

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

In re: HOPEMAN BROTHERS, INC.,
Debtor.

Case No. 24-32428-KLP
Chapter 11

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING
CONFIRMATION OF THE MODIFIED AMENDED PLAN OF REORGANIZATION
OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY
CODE AND APPROVING ADEQUACY OF THE DISCLOSURE STATEMENT**

This matter comes before the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, (this “Bankruptcy Court” or the “Court”) upon the *Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 767] (the “Disclosure Statement”) and the *Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. under Chapter 11 of the Bankruptcy Code*, dated August 21, 2025 [ECF No. 1141], as may be amended, modified, or supplemented from time to time, including but not limited to as modified by the *Second Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1185] (the “Plan”) jointly proposed by Hopeman Brothers, Inc. (“Hopeman” or the “Debtor”), the debtor and debtor-in-possession in the above-captioned Chapter 11 case, and the Official Committee of Unsecured Creditors (the “Committee,” and collectively with Hopeman, the “Plan Proponents”).¹

The Bankruptcy Court has reviewed the Plan and the Disclosure Statement, as well as the other pleadings before the Bankruptcy Court in connection with the confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. The Plan contains terms pursuant to section 524 of Title 11 of the United States Code (the “Bankruptcy Code”), as more fully described

¹ Capitalized words not defined herein shall have the meanings set forth in the Plan.



herein. Section 524(g)(3)(A) of the Bankruptcy Code requires the district court that has jurisdiction over the reorganization case, not the bankruptcy court, issue or affirm an order confirming a 524(g) plan of reorganization.

The Bankruptcy Court has carefully reviewed the arguments of counsel and evidence admitted at the Combined Hearing (as defined herein) to consider confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. After due deliberation of the pleadings filed in this case, including but not limited to the Plan Proponents' memorandum of law in support of confirmation of the Plan and reply to the Plan Objections [ECF No. 1076] (the "Confirmation Brief"), the Plan Proponents' supplemental memorandum of law in support of confirmation of the Plan and reply to the Plan Objections to address the best interests test set forth in 11 U.S.C. § 1129(a)(7) [ECF No. 1119], and the various competing proposed findings of fact and conclusions of law, this Bankruptcy Court recommends entry of an Order by the United States District Court for the Eastern District of Virginia (the "District Court") confirming the Plan and approving the adequacy of the Disclosure Statement subject to the modifications set forth herein. The Bankruptcy Court makes the following findings of fact and conclusions of law in connection with its recommendation.²

I. PROPOSED FINDINGS OF FACT

A. History of Hopeman Prior to Bankruptcy³

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

³ Except as otherwise noted, the facts contained in this section I are provided in section IV of the Disclosure Statement, which was affirmed as true and accurate by Christopher Lascell, the Debtor's president and designee, during his testimony at the Combined Hearing, Combined Hr'g Tr. Day 1 14:3-14, ECF No. 1174 at 14. References to "Combined Hr'g Tr. Day 1" refer to the transcript of the hearing that took place before the Court on August 25, 2025, *see* Aug. 25, 2025, Tr., ECF No. 1174, *as redacted* ECF No. 1260; and "Combined Hr'g Tr. Day 2" refer to the transcript of the hearing that took place before the Court on August 26, 2025, *see* Aug. 26, 2025, Tr., ECF No. 1175, *as redacted*, ECF No. 1261.

Beginning with its incorporation in 1930, for over fifty years, Hopeman engaged in the exclusive business of marine joiner work, i.e., the assemblage, furnishing, and installation of bulkhead panels, ceilings and other interior components of ships. Specifically, Hopeman was a joiner subcontractor that would acquire materials from manufacturers, make modifications to those products to meet shipbuilder specifications, and deliver the resulting “joiner packages” to various shipyards for installation by either Hopeman or shipyard employees. Hopeman provided these joiner packages and/or related services for over 3,000 ships in at least 49 shipyards in over 19 states, including Virginia. Hopeman did not at any time own or operate any shipyard and did not own ships for which it provided joiner packages and/or services.

In response to a tragic maritime fire, in 1939, the U.S. Government began requiring the use of non-combustible, asbestos-containing materials in ship construction. To comply with these regulations for its subcontracting work, Hopeman purchased certain asbestos-containing panels. At times, the installation of the panels required cutting and drilling at the shipyard and/or aboard the ship being constructed. In or around 1975, Hopeman began using a patented asbestos-free panel. Hopeman believes it fully transitioned from asbestos-containing panels to the asbestos-free panels in 1977.

During the 1980s, Hopeman shifted its business away from ship joining and into manufacturing checkout counters used in commercial retail stores. In 2002, Hopeman spun off its cabinet-making business. In 2003, Hopeman sold substantially all of its remaining shipbuilding-related assets to an unrelated party, US Joiner LLC. Hopeman’s asbestos liabilities were excluded and not assumed by US Joiner LLC in the sale and, as such, remained the obligations of Hopeman post-sale closing.⁴ After the sale, aside from its remaining cash and business records, Hopeman’s

⁴ Following the 2003 asset sale, David M. Lascell became the sole officer and majority owner of Hopeman, overseeing the administration and resolution of the Asbestos Claims. After David Lascell’s death in 2016,

only other assets are its interests in the substantial remaining limits of its liability insurance policies. Combined Hr'g Tr. Day 1 at 17:23- 18:3, ECF No. 1174 at 17-18.

Hopeman's only material unpaid liabilities are claims alleging personal injury as a result of alleged exposure to asbestos fibers contained in marine interior materials included within the joiner packages provided by Hopeman ("Asbestos Claims"), most of which currently are unresolved. The Asbestos Claims asserted against Hopeman typically involve allegations of the manifestation of one or more of four general types of asbestos-related diseases: (i) mesothelioma; (ii) lung cancer; (iii) cancers other than lung cancer, such as esophageal cancer or colon cancer; and (iv) asbestosis, or a disease that was not articulated on the face of the pleading or claim.

Hopeman received its first Asbestos Claim in 1979. Since then, claimants have asserted more than 126,000 Asbestos Claims against Hopeman. The Plan Proponents cannot, with any certainty, determine how many individuals who were exposed to asbestos attributable to Hopeman will go on to actually manifest an asbestos-related disease, how many more Asbestos Claims will be asserted in the future, the value of such claims, nor when such claims will stop being asserted. Combined Hr'g Tr. Day 1 at 140:11-23, ECF No. 1174 at 140.

After the closing of the 2003 asset sale, Hopeman has continued to exist in order to defend and, as appropriate, settle Asbestos Claims. Many claims were addressed through an agreed out-of-court claims processes pursuant to administrative agreements Hopeman entered into with various personal injury law firms. A claimant would provide documentation of an asbestos-related disease and exposure to asbestos through Hopeman's business operations. Upon confirmation that

Christopher Lascell, Daniel Lascell, and Carrie Lascell Brown (collectively, the "Board Members") acquired their father's shares, as well as the minority shares, in Hopeman. Since that time, the Board Members have been the 100% equity holders in Hopeman and have served as Hopeman's Board Members and officers. The Board Members had no involvement in Hopeman's business operations prior to the 2003 asset sale.

the claim was valid, Hopeman's third-party prepetition claims administrator, Special Claims Services, Inc., would pay a set amount prescribed in an applicable administrative agreement for the substantiated disease level or otherwise negotiate a settlement amount. If the parties were unable to reach a settlement through the administrative process, or often as an alternative to the out-of-court process, claimants would sue Hopeman in federal or state court. Typically, Hopeman would be one of many defendants, including other parties that provided products or services in the construction or repair of ships, manufacturers and sellers of products, shipyards, and ship owners, among others, and at times, former directors and officers of Hopeman.⁵ As of the Petition Date, over 2,700 Asbestos Claims against Hopeman remained unresolved in either the administrative process or in litigation. The Debtor is not currently aware of any active claims that would not be covered by Hopeman's liability insurance.

Prior to the Petition Date, Hopeman primarily funded its defense and resolution of the Asbestos Claims by drawing upon available coverage from its liability insurance program and with cash on hand. Hopeman's asbestos-related liability insurance program consists of primary-layer insurance policies and multilayer excess general liability insurance policies issued by various insurers (collectively, the "Insurers"), the last coverage period for which ended December 31, 1984. The primary-layer policies Hopeman purchased from 1937 through 1984 were all issued by Liberty Mutual Insurance Company ("Liberty Mutual"). The excess insurance policies in the program were issued by Liberty Mutual and various other Insurers from 1965 through 1984.

⁵ The former directors and officers of Hopeman who have been named in asbestos-related lawsuits have indemnification rights against Hopeman, and Hopeman traditionally has paid the defense costs associated with defending the claims asserted against such directors and officers, subject to reimbursement for a portion of those defense costs by Insurers.

Historically, pursuant to Hopeman's various Asbestos Insurance Policies⁶, solvent Insurers, within their applicable policy limits, would reimburse Hopeman for portions of its defense costs (including claims administration costs) and for portions of the liability payments it made to resolve Asbestos Claims. Given the complexity of Hopeman's insurance coverage, Hopeman entered into various agreements with certain Insurers in an attempt to streamline coverage issues. In June 1985, Hopeman and certain of its Insurers, as well as other asbestos claim defendants and their respective insurers, entered into the "Wellington Agreement." 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 eventually extended to 1984.

Several Insurers who were not signatories to the Wellington Agreement entered into bilateral insurance settlement agreements, called "coverage-in-place" agreements, (the "Asbestos CIP Agreements"⁷) with Hopeman. Pursuant to each Asbestos CIP Agreement, the applicable insurance policy remained in place, obligating the Insurer to pay portions of Hopeman's defense costs and liability indemnification amounts for Asbestos Claims on terms identical to or substantially similar to those in the Wellington Agreement.

Certain other Insurers entered into settlement agreements with Hopeman that fully and finally settled the outstanding insurance coverage through a "buy-back" of the outstanding

⁶ The term "Asbestos Insurance Policies" is broadly defined to include the insurance policies identified on Exhibit H of the Plan, as well as any other insurance policy of Hopeman, whether known or unknown, that provides or potentially provides coverage for any Channeled Asbestos Claim. Plan § 1.12, ECF No. 1185 at 9.

⁷ See Plan § 1.7, ECF No. 1185 at 9. The term "Asbestos CIP Agreement" "includes (i) the Century 2009 Agreement, and (ii) the Wellington Agreement, but (iii) does not include any Designated Insurance Agreement." *Id.*

coverage in exchange for a lump-sum payment, rather than through the Wellington Agreement or an Asbestos CIP Agreement. For example, on March 21, 2003, Hopeman and Liberty Mutual resolved certain disputes between them as to the insurance coverage provided by Liberty Mutual for Asbestos Claims by entering into (i) the *Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company* and (ii) the *Indemnification and Hold Harmless Agreement Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company* (together, the “2003 Agreements”). The 2003 Agreements settled certain disputes between Hopeman and Liberty Mutual that arose under previous agreements concerning the Liberty Mutual policies, including compromising and settling all coverage issues, both present and future, between Hopeman and Liberty Mutual related to the Liberty Mutual policies. As a result of the 2003 Agreements, Hopeman released its rights under all the primary and excess insurance it purchased from Liberty Mutual.⁸

Hopeman has spent much more to pay claims and fund defense costs in connection with the Asbestos Claims than the amounts reimbursed by the Insurers. For example, in 2023 alone, Hopeman spent over \$12 million in combined claim payments and defense costs, while being reimbursed less than \$7 million of this amount by Insurers. In other words, in 2023, Hopeman used its own cash to pay approximately 35.12% of claim payments and 57.33% of defense costs, resulting in an annual cash burn of over \$5.5 million.

After years of such shortfalls, Hopeman’s cash reserves had dwindled. Decl. of Christopher Lascell in Supp. of Ch. 11 Pet. & First Day Pleadings of Hopeman Bros., Inc. ¶ 37, ECF No. 8 at 13 (the “Lascell First Day Declaration”); Combined Hr’g Tr. Day 1 at 136:4-9, ECF

⁸ As more fully discussed herein, certain holders of Asbestos Claims assert that Hopeman’s release of Liberty Mutual does not affect rights and interests such holders have in the Liberty Mutual policies.

No. 1174 at 136. If allowed to continue at its historical pace, Hopeman would have depleted its remaining cash within 12 months of the Petition Date. Lascell First Day Decl. ¶ 37, ECF No. 8 at 13. 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 file this Chapter 11 case, to establish an efficient and fair process to utilize the Debtor's remaining cash and its insurance policies to address the Asbestos Claims. *Id.*; Combined Hr'g Tr. Day 1 at 20:18-21:6, ECF No. 1174 at 20-21.

