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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Hopeman Brothers, Inc., *Debtor.*	Chapter 11 Case No. 24-32428 (KLP)

NOTICE OF THE CHUBB INSURERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (I) DENYING THE ADEQUACY OF THE DISCLOSURE STATEMENT; AND (II) DENYING CONFIRMATION OF THE DEBTOR'S PROPOSED AMENDED PLAN

PLEASE TAKE NOTICE THAT Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company, collectively, the "Chubb Insurers"), by and through counsel, hereby submit the Chubb Insurers' Proposed Findings of Facts and Conclusions of Law Denying Confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the

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Bankruptcy Code (the "Chubb Insurers' Proposed Findings & Conclusions"[1]), as **Exhibit A**, attached hereto. The Chubb Insurers submit their Proposed Findings & Conclusions pursuant to the Court's directive stated on the record at the conclusion of the chapter 11 plan confirmation hearing (the "Confirmation Hearing") on August 26, 2025 and entered on the Bankruptcy Court's docket at Docket No. 1168.

DATED: September 5, 2025

/s/ James Donaldson

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[1] As appropriate, proposed findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact. *See* Fed. R. Bankr. P. 7052, 9014.

CERTIFICATE OF SERVICE

I certify that on September 5, 2025, a true and accurate copy of the foregoing was filed with the Court and served on all necessary parties through the Court's CM-ECF system, through electronic notice.

/s/ James Donaldson

EXHIBIT A – CHUBB INSURERS' PROPOSED FINDINGS & CONCLUSIONS

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: Hopeman Brothers, Inc., *Debtor.*	Chapter 11 Case No. 24-32428 (KLP)

THE CHUBB INSURERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW (I) DENYING THE ADEQUACY OF THE DISCLOSURE STATEMENT; AND (II) DENYING CONFIRMATION OF THE DEBTOR'S PROPOSED AMENDED PLAN

Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company, collectively, the "Chubb Insurers"), by and through counsel, hereby submit the Chubb Insurers' Proposed Findings of Facts and Conclusions of Law Denying Confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code (the "Chubb Insurers' Proposed Findings & Conclusions"[1]). The Chubb Insurers submit their Proposed Findings & Conclusions pursuant to the Court's directive stated on the record at the conclusion of the chapter 11 plan confirmation hearing (the "Confirmation Hearing") on August 26, 2025 and entered on the Bankruptcy Court's docket at Docket No. 1168.

The Chubb Insurers' Proposed Findings & Conclusions address specific issues precluding confirmation of the proposed Plan,[2] rather than provide complete findings of fact and conclusions

[1] As appropriate, proposed findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact. *See* Fed. R. Bankr. P. 7052, 9014.

[2] As used herein, the "Plan" means and refers to that certain *Modified Amended Plan Of Reorganization Of Hopeman Brothers, Inc. Under Chapter 11 Of The Bankruptcy Code*, filed with the Court on August 21, 2025. (Dkt. No. 1141.) Unless stated otherwise, capitalized terms not defined in the Chubb Insurers' Proposed Findings & Conclusions shall have the meaning ascribed by the Plan, as well as the Disclosure Statement, as applicable.

of law regarding all confirmation requirements that Debtor is required to satisfy pursuant to §§ 1129 and 524(g) of the Bankruptcy Code.

FINDINGS OF FACT

I. DEBTOR HAS NO BUSINESS OPERATIONS.

1. Debtor, Hopeman Brothers, Inc. ("Hopeman" or the "Debtor"), was a ship joiner subcontractor that exited the ship joining business in the 1980s. (Aug. 25, 2025 Hrg. Tr. at 14:17-22.)

2. By 2003, Hopeman had sold all its operating assets. Hopeman has had no income producing business from its ship joining or other operations since then. (*Id*., p. 15:1-11.)

3. Since 2003, Hopeman has had no business operations and exists solely to defend and resolve Asbestos Claims. (Dkt. No. 8, Lascell Decl., ¶ 18; Dkt. No. 57 at 12.) Hopeman did not earn income from its pre-petition management of asbestos claims. (Aug. 25, 2025 Hrg. Tr. at 98:11-15.)

4. Hopeman had no employees on June 30, 2024 (the "Petition Date"). (Dkt. No. 8, Lascell Decl., ¶ 19.) Hopeman has had no employees since 2016, if not earlier. (Aug. 25, 2025 Hrg. Tr. at 57:6-8.)

5. Since 2016, Hopeman's assets have consisted of (a) cash held in investment accounts that came from prior insurance settlements, (b) cash held in trust accounts that came from prior insurance settlements, and (c) insurance policies. (Aug. 25, 2025 Hrg. Tr. at 15:12 – 16:7.)

6. From 2004 through the Petition Date, Hopeman had no business operations and no source of future income other than investment income from its prior insurance settlements. (Aug. 25, 2025 Hrg. Tr. at 147:25-148:4 (Mr. Van Epps); *id*. at 27:1-4 (Mr. Lascell's testimony with respect to 2016 and forward).)

7. As of November 26, 2024, Hopeman had no ongoing business, and it did not have

one as of July 1, 2025. (*Id*. at 55:7-57:5.)

II. HOPEMAN FILED ITS CHAPTER 11 CASE TO AVOID A "RACE TO THE COURTHOUSE" BY ITS ASBESTOS CREDITORS.

8. Pre-petition, Hopeman's solvent Asbestos Insurers, including the Chubb Insurers, within their applicable policy limits and pursuant to the terms and conditions of their respective policies[3], reimbursed Hopeman for portions of its defense costs (including claims administration costs) and for portions of the liability payments Hopeman made to resolve Asbestos Claims. (Dkt. No. 57 at 16.)

9. Pre-petition, Hopeman entered into various agreements with certain Asbestos Insurers to address Asbestos Claims. In June 1985, Hopeman and certain of its Asbestos Insurers, as well as other asbestos claim defendants and their respective insurers, entered into an Agreement Concerning Asbestos PI Claims (the "Wellington Agreement"). (Certain Insurers' Ex. 5.) Pursuant to the Wellington Agreement, participating insurers' obligations for Asbestos Claims, including for payment of defense costs and indemnification of liability payments incurred by Hopeman, were spread pro-rata across all insurance policies from a claimant's date of first exposure across a "coverage block" which, in Hopeman's case, eventually extended to 1984. (Dkt. No. 57, at 16; Aug. 25, 2025 Hrg. Tr. 116:5-21.) The Wellington Agreement also provides that Hopeman and the signatory Asbestos Insurers "shall waive claims for bad faith or punitive damages. . . with respect to all matters within the scope of the Agreement." (Certain Insurers Ex. 5, § VIII.3.)

10. Hopeman also entered into coverage-in-place ("CIP") agreements with certain

[3] Hopeman's insurance policies have different language that is unique to them, and the specific policies must be reviewed to understand coverage available under those policies. (Aug. 25, 2025 Hrg. Tr. at 150:23-151:2.) The Court has not reviewed all of Hopeman's insurance policies and makes no determinations with respect to the scope, extent, or interpretation of the insurance policies or insurance coverage here. Those issues are not before the Court.

insurers, including the Chubb Insurers, that established parameters in terms of how the Asbestos Insurers' policies would respond to defense costs and claim payments. (Aug. 25, 2025 Hrg. Tr. at 134:17-24.) According to Hopeman, as a result of such agreements and payments, "all of the primary layer and excess insurance that Hopeman purchased from [Liberty Mutual Insurance Company] is exhausted and released, such that only excess insurance from certain other Insurers remained available to pay the Hopeman Asbestos PI Claims." (Dkt. No. 57, at 16.)

11. Since 2004, Hopeman has had sole responsibility for defending Asbestos Claims. (Aug. 25, 2025 Hrg. Tr. at 128:9-17.) Hopeman's excess policies, including those issued by the Chubb Insurers, are reimbursement policies; the excess insurers have no duty to defend Asbestos Claims. (*Id*. at 154:4-8.) Pre-petition, Hopeman paid its own defense costs and claim payments first, and then submitted those costs and amounts for reimbursement to the participating excess Asbestos Insurers. (*Id*. at 154:9-12.) Hopeman, through its claims administrator, Specialty Claims Services ("SCS"), would send billings to carriers with CIP agreements in place to satisfy the defense and indemnity obligations under their agreements. (*Id*. at 128:18-21.) Hopeman received less in reimbursement from its Asbestos Insurers than Hopeman paid because there were portions of its defense and claim payments for which Hopeman, not its Asbestos Insurers, was responsible. (Aug. 25, 2025 Hrg. Tr. at 100:18-22; *id*. at 128:22-129:3.)

12. Because of Hopeman's pre-petition settlements with various insurers and coverage issued by now-insolvent insurers, along with the terms of its CIP agreements, Hopeman was responsible for 35% to 40% of claim payments associated with Asbestos Claims, and a larger percentage of defense costs associated with those claims. (*Id.* at 153:16-154:3.) In 2023, net of insurance recoveries, Hopeman paid approximately 35.12% of claim payments and 57.33% of defense costs, resulting in an annual "cash burn" of approximately $5.5 million. (Dkt. No. 57. at

16-17.)

13. Having no income-producing business operations since 2003, Hopeman was unable to continue managing the defense and resolution of Asbestos Claims upon exhausting its available cash from prior insurance settlements. Hopeman's President testified at the Confirmation Hearing that this would result in a "race to the courthouse" for claimants to recover remaining insurance proceeds, which would "eliminat[e] any likelihood of an equality of distribution among similarly-situated Holders of Asbestos PI Claims." (Aug. 25, 2025 Hrg. Tr. at 102:13-103:9; Dkt. No. 57 at 31.) In addition, "the cost of defending against such actions would. . . deplete insurance coverage for defense costs that may remain available under the Asbestos Insurance Policies." (Dkt. No. 57 at 31.)

14. At the Confirmation Hearing, Hopeman's President, Mr. Lascell, testified and agreed that such a "race to the courthouse" would create "an unfair and decentralized process that exhausts available insurance proceeds, to the detriment of other holders of valid asbestos related claims against the debtor." (Aug. 25, 2025 Hrg. Tr. at 103:2-6.) That is because Hopeman's available excess policies have limits, such that each claim that gets paid under a policy reduces the amounts available that remain to pay successive claims. (*Id*. at 103:7-9; 103:20-23.)

15. As a result, Hopeman determined that it was in its best interest, as well as in the best interest of holders of Asbestos Claims, to commence this Chapter 11 case. (Aug. 25, 2025 Hrg. Tr. at 100:23-101:4; Dkt. No. 57 at 31.)

III. THE CHUBB INSURERS' POLICIES AND SETTLEMENTS

16. The Chubb Insurers issued certain excess insurance policies to Hopeman under which Hopeman sought coverage for Asbestos Claims. (*See* Certain Insurer Exs. 6-17.) It is undisputed that Hopeman owes a duty to "cooperate with the defense of the underlying claims" under its liability policies, including the Chubb Insurers' policies. (Aug. 25, 2025 Hrg. Tr. at

144:2-8.)

17. Pre-petition, the Chubb Insurers were among the Asbestos Insurers contributing to the reimbursement of Hopeman's claim payments and, solely with respect to Century, Hopeman's defense costs, pre-petition. (Aug. 25, 2025 Hrg. Tr. at 113:23 – 117:5; Dkt. No. 57, at 17.)

18. At the Confirmation Hearing, Hopeman's President testified and acknowledged that the Chubb Insurers' policies are reimbursement policies, and the Chubb Insurers have no duty to defend Hopeman with respect to the Asbestos Claims. (Aug. 25, 2025 Hrg. Tr. at 154:4-8.)

