting that holders of Asbestos Claims would receive payment in full or nearly in full under a chapter 7 scenario."[58] The Chubb Insurers point out that the Liquidation Analysis states that "[b]ecause of the unliquidated nature of the vast majority of the Asbestos Claims, the aggregate amount of such claims is unknown and Hopeman does not have sufficient information to estimate the total

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53 *Id*., ¶ 101 (bolded emphasis in original).

54 *Id.* (emphasis added).

55 *See* § III.A.1. *supra*.

56 *See* Confirmation Brief, § IX.A.

57 "Payment Percentage" has the meaning assigned in § 2.2 of the Asbestos Trust Distribution Procedures.

58 Chubb Insurers' Plan Obj., ¶ 105.

amount of these claims with ***certainty*** for purposes of this analysis."[59] The Chubb Insurers claim that expert reports previously prepared by each of the Plan Proponents' respective experts did precisely what the Liquidation Analysis indicates could not be done, and the Chubb Insurers make much ado about the Committee's response to the alleged "contradiction."[60]

47. As the Committee correctly responded, "it is not necessary for the Liquidation Analysis to rely on prior estimates of Hopeman's liabilities."[61] There is no requirement, legal or otherwise, that the Plan Proponents rely on such prior estimates, and the Chubb Insurers, for all their incredulity at the response, fail once again to cite ***any*** authority that holds otherwise.

48. Furthermore, the Chubb Insurers — despite quoting the language — ignore the operative word in the Liquidation Analysis: "Hopeman does not have sufficient information to estimate the total amount of these [unliquidated Asbestos Claims] ***with certainty for purposes of this analysis***." Abundant authority acknowledges that "it is important to note that the valuation of claims in a hypothetical Chapter 7 liquidation is not an exact science because the process ***entails a considerable degree of speculation***."[62] Indeed, in assessing whether a plan is feasible, courts regularly caution against the speculative nature of future projections.[63] Thus, the Liquidation Analysis is accurate, Hopeman is unable to estimate such claims with ***certainty*** — because the exercise of estimating such future claims is, by its very nature, speculative.

49. In any event, the Chubb Insurers' argument must fail because, once again, it reaches the ***irrelevant*** conclusion that "whether viewed from the lens of the Debtor's expert or

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59 *Id.* at ¶ 109 (emphasis added).

60 *See id.* at ¶¶ 109-110.

61 *Id.* at ¶ 109 (emphasis added).

62 *In re W.R. Grace & Co.*, 475 B.R. at 142 (internal citations and quotation marks omitted) (collecting cases).

63 *See, e.g.*, *In re Moore*, 482 B.R. 248, 256 (Bankr. C.D. Ill. 2012) ("This Court must find that trying to project what will occur over the next ***50 months*** with respect to these Debtors and this loan is a ***speculative venture and not one that can be done with any certainty whatsoever***.") (emphasis added).

the Committee's expert, these projections show that $50 million in proceeds from the Chubb Insurers' Settlement Agreement and the Certain Settling Insurers' Settlement would have been sufficient to pay ***current*** holders of Asbestos Claims in full or nearly in full in a chapter 7 scenario."[64] As set forth above, *see* § III.A.1. *supra*, the Best Interests Test is ***not*** limited to the holders of ***current*** Asbestos Claims.

50. Accordingly, given that the same universe of claims should be assessed in the Liquidation Analysis under the Chapter 7 scenario as are addressed under the Plan (*i.e.*, the Chapter 11 scenario), placing a value on those claims is largely irrelevant to the analysis. Whether those claims are $50 million, $100 million, $200 million (or more) they will be the same if the Plan is confirmed as they would be if the case were converted to Chapter 7. Thus, the salient question is the quantum of assets that are available to satisfy such claims. As reflected in the Liquidation Analysis, the Debtor submits that the assets available for distribution to Asbestos Claimants will be significantly higher under the Plan than in a hypothetical liquidation under Chapter 7, while the costs of a Chapter 7 liquidation will be substantially higher than under the Plan thereby further reducing the assets available for distribution.

51. While the Chubb Insurers acknowledge that the costs under Chapter 7 will be significantly higher, the Scarcella Liquidation Analysis absurdly shows that there would be substantially less assets available for distribution under the Plan than in a Chapter 7 liquidation. But that is nothing more than impermissible result of the Chubb Insurers imposing their self-serving, fictitious three-year bar date. The Chubb Insurers likewise provide no consideration for potential insurance settlements under the Plan, despite, as noted above, suggesting, where it suits them, an intent to enter into a future settlement. If the Chubb Insurers endeavored to prepare an

[64] Chubb Insurers Plan Obj., ¶ 107 (emphasis added).

honest analysis, then they would not have urged their so-called "expert" to include a bogus bar date, without which the Scarcella Liquidation Analysis too would show that payments to the holders of Asbestos Claims would be significantly higher over time, as reflected in the Liquidation Analysis. Unfortunately, the Chubb Insurers intentions are not genuine, and the spurious Scarcella Liquidation Analysis is merely the Chubb Insurers' latest attempt to derail the Plan overwhelmingly supported by the very claimants that the Chubb Insurers allege the Plan will harm.