Prior to filing for bankruptcy, Hopeman engaged in extensive negotiations with the Century Indemnity Company, in its capacity as the successor to CCI Insurance Company, as successor to Insurance Company of North America ("Century") and Westchester Fire Insurance Company ("Westchester" and together with Century, "Chubb") concerning the Debtor's unexhausted insurance coverage under the policies issued by Chubb. Lascell First Day Decl. ¶ 38, ECF No. 8 at 13-14. At that time, Hopeman believed that Chubb had the greatest share of defense and indemnity coverage contribution obligations owed to Hopeman pursuant to current Asbestos CIP Agreements and, as such, had the most exposure of Hopeman's remaining Insurers. *Id.* As a result of those discussions, Chubb offered to "buy-back" their policies in for \$31.5 million (generally, the "Chubb Settlement"). *Id.*

B. Events Occurring in the Bankruptcy Case

On June 30, 2024 (the "Petition Date"), Hopeman filed its voluntary petition under Chapter 11 of the Bankruptcy Code, thereby commencing this bankruptcy case (the "Bankruptcy Case"). After the Petition Date, Hopeman promptly sought this Court's approval of the Chubb Insurer Settlement, as well as a second insurance settlement, the "Certain Settling Insurers Settlement." Mot. of the Debtor for Entry of an Order (I) Approving the Settlement Agreement & Release Between the Debtor & the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement & Release Between the Debtor & the Chubb Insurers; (III) Approving the Sale of

Certain Ins. Policies; (IV) Issuing an Inj. Pursuant to the Sale of Certain Ins. Policies; & (V) Granting Related Relief, ECF No. 9 (the “Chubb Settlement Motion”); Mot. of the Debtor for Entry of an Order (I) Approving the Settlement Agreement & Release Between the Debtor & Certain Settling Insurers; (II) Approving the Sale of Certain Ins. Policies; (IV) Issuing an Inj. Pursuant to the Sale of Certain Ins. Policies; & (V) Granting Related Relief, ECF No. 53 (the “Certain Settling Insurers Settlement Motion” and, together with the Chubb Settlement Motion, the “Insurer Settlement Motions”). Collectively, the settlements contemplated by the two Insurer Settlement Motions would have generated nearly \$50 million in cash through the resolution and buy-back of Hopeman’s unexhausted insurance coverage. Hopeman intended to use these settlement proceeds to fund a proposed Chapter 11 plan of liquidation. *See* Plan of Liquidation of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 56 (the “Original Plan”). The Original Plan contemplated the creation of a liquidation trust, funded by the insurance settlement proceeds and other assets of the Debtors. Original Plan pp. iii-iv, ECF No. 56 at 3-4. The liquidation trust would then address the remaining Asbestos Claims. *Id.*

On July 22, 2024, the Office of the United States Trustee appointed the Committee, composed of five asbestos tort claimants in their individual capacities. Appointment of Unsecured Creditors Comm., ECF No. 69. Initially, the Committee contested the Insurer Settlement Motions and the Original Plan. Following months of discovery and negotiations, Hopeman and the Committee executed a settlement term sheet, effective as of November 29, 2024 (the “November 29 Term Sheet”) and filed with the Bankruptcy Court, through which, among other things, (a) Hopeman agreed to adjourn the hearing on the Chubb Insurer Settlement Motion; (b) Hopeman and the Committee agreed to participate in judicial mediation concerning the Chubb Insurer Settlement Motion; and (c) the Committee agreed not to oppose approval of the Certain Settling

Insurers Settlement Motion. Agreed Order Continuing Hr’g & Deadlines Solely as to Chubb Insurers Settlement Mot. Ex. 1, ECF No. 437 at 8-14. The November 29 Term Sheet also provided that Hopeman and the Committee agreed to negotiate in good faith over the terms of a Chapter 11 plan that would propose to create a trust pursuant to section 524(g) of the Bankruptcy Code. *Id.*

On December 19, 2024, this Court entered its *Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief* [ECF No. 442] (the “Resolute Order”), thereby approving the Certain Settling Insurer Settlement Motion and overruling four objections to that settlement.⁹ By July 10, 2025, all funds owed to the Debtor pursuant to the Resolute Order had been paid and the Certain Settling Insurers Settlement closed. Combined Hr’g Tr. Day 1 at 22:7-22, ECF No. 1174 at 22.

On December 20, 2024, the Bankruptcy Court entered its *Order Authorizing Mediation of Chubb Insurers Settlement Motion* [ECF No. 443] (the “Mediation Order”), which, among other things, (i) appointed the Honorable Kevin R. Huennekens (the “Judicial Mediator”) as the mediator and (ii) directed Hopeman, the Committee, and Chubb to mediate (the “Mediation”) the relief sought in the Chubb Settlement Motion. Mediation Order ¶¶ 2-3, ECF No. 443 at 1-2. The Mediation Order also authorized other parties to participate in the Mediation with either the consent of the Debtor and the Committee or with the Judicial Mediator’s authorization. *Id.* ¶ 3,

⁹ Subsequently, two parties—Huntington Ingalls Industries, Inc. (“HII”) and claimants represented by Roussel & Clement (the “Roussel Claimants”)—appealed the Resolute Order. Notice of Appeal, ECF No. 454; Notice of Appeal, ECF No. 475. Separate settlements were reached with HII and the Roussel Claimants that ultimately led to the voluntary dismissal of their respective appeals. *See* Order (Acknowledging Stipulation of Dismissal with Prejudice), *Huntington Ingalls Indus., Inc., v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00005-DJN (E.D. Va. Mar. 12, 2025), ECF No. 14; Order (Acknowledging Stipulation of Dismissal with Prejudice), *Huntington Ingalls Indus., Inc., v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00005-DJN (E.D. Va. May 15, 2025), ECF No. 19.

ECF No. 443 at 2. Hopeman and the Committee consented to a request from HII to participate in the Mediation. Combined Hr’g Tr. Day 1 at 24:1-4, ECF No. 1174 at 24. Hopeman commenced the Mediation in the hopes of reaching a resolution with the Committee and other parties that would allow the Debtor to continue to prosecute the Chubb Settlement Motion, but such a resolution was not reached. *Id.* at 138:14-139:13, ECF No. 1174 at 138-39.

While the Mediation did not resolve the Chubb Settlement Motion, Hopeman, the Committee, and HII were able to reach a settlement (the “524(g) Settlement”). *Id.* at 24:1-8, ECF No. 1174 at 24. The 524(g) Settlement was negotiated amongst the Debtor, Committee, and HII at arm’s-length and the entirety of the negotiations were conducted under the supervision of the Judicial Mediator. *Id.* at 29:25-34:11, ECF No. 1174 at 29-34. On March 7, 2025, the Debtors filed a term sheet evidencing the basic terms of the 524(g) Settlement. Mot. for Expedited Status Conference Ex. B, ECF No. 609 at 15-34.

The 524(g) Settlement contemplated a joint plan proposed by Hopeman and the Committee, centered around the establishment of a trust (the “Asbestos Trust”) under section 524(g) of the Bankruptcy Code and the imposition of an injunction (the “Asbestos Permanent Channeling Injunction”) that will channel the present and future Asbestos Claims (the “Channeled Asbestos Claims”) to the Asbestos Trust. Under the 524 Settlement and the Plan, Hopeman will transfer its remaining insurance coverage and cash to the Asbestos Trust. The Asbestos Trust will assume liability for the Channeled Asbestos Claims and use the assets conveyed to the Asbestos Trust to resolve the Channeled Asbestos Claims and to compensate eligible holders of the Asbestos Claims in a fair and efficient manner. In addition to possible recovery from the Asbestos Trust, the Plan does not impair the rights of any holder of a Channeled Asbestos Claim to seek recovery from certain Insurers in the tort system.

In accordance with the 524(g) Settlement, on April 29, 2025, the Debtor and the Committee, in their capacity as the Plan Proponents, filed the Plan and the Disclosure Statement. In connection with the Plan and the Disclosure Statement, upon request of the Plan Proponents, on May 14, 2025, the Bankruptcy Court appointed Marla Rosoff Eskin of Campbell & Levine, LLC as the legal representative (the “FCR”) to protect the rights of future claimants in accordance with section 524(g)(4)(B)(i) of the Bankruptcy Code.¹⁰ Additionally, on the Plan Proponents’ motion, on May 21, 2025, this Court entered an order [ECF No. 782] (the “Solicitation Procedures Order”) (a) conditionally approving the Disclosure Statement as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (b) approving various procedures for solicitation, including the materials and notices to be distributed; (c) authorizing Hopeman to solicit votes on the Plan, and (d) scheduling a hearing to consider Confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. The Solicitation Procedures Order was not appealed and is a final order.

Verita Global (“Verita”), the Bankruptcy Court-appointed claims and noticing agent, served notice of the Combined Hearing and solicitation materials in accordance with the terms of the Solicitation Procedures Order. *See* Certificate of Serv., ECF No. 864. In addition, pursuant to the Solicitation Procedures Order, the Debtor caused the notice (the “Publication Notice”) of the Combined Hearing to be published (a) in the *Richmond-Times Dispatch* and the national edition of *USA Today* on May 29, 2025, and (b) in *The Times-Picayune/The New Orleans Advocate* on May 30, 2025. *See* Aff. of Publ’n of the Notice of Combined Hr’g for Approval of Disclosure Statement & Confirmation of Plan, ECF No. 844. The Publication Notice provided the date of the

¹⁰ After the Bankruptcy Court entered the *Order Appointing Future Claimants’ Representative* [ECF No. 732] (the “FCR Appointment Order”), over their objection, Chubb appealed that order to the District Court. Notice of Appeal, ECF No. 745. Chubb’s appeal of the FCR Appointment Order remains pending. *Century Indem. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00378-DJN (E.D. Va.).

Combined Hearing, the deadline to object to the Plan, and how interested parties could obtain updates regarding and copies of documents relating to the Plan, *id.*, all as required by the Solicitation Procedures Order.

Paragraph 6 of the Solicitation Procedures Order also required the Debtor to file its plan supplement no later than June 6, 2025. *See* ECF No. 782 at 3-4. In accordance therewith, on June 6, 2025, the Debtor filed its *Notice of Filing of Plan Supplement Related to Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 853] (the “Initial Plan Supplement”), which included, among other things: (i) the Asbestos Trust Agreement; (ii) the Asbestos Trust Distribution Procedures; (iii) organization documents for Reorganized Hopeman; (iv) the Restructuring Transaction; and (v) the Revised Reorganized Hopeman Projections (with corresponding redline).¹¹ Initial Plan Suppl. Exs. A through I-1, ECF No. 853 at 5-239.

Voting creditors then had until June 12, 2025, to accept or reject the Plan. Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4. As more fully reflected in the *Declaration of Jeffrey R. Miller with Respect to the Tabulation of Votes on the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1077] (the “Voting Certification”), creditors who were entitled to vote upon the Plan overwhelmingly voted in favor of the Plan. The Plan contains two voting classes: Class 3 Claimants and Class 4 Claimants. Plan §§ 4.3(c); 4.4(c), ECF No. 1185 at 24, 25. The only voting creditor in Class 3 voted in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Of the 2,416 returned ballots

¹¹ On August 21, 2025, the Plan Proponents filed the *Notice of Filing of Second Amended Plan Supplement Related to Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1143] (the “Amended Plan Supplement” and, together with the Initial Plan Supplement, the “Plan Supplement”), which included, inter alia the Second Revised Asbestos Trust Agreement and the Second Revised Asbestos Trust Distribution Procedures.

from holders of Class 4 Channeled Asbestos Claims, 2,409 creditors holding Claims in the amount of \$2,409.00 (for voting purposes only) voted in favor of the Plan. *Id.* In other words, 99.71% in number of creditors and 99.71% in amount of claims in Class 4 Channeled Asbestos Claims voted in favor of the Plan. *Id.*

The deadline for parties-in-interest to object to either the adequacy of the Disclosure Statement and/or confirmation of the Plan was June 23, 2025. Solicitation Procs. Order ¶ 6, ECF No. 782 at 4. The only objections to the Plan were filed by certain of the Debtor's Insurers (the "Objecting Insurers"): Chubb,¹² Liberty Mutual,¹³ Travelers Indemnity Company, Travelers Casualty and Surety Company, St. Paul Fire and Marine Insurance Company (Travelers Indemnity Company, Travelers Casualty and Surety Company, collectively, "Travelers").¹⁴ Generally speaking, the Objecting Insurers are dissatisfied with the Debtor's pivot from a liquidation trust to the 524(g) Settlement embodied in the Plan.

Although the 524(g) Settlement was originally publicly noticed on March 7, 2025 (after the Plan Proponents disclosed their intention to negotiate such a plan in the November 29 Term

¹² Chubb Insurers' Obj. to (1) Final Approval of Disclosure Statement & (2) Confirmation of Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 958 (the "Chubb Plan Objection").

¹³ Liberty Mut. Ins. Co.'s Obj. to the Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 953 (the "Liberty Mutual Plan Objection").