19. International (Westchester) has no obligation to pay defense costs under its policies. (Aug. 25, 2025 Hrg. Tr. at 157:6-8.) Westchester paid its share of billings from Hopeman from 2004 until June 2024. (*Id*. at 157:2-5.) Westchester had no pre-petition disputes with Hopeman over coverage under the International policies. (*Id*. at 114:14-19.)

20. Century and Hopeman are parties to the Wellington Agreement. (*Id*. at 115:10-15.)

21. Century and Hopeman also are parties to the 2009 Asbestos CIP Agreement. (*Id*. at 112:17-21.) The 2009 Asbestos CIP Agreement incorporates the Wellington Agreement, which specifies the *pro rata* share of Hopeman's defense costs and claim payments that Century is responsible for reimbursing. Under the 2009 Asbestos CIP Agreement, certain of the Chubb Insurers' policies were fully released. (*Id.* at 113:19-22.) The 2009 Asbestos CIP Agreement further provides, among other things, that Hopeman would deduct a specified percentage from Century's reimbursement shares under the Wellington Agreement to address "non-products" claims that were not subject to aggregate limits of Hopeman's primary policies underlying the Century Policies. (*Id*. at 135:5-16.) Pre-petition, Century performed under the 2009 Asbestos CIP Agreement and there were no disputes between Century and Hopeman as to Century's performance. (*Id*. at 113:23-114:13.)

22. Pursuant to the Chubb Insurers' Policies and their pre-petition Asbestos CIP Agreements with Hopeman, including the Wellington Agreement and the 2009 Asbestos CIP Agreement, as of the Petition Date, the Chubb Insurers collectively were responsible for reimbursing Hopeman for approximately 33.52% of its claim payments, and Century was responsible for re-imbursing Hopeman for approximately 17.51% of its defense costs. (Dkt. No. 57, at 17.)

23. In June 2024, the Chubb Insurers and Hopeman reached a settlement agreement (the "Chubb Insurers' Settlement") whereby, subject to the Court's approval, the Chubb Insurers would buy back the Chubb Insurers' Policies in exchange for a payment of $31.5 million. (Dkt. No. 9; (Aug. 25, 2025 Hrg. Tr. at 21:7-22:3.) Hopeman pursued the Chubb Insurers' 2024 settlement, in part, out of concern that it was not going to be able to perform its obligations under the 2009 Asbestos CIP Agreement because it was running out of money. (*Id*. at 114:4-11.)

24. Debtor sought approval of the Chubb Insurers' 2024 settlement after filing its Chapter 11 petition. (*Id*. at 22:4-6; Dkt. No. 9; the "Chubb Insurers' Settlement Motion"). The Chubb Insurers' Settlement Motion remains pending before the Court, but the Chubb Insurers' Settlement will be rejected if the Plan is confirmed based on the Court's prior finding that the Chubb Insurers' Settlement is an executory contract notwithstanding Hopeman's request for the Court to approve the settlement.

25. The Plan treats the Chubb Insurers as Non-Settling Asbestos Insurers notwithstanding the Chubb Insurers' Settlement. (Aug. 25, 2025 Hrg. Tr. at 117:6-13.) Under the Plan, Hopeman's rights in the Chubb Insurers' policies and the 2009 Asbestos CIP Agreement will be transferred to the Asbestos Trust, while Hopeman's obligations under those contracts will be transferred to Reorganized Hopeman. (*Id*. at 35:17-22.)

26. Hopeman plans to assume the Chubb Insurers' policies and the 2009 Asbestos CIP Agreement pursuant to the Plan because they are "valuable" such that Hopeman wants to keep them. (*Id*. at 43:4-44:4.) But if the Plan is confirmed, Reorganized Hopeman and the asbestos trust will not defend any claims brought against Reorganized Hopeman in the tort system, comprised of state and federal courts across the country. (*Id*. at 155:22-156:1.) Reorganized Hopeman will not participate in any share of claim payments made by a Non-Settling Asbestos Insurer, including the Chubb Insurers, nor will Reorganized Hopeman pay any percentage of defense costs for such a claim. (*Id*. at 155:9-21; 99:13-100:8.)

IV. THE MEDIATION

27. On December 20, 2024, this Court entered an Order approving a joint motion by Hopeman and the Official Committee of Unsecured Creditors (the "Committee" and, together with Hopeman, the "Plan Proponents") to authorize judicial mediation of the Chubb Insurers' Settlement Motion (the "Mediation" and, such order, the "Mediation Order"), with the Honorable Kevin R. Huennekens serving as the mediator (the "Mediator"). (Dkt. No. 443.)

28. The Mediation resulted in a settlement (the "524(g) Settlement"). (Dkt. No. 609, Ex. B.) The 524(g) Settlement is the foundation of the Plan. (*Id.*) The Chubb Insurers were not a party to the 524(g) Settlement. (*Id.*) Hopeman did not seek the Chubb Insurers' consent to the 524(g) Settlement. (Aug. 25, 2025 Hrg. Tr. at 118:9-11.)

29. The Mediation Order prohibits any party from using or disclosing communications made in connection with the Mediation for any purpose in this Chapter 11 case. (Dkt. No. 443.) Accordingly, the Chubb Insurers were not permitted to rely upon any materials related to the Mediation, including information regarding the 524(g) Settlement reached among the Plan Proponents and HII.

30. As part of Plan-related discovery, Hopeman initially produced documents related

to the negotiation of the settlement in the Mediation. Hopeman later clawed back those documents, thereby precluding the Chubb Insurers and all other insurers to which those documents had been produced from using or relying on any Mediation documents, including reliance during the Confirmation Hearing. (Aug. 25, 2025 Hrg. Tr. at 279:5-19; Chubb Ex. 8 (claw back demand).)

31. Because of the Mediation Order and the Plan Proponents' claw back of the Mediation documents that were produced, there is no evidence on the record related to the Mediation and the 524(g) Settlement other than the mere "mechanics" of the Mediation and that the Chubb Insurers were not part of the 524(g) Settlement. (Aug. 25, 2025 Hrg. Tr. at 33:21-34:2.)

V. THE PLAN IMPROPERLY TRANSFERS HOPEMAN'S BOOKS AND RECORDS AND ALLOWS PLAINTIFFS' ATTORNEYS TO ACCESS

32. Section 8.3(l) of the Plan proposes to transfer to Reorganized Hopeman all of Hopeman's books and records, including privileged information, communications, and documents that detail Hopeman's defense strategies in response to Asbestos Claims. (Dkt. No. 1141, at 33.) The Plan purports to preserve applicable privileges as to those books and records when the Asbestos Trust gains access to privileged materials, as follows:

> Hopeman's prepetition claims administrator Special Claim Services, Inc. Notwithstanding anything to the contrary herein, holders of Asbestos Personal Injury Claims may pursue and obtain information stored in Hopeman's books and records (including electronic records) through discovery to the full extent permitted by applicable law. For the avoidance of doubt, privileges belonging to Hopeman on the Petition Date in such books and records shall belong to the 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.

(Dkt. No. 1141, at 33.)

33. The Court finds, however, that the Plan language purporting reserve applicable privileges to be illusory and ineffective. The Asbestos Trust is governed, in part, by the Asbestos Trust Advisory Committee (the "TAC"). (Dkt. No. 1141, at 11.) There are no material restrictions on the ability of asbestos claimants' attorneys serving as members of, or advisors to, the TAC, to

access Hopeman's privileged documents. Rather, § 5.5(a) of the Asbestos Trust Agreement provides for broad, near-unfettered information access for the TAC and its advisors:

> (the "**TAC Professionals**"). The TAC and the TAC Professionals shall at all times have complete access to the Asbestos Trust's officers, employees and agents, as well as to the Trust Professionals, and shall also have complete access to all information generated by them 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. In the

(Dkt. No. 1143, at 37.)

34. On direct examination at the Confirmation Hearing, Hopeman's president, Mr. Lascell, testified that Hopeman's books and records will be turned over to the Asbestos Trust:

> Q. Do you believe that including the protected parties within the channeling injunction is fair and equitable with respect to persons who might subsequently assert an asbestos claim?
> A. I do, yes.
> Q. Why?
> A. Because we are -- we're turning over our -- our shares. We're turning over our books and records. We're turning over control of -- of all those -- control of the Hopeman -- of Hopeman Brothers to the asbestos trust and to reorganize Hopeman.

(Aug. 25, 2025 Hrg. Tr. at 40:6-15.)

35. Mr. Lascell confirmed that intention later in his testimony—but his response regarding the potential waiver of privilege is conclusory and unsubstantiated:

Q. Okay. Does the debtor intend to transfer its books and records to the trust under the plan?
A. We do, yes.
Q. Why?
A. The trust will -- the trust will own reorganized Hopeman Brothers. And the trust will be processing claims against it. And so it -- it needs access to those books and records.
Q. Is it the debtor's intention, as part of the transferring of those books, to waive its privileges?
A. No.
Q. Why not?
A. They're -- because they're -- they're privileged documents, and there's no -- no reason to -- to do -- to do so.

(Aug. 25, 2025 Hrg. Tr. at 42:3-15.)

VI. FINDINGS REGARDING SECTION 524(g)

36. Hopeman's president, Mr. Lascell, testified that one of his goals going into this Chapter 11 case was to gain "finality" for himself and his siblings, who are the current board members owners of Hopeman. (Aug. 25, 2025 Hrg. Tr. at 38:18-39:5.) Mr. Lascell testified that he and his siblings want to leave Hopeman behind and "just be done with it." (*Id.* at 50:15-20.)

37. Hopeman filed a Plan of Liquidation shortly after filing its Chapter 11 petition. (Dkt. No. 56.) Hopeman, in its Disclosure Statement for the Plan of Liquidation, advised that "the fact that the Debtor no longer maintains any business operations suggests that a reorganization or liquidation on terms substantially different than those currently proposed under the Plan may be improbable or infeasible," and, as a result, "any attempt to pro-pose an alternative plan containing different terms for any of these parties may not be confirm-able and could delay and/or dilute distributions to creditors." (Dkt. No. 57 at 32.)

38. According to Hopeman's president, Mr. Lascell, testified that Hopeman proposed the Plan of Liquidation, along with the Chubb Insurers' Settlement and the Certain Insurers' Settlement, because Hopeman believed it was the most attractive option at the time. (Aug. 25,

2025 Hrg. Tr. 117:14-20.) Mr. Lascell testified that Hopeman believed that option was attractive to Hopeman, attractive to claimants, attractive to insurers, but perhaps not attractive to asbestos claimants' attorneys. (*Id*. at 117:21-25.) Notably, Mr. Lascell distinguished between asbestos claimants' attorneysand asbestos claimants because the Plan of Liquidation would limit future work opportunities for asbestos claimants' attorneys. (*Id*. at 118:1-4.)

39. After the appointment of the Committee, Hopeman pivoted to a § 524(g) plan over the Plan of Liquidation because it heard from the Committee from the outset of this Chapter 11 case that the Committee objected to any plan that was not a § 524(g) plan. (Dkt. No. 1176, at 2, 7/1/25 Deposition Designation of Christoper Lascell (the "Lascell Designation"), lines 125:7-20.)

40. At the Confirmation Hearing, Mr. Lascell testified to, and acknowledged, his prior deposition testimony, as Debtor's 30(b)(6) designee with respect to the Plan, that § 524(g) has an "ongoing business" requirement. (Aug. 25, 2025 Hrg. Tr. at 53:22 – 54:2) At the Confirmation Hearing, Mr. Lascell testified that, since his deposition, he had talked to his lawyers and "learned" that there is a "dispute" about the exact requirement and "if it even exists." (Aug. 25, 2025 Hrg. Tr. at 53:4-54:2.)