52. For the reasons set forth above, the Plan Proponents respectfully submit that the Chubb Insurers' objection should be overruled.

C. The Scarcella Liquidation Analysis Is Premised On Inaccurate Assumptions, And It Is, Otherwise, Incorrect.

53. The Chubb Insurers next contend that the Scarcella Liquidation Analysis, which the Chubb Insurers try and fail to portray as one that "estimates the value of current claims against Hopeman and more accurately reflects the terms and operation of the Plan, including the Litigation Trustee's [Compensation], as well as the terms of the Chubb Insurers' policies," purportedly demonstrates that the Best Interests Test is not satisfied.[65] As set forth in detail in the Motion in Limine, the Scarcella Liquidation Analysis is wholly inaccurate as it fails to properly apply the Best Interests Test, and, as a result, Mr. Scarcella's testimony is inadmissible under Federal Rule of Evidence 702.[66] Moreover, as explained below, the Scarcella Liquidation Analysis relies on fundamentally inaccurate assumptions, which further merit disregarding the conclusions reached therein.

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[65] *Id*., ¶¶ 111-112.

[66] Motion in Limine, ¶¶ 15-24.

1. The Scarcella Liquidation Analysis Is Premised On Demonstrably Inaccurate Assumptions.

54. In addition to unjustifiably adopting a three-year bar date that does not exist in the Plan, two of the four other assumptions underlying the Scarcella Liquidation Analysis are flawed. Specifically, the Scarcella Report assumes, for purposes of the Scarcella Liquidation Analysis that:

- "Under the 524(g) option, claim indemnity will be allocated to Chubb per the cost-sharing arrangement prior to HBI's petition that is based on a time-on-the-risk, pro-rata allocation subject to each claim's date of first exposure. Under this arrangement Chubb covered 33.52% of HBI's claim indemnity in 2023, which I have assumed for my analysis."
- "Under the 524(g) option, the current Plan proposes to fund the pursuit of non-settled insurance assets from Chubb and other non-settling insurers by imposing a 33.3% contingency fee on the portion claim values that are recovered from insurance."

Scarcella Report, ¶ 45 (footnotes omitted).

55. The first assumption is misleading because it is predicated on the assumption that the Chubb Insurers' coverage-in-place agreements dictate the amount that Asbestos Claimants could recover from the Chubb Insurers based on a historical 33.52% allocation of this coverage prior to Hopeman's bankruptcy filing. Under the Plan, however, this allocation merely represents a ***floor*** of what might be owed by the Chubb Insurers on account of claims by ***the Asbestos Trust*** under those agreements. But, as the Committee correctly pointed out in its *Motion to Dismiss* in the pending LMIC adversary proceeding [LMIC Adv. Docket No.[67] 28] (the "UCC MTD"), the Chubb Insurers, like LMIC, ignore a host of state law that rejects the notion that agreements between an insured and its insurers impact the rights of injured persons who obtain independent rights under the policies that arise upon injury, which rights, as would be the case under *Grady*'s

[67] 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).

conduct test, arise upon injurious exposure to the asbestos-related product.[68]

56. The Plan Proponents do not dispute that if the ***Asbestos Trust***, through the Litigation Trustee, pursues and obtains recoveries against the Chubb Insurers, such recoveries would be calculated by reference to the coverage-in-place agreements between Hopeman and the Chubb Insurers. Asbestos Claimants' recoveries, however, may not be similarly limited by such agreements under applicable nonbankruptcy law, which might permit such claimants to pursue the Chubb Insurers, or any other Non-Settling Asbestos Insurer, for the entirety of their damages irrespective of any limitations on any Non-Settling Asbestos Insurer's liability contained in coverage-in-place agreements.

57. Accordingly, the Scarcella Liquidation Analysis's application of the 33.52% limitation, stemming from the historical allocation of indemnity liabilities to Hopeman from 2023, is incomplete and improperly understates the assets available for distribution under the Plan — further skewing Mr. Scarcella's flawed analysis, which is amplified by his imposition of a fictitious bar date that suppresses the number of claims eligible for recovery. As Mr. Scarcella acknowledged at his deposition, the increase in the population of claims asserted by removal of the artificial bar date would lead to greater recoveries from the Chubb Insurers and other insurers under the Plan, eventually surpassing the amounts recoverable under even Mr. Scarcella's Chapter 7 analysis:

> [Mr. Brown]: I'm … simply asking you if instead of this artificial bar date of June 30, 2027, you reflected the actual 524(g) plan that's on file that has no bar date, would Chubb pay more than you reflected in this chapter 11 column?
>
> [Mr. Scarcella]: ***Yes. They would pay more as a function of there being more claims beyond just the current claims through June 30, 2027***.