While the Court concludes below that Liberty Mutual lacks standing to object to the Plan, the Court nonetheless addresses the Liberty Mutual Plan Objection herein and finds that, even if Liberty Mutual had standing, its objections to the Plan fail.

¹⁴ Objs. of the Travelers Indem. Co., Travelers Cas. & Sur. Co., & St. Paul Fire & Marine Ins. Co. to (I) Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code & (II) the Disclosure Statement with Respect to the Am. Plan of Reorg. of Hopeman Bros., Inc., ECF No. 944 (the "Travelers Plan Objection" and, collectively with the Chubb Plan Objection and the Liberty Mutual Objection, the "Plan Objections").

Hartford Accident and Indemnity Company and First State Insurance Company also objected to the Plan [ECF Nos. 942, 965] but subsequently settled and withdrew their objections

Sheet), the Objecting Insurers did not take action in the Bankruptcy Case for almost two months. Since their delayed start, the Objecting Insurers have been exceedingly active.

Chubb filed a complaint against the Debtor, seeking a declaratory judgment that the Debtor had breached the pre-Petition Date, unapproved, unassumed Chubb Insurance Settlement and either allowing Chubb an administrative expense claim or ordering specific performance. Compl., *Century Indem. Co. v. Hopeman Bros., Inc.*, Adv. Pro. No. 25-03015 (Bankr. E.D. Va. Apr. 21, 2025), ECF No. 1. The Bankruptcy Court dismissed Chubb's complaint for failure to state a claim upon which relief could be granted, *see* Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012, ordering Chubb to instead seek such relief through the normal bankruptcy claims process. Order Granting Debtor's Mot. to Dismiss Compl., *Century Indem. Co. v. Hopeman Bros., Inc.*, Adv. Pro. No. 25-03015 (Bankr. E.D. Va. Apr. 21, 2025), ECF No. 28. The dismissal order is now a final order. Chubb has taken no further action to pursue any alleged pre-Petition Date breach of contract claim arising out of or related to the Chubb Insurance Settlement.

Liberty Mutual filed a proof of claim (the "Liberty Mutual POC"), which asserted a "partially contingent and unliquidated" unsecured claim in the amount of \$317,254.89 based upon alleged indemnity obligations purportedly arising under the 2003 Agreements. The Debtor objected to the Liberty Mutual POC on the grounds that Liberty Mutual had no recourse against the Debtor. Obj. of Hopeman Bros., Inc. to Claim No. 10 of Liberty Mut. Ins. Co., ECF Nos. 693, 694. The Bankruptcy Court agreed with the Debtor and, on June 23, 2025, disallowed and expunged the Liberty Mutual POC. Order Disallowing & Expunging Claim of Liberty Mut. Ins. Co., ECF No. 907 (the "Liberty Mutual Claim Objection Order"). Liberty Mutual appealed the

Liberty Mutual Claim Objection Order, which appeal remains pending. *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00486-DJN (E.D. Va.).¹⁵

At the end of May 2025, Liberty Mutual filed an adversary proceeding against the Debtor, the Committee, the FCR, HII, and a number of holders of Asbestos Claims, seeking a declaratory judgment that it has no further obligation to any person on account of the Asbestos Claims, having fully satisfied and exhausted any insurance obligations that existed or ever could exist under any insurance policies issued or allegedly issued by Liberty Mutual to Hopeman by virtue of the 2003 Agreements. Sealed First Am. Compl. for Decl. J., *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Adv. Proc. No. 25-03020-KLP (Bankr. E.D. Va. Jun. 16, 2025), ECF No. 17. This Court has recommended that the District Court withdraw the reference in this matter, which remains pending

Finally, in early June 2025, Travelers filed a notice of appearance in the bankruptcy case, ECF No. 841, and immediately served discovery upon the Debtor, the FCR, and the Committee in connection with the Plan, ECF Nos. 845-848. It is unclear to the Bankruptcy Court why Travelers waited almost a year after the Petition Date and three months after disclosure of the 524(g) Settlement to appear in the Bankruptcy Case.

On August 25, 2025, and August 26, 2025, the Bankruptcy Court conducted a two-day evidentiary contested hearing (the “Combined Hearing”) to determine whether to approve the Disclosure Statement on a final basis and to confirm the Plan over the objections of the Objecting Insurers. At the conclusion of the Combined Hearing, the Bankruptcy Court permitted any party-in-interest to submit additional or revised proposed findings of fact and conclusions of law. Each of the Objecting Insurers filed competing statements.¹⁶ The Debtor filed amended proposed

¹⁵ Liberty Mutual also filed a motion for temporary allowance of the Liberty Mutual POC, ECF No. 851, but declined to go forward on the motion at the Combined Hearing, *see* ECF No. 1162.

¹⁶ Proposed Findings of Fact & Conclusions of Law Denying Confirmation of the Am. Plan of Reorg. of Hopeman

findings and conclusions to address the evidence admitted at the Combined Hearing.¹⁷ The Debtor also filed the Second Modified Plan, documenting the agreed-upon modifications placed on the record at the Combined Hearing.¹⁸

II. PROPOSED CONCLUSIONS OF LAW

Subject to the requirements of section 524(g), the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Hopeman was and is qualified to be a debtor under section 109 of the Bankruptcy Code. Venue of this Bankruptcy Case in the Eastern District of Virginia is proper under 28 U.S.C. § 1408.

A. As a Preliminary Matter, Liberty Mutual Lacks Standing to Object to either the Disclosure Statement or the Plan.

Although the Bankruptcy Court will address Liberty Mutual's objections on the merits, the Court agrees with the Plan Proponents that Liberty Mutual lacks standing to object to the Disclosure Statement and the Plan. In a Chapter 11 case, "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). Under this statute, Liberty Mutual has standing to

Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 1184 at Ex. A (the "Liberty Mutual PFFCL"); Travelers' Proposed Findings of Fact & Conclusions of Law Regarding Denial of Confirmation of the Mod. Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 1188; Chubb Insurers' Proposed Findings of Fact & Conclusions of Law (I) Denying the Adequacy of the Disclosure Statement; & (II) Denying Confirmation of the Debtor's Proposed Am. Plan, ECF No. 1189 at Ex. A (the "Chubb PFFCL").

¹⁷ Am. Proposed Findings of Fact & Conclusions of Law Regarding Confirmation of the Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code & Approving Adequacy of the Disclosure Statement, ECF No. 1187 at Ex. A.

¹⁸ The Court specifically finds and holds that the modifications to the Plan fully comply with all applicable provisions of the Bankruptcy Code and Rules and either do not materially or adversely affect or change the treatment of any Claim or Equity Interest in the Debtor or have been consented to by any holder of an affected Claim or Equity Interest.

object to the Disclosure Statement and Plan only if Liberty Mutual is a creditor or if Liberty Mutual qualifies as some other “party in interest.” Liberty Mutual is neither.

Liberty Mutual is not a creditor of the Debtor. The term “creditor” is defined in the Bankruptcy Code to mean an entity that has a claim against the debtor or against the estate. 11 U.S.C. § 101(10). As described herein *supra*, the Bankruptcy Court disallowed and expunged the Liberty Mutual POC. Liberty Claim Obj. Order, ECF No. 907. Although Liberty Mutual appealed the Liberty Claim Objection Order, *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00486-DJN (E.D. Va.), Liberty Mutual has not sought nor obtained a stay pending appeal. Without a stay, the order is effective and, as such, Liberty Mutual has no claim against either the Debtor or the Hopeman estate.

In the recent *Truck Insurance Exchange v. Kaiser Gypsum Co., Inc.* case, the Supreme Court explained when an insurer is considered a party-in-interest for purposes of section 1109(b), giving it standing to object to an insurance-neutral plan. 602 U.S. 268 (2024). In *Truck Insurance*, the Supreme Court rejected the argument that an insurance-neutral plan deprives an insurer of standing under all circumstances: “Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer’s prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers.” *Id.* at 283. In finding that Truck Insurance has standing, the Supreme Court focused on the fact the insurer had “financial responsibility for *bankruptcy claims*.” *Id.* at 281 (emphasis added).

The Northern District of New York recently interpreted *Truck Insurance* to require actual financial responsibility to confer standing upon an insurer. *In re Roman Cath. Diocese of Albany*, No. 23-10244, 2025 WL 2536165, 2025 Bankr. LEXIS 2185 (Bankr. N.D.N.Y. Sep. 3, 2025). In

the *Albany Diocese* case, the objecting insurance companies had disclaimed liability for bankruptcy claims, much like Liberty Mutual in the case at bar. The bankruptcy court rejected the insurers' argument that they had standing to object to claims, holding

it is difficult to understand how the Insurers create the thread that the Insurers have standing when they have nothing at stake, they have no skin in the game. Such a stance by the Insurers would seemingly be paradoxical: insurance companies could claim standing because they are likely to contribute to the bankruptcy distribution while simultaneously claiming they are under no obligation to make said contribution.

Id. at *6, 2025 Bankr. LEXIS 2185 at *18 (alterations and internal quotation marks removed). To have standing to object, the bankruptcy court required the insurers have either “an affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors.” *Id.*, 2025 Bankr. LEXIS 2185, at *19.

The Plan Proponents have been unequivocal. Hopeman does not have any rights or coverage in any Asbestos Insurance Policies issued by Liberty Mutual. Plan § 6.2, ECF No. 1185 at 28; Combined Hr'g Tr. Day 1 72:19-74:24, 131:19-34:14, ECF No. 1174 at 72-74, 131-34. There are no rights or obligations that Hopeman could alter or impose on Liberty Mutual by the Plan or otherwise. Similarly, the Plan does not seek to impose any financial responsibility upon Liberty Mutual for *bankruptcy* claims, as required by *Truck Insurance*. *See* 602 U.S. at 281 (emphasis added). The Plan only clarifies that to the extent a person may have a claim against Liberty Mutual directly arising under non-bankruptcy law, that claim is unaffected by the Plan. *See, e.g.,* Plan, § 8.13(d), ECF No. 1185 at 37 (“Channeled Asbestos Claimants may, only to the extent permitted or provided under applicable nonbankruptcy law, bring such Insurance Policy Actions against a Non-Settling Asbestos Insurer . . .”). The Plan neither enhances nor diminishes those rights, *see, e.g., id.* § 6.2, ECF No. 1185 at 27 (expressly preserving “all parties' respective

rights, duties, defenses, obligations and liabilities” in the Asbestos Insurance Policies and the Asbestos CIP Agreements); nor does the Plan impair or otherwise alter any defenses Liberty Mutual may have to such claimants’ claims, *id.* § 8.18, ECF No. 1185 at 40 (preserving each Non-Settling Asbestos Insurers’ “claims, defenses, rights, or causes of action that it has or may have under or in connection with any of its Asbestos Insurance Policies or any of its Asbestos CIP Agreements”).

The Bankruptcy Court also finds that identifying Liberty Mutual as a named “Non-Settling Asbestos Insurer” does not render them a party-in-interest with standing to object to the Plan. As more fully discussed *infra*, the actions that Liberty Mutual has initiated or otherwise taken in this Bankruptcy Case have created confusion or a misunderstanding of the effect that this Bankruptcy Case may have on non-bankruptcy claims asserted against Liberty Mutual by third-parties. The inclusion of Liberty Mutual as a Non-Settling Asbestos Insurer is necessary to make clear that this Bankruptcy Case does impact any rights claimants may have against Liberty Mutual directly under applicable non-bankruptcy law. Similarly, Liberty Mutual’s rights, claims, and defenses it may assert in these direct action claims are all unimpacted by the Plan. While such language may seem superfluous, the Bankruptcy Court views it as an appropriate clarification given the positions that Liberty Mutual has taken (and the Bankruptcy Court has rejected) during the pendency of this Bankruptcy Case.

In the absence of any financial responsibility for bankruptcy claims – either through affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors, Liberty Mutual is not a party-in-interest under *Truck Insurance* and does not have standing to object to the Plan and Disclosure Statement. *See In re Roman Cath. Diocese of Albany*, 2025 WL 2536165, at *6, 2025 Bankr. LEXIS 2185, at *18-19. Liberty Mutual is neither a creditor

of the Debtor that has any rights or claims against the Debtor nor an insurer against which the Debtor asserts rights or claims. Nothing in the Plan alters Liberty Mutual's liability or the rights of the holders of Channeled Asbestos Claimants against Liberty Mutual, or vice versa. Accordingly, Liberty Mutual lacks standing to object to the Disclosure Statement and Plan.