41. According to Mr. Lascell, Debtor is "reorganizing" because it is continuing its corporate existence under the Plan. (*Id*. at 35:7-11.) Mr. Lascell and his siblings will achieve the finality they seek by exiting Hopeman and "turning over control of. . . Hopeman Brothers to the asbestos trust" and to Reorganized Hopeman, which will be owned by the asbestos trust. (*Id*. at 36:5-6, 40:11-15.)

42. Under the Plan, the Asbestos Trust will provide Reorganized Hopeman with initial net reserves of $150,000 on the effective date. (Plan Proponents Ex. 1, at 181, Trust Agreement § 3.2(k).) The Asbestos Trust also is required to make additional financial contributions to

Reorganized Hopeman in the future, as necessary to ensure that Reorganized Debtor maintains sufficient working capital. (*Id.*; Aug. 25, 2025 Hrg. Tr. 205-206.) Conversely, the Plan contains no obligation of Reorganized Debtor to provide dividends or other capital contributions, if any, or any ongoing funding to the Asbestos Trust. (Aug. 25, 2025 Hrg. Tr. 205, 207.)

43. Under the Plan, after the effective date, Reorganized Hopeman will make a passive investment of $350,000 in exchange for a 1.7% interest in real estate. (*Id.* at 46:18-47:4; 195.) The passive investment was identified by the Committee's financial advisor, FTI. (*Id.* at 195.)

44. The passive real estate investment contemplated by the Restructuring Transaction does not resemble Hopeman's prior business, operations, or work—ship-joining, later, cabinet installation, and, ultimately, management of insurance assets—including during the period immediately preceding Hopeman's bankruptcy filing. (*Id.* at 58:5-12.) Mr. Lascell has no experience with passive real estate investments and no knowledge regarding passive real estate investing. (*Id.* at 57:19-24.)

45. Reorganized Hopeman will have no management discretion to affect the actual business operations of the proposed real estate investment. (*Id.* at 197.) Reorganized Hopeman will have no role in assessing tenants or determining rental rates at the property. (*Id.*) Reorganized Hopeman's investment is limited to a five-year time frame, as the property owner anticipates a sale of the property in 2030. (*Id.* at 196-197; Plan Proponents Ex. 6 at 18.)

46. Between the $150,000 funding that the Asbestos Trust will provide to Reorganized Hopeman on the Plan effective date and the $350,000 passive real estate investment, Reorganized Hopeman is projected to earn a total of $149,000 over five years. (Plan Proponents Ex. 9; (Aug. 25, 2025 Hrg. Tr. at 203.) Reorganized Hopeman's projected five-year cumulative cash flow is smaller than the typical value of a single mesothelioma claim against Hopeman. (Aug. 25, 2025

Hrg. Tr. at 203.)

47. The projections for Reorganized Hopeman reflect an expected 2028 refinancing of the property in which Reorganized Hopeman is investing, and if that refinancing does not occur, then Reorganized Hopeman's net cash flow would be reduced by an amount between $80,000 and $90,000 dollars. (*Id*. at 204.) The Committee's financial consultant, Mr. Tully of FTI, testified that if Reorganized Hopeman's cash flow is materially lower than the projections because the refinancing does not take place, or because Reorganized Hopeman's expenses are higher than projected, and Reorganized Hopeman spends its initial $150,000 capitalization from the Asbestos Trust, then the Asbestos Trust would need to provide Reorganized Hopeman with funding. (*Id.* at 207.)

48. At the Confirmation Hearing, Mr. Van Epps initially testified that Hopeman had "a billion dollars" in insurance coverage for asbestos claims that will be asserted against Reorganized Hopeman (or directly against Non-Settling Asbestos Insurers) and paid by Non-Settling Insurers. (Aug. 25, 2025 Hrg. Tr. 145:4.) However, because "a lot of those limits have been paid, a lot are insolvent," Mr. Van Epps ultimately explained that the insurance that could realistically be accessed is "north of 100 million dollars. . . But it's not – the billion I said is the entire program." (*Id*. at 168:6-18.)

49. Mr. Van Epps further testified that just because Hopeman has available policy limits all the way up one of the "stacks" or "towers" of coverage on its coverage map, it does not mean that Hopeman can access all of those policies. (*Id.* at 151:24-152:2.)

50. On April 29, 2025, coincident with the initial filing of the Plan, Plan Proponents applied for the Court to appoint Marla Rossoff Eskin, Esq. as Future Claims Representative ("FCR"). (Dkt. No. 688.) Over the objection of the Chubb Insurers (Dkt. No. 717), on May 13,

2025, the Court appointed Ms. Eskin as FCR.

51. Despite her appointment and obligation to represent the interests of potential future asbestos claimants, the FCR did not testify at the Hearing. Accordingly, the Court has no evidence from the FCR regarding the Plan or her efforts (if any) to confirm that the Plan deals fairly and equitably as between present asbestos claimants and potential future claimants, or any of the other issues relevant under § 524(g).[4]

VII. FINDINGS REGARDING § 1123(a)(4)

52. The Plan classifies all "Channeled Asbestos Claims" as Class 4 claimants. (Dkt. No. 1141, at Art. 4.4.) The definition of "Channeled Asbestos Claims" includes "collectively, the Asbestos Claims and Demands." (*Id*. at Art. 1.37.) "Asbestos Claim" is, in turn, defined as an "Asbestos Personal Injury Claim or an Asbestos Indirect Claim" and "Demand" is defined to mean "a demand, as defined in 524(g)(5) of the Bankruptcy Code, against Hopeman." (*Id*. at Art. 1.50.)

53. Within Class 4, the Plan differentiates between an "Insured Asbestos Claim" and an "Uninsured Asbestos Claim," with the former being "a Channeled Asbestos Claim that is not an Uninsured Asbestos Claim," and the latter being "a Channeled Asbestos Claim (a) with a date of first exposure to asbestos or asbestos-containing products or things falling after January 1, 1985 or (b) for which no coverage under any Asbestos Insurance Policy is available due to settlement (including an Asbestos Insurance Settlement), exhaustion, or final and non-appealable ruling on a coverage issue or defense." (*Id*. at Arts. 1.77 (Insured Asbestos Claim) and 1.114 (Uninsured Asbestos Claim); *see also* Aug. 25, 2025 Hrg. Tr. 105 (Mr. Lascell confirming that the Plan "distinguishes between uninsured asbestos claims and insured asbestos claims").)

[4] By and through her attorneys, the FCR filed a brief joining in the Plan Proponents' Memorandum of Law in support of final approval of the Disclosure Statement and Confirmation of the Plan (Dkt. No. 1114). Her attorneys also spoke in support of the Plan at the Confirmation Hearing. These submissions, however, are not evidence on which the Court can rely when making its independent determinations under 11 U.S.C. § 524(g).

54. Finally, and still within Class 4, among Insured Asbestos Claims, the Plan sets out two sub-classes: (i) claims for which there is right to "pursue direct actions" against insurance (hereinafter "Direct Action Insured Claims"), and (ii) claims for which the claimant must first pursue "an action against Reorganized Hopeman" and may pursue insurance only "to the extent they have obtained a judgment against Reorganized Hopeman" (hereinafter a "Non-Direct Action Insured Claim"). (Dkt. No. 1141, at Introduction.)

55. The process for liquidating and paying Direct Action Insured Claims, Non-Direct Action Insured Claims, and Uninsured Asbestos Claims varies. For Direct Action Insured Claims and Non-Direct Action Insured Claims, the "sole and exclusive source of payment or recovery . . . shall be the Asbestos Insurance Coverage applicable to such Channeled Asbestos Claim." (Plan Proponents Ex. 2, at § 5.2(b).) In contrast, holders of Uninsured Asbestos Claims are limited to a recovery directly from the Asbestos Trust and its liquid assets. (Aug. 25, 2025 Hrg. Tr. at 108 (Mr. Lascell testifying that: "All the claims would go to the trust. The insured asbestos claims would then be asserted against the reorganized Hopeman. And if you had [an] uninsured asbestos claim, it would come back to the trust."); *see also* Plan Proponents Ex. 2, at Section 2.2 ("Uninsured Asbestos Claims, if any, shall be processed based on their place in the FIFO Processing Queue, as defined in Section 5.1(a)(1) below.")

56. Another variance within the treatment of Class 4 claims stems from the proposed liquidation and payment process. Holders of Non-Direct Action Claims are required to follow a two-step process: first the claimant must liquidate their claims in the tort system—*i.e.*, a state or federal court in one of the many jurisdictions in which Hopeman had operations—against Reorganized Hopeman; then, if that claimant obtains a judgment, they may pursue a judgment enforcement action against "Non-Settling Insurer(s) with coverage applicable to their Non-Direct

Action Claim. (Plan Proponents Ex. 2, at Section 5.2(a)(1); Aug. 25, 2025 Hrg. Tr. at 104 (Mr. Lascell confirming the two-step process).)

57. In contrast, holders of Direct Action Claims can skip the first step and, instead, pursue a claim directly against "any Non-Settling Asbestos Insurer for Wayne Manufacturing Corporation in the tort system to obtain the benefit of the asbestos insurance coverage."[1] (Plan Proponents Ex. 2, at Section 5.2(a)(1); Aug. 25, 2025 Hrg. Tr. at 109 (Mr. Lascell confirming what "a direct action" is).) Contrary to both of those processes, Uninsured Asbestos Claims are liquidated and paid through a Trust-controlled process by which "[i]f the Asbestos Trust is satisfied that the claimant has presented a claim that would be cognizable and valid in the applicable tort system and would have been compensable by the Debtor Pre-Petition, the Asbestos Trust shall offer the claimant a settlement amount to be determined based on the values paid by the Debtor with respect to substantially similar claims in the tort system, which values shall be determined by reference to the Debtor's tort system history, including the valuation data contained in such history." (Plan Proponents Ex. 2 at Section 2.2)

58. The potential timing and amount of recoveries across Direct Action Claims, Non-Direct Action Claims, and Uninsured Asbestos Claims—all of which comprise Class 4 claims—also differs widely. Holders of Direct Action Claims can recover 100% of the value of their claim quickly, without having to sue reorganized Hopeman or incur costs to do so. (Plan Proponents Ex. 2, at Section 5.2(a)(1).) Holders of Non-Direct Action Claims can also recover 100% of the value of their claim, but because of the two-step process that requires an initial judgment against reorganized Hopeman, any recovery will necessarily be delayed. (Aug. 25, 2025 Hrg. Tr. at 104 (Mr. Lascell confirming the two-step process.) Claimants who win the "race to the courthouse" and receive payments first will diminish the limited amounts of insurance remaining to pay

subsequent claimants (*id*. at 103:7-9; 103:20-23), but the Plan provides no mechanism to ensure that all holders of Insured Asbestos Claims will be treated similarly.

59. In contrast, holders of Uninsured Asbestos Claims will not receive 100% of the value of their claims. That is because any "settlement amount" offered by the Trust for any Uninsured Asbestos Claim is further reduced by application of a "Payment Percentage," the amount of which has yet to be established. (*Id*. at §§ 2.3 ("Establishment and Application of the Payment Percentage"), 4 ("Payment Percentage") and 5.1(b) ("All Uninsured Asbestos Claims . . . are subject to the applicable Payment Percentage").) In other words, as Mr. Lascell testified, if an Uninsured Asbestos Claim is resolved through the Trust for $1,000 and the "Payment Percentage" is set at 10%, the claimant holding the Uninsured Asbestos Claim would only receive $100. (Aug. 25, 2025 Hrg. Tr. at 111:3-24.)