July 23, 2025 Scarcella Dep. Tr. at 126:15 – 127:20 (emphasis added). This is particularly true

[68] *See* UCC MTD, ¶¶ 13-15 (identifying relevant New York law); 16-17 (identifying relevant Virginia law); 17 n.8 (identifying relevant Louisiana and California law).

given the claims that must be addressed in a Chapter 7 should be the same as Chapter 11, so while he assumes a fixed pot recovery from the Chubb Insurers of $31.5MM in the Chapter 7 scenario, there is no basis for such a limitation under the Plan.

58. Second, as noted above and addressed in detail in the Confirmation Brief, the Scarcella Liquidation Analysis's assumption that the recoveries of Insured Asbestos Claimants will be reduced, in every instance, by the Litigation Trustee's Compensation is ***wrong*** because it is an incorrect reading of the Plan.[69] The Litigation Trustee's Compensation only applies to claims the Litigation Trustee prosecutes, not claims prosecuted by the claimants through their own counsel, and the Plan authorizes claimants to pursue their claims directly.

59. Thus, the Plan Proponents respectfully submit that these assumptions render the Scarcella Liquidation Analysis inaccurate.

2. The Scarcella Liquidation Analysis Fails to Properly Apply the Best Interests Test.

60. Finally, as discussed in detail in the Motion in Limine, the Scarcella Liquidation Analysis is irrelevant and unhelpful because it fails to properly apply the Best Interests Test, rendering Mr. Scarcella's testimony inadmissible under Federal Rule of Evidence 702.[70]

61. The Scarcella Liquidation Analysis does not compare the recoveries of claimants addressed by the Plan to their recoveries in a hypothetical liquidation. Instead, it compares a ***hypothetical*** version of the Plan — one in which Mr. Scarcella improperly applies a June 2027 bar date that does not exist in the Plan[71]— and compares it to a hypothetical liquidation under

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69 *See* Confirmation Brief, § IX.A.

70 Motion in Limine, ¶¶ 15-24.

71 Mr. Scarcella acknowledged in his deposition that the Plan does ***not*** impose any such bar date. *Id.* at Ex. A (Scarcella Dep. Tr.) at 30:10 – 31:7. Moreover, the Scarcella Report expressly provides that this fictitious bar date was applied because it "***was the proposed bar date under the Debtor's original plan of liquidation***." Scarcella Report, ¶ 1 (emphasis added).

Chapter 7 in which Mr. Scarcella improperly applies the same unworkable bar date. As explained in detail above, the Best Interests Test ***requires*** considering future Claims.[72] Nonetheless, Mr. Scarcella restricted the inquiry based on the erroneous advice of the Chubb Insurers' counsel,[73] which is not surprising because Mr. Scarcella does not have any experience performing such an analysis and, in any event, Mr. Scarcella is not qualified to offer expert opinions on such matters.[74]

62. Indeed, Mr. Scarcella does not dispute that individuals will likely continue to manifest asbestos-related diseases after 2027. On the contrary, he acknowledged that he expected they would until at least 2037, and, in connection with his work for the Chubb Insurers here, he himself had modeled and/or estimated claims that would arise as individuals subsequently manifest injuries through at least 2037.[75] He simply fails to account for such claims because the Chubb Insurers' counsel provided him a self-serving and legally-incorrect assumption.

63. Thus, the Plan Proponents respectfully submit that the inaccurate Scarcella Liquidation Analysis demonstrates nothing relevant to the Best Interests Test, and the Chubb Insurers' objection should be overruled.

IV. CONCLUSION

For the reasons set forth herein, and in the 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 (as defined in the Confirmation Brief), fully satisfies all applicable

[72] Section III.A.1. *supra*.

[73] Motion in Limine, Ex. A (Scarcella Dep. Tr.) at 26:12 – 28:11.

[74] Motion in Limine, ¶¶ 25-28; Motion in Limine, Ex. A (Scarcella Dep. Tr.) at 54:2 – 56:13.

[75] Motion in Limine, Ex. A (Scarcella Dep. Tr.) at 27:8 – 28:11.

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 confirming the Plan under §524(g) and issuing the Asbestos Permanent Channeling Inunction.

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Dated: August 18, 2025
Richmond, Virginia

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