B. The Bankruptcy Court Approves the Disclosure Statement on a Final Basis.¹⁹

The primary purpose of a disclosure statement is to provide sufficient information for creditors and interest holders to make an informed decision regarding whether to vote for the plan. *See, e.g., Nelson v. Dalkon Shield Claimants Trust (In re A.H. Robins Co., Inc.)*, 216 B.R. 175, 180 (E.D. Va. 1997), *aff'd* 163 F.3d 598 (4th Cir. 1998); *In re Mohammad*, 596 B.R. 34, 39 (Bankr. E.D. Va. 2019), *subsequently aff'd sub nom. Mohammad v. Fitzgerald*, 790 Fed. App'x. 534 (4th Cir. 2020). To that end, section 1125 of the Bankruptcy Code requires a disclosure statement to contain "adequate information." 11 U.S.C. § 1125(b). "Adequate information" as used in the section 1125 means

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan

11 U.S.C. § 1125(a)(1). A disclosure statement does not need to include "information about any other possible or proposed plan." *Id.* When evaluating whether a disclosure statement contains adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional

¹⁹ The District Court must consider whether to confirm a plan proposed under section 524(g) of the Bankruptcy Code. There is no similar requirement for the approval of a disclosure statement related to a 524(g) plan. However, to the extent that this Bankruptcy Court must issue proposed findings of fact and conclusions of law in connection with final approval of the Disclosure Statement, for the reasons stated herein, the Bankruptcy Court recommends the District Court approve the Disclosure Statement on a final basis.

information.” *Id.* When making this determination, which is made on a case-by-case basis, courts typically look for disclosures related to a variety of topics. Such topics may include, among others:

(1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys’ and accountants’ fees; (13) the collectibility of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors’ decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Publ’g Servs., Inc., 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984). In addition to the foregoing, Bankruptcy Rule 3016 requires that when a plan “provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction.” Fed. R. Bankr. P. 3016(c).

Here, the Disclosure Statement contains information concerning: (i) the nature and history of Hopeman’s business and liabilities; (ii) events leading up to this Bankruptcy Case; (iii) the terms of the Plan, including the treatment of holders of claims and equity interests under the Plan; (iv) the terms of the Asbestos Trust; (v) financial information and projections for the Reorganized Hopeman; (vi) an overview of the requirements for confirmation of the Plan; (vii) effect of confirmation of the Plan, including the channeling of the Asbestos Claims to the Asbestos Trust;

(viii) a discussion of risk factors affecting the implementation of the Plan; (ix) certain federal income tax consequences of the Plan; and (x) solicitation of holders of General Unsecured Claims and Asbestos Claims. The Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code because it contains information that is reasonably practicable to permit a hypothetical creditor to make an informed judgment about the Plan. The Disclosure Statement further provides sufficient notice of the injunction, exculpation, and release provisions in the Plan, including the Asbestos Permanent Channeling Injunction as required by Bankruptcy Rule 3016(c). Article VIII of the Disclosure Statement describes the entities and the acts subject to the injunction under the Plan in specific and conspicuous language, making it clear to anyone who reads it.

As a co-Plan Proponent, the Committee had the opportunity to review and comment upon the Disclosure Statement prior to its filing. The FCR also had the opportunity to review and comment on the Disclosure Statement prior to its preliminary approval and the solicitation of the Plan. Neither the representative of current holders of Asbestos Claims nor the representative of future holders of Asbestos Claims had any objection to the Disclosure Statement.

Chubb objected to final approval of the Disclosure Statement, alleging it does not provide adequate information about the Litigation Trustee's compensation. First, Chubb questioned the timing and means by which the Litigation Trustee's Compensation was disclosed. Chubb faults the Plan Proponents for disclosing the compensation structure in the Amended Trust Agreement filed with the Bankruptcy Court after the Solicitation Packages were transmitted. Chubb Plan Obj. ¶ 104, ECF No. 958 at 57. However, this was exactly the timing and method of disclosure contemplated by the Solicitation Procedures Order. *See* Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4 (approving the "dates and deadlines . . . with respect to the Disclosure Statement, solicitation of votes to accept the Plan, voting on the Plan, and confirming the Plan," including a

June 6, 2025, deadline to file the Plan Supplement); Initial Plan Suppl. Ex. A, ECF No. 853 at 5-55 (containing Amended Trust Agreement and filed on June 6, 2025). No party-in-interest – including Chubb – objected to or appealed the Solicitation Procedures Order, including on the grounds that solicitation should be delayed pending full disclosure of the Litigation Trustee’s compensation.

Moreover, the Solicitation Procedures Order established a June 6, 2025, disclosure deadline based on a contemplated confirmation hearing on June 23. Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4. The Combined Hearing was continued and subsequently held on August 25, allowing parties-in-interest two more months to consider those disclosures. *See* Notice of Adjournment of Combined Hr’g, ECF No. 972. No beneficiary of the proposed Asbestos Trust objected to the Plan because of any delayed notice of the Litigation Trustee’s compensation either before or after voting in favor of the plan.

In addition to unfounded timing concerns, Chubb complains that the Disclosure Statement fails to disclose that the fees of the Litigation Trustee will significantly diminish the returns to be recovered by holders of Insured Asbestos Claims. *See* Chubb Plan Obj. ¶ 102, ECF No. 958 at 56. The Bankruptcy Court agrees with the Debtor that this is a misreading of the Plan’s provisions and that there is no failure of disclosure on this point. The Disclosure Statement provides that the Litigation Trustee will only be entitled to compensation in actions involving the Asbestos Trust, *see* Am. Plan Suppl. Ex. A § 4.5(b), ECF No. 1143 at 28 (the “Asbestos Trust Agreement”) (“The Litigation Trustee shall be entitled to 33.3% of all funds recovered in litigation in favor of the Asbestos Trust as the Litigation Trustee’s compensation”), with such compensation to be paid as an expense of the Asbestos Trust. Plan § 8.3(n), ECF No. 1185 at 33. The Litigation Trustee would not be entitled to compensation in other circumstances, such as when a Channeled Asbestos

Claimant obtains a judgment on their tort claim through the court system, Disclosure Statement § 8.12(a), ECF No. 690 at 95 (expressly permitting a Channeled Asbestos Claimant to “initiate, commence, continue or prosecute an action against Reorganized Hopeman . . . and . . . any Non-Settling Asbestos Insurer for Wayne, in a court of competent jurisdiction to obtain the benefit of Asbestos Insurance Coverage”), and then seeks to recover such amounts from the applicable Non-Settling Asbestos Insurers, *id.* § 8.13(c), ECF No. 690 at 96. A plain reading of those provisions shows that, for such recoveries, there will be no compensation payable to the Litigation Trustee because the Litigation Trustee will not be involved in such an action.

Moreover, any settlement obtained through an action by the Asbestos Trust would, by definition, require complete disclosure and the Bankruptcy Court’s approval, and the proceeds of the settlement would be held by the Asbestos Trust for the benefit of certain holders of Uninsured Asbestos Claim. The deduction of the Asbestos Trust expenses – which include the Litigation Trustee’s Compensation – from the corpus of the Asbestos Trust is appropriate in these circumstances.

Finally, although Chubb appears to concede that the Debtor complied with the Solicitation Procedures Order, Chubb urges this Court to find such compliance insufficient because “[t]he Plan Supplement was not provided to all of the creditors that received Solicitation Packages; rather, it was served only on the Rule 2002 service list.” Chubb Plan Obj. ¶ 104, ECF No. 958 at 57. The Bankruptcy Court finds this contention to be without merit.²⁰ The Debtor performed in accordance with the Solicitation Procedures Order, which is a final, unappealable order. Moreover, the

²⁰ The Bankruptcy Court agrees with the Debtor that *Braun v. Am.-CV Station Grp., Inc. (In re Am.-CV Station Grp., Inc.)*, 56 F.4th 1302 (11th Cir. 2023) is inapplicable. This is not the instance of an undisclosed last-minute modification that contradicted prior express representations. See *id.* at 1305, 1313. While the exact amount of the Litigation Trustee Compensation may have been unknown, the Disclosure Statement was clear – the Litigation Trustee would be paid a certain fee in certain circumstances and the details surrounding such a fee would be provided in the Plan Supplement.

Bankruptcy Court finds that the Debtor provided actual notice of the forthcoming plan supplement and the mechanism by which any party-in-interest could obtain a copy. Certificate of Serv., ECF No. 864; Solicitation Procs. Order ¶ 20, ECF No. 782 at 8. The Debtor served the Solicitation Packages, Certificate of Serv. ¶¶ 7-9, ECF No. 864 at 2-3, which included a copy of the Solicitation Procedures Order disclosing that the Debtor would file a Plan Supplement and the deadline for such filing, *id.* ¶ 4(b), ECF No. 864 at 2; Solicitation Procs. Order Ex. 4, ECF No. 782 at 8. Furthermore, that notice apprised parties-in-interest, including holders of Claims in the Voting Classes, that they could—and how to—obtain copies of filings in this Chapter 11 Case free of charge on Verita’s website. Solicitation Procs. Order Ex. 4, ECF No. 782 at 77. That notice was more than sufficient in these circumstances.

Accordingly, Chubb’s objections to the Disclosure Statement are without merit. The Disclosure Statement contains adequate information for the parties entitled to vote on the Plan to make an informed decision. Service of the Disclosure Statement was accomplished in accordance with this Solicitation Procedures Order. Under the facts and circumstances of this case, the Bankruptcy Court finds that the Disclosure Statement contains adequate information as required by section 1125 of the Bankruptcy Code and as such, is approved on a final basis. Alternatively, the Bankruptcy Court recommends that the District Court approve the Disclosure Statement on a final basis.

C. The Bankruptcy Court Recommends Finding the Plan Complied with the Requirements of Section 1129 of the Bankruptcy Code

To confirm the Plan, the Court must find that the Plan complies with each of the requirements of section 1129(a) of the Bankruptcy Code. The Bankruptcy Court recommends the following proposed findings and conclusions of law in support of confirmation of the Plan as modified herein.

1. Section 1129(a)(1): The Plan complies with applicable provisions of the Bankruptcy Code.

Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if “[t]he plan complies with the applicable provisions of this title.” 11 U.S.C. § 1129(a)(1); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 270-73 (Bankr. S.D. Ohio 1996) (examining each requirement of Chapter 11 to demonstrate that section 1129(a)(1) was satisfied); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) (“[I]n order for a plan of reorganization to pass muster . . . it must comply with all the requirements of Chapter 11.”). The primary focus of this requirement is to ensure that the Plan complies with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan, respectively. *See* S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5962, 6368; *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) (holding that legislative history indicates that section 1129(a)(1) was intended to require compliance with sections 1122 and 1123).

The Bankruptcy Court recommends finding that the Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123.

a. Sections 1122 and 1123(a)(1)-(4): Classification and Treatment of Claims and Interests.

This Court finds that the Plan meets the classification requirements of sections 1122(a) and 1123(a)(1)-(4) of the Bankruptcy Code. Section 1122 of the Bankruptcy Code provides that the claims or interests within a given class must be “substantially similar” to the other claims or interests in that class:

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

11 U.S.C. § 1122. Although section 1122(a) of the Bankruptcy Code prohibits the inclusion of dissimilar claims in the same class, it does not require the placement of all similar claims in one class. *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) (“[W]e agree with the general view which permits the grouping of similar claims in different classes.” (first citing *Teamsters Nat’l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc. (In re U.S. Truck Co., Inc.)*, 800 F.2d 581, 587 (6th Cir. 1986); then citing *Brinkley v. Chase Manhattan Mortg. & Realty Tr. (In re LeBlanc)*, 622 F.2d 872, 879 (5th Cir. 1980); then citing *Barnes v. Whelan (In re Barnes)*, 689 F.2d 193, 200 (D.C. Cir. 1982))); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) (“Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together.” (citing *In re AG Consultants Grain Div., Inc.*, 77 B.R. 665, 674 (Bankr. N.D. Ind. 1987))).

“[T]he focus of the classification is the legal character of the claim as it relates to the assets of the debtor . . . not the nature of other claims or interests a creditor might have.” *In re AOV Indus., Inc.*, 792 F.2d 1140, 1150-51 (D.C. Cir. 1986) (first citing *J. P. Morgan & Co. v. Mo. Pac. R.R. Co.*, 85 F.2d 351, 352 (8th Cir. 1936); then quoting *In re Martin’s Point Ltd. P’ship*, 12 B.R. 721, 727 (Bankr. N.D. Ga. 1981)). The existence of alternative payment sources “does not change the nature of a claim vis-a-vis the bankrupt estate and, therefore, is irrelevant to a determination of whether claims are ‘substantially similar’ for classification purposes.” *Id.* (citation omitted).