60. During his cross-examination at the Confirmation Hearing, Mr. Tully, of FTI, also testified to the variance in treatment as to Class 4 Claims and the fact that the Plan does not adopt a uniform scheme for liquidation and payment of such claims, such as a matrix, structured payments, periodic payments, supplemental payments, or pro rata distribution:

Q. In fact, of the ten or so asbestos bankruptcies on which you've worked, they are mostly like that. Where there's a matrix that trust pays claims according to a set out matrix that's adopted as part of the plan?
A. Yeah. The ones that were confirmed. Yes.
Q. Right. Here, other than for uninsured claims, the trust will not operate through a matrix type mechanism, right?
A. That's right.
Q. So for insured asbestos claims, here, there is no matrix, right?
A. No.
Q. There is no structured payment, right?
A. No.
Q. There is no periodic payment, right?
A. No.
Q. There is no supplemental payment, right?

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A. No.
Q. There is no pro-rata distribution, right?
A. No, I mean --
Q. Right.
A. -- there was testimony before just to clarify that that could exist.
Q. But --
A. It could be put in place in the future. It's not prohibited, but it doesn't -- that's not how the T-D-P works right now.
Q. That's all I'm saying.
A. Okay.
Q. That's not how the T-D-P works right now. No matrices, no structured payments. I think we're on the same page, right?
A. Yes.
Q. Instead, as the T-D-P is drafted right now, insured asbestos claims are liquidated through the tort system, right?
A. Correct.

(Aug. 25, 2025 Hrg. Tr. 218:10 – 219:18.)

VIII. FINDINGS REGARDING § 1129(a)(3)

61. The Plan Proponents presented no evidence of good faith during the confirmation

hearing. Mr. Lascell offered conclusory testimony that he believes the Plan was proposed in good faith and at arms' length through the Mediation, and that it was not the product of collusion. (Aug. 25, 2025 Hrg. Tr. at 29:23-30:2, 22-25, 31:1.) Mr. Van Epps testified that he was also present at mediation, and that the settlement and deal embodied in the Plan was reached "as part of the mediation process." (*Id*. at 138:24-25.)

IX. FINDINGS REGARDING § 1129(a)(5)

62. The Committee selected Matthew Richardson to serve as the sole director of Reorganized Hopeman. Mr. Richardson also was selected by the Committee to serve as the Litigation Trustee of the Asbestos Trust. (*Id*. 59:17-61:19.)

63. Mr. Branham, the Committee's 30(b)(6) designee, declined to disclose any facts concerning why Mr. Richardson was selected to serve ***both*** as the Litigation Trustee of the Asbestos Trust and Director of Reorganized Hopeman. (LM Ex. 13 at 84:10-86:12.) Mr. Branham also refused to disclose who the Committee interviewed to serve as Director of Reorganized Hopeman, other than Mr. Richardson. (*Id.* at 86:13-87:4.) Mr. Branham, likewise refused, to disclose who the Committee interviewed to serve as the Litigation Trustee, or how many people the Committee interviewed. (*Id.* at 88:16-89:15.)

64. Mr. Branham, who represents a current member of the Committee and who also will serve on the Asbestos Trust's Trust Advisory Committee, is party to a fee-sharing arrangement with Mr. Richardson in a different asbestos-related matter. (*Id.* at 84:10-25.)

X. FINDINGS REGARDING §1129(a)(7)

65. Mr. Lascell testified that he believed that the value of the insurance under the Plan "will be higher" compared to a hypothetical Chapter 7 liquidation because the insurance proceeds would be "available without a bar date" and "the claimants will have a longer period of time to assert their claims against…the insurance" and "that's where the – the insurance derives value is

from settling claims." (Aug. 25, 2025 Hrg. Tr.at 36-37.) Mr. Van Epps likewise testified that the longer that asbestos claims can be filed against Hopeman, the more opportunity there will be to "access coverage." (*Id*. at 167-68.)

66. The Plan Proponents included as Exhibit B to the Disclosure Statement a "LIQUIDATION ANALYSIS" (the "Liquidation Analysis"). (Plan Proponents' Exhibit 11; Dkt. No. 767, at 212-17.) The Plan Proponents summarized FTI's Liquidation Analysis with the following table:

($ in Thousands)

Assets[1]	**Chapter 11**	**Chapter 7**
Cash[2]	$ 801.3	$ 801.3
Accounts Receivable, net[3]	117.9	117.9
Ongoing Business Investment[4]	350.0	-
Resolute Settlement Proceeds[5]	18,395.0	18,395.0
Other Asbestos Insurance[6]	80,000.0 - 120,000.0	31,500.0 - 40,000.0
Total Assets	**$ 99,664.2 - 139,664.2**	**$ 50,814.2 - 59,314.2**
Secured Claims and Administrative Expenses		
Professional Fee Administrative Expense Claims[7]	$ 12,500.0	$ 12,500.0
Asbestos Trust Start-Up Costs	250.0	-
Ongoing Business Investment[4]	350.0	-
Priority Tax Claims[8]	35.0	35.0
Priority Non-Tax Claims[9]	5.4	5.4
Secured Claims	-	-
United States Trustee Fees[10]	90.0	90.0
Chapter 7 Trustee Fees[11]	-	890.5 - 1,145.7
Chapter 7 Trustee's Professional Fees and Expenses[12]	-	8,500.0
Total Secured Claims and Administrative Expenses	**$ 13,230.4**	**$ 22,020.9 - 22,276.1**
Assets Potentially Available for Claimants	**$ 86,433.8 - 126,433.8**	**$ 28,793.3 - 37,038.1**
Unsecured Claims		
General Unsecured Claims[13]	$ 121.7	$ 121.7
Asbestos Claims[14]	Unknown	Unknown
Total Unsecured Claims	**Unknown**	**Unknown**

67. The Liquidation Analysis purports to compare, on the one hand, (A) an estimate of the assets available to pay asbestos claims under the Plan and the attendant costs of the Plan, to,

on the other hand, (B) an estimate of the assets available to pay asbestos claims under a hypothetical chapter 7 liquidation of Debtor, and the attendant costs of such a liquidation. (*Id.*)

68. The most significant asset assumption in the Liquidation Analysis relates to the "Other Asbestos Insurance"; under the Chapter 11 scenario it is assumed to be $80 million - $120 million, but under the Chapter 7 scenario it is assumed to be $31.5 million - $40 million. (*Id.*) The most significant expense assumption relates to the Chapter 7 Trustee fees and Chapter 7 Trustee's Professional Fees and Expenses, which together amount to just under $10 million. (*Id.*) The Liquidation Analysis contains no analog in the Chapter 11 scenario of the Professional Fees and Expenses for which the Asbestos Trust will be responsible, including the expenses of the trustees, the expenses of the trustees' professionals, the expenses of the TAC's professionals, the expenses of the FCR, and the expenses of the FCR's professionals. (*Id.*; Plan Proponents' Ex. 1 at Sections 4.5, 4.8, 5.5, 6.4, and 6.5; Aug. 25, 2025 Hrg. Tr. at 227 – 228.)

69. There is no estimate of the dollar amount of "Asbestos Claims" liabilities under either scenario, as the Liquidation Analysis states "UNKNOWN" for that figure in each scenario. It is undisputed that Plan Proponents previously prepared (at significant cost to the Debtor's estate) estimates of current and future asbestos claims. Mr. Tully testified that FTI billed the estate "over 700,000 dollars for the asbestos claims estimation work" that was done by his firm in this case, and acknowledged that Debtor and the Committee retained asbestos claims estimation experts who submitted reports during the pendency of this bankruptcy case. (Aug. 25, 2025 Hrg. Tr. at 192, 234.)

70. As presented, the Liquidation Analysis concludes that there are more assets available for asbestos claimants under the proposed Plan scenario than in a hypothetical Chapter 7 liquidation scenario. (Plan Proponents' Ex. 11, Dkt. No. 767, at 212-17.)

71. The Committee's financial advisor, Mr. Tully of FTI, prepared the Liquidation Analysis. (Aug. 25, 2025 Hrg. Tr. at 172:12 – 17.) Mr. Tully initially testified that he prepared the liquidation analysis for one other chapter 11 asbestos bankruptcy plan that was confirmed. (Aug. 25, 2025 Hrg. Tr. at 208.) That testimony turned out to be false, as Mr. Tully later testified that he had never prepared a liquidation analysis in support of a chapter 11 plan that was later confirmed. (*Id*. at 214:17 – 20.) Mr. Tully offered no testimony that he has any experience with Chapter 7 bankruptcy cases.

72. Mr. Tully initially testified during the Confirmation Hearing that the Plan is better than a hypothetical Chapter 7 "for two reasons: the assets are higher, mainly the insurance asset, and the expenses are lower." (*Id*. at 183.) Tracking the testimony of Mr. Lascell and Mr. Van Epps, Mr. Tully explained that, in his view, the asbestos insurance assets were "more valuable" under the Plan because it provided an "an enduring structure" that would ultimately pay more claimants over a longer period of time (he estimated "thirty, forty years") which is "not available under the Chapter 7 scenario." (*Id*.)

73. On cross-examination, Mr. Tully adopted a different approach, testifying that the Liquidation Analysis assumes ***the same*** current and future claimants under both the Plan scenario and the Chapter 7 scenario: "the claims are the claims." (*Id*. at 232:8 – 18.) In stark contrast to his testimony on direct, Mr. Tully explained that "We didn't illustrate the claims levels on the bottom [of the Liquidation Analysis] for the reason you said before, and I agreed with, which was they're going to be the same under either scenario." (*Id*. at 234:15-17.)

CONCLUSIONS OF LAW

I. CONCLUSIONS OF LAW REGARDING PROPOSED ASSUMPTION AND TRANSFER OF CHUBB INSURERS' POLICIES AND ASBESTOS CIP AGREEMENT

74. As set forth in the Court's Findings above, Hopeman proposes to assume the Chubb

Insurers' Policies and the 2009 Asbestos CIP Agreement and transfer its rights in those contracts to the Asbestos Trust. Dkt. No. 1141, Plan § 8.3(b). At the same time, Hopeman is repudiating its obligations under those contracts. Mr. Van Epps testified: "Well, the fact that Hopeman has no money and is going into bankruptcy is going to impact Chubb and all the other insurers' rights and obligations . . . . We [Hopeman] can't honor our piece of that anymore." (Aug. 25, 2025 Hrg. Tr. at 161:7-19.) The undisputed evidence reflects that, following the assumption and transfer of the Chubb Insurers' policies and the 2009 Asbestos CIP Agreement, Reorganized Hopeman will not honor the obligations it had pre-petition under those contracts to defend Asbestos Claims; make claim payments before seeking reimbursement from the Chubb Insurers' reimbursement-only contracts; or pay Hopeman's shares of defense costs and claim payments on behalf of now-settled policies or policies issued by insolvent insurers. *See* Findings ¶¶ 11-22, above.

75. To the extent the Plan Proponents wish to assume the Chubb Insurers' contracts, they must be assumed *cum onere*. *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 531-32 (1984) ("Should the debtor-in-possession elect to assume the executory contract, however, it assumes the contract *cum onere").* Hopeman "may not blow hot and cold. . . If he accepts the contract he accepts it cum onere. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other." *In re Italian Cook Oil Corp.*, 190 F.2d 994, 997 (3d Cir. 1951). And "after assumption, the debtor must comply with all the terms of the contract going forward." *In re Conseco, Inc.*, 330 B.R. 673, 687 (Bankr. N.D. Ill. 2005). The Court cannot confirm a Plan that proposes to "assume" the Chubb Insurers' Policies and 2009 Settlement Agreement, while the Plan and evidence also make clear that Reorganized Hopeman will not comply with "all the terms" of those contracts going forward.