Article III of the Plan classifies Claims and Interests into five separate Classes: Priority Non-Tax Claims (Class 1), Secured Claims (Class 2), General Unsecured Claims (Class 3), Channeled Asbestos Claims (Class 4), and Equity Interests (Class 5). The number of Classes reflects the diverse characteristics of those Claims and Interests, and the legal rights under the Bankruptcy Code of each of the holders of Claims or Interests within a particular Class are substantially similar to other holders of Claims or Interests within that Class. Due to their entitlement to priority status under section 507 of the Bankruptcy Code, Priority Non-Tax Claims have been separately classified in Class 1. Secured Claims have been separately classified in Class 2 based on their secured status. Channeled Asbestos Claims have been separately classified in Class 4 due to the distinctive bases for such Claims and because such claims will receive unique treatment permitted by section 524(g) of the Bankruptcy Code. Class 3 General Unsecured Claims, while also Impaired, are separately classified given the distinctive differences in the underlying bases for such Claims, as contrasted with Class 4 Channeled Asbestos Claims. Class 3 General Unsecured Claims also are separately classified from Class 4 Channeled Asbestos Claims because they are not subject to the provisions authorized by section 524(g) of the Bankruptcy Code, which applies to the Class 4 Channeled Asbestos Claims. Finally, the Interests in the Debtor have been separately classified, as Class 5 Equity Interests, to reflect their status as Interests.

The inclusion of both Insured Asbestos Claims and Uninsured Asbestos Claims in Class 4 Channeled Asbestos Claims is not improper. Both Insured Asbestos Claims and Uninsured Asbestos Claim have rights against the Debtor's estate arising out of Asbestos Claims and, as such, share similar legal character vis a vis the Debtor. *See In re AOV Indus., Inc.*, 792 F.2d at 1150-51

(citations omitted). The existence of recourse against the Insurers – or any other recovery source – is immaterial for purposes of classification under the Plan. *See id.*

This Court also finds that the Plan complies with sections 1123(a)(1)-(4) of the Bankruptcy Code. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified. Article III of the Plan identifies and describes each Class of Claims or Interests that is not impaired under the Plan, as required by section 1123(a)(2). Article III of the Plan indicates that Classes 1 and 2 are unimpaired.

In accordance with section 1123(a)(3), Article III of the Plan specifies the treatment of each Class of Claims or Interests that is impaired under the Plan. Sections 4.3 and 4.4 of the Plan state that Class 3 (General Unsecured Claims) and Class 4 (Channeled Asbestos Claims) are impaired and provide for the treatment of those classes.

Section 1123(a)(4) provides that a plan must “provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest.” 11 U.S.C. § 1123(a)(4). No holder of an Asbestos Claim objected to the classification of claims under the Plan. Nevertheless, Chubb and Travelers both argue that the Plan violates section 1123(a)(4) because it fails to provide the same treatment to all holders of Class 4 Channeled Asbestos Claims. Specifically, Chubb contends that not all Channeled Asbestos Claims are subject to the same process because Uninsured Asbestos Claims are paid directly by the Asbestos Trust while Insured Asbestos Claims are resolved in the tort system. Chubb Plan Obj. ¶ 90(a), ECF No. 958 at 49. Furthermore, with respect to Insured Asbestos Claims, Chubb complains of disparate treatment as holders of Insured Asbestos Claims with direct-action rights may sue and recover from Non-Settling Asbestos Insurers directly while

those without such rights must engage in a two-step litigation process. *Id.* The Bankruptcy Court recommends that these objections be overruled because they are without merit.

“‘[N]either the Code nor the legislative history precisely defines the standards of equal treatment,’” but “courts have interpreted the ‘same treatment’ requirement to mean that all claimants in a class must have ‘the same opportunity’ for recovery.” *In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) (first quoting *In re AOV Indus., Inc.*, 792 F.2d at 1152; then quoting *Ad Hoc Comm. of Pers. Inj. Asbestos Claimants v. Dana Corp. (In re Dana Corp.)*, 412 B.R. 53, 62 (S.D.N.Y. 2008)). Indeed, “[s]ection 1123(a)(4) does not require precise equality, only approximate equality.” *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) (first citing *In re Dow Corning Corp.*, 255 B.R. 445, 497 (E.D. Mich. 2000), *aff’d in part and remanded in part*, 280 F.3d 648 (6th Cir. 2002); then citing *In re Resorts Int’l, Inc.*, 145 B.R. 412, 447 (Bankr. D.N.J. 1990)) ([Section 1123(a)(4)] “is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure since there is no statutory obligation upon plan proponents to quantify exactly what each class member is relinquishing by a release.”); *see also In re LATAM Airlines Grp. S.A.*, No. 20-11254-JLG, 2022 WL 2206829, at *35, 2022 Bankr. LEXIS 1725, at *107-08 (Bankr. S.D.N.Y. June 18, 2022) (“[B]y its terms, [section 1123(a)(4)] does not mandate that members of the same class receive the same treatment on account of their claims.” (citing *In re Quigley*, 377 B.R. at 116)); *In re Mesa Air Grp., Inc.*, No. 10-10018 MG, 2011 WL 320466, at *7, 2011 Bankr. LEXIS 3855, at *19 (Bankr. S.D.N.Y. Jan. 20, 2011) (“Without question, the ‘same treatment’ standard of section 1123(a)(4) does not require that all claimants within a class receive the same amount of money.” (quoting *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992))). Ultimately, “[w]hat matters, then, is not that claimants recover the same amount but that they have equal opportunity to recover on their

claims.” *In re W.R. Grace & Co.*, 729 F.3d at 327. And the Bankruptcy Court has discretion in determining whether this standard is met. *In re Multiut Corp.*, 449 B.R. 323, 335 (Bankr. N.D. Ill. 2011) (“[B]ankruptcy courts have some discretion in deciding whether class members are receiving the same treatment.”).

“Certain procedural differences, such as a ‘delay in receipt of distributions’ for some claims, ‘do[] not alone constitute unequal treatment.’” *In re W.R. Grace & Co.*, 729 F.3d at 327 (brackets in original) (quoting *Enron Corp. v. The New Power Co. (In re New Power Co.)*, 438 F.3d 1113, 1122-23 (11th Cir. 2006)). “In fact, § 524(g) ‘clearly envisions that asbestos claims will be paid periodically as they accrue and as they are allowed,’ since it requires courts to ensure that there will be sufficient funds available for both future demands and present claims to receive similar treatment.” *Id.* (quoting *In re W. Asbestos Co.*, 313 B.R. 832, 842-43 (Bankr. N.D. Cal. 2003)). Accordingly, “differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant’s opportunity to recover.” *Id.* at 327, 330 (“[T]he District Court rightly determined that the Joint Plan satisfies the equal treatment provisions of § 1123(a)(4) and § 524(g). Although there may, at the margins, be some differences in recovery for direct and indirect claims, those differences do not amount to disparate treatment of creditors.”); *see also In re Dow Corning*, 255 B.R. at 497-98 (affirming bankruptcy court’s finding that § 1123(a)(4) was satisfied when each tort claimant’s primary treatment was to enter a litigation facility notwithstanding claimants’ subsequent choice of litigating his or her disputed and unliquidated claims or settling, that is, agreeing to less favorable treatment).

First, the Bankruptcy Court agrees with the Debtor that the Plan itself – which is the relevant inquiry for purposes of section 1123(a)(4) – does not provide a different process for the

holders of Insured Asbestos Claims to liquidate and recover their claims. Rather, the Plan leaves undisturbed any state law rights that the holders of Channeled Asbestos Claims may have outside of this Bankruptcy Case. Each holder of a Channeled Asbestos Claim may resort to the tort system to pursue their claim to the extent they have that right under applicable non-bankruptcy law. To the extent any Channeled Asbestos Claimants find that they hold an Uninsured Asbestos Claim, they can pursue a claim against the Asbestos Trust in accordance with the Asbestos Trust Distribution Procedures. *See* Am. Plan Suppl. Ex. B, ECF No. 1143 at 107-41 (the “Asbestos Trust Distribution Procedures”). All holders of Channeled Asbestos Claims have those same avenues of recovery under the Plan. The possibility of different recoveries for class members is a result of non-bankruptcy law, not the Plan.

Second, although the Bankruptcy Court failed to receive any evidence regarding the delay a dual system may cause, the Bankruptcy Court agrees with the Debtor that any potential delay in recovery does not violate section 1123(a)(4). Any delay in recovery, if such a delay exists, would not affect Channeled Asbestos Claimants’ substantive rights, and “[i]t would be wholly unreasonable to require asbestos victims . . . to continue to wait indefinitely” until all Channeled Asbestos Claims are liquidated and at the distribution stage. *In re W.R. Grace & Co.*, 729 F.3d at 328-29. Indeed, there undoubtedly is a “rational basis” for placing all unliquidated personal injury claims in the same class, notwithstanding the fact that certain claimants have a procedural right to sue the debtor’s insurers directly. That procedural right does not change the character of the claims. *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504, 634 (Bankr. D. Del. 2022), *aff’d*, 650 B.R. 87 (D. Del. 2023), *aff’d in part, rev’d in part, dismissed in part sub nom. In re Boy Scouts of Am.*, 137 F.4th 126 (3d Cir. 2025); *see also In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. at 161-63, *aff’d in part, rev’d in part on other grounds, dismissed in part on other grounds sub*

nom. In re Boy Scouts of Am., 137 F.4th 126 (3d Cir. 2025) (“[T]he Bankruptcy Court correctly concluded that Lujan Claimants’ direct action rights do not warrant separate classification because those rights are procedural in nature and do not give the Lujan Claimants extra substantive rights [over claimants who cannot sue the insurers directly].”).

Finally, this structure of holders of Insured Asbestos Claims seeking payment for their claims from Non-Settling Asbestos Insurers while holders of Uninsured Asbestos Claims proceed against the Asbestos Trust mirrors the structure included in the *Kaiser Gypsum* 524(g) plan that was recently affirmed by the Fourth Circuit. *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co. (In re Kaiser Gypsum Co.)*, 135 F.4th 185, 190-91 (4th Cir. 2025). The *Kaiser Gypsum* plan similarly provided that

holders of insured asbestos personal injury claims—i.e., claims that fall within the scope of the Truck policy—would continue to assert actions against the reorganized Debtors, in name only, in the tort system. . . . Holders of uninsured asbestos personal injury claims—i.e., claims that fall outside the scope of the Truck policy—would submit their claims directly to the Trust for resolution through an administrative process.

Id. Although the *Kaiser Gypsum* plan contemplated dual tracks for holders of asbestos claims, the plan also placed holders of insured and uninsured asbestos personal injury claims in the same class for voting and treatment purposes. *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW), 2021 WL 3215102, at *10, 2021 U.S. Dist. LEXIS 146354, at *28-30 (W.D.N.C. July 27, 2021) (subsequent history omitted). The district court found that this plan structure satisfied section 1123(a)(4). *Id.*

Chubb urges this Court to follow *In re City Homes III LLC*, 564 B.R. 827 (Bankr. D. Md. 2017). That case is easily distinguishable as a non-asbestos liquidation case. Even if the decision were applicable, it would not mandate denial of confirmation. The original unconfirmed plan in *City Homes* permitted insured lead paint claimants to bring suit in the tort system, for a potentially

full recovery, while uninsured claimants were limited to their pro rata share of a finite \$300,000 trust. *Id.* at 861-62, 868. The bankruptcy court confirmed a subsequent plan that continued to place insured claims and uninsured claims in the same class, but increased trust funding. *See* Order Confirming Third Am. Ch. 11 Plan Jointly Proposed by the Debtors & the Official Comm. of Unsecured Creditors, *In re City Homes III LLC*, Case No. 13-25370-RAG (Bankr. D. Md. Apr. 13, 2017), ECF No. 849. Because satisfying section 1123(a)(4) is mandatory to confirm any Chapter 11 plan, the *City Homes* court implicitly found that classifying insured and uninsured claims together was appropriate. Taken to its logical conclusion, the *City Homes* decision supports a finding that the Plan complies with section 1123(a)(4).

For the reasons discussed *supra* in connection with final approval of the Disclosure Statement, this Bankruptcy Court also rejects Chubb's contention that the Litigation Trustee's Compensation will somehow result in disparate treatment for Channeled Asbestos Claims. Holders of Insured Asbestos Claims generally may pursue their own claims in the tort system against Reorganized Hopeman and, if they have direct-action rights under applicable non-bankruptcy law, against Non-Settling Insurers. Those claimants will compensate their own lawyers based on their engagement agreements. The Litigation Trustee will not be imposing a fee for that work, which the Litigation Trustee is not undertaking. In the event the Litigation Trustee institutes litigation and recovers monies for the Asbestos Trust from a Non-Settling Asbestos Insurer or reaches an Asbestos Insurance Settlement with the Court's approval under section 524(g), then the Litigation Trustee's Compensation may be payable out of those recoveries for his work on those matters. The fact that the Litigation Trustee is to be paid for his work on behalf of the Asbestos Trust does not make Class 4 members' treatment disparate. All class members whose compensable claims become Uninsured Asbestos Claims will have the same avenues for recovery

by being payable by the Asbestos Trust, in accordance with the Trust Distribution Procedures, out of funds available to the Trust. Any inequality in the value of Channeled Asbestos Claims is not dictated by any differing treatment provided to the holders of Class 4 Channeled Asbestos Claims under the Plan but merely by applicable non-bankruptcy law.

Travelers, for its part, argues that the Plan violates section 1123(a)(4) because “Uninsured Asbestos Claims are limited to only compensatory damages and cannot recover punitive or exemplary damages . . . [but] there is no similar limitation on Insured Asbestos Claims.” Travelers Plan Obj. ¶ 104, ECF No. 949 at 61. This objection fails for three reasons.

First, section 1123(a)(4)’s requirements need not be satisfied where “the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest.” 11 U.S.C. § 1123(a)(4). Here, no holder of a Channeled Asbestos Claim has objected to the Plan. The only holders of Channeled Asbestos Claims that did not vote to accept the Plan – the Roussel Claimants – are not believed to hold Uninsured Asbestos Claims. As a result, section 1123(a)(4)’s requirements are satisfied.

Second, section 7.2 of the Asbestos Trust Distribution Procedures, which provides that “[p]unitive or exemplary damages . . . shall not be considered or paid by the Asbestos Trust on any Uninsured Claim,” Asbestos Tr. Distrib. Procs. § 7.2, ECF No. 1143 at 139, is substantively identical to the analogous provision in the *Kaiser Gypsum* trust distribution procedures. Third Am. Joint Plan of Reorg. of Kaiser Gypsum Co., Inc. & Hanson Permanente Cement, Inc. Ex. I.A.19 at § 7.2, *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481 at 181 (“Punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or paid by the Asbestos Trust on any Asbestos

Claim, notwithstanding their availability, or award, in the tort system.”). Thus, this provision is acceptable to the Fourth Circuit.

Third, it is entirely consistent with the purpose of asbestos trusts that Uninsured Asbestos Claims satisfied through the Asbestos Trust Distribution Procedures would be limited to compensatory damages. The function of these trusts is to compensate injured individuals, not to punish alleged bad actors. Setting aside the procedural impossibilities of providing for the award of punitive or exemplary damages through the Asbestos Trust Distribution Procedures, such awards would jeopardize the Asbestos Trust’s goal of protecting the interests of future claimants by disproportionately diminishing the corpus of the trust to the detriment of all Channeled Asbestos Claimants.

Much like *Kaiser Gypsum*, the Plan treats insured and uninsured claims alike. Channeled Asbestos Claimants can pursue whatever claims they may have in the tort system to the extent available to them under applicable non-bankruptcy law, *see* Third Am. Joint Plan of Reorg. of Kaiser Gypsum Co., Inc. & Hanson Permanente Cement, Inc. § 4.O, *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481 at 47, but if a claim is presented to the Asbestos Trust because the holder of that claim is determined to hold an Uninsured Asbestos Claim, the Asbestos Trust will only allow for payment of compensatory damages, not any punitive damages, *see id.* Ex. I.A.19 at § 7.2, ECF No. 2481 at 181. The Plan is designed to treat all Channeled Asbestos Claims similarly without disturbing any non-bankruptcy rights such holders may have to seek additional sources of recovery. For these reasons, the Bankruptcy Court finds Chubb’s and Travelers’ objections are without merit. Therefore, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

b. Section 1123(a)(5): Adequate Means for the Plan's Implementation.

Article VIII and various other provisions of the Plan provide adequate means for the Plan's implementation in accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code. Subsection (a)(5) provides a non-exhaustive list of transactions that may constitute adequate means for implementation of a plan. *In re Fed.-Mogul Glob.*, 684 F.3d 355, 368 (3d Cir. 2012) (quoting *Collier on Bankruptcy* ¶ 1123.01[5] (Richard Levin & Henry J. Sommer eds., 16th ed.)).

One means of plan implementation is the “transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan.” 11 U.S.C. § 1123(a)(5)(B). The Plan provides for the vesting of all property, subject to the Asbestos Trust Contribution, of the Debtor's Estate and any property acquired by the Debtor or Reorganized Hopeman under the Plan in Reorganized Hopeman, Plan § 9.2, ECF No. 1185 at 42, including the transfer of and preservation of rights of action by the Reorganized Hopeman, *id.* § 9.3, ECF No. 1185 at 43. The Plan also provides for the creation and transfer of certain assets to and the vesting of assets in the Asbestos Trust. *Id.* §§ 8.2(a), 8.3, ECF No. 1185 at 29-34.

Another means of plan implementation is “the distribution of all or any part of the property of the estate among those having an interest in such property of the estate.” 11 U.S.C. § 1123(a)(5)(D). Article V of the Plan explains what distributions will be made, to whom such distributions will be made, and the methods for delivering such distributions. Section 8.5 of the Plan contemplates how those distributions will be funded. *Id.* § 8.5, ECF No. 1185 at 34.

Section 1123(a)(5) is not exclusive, and other actions may constitute adequate means for plan implementation. In this case, the Plan also provides for (a) the Debtor's continued corporate existence by consummation of the Restructuring Transactions, *id.* § 8.10, ECF No. 1185 at 35; (b) the adoption of Reorganized Hopeman's corporate governance documents, *id.* §§ 8.2(b)(i), 8.4, ECF No. 1185 at 30, 34, and the identification of the initial directors and officers of Reorganized

Hopeman, *id.* §§ 8.2(b)(ii), 8.7, ECF No. 1185 at 30, 34; (c) the appointment of the Asbestos Trustees, the Delaware Trustee, the FCR, and the Trust Advisory Committee (the “TAC”), *id.* §§ 8.3(d)-(g), ECF No. 1185 at 31-32; (d) the authorization to execute various documents and to implement various transactions to effectuate the Plan, *id.* § 8.9, ECF No. 1185 at 35; (e) the exemption from certain transfer taxes, *id.* § 13.7, ECF No. 1185 at 60; (f) the various discharges, releases, injunctions, and exculpations set forth in Article X of the Plan; and (g) the treatment of all executory contracts and unexpired leases to which the Debtor is a party as detailed in Article VI of the Plan. When considering the foregoing, the Plan fully complies with the requirements of section 1123(a)(5).

c. Section 1123(a)(6): Prohibition Against the Issuance of Nonvoting Equity Securities and Adequate Provisions for Voting Power of Classes of Securities.

Section 1123(a)(6) of the Bankruptcy Code requires that a debtor’s corporate documents prohibit the issuance of nonvoting equity securities. Section 8.4 of the Plan provides that the Amended Certificate of Incorporation and Amended By-Laws will prohibit the issuance of nonvoting equity securities to the extent required under section 1123(a)(6). As such, section 1123(a)(6) is satisfied.

d. Section 1123(a)(7): Selection of Directors and Officers in a Manner Consistent with the Interests of Creditors and Equity Security Holders and Public Policy.

The Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized Hopeman is consistent with the interests of creditors and equity security holders and with public policy. In analyzing a plan’s provisions with respect to the selection of officers and directors, a court is to consider “the shareholders’ interest in participating in the corporation, the desire to preserve the debtor’s reorganization, and the overall fairness of the provisions.” *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1362 (9th Cir. 1986).

This provision is supplemented by section 1129(a)(5) of the Bankruptcy Code, as more fully discussed *infra*, which directs courts to scrutinize the methods by which the reorganized corporation's management is to be chosen in order to provide adequate representation of those whose investments are involved in the reorganization— i.e., creditors and equity holders. *See Collier on Bankruptcy* ¶ 1123.01[7] (Richard Levin & Henry J. Sommer eds., 16th ed.); *see also In re Acequia*, 787 F.2d at 1361-62.

e. Section 1123(b): Discretionary Provisions.

Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization but are not required. For example, a plan may impair or leave unimpaired any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases. 11 U.S.C. § 1123(b)(1)-(2). A plan also may provide for: (a) “the settlement or adjustment of any claim or interest belonging to the debtor or to the estate;” or (b) “the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest.” *Id.* § 1123(b)(3)(A)-(B). Finally, a plan may “modify the rights of holders of . . . unsecured claims, or leave unaffected the rights of holders of any class of claims” and may “include any other appropriate provision not inconsistent with the applicable provisions of [title 11].” *Id.* § 1123(b)(5)-(6).

As described above, the Plan provides for the impairment of Classes 3, 4, and 5, while leaving all other Classes of Claims and Interests unimpaired. The Plan thus modifies the rights of the holders of certain Claims and leaves the rights of others unaffected. Plan art. III, ECF No. 1185 at 23-24. In particular, Channeled Asbestos Claims will be channeled to the Asbestos Trust for resolution as set forth in Article VIII of the Plan, the Asbestos Trust Agreement and the related Asbestos Trust Distribution Procedures. *Id.* § 8.3, ECF No. 1185 at 30-34. The Plan also provides for (a) the assumption, assumption and assignment, or rejection of executory contracts and

unexpired leases to which Hopeman is a party, *id.* art. VI, ECF No. 1185 at 27-28, and (b) the retention and enforcement of certain claims by the Debtor, *id.* § 9.3., ECF No. 1185 at 42.

Finally, in accordance with section 1123(b)(6), the Plan includes numerous other provisions necessary for its implementation that are consistent with the Bankruptcy Code, including: (a) Article VIII of the Plan providing for (i) the creation of the Asbestos Trust and (ii) the appointment of the Asbestos Trustee; (b) Article V of the Plan governing Distributions on account of Allowed Claims; (c) Article VII of the Plan establishing procedures for resolving Disputed Claims and making Distributions on account of such Disputed Claims once resolved; (d) Article X of the Plan regarding the discharge of Claims and injunctions against certain actions; and (e) Article XII of the Plan regarding retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date. Accordingly, the Plan fully complies with section 1123(b) of the Bankruptcy Code.

Notwithstanding the Bankruptcy Court's finding above, certain discretionary provisions included in the Plan merit additional analysis. As more fully discussed *infra*, certain of these discretionary provisions are acceptable without modification. However, the Plan's discretionary provisions regarding the Asbestos Insurance Policies and Asbestos CIP Agreements must be modified to be confirmable.

i. The Plan's discretionary provision regarding the assumption or rejection of executory contracts under the Plan should be approved.

Article VI of the Plan provides for the rejection of all Executory Contracts to which Hopeman is a party. Plan § 6.1, ECF No. 1185 at 27. The Debtor has the discretion to assume or reject any executory contract in the exercise of its sound business judgment. *In re Alpha Nat. Res., Inc.*, 555 B.R. 520, 529-30 (Bankr. E.D. Va. 2016), *aff'd*, 237 F. Supp. 3d 369 (E.D. Va. 2017), *aff'd*, 712 Fed. App'x 256 (4th Cir. 2018). "A court should not second-guess a debtor's business

judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion.” *Id.* at 530.

The Debtor takes the position, and the Court agrees, that the Asbestos Insurance Policies, Asbestos CIP Agreements, Non-Asbestos Insurance Policies,²¹ and Designated Insurance Agreements,²² including the Travelers 2005 Agreement, are not Executory Contracts. Given that the policies are not executory, there is nothing to assume or reject. *Westchester Surplus Lines Ins. Co. v. Surfside Resort & Suites, Inc. (In re Surfside Resort & Suites, Inc.)*, 344 B.R. 179, 187 (Bankr. M.D. Fla. 2006) (“[T]he Policy fails to satisfy the Countryman definition of an executory contract. . . . Therefore, the benefit of assuming or rejecting the Policy is inapposite.”).

The Fourth Circuit uses the Countryman definition of executory contracts: a “contract is executory if the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete the performance would constitute a material breach excusing the performance of the other.” *In re RoomStore, Inc.*, 473 B.R. 107, 110-11 (Bankr. E.D. Va. 2012) (quoting Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 Minn. L. Rev. 439, 460 (1973)); *see also Lubrizol Enters., Inc. v. Richmond Metal Finishers*,

²¹ “Non-Asbestos Insurance Policy means any insurance policy that provides coverage to Hopeman that is not an Asbestos Insurance Policy.” Plan § 1.82, ECF No. 1185 at 18. Section 6.1 of the Plan governs the rejection of contracts. Plan § 6.1, ECF No. 1185 at 27.

²² The Plan defines Designated Insurance Agreement as

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

Plan § 1.51, ECF No. 1185 at 14.

Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1045 (4th Cir. 1985). “Under the Countryman definition courts have recognized that where one of the parties to the insurance policy has fulfilled the central agreement to such contract, such as the obligation of the insured to pay the premium in exchange for the insurer’s defense and payment of indemnity claims against the insured, the contract is no longer executory.” *In re Fed.-Mogul Glob., Inc.*, 385 B.R. 560, 575 (Bankr. D. Del. 2008) (first citing *In re Surfside Resort & Suites, Inc.*, 344 B.R. at 187; then citing *In re CVA Gen. Contractors, Inc.*, 267 B.R. 773, 779 (Bankr. W.D. Tex. 2001); then citing *In re Firearms Imp. & Exp. Corp.*, 131 B.R. 1009, 1013 (Bankr. S.D. Fla. 1991)). “The payment of policy premiums prior to the petition date constitutes substantial compliance with the policy and renders the contracts non-executory in nature.” *Id.* Additionally, an insurance policy no longer is executory after the last effective date of the policy has passed. *Id.* at 574; *see also Daileader v. Certain Underwriters at Lloyd’s London*, 670 F. Supp. 3d 12, 47 (S.D.N.Y. 2023) (collecting cases) (“Insurance policies do not constitute executory contracts where the premiums have been paid in full and the coverage period has expired prepetition.”). In such an instance, the terms and conditions of the insurance policy remain enforceable, but the policy is no longer executory. *In re Fed.-Mogul Glob., Inc.*, 385 B.R. at 574.