76. Hopeman is not assuming the Chubb Insurers' Policies and the 2009 Asbestos CIP

Agreement *cum onere*, so its proposed assignment of rights in those contracts to the Asbestos Trust is improper. That principle applies equally to the transfer of rights and obligations under a non-executory contract. *See In re Stewart Foods*, 64 F.3d 141, 145 (4th Cir. 1995) ("Because § 365 applies only to executory contracts, a debtor-in-possession does not have the option of rejecting or assuming non-executory contracts and remains bound by the debtor's obligations under those contracts after the bankruptcy filing.").

77. Further, § 8.3 of the Plan purports to transfer rights to coverage under Century policy nos. XCP-143410, XCP-143696, and XCP144541 that Hopeman "fully release[d] and forever discharge[d]" under the 2009 Asbestos CIP Agreements "with respect to any and all coverage incepting above $50 million of underlying annual coverage". (Certain Insurers' Exs. 10, 13, 14; Dkt. No. 1176, C. Lascell Dep. Designation at 129:11-14.) This purported transfer is legally unenforceable because, having been fully released pre-petition, such rights do not exist. Such asserted rights could not have become part of Hopeman's estate on the petition date because Hopeman did not own them; thus, they are not property of the estate that could be transferred. *See* 11 U.S.C. § 1123(a)(5)(B) (providing that a plan may transfer property ***of the estate*** to one or more entities) (emphasis supplied); *Mission Prod. Holdings v. Tempnology, LLC*, 587 U.S. 370, 381 (2019) (because 11 U.S.C. § 541(a)(1) defines the bankruptcy estate to include the "interests of the debtor in property", the estate cannot possess anything more than the debtor itself did outside bankruptcy).

78. The Plan Proponents assert that the *cum onere* principle is inapplicable because "section 1123(a)(5) of the Bankruptcy Code controls here" and preempts any restrictions on assignment of the Chubb Insurers' Policies and the 2009 Asbestos CIP Agreement. (Dkt. No. 1076, Confirmation Br.¶ 273.) The Court disagrees. The issue before the Court is not whether the

proposed assignment of rights is permissible, but whether Hopeman can assign the rights in the Chubb Insurers' policies and the 2009 Asbestos CIP Agreement that it proposes to assign without the corresponding obligations. As explained above, Hopeman cannot alter its contracts that way. The Plan Proponents' reliance on § 1123(a)(5) would read § 365 out of the Bankruptcy Code because every debtor seeking to assume an executory contract could avoid the burdens of such a contract simply by waiting to assume the contract part of its Chapter 11 plan. Section 1123(a)(5) cannot be construed to extend that far.

79. For the foregoing reasons, this Court cannot approve Hopeman's proposed assumption of the Chubb Insurers' Policies and the 2009 Asbestos CIP Agreement or the Plan's transfer of rights related to the Chubb Insurers' Policies and the 2009 CIP Agreement from Hopeman to the Asbestos Trust. The Plan cannot be confirmed unless it is modified to (a) expressly state that Hopeman has no rights to the previously-released coverage under the Century Policies that constitute Asbestos Insurance Rights that could be transferred to the Asbestos Trust, and (b) expressly provide that Hopeman is assuming all of its obligations under the Chubb Insurers' Policies and the 2009 CIP Agreement and that the Asbestos Trust and Reorganized Hopeman will perform all of Hopeman's obligations rights under those contracts.

II. THE PLAN IS NOT "INSURANCE NEUTRAL"

80. The Plan Proponents argue that the Plan is "insurance neutral," yet at the same time argue that the Plan does not "impermissibly" impair the Chubb Insurers' rights. (Dkt. No. 1076 at 125-127, 134-43.) Both cannot be true. If the Plan impairs the Chubb Insurers' rights, whether "permissible" or not, then it is not neutral.

81. Judge Goldblatt recently addressed the concept of "neutrality" as to insurers in the *AIO* (Avon) bankruptcy case, explaining that "[t]o the extent [policy] terms and conditions were enforceable under non-bankruptcy law the day before the bankruptcy, they remain enforceable by

the insurers against the trust." *In re: AIO US, INC, et al.*, No. 24-11836 (CTG), 2025 WL 2426380 (Bankr. D. Del. Aug. 21, 2025). Judge Goldblatt thus ruled that, "[t]o the extent any of the plan language may be read to suggest that the insurance 'rights' may be transferred without the corresponding terms and conditions, the plan and confirmation order must be revised to reflect the fact that the 'rights' remain subject to those terms and conditions." *Id.* The Court concludes that this rule should apply equally here.

82. As described in Section I of these Conclusions of Law, the Plan purports to assign Hopeman's rights in the Chubb Insurers' Policies and the 2009 Asbestos CIP Agreement to the Asbestos Trust without also transferring all of Hopeman's obligations under those contracts to the Asbestos Trust or Reorganized Hopeman. This alone renders the plan non-confirmable because it is not "neutral."

83. The Plan further impairs the Chubb Insurers' rights and increases their burden by placing improper impediments to honoring Hopeman's duty of cooperation. The Trust Agreement and Trust Distribution Procedures ("TDP") expressly condition the Asbestos Trust's ability to "disclose information, documents, or other materials reasonably necessary. . . to comply with an applicable obligation under an insurance policy or settlement agreement within the Asbestos Insurance Rights" on first obtaining the TAC and FCR's approval of such disclosure. (Dkt. No. 1143 at 173-74, TDP § 6.5.) The Trust Agreement gives members of those bodies full access to the privileged documents and information that the Asbestos Trust obtains from Reorganized Hopeman. The Trust Agreement further provides that the TAC, the FCR, and the TAC/FCR Professionals "shall also have complete access to ***all information*** generated by [the Asbestos Trust's officers, employees, agents, and the Trust Professionals employed by the Asbestos Trust] ***or otherwise available to the Asbestos Trust or the Trustees*** . . . ." (Dkt. No. 1143 at 37, 42,

Second Plan Suppl., Ex. A, Trust Agreement §§ 5.5(a), 6.4(a) (emphasis added).)

84. No evidence was adduced at the confirmation hearing as to why the TAC, consisting of attorneys who are suing Hopeman, or the FCR, whose constituency will do so in the future, or any of their respective professionals have any need to review Hopeman's potentially privileged and/or work product-protected documents pertaining to Asbestos Claims and Hopeman's defenses. Such disclosure not only would effectuate an irreversible waiver of Hopeman's privileges, that disclosure would increase Hopeman's – and, in turn, its insurers – potential liabilities for Asbestos Claims.

85. According to the Plan Proponents, the Trust Agreement provision stating that information provided by the Asbestos Trust or its professionals to the TAC, FCR and/or their respective professionals "shall not constitute a waiver of any applicable privilege." (Dkt. No. 1076 ¶ 168 (citing to what is now in Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement §§ 5.5(a) & 6.4(a)).)

86. The Court finds, and concludes, that the mere prospective statement that a privilege will not be waived is an insufficient safeguard to prevent the use of privileged information, communications, and documents by parties and claimants prosecuting claims against Reorganized Hopeman and the Non-Settling Asbestos Insurers. By law, privilege is waived by an affirmative act, or omission, and the Plan's language is incapable of altering the legal effect of a party's acts or omissions. The Plan's language would have no bearing on the waiver analysis, which, instead, focuses on the relevant facts concerning the disclosure, including but not limited to whether it was (1) inadvertent; (2) whether reasonable steps were taken to prevent disclosure; and (3) whether the holder promptly sought to rectify the error. *See*, *e.g.*, Fed. R. Evid. 502(b).

87. The Plan unlawfully purports to change the terms of those contracts, increase the

Chubb Insurers' liabilities, and impairs the Chubb Insurers' contractual rights. As a result, the Court concludes that the Plan cannot be confirmed because it is not "neutral" to the Chubb Insurers' rights under the Chubb Insurers' Policies and the 2019 Asbestos CIP Agreement.

III. CONCLUSIONS OF LAW REGARDING THE PLAN'S FAILURE TO SATISFY § 524(g) OF THE BANKRUPTCY CODE

A. Hopeman Is Not Eligible For § 524(g) Relief Because It Is Not Eligible For A Discharge

88. If a debtor does not qualify for a discharge of its debts under § 1141, then it is not entitled to discharge injunction under § 524(a) nor a supplemental injunction under § 524(g). *See* 11 U.S.C. §524(g)(1)(A) (court may enter "an injunction in accordance with this subsection to ***supplement*** the injunctive effect of a discharge under this section") (emphasis added); *see also In re Flintkote Co.*, 486 B.R. 99, 129 (Bankr. D. Del. 2012) ("[A] bankruptcy court may issue a channeling injunction 'to supplement the injunctive effect of a discharge under this section.' It follows then that there must be a discharge for the channeling injunction to 'supplement.'"), *aff'd*, 526 B.R. 515 (D. Del. 2014).

89. Section 1141(d)(3)(A)-(B) provides that plan confirmation will not discharge a debtor if "the plan provides for the liquidation of all or substantially all of the property of the estate; [and] the debtor does not engage in business after consummation of the plan." 11 U.S.C. § 1141(d)(3)(A)-(B). The Fourth Circuit has held that § 1141(d)(3) requires the "*continuation* of *a pre-petition business*" following confirmation. *In re Grausz*, 63 F. App'x 647, 650 (4th Cir. 2003) (emphasis in original). The Court concludes, based on the evidence before it, that Hopeman is not entitled to a discharge.

90. Hopeman had no business operations on the Petition Date or for decades preceding it, and Hopeman has none today. (Dkt. No. 8, Lascell Decl., ¶19; Aug. 25, 2025 Hrg. Tr. at 147:25-148:4 (Mr. Van Epps); *id.* at 27:1-4 (Mr. Lascell's testimony with respect to 2016 and forward).)

Hopeman sold all of its operating assets in 2003, and it has no employees. (Dkt. No. 8, Lascell Decl., ¶18; Dkt. No. 57 at 12.) Hopeman's only remaining assets are cash and its available liability coverage, neither of which can be reorganized. (Aug. 25, 2025 Hrg. Tr. at 15:12 – 16:7.) As set forth above, a debtor's insurance contracts cannot be altered or changed because of a Chapter 11 filing. Hopeman's insurance policy proceeds are available only to pay covered third-party claims, such as the Asbestos Claims, such that they can only be liquidated. Pursuant to the Plan, Hopeman's insurance policies will be transferred to the Asbestos Trust precisely so they can be liquidated. (Dkt. No. 1141, at Introduction.)

91. The Court rejects the Plan Proponents' suggestion that Hopeman is reorganizing because it is continuing its corporate existence. (Aug. 25, 2025 Hrg. Tr. at 35:7 – 13 (Mr. Lascell testifying: "What we were doing when we reorganize is, is we're continuing our – our corporate existence. And by – by doing so, we can keep our insurance available, our most valuable asset, and that can be available indefinitely.").) The mere fact that a company exists and remains in good standing as a corporation is not relevant to whether there is an "otherwise viable business facing financial distress" that can be reorganized in Chapter 11. *In re LTL Mgmt.*, LLC, 64 F.4th 84, 101 (3d Cir. 2023).

92. The Plan Proponents' suggestion that Hopeman was engaged in a pre-petition business by managing its asbestos claims and insurance also must be rejected. (Aug. 25, 2025 Hrg. Tr. at 16:16 – 17:12.) It is contrary to the evidence and pleadings submitted by Hopeman from the outset of this case stating unequivocally that Hopeman had "no business operations" prepetition. (Dkt. No. 8, Lascell Decl., ¶¶18 – 19.) Further, Hopeman earned no income from those "management" activities, as the evidence reflects that Hopeman paid its professionals to do them. (Aug. 25, 2025 Hrg. Tr. at 98:16 – 19.) Those activities do not rise to the level of business

activity necessary for a discharge under § 1141. *See In re W. Asbestos Co.*, 313 B.R. 832, 853 (Bankr. N.D. Cal. 2003) (holding that "[t]here would be no substance left to 11 U.S.C. § 1141(d)(3) if the level of assets and business activity retained by Western Asbestos entitled it to a discharge" where it had no business operations but had "assets (its rights under the Policies) and liabilities (the asbestos claims).").