Applying the Countryman definition, the Asbestos Insurance Policies, Asbestos CIP Agreements, Non-Asbestos Insurance Policies, and Designated Insurance Agreements, including the Travelers 2005 Agreement, are not executory contracts and, as such, are not capable of assumption or rejection. For each such insurance policy, the Debtor fully paid the premiums under the policies prior to the Petition Date, and their coverage periods expired prior to the Petition Date. Therefore, these policies are not Executory Contracts. Because the identified policies are no longer executory, they are not capable of assumption or rejection. Although there is no evidence of any

existing executory contracts, to the extent any executory contracts exist, there has been no showing of bad faith or gross abuse of discretion associated with the Debtor's intentions. *In re Alpha Nat. Res., Inc.*, 555 B.R. at 529-30. Accordingly, the Plan properly provides for the rejection of such contracts.

ii. The Plan's discretionary provision regarding the Asbestos Trust's access to certain documents should be approved.

The Plan provides that, on the Effective Date, the Debtor shall transfer to Reorganized Hopeman all the Debtor's books and records necessary for the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with sections 8.3 and 8.16 of the Plan, the Asbestos Trust Agreement, and the Asbestos Trust Distribution Procedures. Plan § 8.3(l), ECF No. 1185 at 33. The Plan further expressly provides that "privileges belonging to Hopeman on the Petition Date in such books and records shall belong to Reorganized Hopeman as of the Effective Date, and the Asbestos Trust's access to such books and records shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records." *Id.* Chubb and Travelers object to the Plan on the grounds that this arrangement will result in privilege waivers despite the express language of this section. *See, e.g.*, Travelers Plan Obj., ¶ 95, ECF No. 944 at 57; Chubb Plan Obj. ¶¶ 126-28, ECF No. 958 at 69-71.

Chubb and Travelers apparently do not take any issue with the transfer of the Debtor's books and records to Reorganized Hopeman. The Bankruptcy Court finds such an arrangement proper and consistent with the terms of the Plan. Section 9.2 of the Plan provides that "the property of the Estate of Hopeman . . . shall vest in Reorganized Hopeman on the Effective Date." Plan § 9.2, ECF No. 1185 at 42. The Debtor's books and records, as well as any privileges associated with such books and records, are property of the Hopeman Estate that will be transferred to Reorganized Hopeman under the Plan.

However, the Bankruptcy Court does not agree with the Plan Proponents' reasoning that the Asbestos Trust should have unfettered access to the Debtor's books and records or why such unlimited access would not unduly risk a finding by another tribunal that the privilege has been lost or waived. Under the Plan, the only assets to be conveyed to the Asbestos Trust are (a) the Asbestos Trust Contribution; (b) the Asbestos Insurance Rights; (c) all other assets, rights (including Causes of Action), and benefits assigned, transferred or conveyed to the Asbestos Trust in connection with the Plan or any Plan Documents; and (d) all proceeds of the foregoing." Plan § 1.22, ECF No. 1185 at 11. The Debtor's books and records are not being transferred to the Asbestos Trust.

The Plan Proponents assert that the Asbestos Trust will retain and assert any interest and privileges in the books and records as the Asbestos Trust is the Debtor's successor in interest with respect to the Debtor's asbestos personal injury liabilities, Plan § 8.3(a), ECF No. 1185 at 30. The Plan Proponents do not provide – and the Bankruptcy Court is unfamiliar with – any reason why access to and privileges associated with the books and records would somehow transfer with liabilities to the Asbestos Trust instead of or in addition to being part of the Debtor's assets transferred to Reorganized Hopeman under the Plan.

In the absence of further support for why the Asbestos Trust should have unfettered access to the Debtor's existing books and records, the Bankruptcy Court believes the limitation proposed by Travelers is appropriate – that the Asbestos Trust's access should be limited "only to the extent it is defending or processing an Uninsured Asbestos Claim." Travelers Plan Obj. ¶ 95, ECF No. 994 at 57. Such limited access would be consistent with the Debtor's pleadings, which suggest that the Asbestos Trust needs "access to the Debtor's books and records to enable the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with the Plan."

Debtor's Am. PFFCL ¶ 153, ECF No. 1187 at 75. In such a scenario, the common interest work-product doctrines would remain viable, preserving any privilege associated with the books and records. The Bankruptcy Court believes this limitation would ensure that any privilege is not waived and would help to prevent any unnecessary risk that a subsequent court find that coverage can be denied due to an alleged failure to cooperate.

In so holding, this Bankruptcy Court does not accept the Objecting Insurers' insinuation that members of the TAC or the FCR may improperly use the privileged information contained in the Debtor's books and records to somehow advantage individual holders of Asbestos Claims. As more fully explained in section II.B.3.b *infra*, the TAC owes a fiduciary duty to holders of current Channeled Asbestos Claims, Asbestos Tr. Agreement § 5.2, ECF No. 1143 at 34, and the FCR owes a fiduciary duty only to holders of future Channeled Asbestos Claims, *id.* § 6.1, ECF No. 1143 at 40. The Bankruptcy Court has no reason to believe that the TAC and the FCR will fail to uphold their fiduciary duties. However, because the FCR and the TAC each represent only certain constituencies of the Asbestos Trust, the Bankruptcy Court is not persuaded that the FCR and the TAC would necessarily be covered by the common interest doctrine – at least not based on the record currently before the Court. Thus, limiting the Asbestos Trust's access is appropriate.

Accordingly, subject to the modification provided herein, the Bankruptcy Court finds that it is appropriate for the Confirmation Order to include language holding that the Asbestos Trust's limited access to the Debtor's books and records for the purposes of defending or processing an Uninsured Asbestos Claim will not result in the destruction or waiver of any privileges or protections applicable thereto. The transfer of the books and records along with any attendant privileges will have no effect on the ability of third parties, such as holders of Asbestos Personal Injury Claims or the Debtors' insurers, to pursue and obtain information stored in Hopeman's

books and records (including electronic records) through discovery to the full extent permitted by applicable law.

iii. The Plan’s discretionary provisions regarding settlements and releases should be approved.

Article X of the Plan includes the settlement of certain estate claims and the releases. Plan §§ 10.4-10.9, ECF No. 1185 at 46-48. In compliance with existing case law, *see, e.g., Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024); *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641 (E.D. Va. 2022), holders of non-asbestos claims could opt in to, rather than opt out of, the releases under the Plan.²³ Plan § 1.100, ECF No. 1185 at 19 (defining “Releasing Party” to mean holders who affirmatively opted in to the releases by checking a box on a form they returned to Verita); *see also* May 22, 2025, Hr’g Tr. 8:16-10:9, ECF No. 789 at 8-10. The scope of the exculpation provision is sufficiently narrowly tailored to comply with applicable law. *Compare* Plan § 10.4, ECF No. 1185 at 46, *with Patterson*, 636 B.R. at 701-02; *see also* May 22, 2025, Hr’g Tr. 10:13-11:3, ECF No. 789 at 10-11.

The uncontroverted evidence presented at the Combined Hearing established that the provisions of Article X of the Plan, including the releases of non-Debtor parties pursuant to the general releases in Section 10.6, are (a) integral to the terms, conditions and settlements contained in the Plan, (b) appropriate in connection with Hopeman’s reorganization and (c) supported by reasonable consideration. *See, e.g.,* Combined Hr’g Tr. Day 1 44:24-46:14, ECF No. 1174 at 44-46. Pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided under the Plan, the provisions in

²³ As recognized in *Harrington v. Purdue Pharma*, injunctions against third parties are expressly permitted in “asbestos-related bankruptcies—and only for such bankruptcies” 603 U.S. 204, 222. In other words, *Purdue* and *Patterson* are not implicated in connection with injunctions and releases by holders of Asbestos Claims.

Article X of the Plan, including the settlement of certain estate claims set forth in section 10.9 and the releases set forth in sections 10.5 10.6, and 10.7, constitute a good-faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Channeled Asbestos Claim, or Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim, Channeled Asbestos Claim, or Interest. When considering all of the facts and circumstances, the settlements and releases contained in Article X of the Plan are fair, equitable and in the best interests of the Estates.

iv. The Plan’s discretionary provisions regarding the Insurers’ rights under the Asbestos Insurance Agreements and the Asbestos CIP Agreements require modification.

The Plan provides for the transfer of the Asbestos Insurance Rights to the Asbestos Trust on the Effective Date, Plan § 8.3(b), ECF No. 1185 at 31, while leaving the ministerial obligations under the Asbestos Insurance Policies (e.g., providing notice and cooperation) with Reorganized Hopeman, *id.* § 8.18, ECF No. 1185 at 41 (“[T]he Asbestos Insurance Cooperation Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust.”). Chubb and Travelers argue that separating the insurance rights from the obligations harms them and violates the principle of *cum onere*, under which the burdens of an assigned contract must accompany the contract’s benefits. Chubb Plan Obj. ¶¶ 124-25, ECF No. 958 at 67-69; Travelers Plan Obj. ¶¶ 24-31, ECF No. 944 at 21-26.

The Bankruptcy Court agrees with the Plan Proponents that the *cum onere* principle is inapplicable here. Generally, under the *cum onere* principle, “[w]hen an executory contract or lease is assumed, it must be assumed *cum onere*, with all of its benefits and burdens.” *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 49 (Bankr. M.D.N.C. 2003) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531-32 (1984)). As discussed *supra*, the Asbestos Insurance

Agreements and the Asbestos CIP Agreements are not executory contracts and, therefore, are not subject to assumption.

Instead, the Asbestos Insurance Agreements and the Asbestos CIP Agreements are property of the Debtor's bankruptcy estate which may be properly transferred through a confirmed plan. 11 U.S.C. § 1123(a)(5)(B) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plan's implementation, such as . . . the transfer of all or any part of the property of the estate to one or more entities.").²⁴ However, the Plan's contemplated transfer of the Asbestos Insurance Rights to the Asbestos Trust does not affect any attendant terms and conditions.

To the extent those terms and conditions were enforceable under non-bankruptcy law the day before the bankruptcy, they remain enforceable by the insurers against the trust. To 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.

In re AIO US, Inc., Case No. 24-11836 (CTG), 2025 WL 2426380, at *24, 2025 Bankr. LEXIS 2012, at *70 (Bankr. D. Del. Aug. 21, 2025). While the Bankruptcy Court agrees with the Plan Proponents that the Plan does not extinguish the Debtor's obligations under the Asbestos Insurance Policies, *see, e.g.*, Plan § 8.18, ECF No. 1185 at 41 (providing, *inter alia*, that the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies are subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations), any order confirming the

²⁴ This section permits the transfer of a debtor's insurance policies to a trust notwithstanding any anti-assignment provisions contained in the policies themselves. *See, e.g., In re Fed.-Mogul Glob. Inc.*, 684 F.3d at 382.

Plan should make clear that the Asbestos Insurance Rights are being transferred to the Asbestos Trust subject to any existing terms and conditions.²⁵

Liberty Mutual also objects to the Plan's language concerning the transfer of the Asbestos Insurance Rights, but on different grounds. Liberty Mutual complains that the Plan improperly purports to transfer the Debtor's Asbestos Insurance Rights vis-à-vis Liberty Mutual, where no such rights exist. The Debtors cannot transfer what they do not have. *In re Boy Scouts of Am.*, 137 F.4th at 164–65 (“[A] debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy.”) As a matter of law, if the Debtor does not have any rights, no transfer is effectuated. But issues regarding the nature of the Debtor's Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute.

Consistent therewith, although the Plan may provide for the transfer of the Asbestos Insurance Rights pursuant to section 1123 of the Bankruptcy Code, the Bankruptcy Court also agrees with the Objecting Insurers that it would be improper for either the Plan or the Confirmation Order to include any findings regarding the effect of such transfer, as such language may impermissibly affect the rights and defenses of the insurers.