B. Hopeman Has No Ongoing Business To Provide An "Evergreen Source of Funding" As Required By § 524(g)

93. A debtor seeking to utilize the supplemental injunctive relief set forth in § 524(g) is one that "emerg[es] from a Chapter 11 reorganization as a going-concern cleansed of asbestos liability" that "will provide the asbestos personal injury trust with an 'evergreen' source of funding to pay claims." *In re Combustion Engineering, Inc.*, 391 F.3d 190, 234 (3d Cir. 2004). Even if a Chapter 11 debtor with no business operations could somehow qualify for a discharge by buying and operating a new business post-confirmation, that is not what is proposed for Reorganized Hopeman here. Reorganized Hopeman will not own any real estate outright, nor will it operate a real estate management business. (Plan Proponents' Ex. 6; Aug. 25, 2025 Hrg. Tr. at 197:11 – 20 (Mr. Tully confirming Reorganized Hopeman will be "strictly a passive investor" with "no management discretion to affect the actual business operations of the Pines at Woodcreek").)

94. The evidence demonstrates that Reorganized Hopeman will make only a "passive" investment into a 1.7% ownership share of a real estate parcel, and that the passive investment will last only five years. (*Id.*) Such a limited, admittedly passive investment is not sufficient to satisfy the "going concern" requirement of § 524(g). *See, e.g.*, *Imperial Tobacco Canada. Ltd. v. Flintkote Company* (*In re Flintkote Company*), 486 B.R. 99, 133-34 (Bankr. D. Del. 2012) (debtor satisfied ongoing business requirement because its business operations were not "passive").

95. Section 524(g) contemplates that a reorganized debtor "continues to generate assets

to pay claims today and into the future. In essence, the reorganized company becomes the goose that lays the golden egg by remaining a viable operation and maximizing the trust's assets to pay claims." *Combustion Eng'g*, 391 F.3d at 248 n.69, *quoting* 140 Cong. Rec. S4521–01, S4523 (Apr. 20, 1994) (statement of Senator Heflin). The evidence before the Court shows that Reorganized Hopeman will be no such goose. (Plan Proponents' Ex. 9 (showing less than $150,000 projected income over five years); Aug. 25, 2025 Hrg. Tr. at 203:19 – 204:1 (Mr. Tully acknowledging $149,000 would not be enough to pay for a single mesothelioma claim for which Reorganized Hopeman would be liable).) To the contrary, the only funding obligation going between Reorganized Hopeman and the Asbestos Trust is one that requires the Asbestos Trust to provide ongoing working capital to Reorganized Hopeman. (Plan Proponents Ex. 1, § 3.2(k).) Based on this unprecedented requirement that the §524(g) trust provide ongoing funding to a reorganized debtor, rather than the reorganized debtor providing ongoing funding to the trust as statutorily mandated, the Court is compelled to conclude that the Plan does not satisfy § 524(g) and cannot be confirmed.

C. The Plan Fails To Comply With § 524(g)(2)(B)(i)(II) Because Reorganized Hopeman Is Not Obligated To Make Future Payments To the Trust

96. Under § 524(g)(2)(B)(i)(II), a channeling injunction is only proper where the asbestos trust is 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). Under the Plan, the Asbestos Trust would take ownership of the securities of Reorganized Hopeman. (Plan Proponents' Ex. 12, at Art. 8.6.) The evidence is undisputed, however, that Reorganized Hopeman does not have any obligation under the Plan to make future payments or dividends to the Trust. Nowhere in the Plan documents is any such obligation set forth or outlined. Further, Mr. Tully acknowledged in his testimony that

Reorganized Hopeman does not have an obligation to issue dividends to the Trust. (Aug. 25, 2025 Hrg. Tr. at at 205:3-17.) As discussed above, the only funding ***obligation*** in the Plan documents requires ***the Asbestos Trust*** to "make additional contributions to the Reorganized Debtor in the future as necessary "to ensure the Reorganized Debtor maintains sufficient working capital." (Plan Proponents Ex. 1, § 3.2(k).)

97. Plan Proponents argue that because the Asbestos Trust will own 100% of the shares of Reorganized Hopeman, the Trustees could direct Reorganized Hopeman to make dividend payments to the Trust. But, § 524(g)(2)(B)(i)(II) is specific: the debtor must have "the obligation . . . to make future payments, including dividends" to the Trust. 11 U.S.C. § 524(g)(2)(B)(i)(II). The Plan contains no such obligation running from Reorganized Hopeman to the Trust; therefore, the Plan does not comply with § 524(g) and cannot be confirmed.

D. The Plan Fails To Comply With § 524(g)(2)(B)(ii)(V) Because It Does Not Operate Through Mechanisms To Assure The Trust Will Value And Be In A Financial Position To Pay Present Claims And Future Demands In Substantially The Same Manner

91. The Court is required to make an independent determination 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). The Court cannot make such a finding here.

92. The evidence is undisputed that, as to "Insured Asbestos Claims," the Asbestos Trust will not "operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices . . . or comparable mechanisms." There are no such

mechanisms set forth in the Plan documents. Mr. Tully also confirmed this fact. (Aug. 25, 2025 Hrg. Tr. at at 218-19.)

93. The Plan and TDP provide that a "Payment Percentage" will be applied solely with respect to Uninsured Asbestos Claims to ensure that the Asbestos Trust will be in a position to pay current and future holders of Uninsured Asbestos Claims in substantially the same manner." (Plan Proponents' Ex. 2, at Sec. 4.2.) According to the Plan Proponents, no Uninsured Asbestos Claims currently exist. (Aug. 25, 2025 Hrg. Tr. at 137.) Assuming the Plan Proponents are correct, all of the Asbestos Claims are Insured Asbestos Claims for which the Plan contains no mechanisms to ensure that current and future claims will be valued and paid in substantially the same manner. The Plan cannot be confirmed because its lack of such mechanism violates the express requirements of § 524(g)(2)(B)(ii)(V).

E. The Plan Fails To Comply With § 524(g)(4)(B)(ii) Because There Is No Evidence That The Plan Is "Fair And Equitable" To Future Asbestos Claimants

94. Under § 524(g)(4)(B)(ii), the Court is required to make an independent determination the Plan is "fair and equitable with respect to" future demand-holders that might subsequently assert asbestos claims against the Trust. 11 U.S.C. § 524(g)(4)(B)(ii). There is no evidence that the Plan will deal fairly and equitably between those persons with "claims" (*i.e.*, pending asbestos claimant creditors) and those persons "future demands" (*i.e.*, potential future asbestos claimants who, by definition, do not hold "claims" and thus are not "creditors").[5] *See* 11 U.S.C. § 524(g)(5)(A) ("the term 'demand' means a 'demand' for payment, present or future, that ***was not a claim*** during the proceedings leading to the confirmation of a plan of reorganization. . . .") (emphasis added); 11 U.S.C. § 101(10) ("The term 'creditor' means (A) entity that has a claim

[5] For this reason, the Court also questions whether the Plan complies with § 524(g)(2)(B)(ii)(III), because the Plan does not have the "purpose to deal equitably with claims and future demands."

against the debtor that arose at the time of or before the order for relief concerning the debtor").

98. As stated above, the FCR did not testify at the Confirmation Hearing. Accordingly, the Court has no evidence from the FCR regarding the Plan or her efforts (if any) to confirm that the Plan deals fairly and equitably as between present asbestos claimants and potential future claimants.[6]

99. Plan Proponents posit that the Plan treats potential future asbestos claimants fairly and equitably because having a Trust would permit potential future asbestos claimants to file claims and seek recovery from the available insurance assets. (*See, e.g.*, (Aug. 25, 2025 Hrg. Tr. at 28:22 – 29:12.) Those future asbestos claimants, however, are only put into "the same system" as current claimants, required to liquidate their claims through the tort system and then seek recovery from available insurance. (*Id*. at 29:7-9.)

100. As explained above, there is ***no process*** in the Plan or the Trust Distribution Procedures, however, to assure that a future holder of an Insured Asbestos Claim will be treated "fairly" or "equitably" as a current holder of an Insured Asbestos Claim that could get fully-paid next year, if the Plan were confirmed. The lack of such mechanism leads the Court to conclude that the Plan cannot be "fair and equitable" to future demand holders, based on the evidence showing that Hopeman's available excess insurance policies have limits and that "[e]ach claim that gets paid under a policy reduces the amounts available that remain to pay successive claims…." (*Id* at 103:20-23.)

101. The Plan contains no process for estimating the total value of current and potential future Insured Asbestos Claims, calculating how those values compare against the limited

[6] Although the FCR's attorneys filed a brief in support of the Plan and spoke in support of the Plan at the hearing, that is mere argument. It is not evidence on which the Court can rely when making its independent determination under 11 U.S.C. § 524(g)(4)(B)(ii).

available insurance assets, or ensuring that Hopeman's limited available insurance assets can be preserved in some way to ensure that holders of future Insured Asbestos Claims will obtain recoveries substantially similar to holders of current Insured Asbestos Claims. That is neither fair nor equitable to future claimants. For example, it is undisputed that on the Petition Date there were 2,700 pending asbestos claims against Hopeman. (Aug. 25, 2025 Hrg. Tr. at 19:7 – 11.) Assuming that each pending claim is an Insured Asbestos Claim that will be pursued in the tort system and paid by Non-Settling Asbestos Insurers at an average value of $50,000, those current claims alone would require $135 million in payments, potentially wiping out all available insurance coverage as well as a significant portion of the Trust's liquid assets. Yet, the Plan contains no mechanism to preclude this "race to the courthouse" result.

102. The Plan is not "fair and equitable" to future asbestos demand holders under these circumstances. For these reasons, the Court concludes that the Plan cannot be confirmed because it does not comply with § 524(g)(4)(B)(ii).[7]

V. THE PLAN FAILS TO COMPLY WITH § 1123(a)(4) BECAUSE IT DOES NOT PROVIDE EQUAL TREATMENT FOR EACH CLAIM WITHIN CLASS 4

103. Section 1123(a)(4) requires that a plan "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." 11 U.S.C. § 1123(a)(4). The Plan documents and the evidence presented at the Confirmation Hearing demonstrate that the Plan fails to comply with § 1123(a)(4) for holders of Class 4 claims because individual claimants and future demand holders within that class will receive disparate treatment. (Dkt. No. 1141, at Arts. 1.77 (Insured Asbestos Claim) and 1.114 (Uninsured Asbestos Claim); *see also* Aug. 25, 2025 Hrg. Tr.

[7] The Court notes that the Chubb Insurers have asserted in an appeal that the Plan does not comply with § 524(g)(4)(B)(i) because the Future Claimant Representative was not appropriately appointed. Rather than address it here, the Court leave that issue in the capable hands of the District Court.

at 105 (Mr. Lascell confirming that the Plan "distinguishes between uninsured asbestos claims and insured asbestos claims").)

104. The disparate treatment of Class 4 creditors is largely undisputed. Plan Proponents assert that the different treatment of these claimants is appropriate based on the different rights of holders of Direct Action Claims, Non-Direct Action Claims, and Uninsured Asbestos Claims under state law. That is not consistent with § 1123(a)(4), which requires that "all class members' claims must be of 'equal value' through the application of the same pro rata distribution or payment percentage procedures to all claims." *In re W.R. Grace & Co*., 475 B.R. 34, 121 (D. Del. 2012), *aff'd*, 729 F.3d 311 (3d Cir. 2013).

105. The Plan Proponents undoubtedly could have structured the Plan to be compliant with §1123(a)(4) by establishing a mechanism to ensure that holders of Class 4 claims have the opportunity to receive "equal value" for his or her claim. Those types of procedures—structured, periodic, or supplemental payments, pro rata distributions, or use of matrices—are specifically set forth in § 524(g)(2)(B)(ii)(V). Yet, the Plan does not adopt any of them. Instead, for Insured Asbestos Claims, the Plan adopts the very same process – liquidation through the tort system with recoveries from available insurance – that existed pre-petition. (*See* Plan Proponents Ex. 2, at § 5.2(a)(1).) Only Uninsured Asbestos Claims will receive payments directly from the Trust, subject to a "Payment Percentage." (*Id*. at §§ 2.2, 5.1(b).)

106. Finally, it is impossible for the Court to determine if "the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). The Master Ballots transmitted in this case did not distinguish among Uninsured Asbestos Claims or the two types of Insured Asbestos Claims, so there is no way to know (i) which Asbestos Claimants fall into each sub-group within Class 4, (ii) the alleged nature and value of

their claims, or (iii) whether any holder of a particular Asbestos Claim agreed to a less favorable treatment of his or her claim. (Dkt. No. 782, at 47-62.) Further, the Court cannot make any such finding with respect to future demand-holders within Class 4. No "holder of a particular" demand currently exists, so he or she could not have agreed to less favorable treatment of their particular claim or interest. And, the Court has no evidence before it that the FCR, as their fiduciary, believed such treatment was in the future demand holders' best interests.

107. Based on the evidence before the Court as it relates to Class 4, the Plan violates the § 1123(a)(4) requirement that a plan "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." Accordingly, the Plan cannot be confirmed.

VI. CONCLUSIONS OF LAW REGARDING THE PLANS FAILURE TO SATISFY § 1129(a)(3)

108. The Plan Proponents failed to offer evidence sufficient to satisfy their burden of proving that the Plan was negotiated and proposed in good faith.

109. The evidence presented by the Plan Proponents in support of their position that the Plan was proposed in good faith is that the Plan is the result of a judicial mediation by Judge Huennekens. (Aug. 25, 2025 Hrg. Tr. at 29:23-30:2, 22-25, 31:2 – 11; 138:24:25.) There is no evidence that Judge Huennekens was privy to all of the communications among the Plan Proponents leading to the 524(g) Settlement that purports to be foundation of the Plan. That was not the Mediator's charge.

110. Further, the Court's Mediation Order precluded Mediation-related communications from being used for any purpose in this Chapter 11 case. (Dkt. No. 443.) The evidence before the Court reflects that mediation-related documents and communications were produced by Debtor as part of plan-related discovery but then clawed back. (Chubb Ex. 8.) The Insurers honored the

Plan Proponents' request.

111. The Court will not now entertain the Plan Proponents' attempt to rely on the Mediation as a sword to prove that the Plan was proposed in good faith, while shielding from the Chubb Insurers and other objecting parties all evidence of communications that occurred during the mediation. *See, e.g.*, *Bradfield v. Mid-Continent Cas. Co.*, 15 F. Supp. 3d. 1253, 1257 (M.D. Fla. 2014) (mediation privilege cannot be used as a "sword and a shield" to prevent discovery into, and use of, communications that have been offered to support a legal claim); *Galaxy Computer Servs. Inc. v. Baker*, 325 B.R. 544 (E.D. Va. 2005) ("The weight of authority indicates that to permit Mouer to testify to issues which she refused to testify to during her deposition based on privilege would allow the Defendants to use the attorney-client privilege as both a shield and a sword. Thus, Mouer may only testify at trial within the scope of her deposition.").

112. The same reasoning applies here. The Court will not rely on Plan Proponents' scant evidence that the Plan was proposed in good faith because it is the ultimate product of the 524(g) Settlement agreed to in the Mediation. The Court has no evidence before it sufficient to carry the Plan Proponents' burden that the Plan was proposed in good faith. Consequently, the Court concludes that the Plan cannot be confirmed because it does not satisfy § 1129(a)(3) of the Bankruptcy Code.

VI. THE PLAN DOES NOT COMPLY WITH §§ 1129(a)(3) AND 1129(a)(5)

113. The Plan Proponents failed to offer evidence sufficient to prove that the proposed governance structure of Reorganized Hopeman is (i) consistent with public policy and (ii) devoid of actual and potential conflicts of interest.

114. The Chubb Insurers objected to the Plan because Reorganized Hopeman's sole director and officer, charged with performing Hopeman's duties of cooperation to the Non-Settling

Asbestos Insurers intended to minimize Hopeman's liabilities, will be the same individual serving as the Asbestos Trust's Litigation Trustee.

115. It is undisputed that the Litigation Trustee's sole compensation is 33 1/3% of amounts recovered from litigating with Non-Settling Asbestos Insurers on behalf of Insured Asbestos Claimants. This creates an inherent conflict of interest because the Litigation Trustee, whose fiduciary obligation is owed to holders of Channeled Asbestos Claims, maximizes his compensation by maximizing the amount of Reorganized Hopeman's liability for those claims. Nor do they dispute that the Litigation Trustee's fiduciary obligation to the Trust and its beneficiaries means that he will have the obligation to maximize the Asbestos Trust's assets and recoveries, which, in the context of this Plan means that he must seek to increase the amount of recoveries available from Non-Settling Insurers by maximizing the amount of Reorganized Hopeman's liabilities.

116. Instead, the Plan Proponents argue that these conflicts may be ignored, or are diminished ,because both Reorganized Hopeman and the Asbestos Trust share the goal of ensuring that Hopeman's most valuable asset – *i.e.*, its rights to insurance coverage – remains intact such that Mr. Richardson, regardless of which hat he wears, will not do anything that could breach the insurance policies. This is a non-sequitur. It does not address the overarching conflict issues posed by having the same individual who will serve as a Litigation Trustee with fiduciary obligations to the beneficiaries of the Asbestos Trust, also serve as the sole Director and Officer of Reorganized Hopeman, to which the Trust beneficiaries are adverse.

117. 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 with the Committee's co-chair, Mr. Branham – who also will serve as a member of the TAC – in an

asbestos-related lawsuit. Second, given Mr. Richardson's ties with the Committee's co-chair and TAC member, and an incentive to obstruct Reorganized Hopeman's defense that is created by his contingency fee compensation in his role as Litigation Trustee, his appointment as Reorganized Hopeman's only director does not comport with public policy.

118. The Committee and FCR selected Mr. Richardson to serve as the Litigation Trustee. The Committee and FCR also selected Mr. Richardson to serve as Reorganized Hopeman's sole director,[8] notwithstanding the conflicting fiduciary obligations he will owe in those roles and the inherent conflict created by his contingency fee compensation pursuant to the Trust Agreement. That is exactly the type of conflict interest demonstrating that the Plan cannot "*fairly* achieve the Bankruptcy Code's objectives."[9] Accordingly, confirmation of the Plan must be denied.

VIII. THE PLAN DOES NOT SATISFY § 1129(a)(7) AND THE BEST INTERESTS TEST

119. Pursuant to § 1129(a)(7), the Court may confirm a chapter 11 plan of reorganization "only if…[w]ith respect to each impaired class of claims or interests (A) each holder of a claim or interest of such class (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date…."

120. The Plan Proponents bear the burden of proving by a preponderance of the evidence that the Plan complies with the Best Interests Test under § 1129(a)(7), with the Court required to

[8] *See* Plan § 8.7 (**"Corporate Governance of Reorganized Hopeman.** On the Effective Date, (a) the current officers and directors of Hopeman shall be deemed to resign from their respective positions by operation of the Plan, and (b) the individual(s) identified in a notice to be filed jointly by the Committee and the Future Claimants' Representative no later than two (2) days prior to the deadline established to accept or reject the Plan shall be appointed to serve as the officers and as the director of Reorganized Hopeman.").

[9] *Skinner*, 688 F.3d at 158.

make an "independent" finding on that issue based on the evidence adduced by the Plan Proponents, rather than on non-evidentiary assumptions and conclusory assertions.[10]

121. The Court finds that the Plan Proponents' Liquidation Analysis fails to satisfy § 1129(a)(7). The Best Interests Test focuses on assuring that any ***creditor who has not voted to accept the Plan***, will receive as much under the Plan as such creditor would receive in a Chapter 7 liquidation.[11] Here, the creditors that voted on the Plan are asbestos claimants holding claims in Hopeman's Chapter 11 proceeding.[12] Future asbestos claimants are demand-holders, not current claimants or creditors entitled to vote, and, accordingly, those future demand-holders were not solicited and, in turn, did not vote on the Plan.[13]

122. Potential future asbestos demand-holders do not fall within the scope of § 1129(a)(7) because, as set forth in § 524(g), those demands were "***not a claim***" in the bankruptcy case such that they are not creditors. 11 U.S.C. § 524(g)(5) (emphasis added). The Liquidation Analysis does not offer any analysis specific to just the pending asbestos claims.[14] Instead, it shoehorns into the comparison not only (a) current, impaired asbestos claimants but also (b) potential, future demand-holders, by asserting that both categories ought to be considered in the Liquidation Analysis as to the Plan.

123. The Plan Proponents urge the Court assume that, because there is supposedly more

[10] *See In re Smith*, 357 B.R. at 67 (analysis must be "based on evidence and not mere assumptions or assertions"); *In re Multiut Corp.*, 449 B.R. 323, 344 – 346 (Bankr. N.D. Ill. 2011) ("The best interests valuation is to be based on evidence not assumptions").

[11] Dkt. No. 1147 at p. 2; *see also Bank of America Nat'l Trust and Sav. Ass'n v. 203 North LaSalle St. P'ship*, 526 U.S. 434, 441 n.13 (1999) (discussing how the Best Interests Test focuses on "individual creditors holding impaired claims, even if the class as a whole votes to accept the plan").

[12] 11 U.S.C. § 101(10) (defining "creditor" as an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor").

[13] Notably, the Liquidation Analysis itself states that it was "prepared so that the Bankruptcy Court may determine that the Plan is in the best interest of creditors who reject the Plan and equity holders." *See* Plan Proponent's Ex. 11 at 2.

[14] Day 1 Tr. at 234:4 – 6 ("Q: Right. And [the Liquidation Analysis] doesn't offer any analysis specific to just the pending claims as of the petition date. A. No.").

dollars of insurance assets available under the Chapter 11 Plan scenario, the asbestos claimants who voted on the Plan will fare as well, or better, under the Plan than under Chapter 7. In other words, if the "Other Asbestos Insurance" numerator is two-to-three times higher in the Chapter 11 scenario, then the Court can, under the Plan Proponents' logic, assume that current asbestos claimants are ensured a recovery under the Plan that exceeds that under the Chapter 7 scenario.

124. As an initial matter, the Court is not empowered to make its independent determination under § 1129(a)(7) based on these mere assumptions. *See In re Smith*, 357 B.R. at 67 (analysis must be "based on evidence and not mere assumptions or assertions"); *In re W.R. Grace & Co.*, No. 11-199, 2012 U.S. Dist. LEXIS 80461, at *256 – 258 (D. Del. June 11, 2012) (discussing the "independent" determination required under the Best Interests Test, which must be based on "evidence" and not assumptions). Just as problematic, a higher "Other Asbestos Insurance" numerator is not the end of the analysis when it is explicitly based on the assumption that there will be more asbestos claims to be paid under the Plan than under the Chapter 7 scenario.[15] Instead, the denominator – *i.e.*, the number and value of the additional asbestos claims – is imperative.

125. The Court's Order granting Debtor's Motion in Limine to exclude the testimony of Chubb expert Mr. Scarcella succinctly explains this issue: "Such a determination turns on (1) the pool of available assets to be distributed in a Chapter 7 liquidation; ***and (2) the estimated amount of claims to be paid under the Plan***."[16] The Liquidation Analysis would be complete only with both the numerator (available assets) and the denominator (total liabilities) under both the Chapter 11 scenario and the Chapter 7 scenario. Only with both parts of the equation could the Court even attempt to determine independently whether a claimant who has not voted to accept the Plan would receive as much or more in a hypothetical Chapter 7. But Plan Proponents admit that they have

[15] *Id.*

[16] Dkt. No. 1147 at 2 – 3.

no asbestos claims estimates.[17] While they claim that such estimates are not available "with certainty," that is not the standard. An "estimate" is a best guess and it is undisputed that Plan Proponents previously prepared (at significant cost to the Debtor's estate) estimates of current and future asbestos claims.[18] Even if the Court had actual evidence in the record to support the Liquidation Analysis (and, as discussed below, it does not), then the Plan Proponents' failure to provide any asbestos claims estimate is fatal under § 1129(a)(7).

126. Aside from the failure to follow the proper test, Mr. Tully's testimony revealed multiple, significant problems with the Liquidation Analysis.

B. The Liquidation Analysis Ignores Plan Expenses and the Litigation Trustee

127. The first flaw in the Liquidation Analysis is its failure to account for the Plan's expenses under the Chapter 11 scenario. As set forth in the Plan documents and admitted by Mr. Tully, the Trust set up by the Plan will incur significant annual expenses, including the expenses of the trustees, the expenses of the trustees' professionals, the expenses of the TAC's professionals, the expenses of the FCR, and the expenses of the FCR's professionals.[19] Yet, other than some minor "start up" costs, none of these Trust expenses are reflected or accounted for in the Liquidation Analysis.[20] If those expenses were $1 million or $1.5 million annually, then over the forty-year potential life of the Trust, they would total between $40 million and $60 million, which Mr. Tully admitted would be "material" to the Liquidation Analysis and what an asbestos claimant

[17] Plan Proponents' Ex. 11 at 4 217 of 220 n.14.

[18] Day 1 Tr., at 192 (Mr. Tully testifying that FTI billed the estate "over 700,000 dollars for the asbestos claims estimation work" that was done by its firm in this case) and 234 (Mr. Tully acknowledging that the Debtor and Committee retained asbestos claims estimation reports by experts who submitted reports in the bankruptcy).

[19] *See* Plan Proponents' Ex. 1 at Sections 4.5, 4.8, 5.5, 6.4, and 6.5; *see also* Day 1 Tr. at 227 – 228.

[20] *See* Plan Proponents' Ex. 11; *see also* Day 1 Tr. at 228 – 229.

is projected to recover.[21] The Liquidation Analysis's complete failure to account for them is improper and unreasonable.

128. Also improper is the failure of the Liquidation Analysis to account for the expense associated with the Plan's Litigation Trustee. As set forth in the Plan documents, the Litigation Trustee is "responsible for all matters relating to Trust litigation."[22] As compensation for this responsibility, the Litigation Trustee is "entitled to 33% of all funds recovered in litigation in favor of the Asbestos Trust."[23] This fee, which is eleven times the fee charged by the Chapter 7 trustee on his recoveries,[24] is not reflected in the Liquidation Analysis in any manner. There is no basis for assuming that the Litigation Trustee will not do anything and will be paid zero dollars from the Trust. In fact, just the opposite because his role was specifically added by the Plan Proponents through the Plan Supplement ***after*** the Liquidation Analysis was prepared and the Disclosure Statement was filed and served on claimants entitled to vote.[25] Mr. Tully admitted that removing 33% of the "Other Asbestos Insurance" asset from the Chapter 11 scenario in the Liquidation Analysis would be material.[26] Failing to include the Litigation Trustee's expenses in the Liquidation Analysis, in any way, essentially reads his role and expense out of the Plan. That is not appropriate or reasonable, and it leaves the Liquidation Analysis fundamentally flawed.

C. The Liquidation Analysis Improperly Presents Both Nominal And Present Values

129. The second flaw in the Liquidation Analysis is the inconsistency in which the information is presented. On one hand, Mr. Tully testified that $80 million to $120 million

[21] Day 1 Tr., at 230 – 231.

[22] Plan Proponents' Ex. 1 at Section 4.1.

[23] *Id*. at Section 4.5(b).

[24] Day 1 Tr. at 243.

[25] Plan Proponents' Ex. __ [DKT. 853].

[26] Day 1 Tr. at 249.

assumption for the "Other Asbestos Insurance" asset in the Chapter 11 proceeding is a "nominal" amount paid over the Trust's lifetime.[27] On the other hand, Mr. Tully testified that the $31.5 million to $40 million assumption for the "Other Asbestos Insurance" asset in the Chapter 7 proceeding is essentially a "present value" amount that would be collected by the Chapter 7 trustee within a short time.[28] That is a material, undisclosed difference in the basis of the financial presentation in the Liquidation Analysis. Plan Proponents attempted to fix the problem by asking Mr. Tully how the pace at which the dollars would be collected in the "nominal" Chapter 11 scenario would impact a potential present value calculation for the Other Insurance Asset, but even if that is the case, the Hearing is not the time to try and fix the Liquidation Analysis. This Court must make its independent determination under § 1129(a)(7) based on evidence, not speculation. The failure to disclose this material difference that is a foundation for the financial presentation in the Liquidation Analysis is another fundamental flaw and demonstrates how the Plan Proponents do not meet their burden of proof.

D. The Liquidation Analysis Is Internally Inconsistent

130. A third flaw in the Liquidation Analysis is its glaring internal inconsistency. On direct examination, Mr. Tully's testified that the Liquidation Analysis showed the Chapter 11 scenario was better than the Chapter 7 scenario "for two reasons: the assets are higher, mainly the insurance asset, and the expenses are lower."[29] Mr. Tully explained that, in his view, the asbestos insurance assets were "more valuable" in the Chapter 11 scenario because it provided an "an enduring structure" that would ultimately pay more claimants over a longer period of time (he

[27] Day 1 Tr. at 236:13 – 15 ("Q: Yeah, So over the lifespan, thirty to forty years of the Trust, you're saying 80 to 120 million comes in? A. That's right.") and 240 - 241 (admitting that the Chapter 11 Other Asbestos Insurance asset assumption was based on "a nominal figure").

[28] *Id*. at 237 – 238.

[29] *Id*. at 183.

estimated "thirty, forty years") which is "not available under the Chapter 7 scenario."[30] This testimony mirrored that of other Plan Proponent witnesses. Mr. Lascell, for example, testified that he believed that the value of the insurance under the Plan "will be higher" compared to a Chapter 7 liquidation because the insurance would be "available without a bar date" and "the claimants will have a longer period of time to assert their claims against…the insurance" and "that's where the – the insurance derives value is from settling claims."[31] Likewise, Mr. Van Epps testified that the longer asbestos claims, *i.e.*, future asbestos demands in the language of § 524(g), can come in the more opportunity to access insurance coverage.[32]

131. Despite this testimony, on cross-examination Mr. Tully changed his story and testified that the Liquidation Analysis assumes that the claims under the Chapter 11 Plan and the hypothetical Chapter 7 liquidation would be ***the exact same***. Specifically, Mr. Tully testified that the Liquidation Analysis assumes the same current and future claimants under both the Plan scenario and the Chapter 7 scenario, testifying "the claims are the claims."[33]

132. At best the Court can tell, Mr. Tully offered his "the claims are the claims" testimony in order to justify the Plan Proponents' failure to conduct an estimation of the current asbestos claims and future asbestos demands under each of the Plan and Chapter 7 scenarios. As he testified: "We didn't illustrate the claims levels on the bottom [of the Liquidation Analysis] for the reason you said before, and I agreed with, which was they're going to be the same under either scenario."[34] But that testimony cannot be reconciled with Mr. Tully's prior testimony that the

[30] *Id.*

[31] *Id.* at 36 – 37.

[32] *Id.* at 167 – 168.

[33] *Id.* at 232:8 – 18 ("Q: Yeah. Does the liquidation analysis here, that's reflected – A. Um-hum Q. – here, does it assume the same current and future asbestos claimants under both the planned [sic] scenario and the Chapter 7 scenario? A. Yes. Q. So it's the exact same – A. The – the claims are the claims. Q. The claims are the claims? A. Yeah, I think that

[34] *Id.* at 234:15 – 17.

"Other Asbestos Insurance" asset is a higher number because the "enduring structure" would allow "more" claims to be paid under the Plan than in a Chapter 7 scenario.[35]

133. Similarly, on re-direct, Mr. Tully testified that the Liquidation Analysis does not need a claims estimation because it is a "waterfall" analysis with the asbestos claimants getting "whatever's left" at the bottom.[36] As outlined above, however, the available insurance asset (numerator) is only half of the equation. To understand what any individual claimant will receive under either the Plan or the Chapter 7 scenario, it is imperative to spread those leftover assets across the estimated amount of asbestos claims to be paid under each scenario. After all, if the insurance assets are three times greater under the Plan, but the asbestos claims liabilities are four times higher, then the Chapter 7 scenario is better for creditors because, proportionally, they receive more for their claim. But because Plan Proponents provided no asbestos claims estimates, the Liquidation Analysis cannot make that showing.[37]

134. Put simply, it cannot be simultaneously true that (1) the Plan creates more "Other Asbestos Insurance" assets than the Chapter 7 scenario because its "enduring structure" allows for the payment of more claims and future demands; and (2) the claims and future demands under the Plan and the Chapter 7 scenario are the exact same. Yet, that is what the Plan Proponents and Mr. Tully posit with the Liquidation Analysis. The Court cannot and does not sanction such inconsistent and incoherent reasoning.

E. Plan Proponents Offer No Evidentiary Basis for the Liquidation Analysis

135. Beyond the fundamental flaws of the Liquidation Analysis, the Court also finds that the Plan Proponents did not meet their burden of proof on § 1129(a)(7) because they provided no

[35] *Id.* at 183.

[36] *Id.* at 257.

[37] Plan Proponents' Ex. 11 at 17 of 220 n.14.

actual evidence to support the conclusions in the Liquidation Analysis. As outlined above, the Liquidation Analysis was based wholly on conclusory assertions and assumptions (some flawed) regarding the available insurance assets and expenses under each of the Plan and the Chapter 7 scenarios. There was no specific calculation for any of the figures in the Liquidation Analysis. Indeed, as to the key $80 million - $120 million "Other Asbestos Insurance" asset figure for the Plan, the best that Mr. Tully offered was that it "was an amalgamation of a bunch of information…[a]nd, you know, then, applying judgment and…putting a range on it."[38] He offered no testimony as to what "information" was amalgamated, how that information was relevant, the basis for his supposed judgment, or any other factor or data.

136. Under § 1129(a)(7), the Court's independent determination must be based on evidence, not assumptions and assertions.[39] In this instance, no evidence was presented to substantiate or justify any of the numbers contained in the Liquidation Analysis. Instead, the Court was presented solely with Mr. Tully's assertions and assumptions, some of which were plainly inconsistent or unreasonable. That is not sufficient. Because the Plan Proponents failed to meet their burden of proving by a preponderance of the evidence that the Plan complies with the Best Interests Test, the Court cannot find that the Plan comports with § 1129(a)(7).

[38] Day 1 Tr. at 238:12 – 15.

[39] *See In re Smith*, 357 B.R. at 67 (analysis must be "based on evidence and not mere assumptions or assertions"); *In re Multiut Corp*., 449 B.R. at 344 – 346 ("The best interests valuation is to be based on evidence not assumptions").