Though they are not executory contracts, the Asbestos Insurance Agreements and the Asbestos CIP Agreements are property of the Debtor's bankruptcy estate. *See* 11 U.S.C. § 541(a)(1) (Property of the estate includes “all legal or equitable interests of the debtor in property as of the commencement of the case.”). A bankruptcy filing should neither augment nor shrink

²⁵ Travelers argues that the term “Asbestos Insurance Cooperation Obligations” does not cover all obligations that are attendant to the Asbestos Insurance Agreements. Travelers Plan Obj. ¶ 34, ECF No. 944 at 27-28. Simply because the Plan has tasked Reorganized Hopeman as the agent responsible for compliance with the Asbestos Insurance Cooperation Obligations does not in any way eliminate or reduce any terms and conditions attendant to the Asbestos Insurance Agreements to the extent that the Asbestos Trust seeks to exercise its Asbestos Insurance Rights.

the nature of property of the estate. *See, e.g., Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381 (2019) (“The estate cannot possess anything more than the debtor itself did outside bankruptcy.” (citation omitted)). Applying this general principle, a plan should “neither increase[] [the insurer’s] prepetition obligations nor impair[] its rights under the insurance contracts.” *Truck Ins. Exch.*, 602 U.S. at 271-72 (dicta); *see also In re Boy Scouts of Am.*, 137 F.4th at 164-65 (“[A] debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts’ rights.”); *In re AIO US, Inc.*, 2025 WL 2426380, at *17, 2025 Bankr. LEXIS 2012, at *48 (“[An] order confirming the plan should not put a thumb on the scale one way or the other. The parties’ rights are essentially the same as they would be had such a transaction occurred outside of bankruptcy.”) In other words, a plan is insurance neutral if “all contractual rights and coverage defenses [are] fully preserved.” *In re Flintkote Co.*, 486 B.R. 99, 117 (Bankr. D. Del. 2012), *aff’d*, 526 B.R. 515 (D. Del. 2014); *see also Truck Ins. Exch.*, 602 U.S. at 271-72.

The Plan Proponents assert that the Plan is insurance-neutral and does not affect Insurers’ rights under their policies. To support this assertion, the Plan Proponents point to sections 6.2 and 8.18 of the Plan, which provide:

6.2. Asbestos Insurance Agreements. . . . [F]or the avoidance of doubt, except as expressly provided in Section 8.18 and Section 11.1(g) herein, none of the Asbestos Insurance Policies or the Asbestos CIP Agreements is being rejected, altered, or otherwise modified pursuant to this Plan, the other Plan Documents, or the Confirmation Order, or any findings of fact or conclusions of law with respect to confirmation of the Plan and all parties’ respective rights, duties, defenses, obligations, and liabilities thereunder are hereby preserved, except as such rights, duties, defenses, obligations, and liabilities may be affected by Section 8.18 or Section 11.1(g) or to the extent of an Asbestos Insurance Policy or Asbestos CIP Agreement that is the subject of and only to the extent

contemplated by and provided for in an Asbestos Insurance Settlement and only to the extent approved by an order of the Bankruptcy Court or the District Court. . . . In addition, nothing in this Plan, any Plan Supplement, or any other document related to or made as an exhibit to the Plan is intended to or shall limit the right of any Asbestos Insurer or Non-Asbestos Insurer to assert any insurance coverage defense available under the applicable Asbestos Insurance Policy to any Channeled Asbestos Claim, or the applicable NonAsbestos Insurance Policy to any non-Channeled Asbestos Claim, as appropriate, asserted against Hopeman or administered by the Asbestos Trust.

8.18. Insurance Neutrality. Nothing in the Plan, the other Plan Documents, the Confirmation Order, any finding of fact or conclusion of law with respect to confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order (i) shall preclude any Non-Settling Asbestos Insurer from asserting in any proceeding any and all claims, defenses, rights, or causes of action that it has or may have under or in connection with any of its Asbestos Insurance Policies or any of its Asbestos CIP Agreements; or (ii) shall be deemed to waive any claims, defenses, rights, or causes of action that any Non-Settling Asbestos Insurer has or may have under the provisions terms, conditions, defenses, or exclusions contained in its Asbestos Insurance Policies and its Asbestos CIP Agreements, including any and all such claims, defenses, rights, or causes of action based upon or arising out of the Channeled Asbestos Claims that are liquidated, resolved, discharged, channeled, or paid in connection with the Plan; provided, however, that (a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the Asbestos Insurance Rights as Hopeman or Reorganized Hopeman may have, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected Parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent that any such insurer is a Settled Asbestos Insurer. Notwithstanding anything in this Section 8.18 to the contrary, nothing in this Section 8.18 shall affect or limit, or be construed as affecting or limiting, (1) the binding effect of the Plan and the Confirmation Order on Hopeman, Reorganized Hopeman, the Asbestos Trust, or the beneficiaries of the Asbestos Trust or (2) the protection afforded to any Settled Asbestos Insurer by the Asbestos Permanent Channeling

Injunction. Further, nothing in this Section 8.18 is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any insurer with respect to any issue that is actually litigated by such insurer as part of its objections to confirmation of the Plan. Except as otherwise provided in this Section 8.18, including, without limitation, the foregoing (a) regarding the transfer of the Asbestos Insurance Rights to the Asbestos Trust and the foregoing (b) regarding the discharge of Hopeman and Reorganized Hopeman, the Asbestos Insurance Rights held by the Asbestos Trust and any claims made against the Asbestos Insurance Policies on account of such rights will be subject to any coverage defenses a Non-Settling Asbestos Insurer may raise as a result of Reorganized Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations. For the avoidance of doubt, notwithstanding that the Asbestos Insurance Cooperation Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust, the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies or Asbestos CIP Agreements shall be subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to perform the Asbestos Insurance Cooperation Obligations.

Plan §§ 6.2, 8.18, ECF No. 1185 at 27-28, 40-41 (sections 6.2 and 8.18, collectively, the "Insurance-Neutrality Provisions"). Comparing the Insurance-Neutrality Provisions to plans found by other courts to be insurance neutral, the Plan Proponents assert that this Plan is also insurance neutral. Debtor's Am. PFFCL ¶¶ 190 & n.138, ECF No. 1187 at 94-95. All evidence adduced at the Combined Hearing suggests that the Plan Proponents intend for the Plan to be insurance neutral. *See, e.g.*, Travelers Ex. W 156:4-9, ECF No. 1182-1 at 26; Combined Hr'g Tr. Day 1 141:2-8, 161:4-6, ECF No. 1174 at 141, 161; *see also* Disclosure Statement § VI.C(a)(v), ECF No. 767 at 21 ("The Debtor contends the Plan is 'insurance neutral' and does not impose any burdens or duties on the [] Insurers that they do not already have under the policies."); Confirmation Br. ¶¶ 268, ECF No. 1076 at 133-34.

The issue is not whether the Plan Proponents intend for the Plan to be insurance neutral; that is unquestionably their intent. Nor is the issue whether the Plan should contain the language that the Objecting Insurers prefer. *In re Boy Scouts of Am.*, 137 F.4th at 166 (declining to “rewrite the Plan and fasten suspenders to this already well-secured belt” where insurers requested additional language be included in the plan and confirmation order). Instead, “[t]he operative question is whether the Plan impermissibly impairs the rights of the Chubb Insurers or Travelers.” Confirmation Br. ¶ 269, ECF No. 1076 at 134.

In determining whether the Plan impermissibly modifies the rights of Insurers, the Bankruptcy Court finds Judge Goldblatt’s recent decision in *AIO* to be instructive. *In re AIO US, Inc.*, 2025 WL 2426380, 2025 Bankr. LEXIS 1212. In *AIO*, the debtor sought to resolve its tort liability through a trust.²⁶ Various insurers objected on the grounds that the proposed trust mechanism impermissibly altered their rights and defenses. Judge Goldblatt disagreed, holding instead that the proposed distributions were a voluntary arrangement between the claimants and the debtor for the resolution of tort claims. The consensual selection of a particular mechanism to resolve tort liability should not “affect, let alone . . . determine, the insurers’ obligations under their policies.” *Id.* at *22, 2025 Bankr. LEXIS 1212, at *64. “Accordingly, any proposed ‘finding’ that would tilt the playing field in a subsequent coverage dispute one way or the other should be deleted.” *Id.* at *23, 2025 Bankr. LEXIS 1212, at *67.

²⁶ *AIO* is not squarely on point as it did not involve a plan pursuant to section 524(g). However, the analysis regarding insurance neutrality is unaffected by whether a plan seeks a supplemental discharge under section 524(g).

The Debtor seeks to distinguish *AIO* on the grounds that most Channeled Asbestos Claims will be resolved in the tort system, as originally contemplated by the underlying Asbestos Insurance Agreements and Asbestos CIP Agreements, rather than being liquidated by a trust as in *AIO*. Debtor’s Am. PFFCL ¶ 191, ECF No. 1187 at 95-96. While it is true that the structure contemplated by the Plan leaves the “basic insurance bargain” intact, *id.* (quoting *In re AIO US, Inc.*, 2025 WL 2426380, at *16, 2025 Bankr. LEXIS 1212, *44), the Court must examine the Insurance Neutrality Provisions to ensure that the Plan truly is a passthrough.

Travelers objects to language in the Plan that may be interpreted as a declaration of the effect of the Plan on the Objecting Insurers' rights and defenses under the Insurance Policies. Applying the rationale of *AIO*, the Bankruptcy Court finds that these objections are well-founded. While the Plan may permissibly transfer the Asbestos Insurance Rights, the Bankruptcy Court agrees that it would be improper at this stage to determine the impact of such a transfer upon the insurers and/or the effect of the bankruptcy case and the actions taken in connection therewith.²⁷ To truly be insurance neutral, the Plan should not impair any available rights or defenses in connection with the insurance policies, save for the voidability of anti-assignment provisions. To the extent there is a future dispute over the effect of the Plan, those issues should be more properly resolved in the context of a future coverage dispute. *In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. at 147 (providing that any issues regarding the debtor or trustee's cooperation obligations should more properly be addressed as a defense to coverage).

This rationale also applies as to the preclusive effect of any order confirming the Plan. The Bankruptcy Court agrees that issues of preclusion and estoppel are more properly to be determined by a future court. *In re Boy Scouts of Am. & Delaware BSA, LLC*, 642 B.R. at 631 (“[T]he res judicata or collateral estoppel effect of any Order I issue confirming the Plan is for a future court to decide in the context of specific litigation.”); *In re AIO US, Inc.*, 2025 WL 2426380, at *26, 2025 Bankr. LEXIS 2012, *77 (“It is generally settled law . . . that the preclusive effect of a court's judgment is properly decided by the subsequent court, not the rendering court. A court usually does not get to dictate the preclusion consequences of its own judgment.”).

²⁷ The Plan includes an express factual finding that the Debtor has not violated any Asbestos Insurance Cooperation Obligations, including any express or implied covenant of good faith and fair dealing. Plan § 11.1(g)(xxvii), ECF No. 1185 at 53. The Court must find – and the Bankruptcy Court has found – that the Debtor has filed the Bankruptcy Case in good faith and has proposed this Plan in good faith. However, such a finding does not necessarily mean that the Debtor has complied with its Asbestos Insurance Cooperation Obligations. To the extent a disagreement exists, such issue should be preserved for future adjudication in a coverage dispute.

In a similar vein, Liberty Mutual objects to the Asbestos Trust's ability to intervene in Insurance Policy Actions. Plan § 8.13(c)(v), ECF No. 1185 at 37 (The Asbestos Trust "may . . . intervene in any Insurance Policy Action at any time."). The inclusion of this provision should serve to merely protect any right that the Asbestos Trust may have, subject to compliance with the proper procedural mechanism for intervention. See *Moglia v. Keith (In re Manchester, Inc.)*, No. 08-30703-BJH-11, 2009 WL 2243592, at *3, 2009 Bankr. LEXIS 2003, *7 (Bankr. N.D. Tex. July 16, 2009) ("[D]id the Plan 'expressly retain the right to pursue such actions' and was the reservation of the claims 'specific and unequivocal?' If so, the Litigation Trustee has standing to pursue the claims." (quoting *Dynasty Oil & Gas, LLC v. Citizens Bank (In re United Operating, LLC)*, 540 F.3d 351, 355 (5th Cir. 2008))). Similarly, any party in such an Insurance Policy Action should retain the right to object to the Asbestos Trust's motion to intervene. To the extent that the Plan language extends beyond the foregoing, it should be modified.

For the avoidance of doubt, the Plan may provide for the transfer of the Asbestos Insurance Rights to the Asbestos Trust, provided that the rights are accompanied by all terms and conditions. For this Plan to be confirmable as an insurance-neutral plan, it must truly provide for the passthrough of any rights, duties, and defenses that all persons may have with respect to the Asbestos Insurance Agreements and the Asbestos CIP Agreements. Any coverage disputes should be more properly brought in connection with future proceedings and the effect of the entry of any order confirming the Plan should be determined by the court overseeing the proceeding.

f. Section 1123(d): Cure of Defaults.

The Plan provides that, to the extent necessary, the Bankruptcy Court shall determine the amount of any payments necessary to cure any defaults under any assumed Executory Contracts as of the Confirmation Date in accordance with the underlying agreements and applicable

non-bankruptcy law. Plan §§ 6.1-6.2, ECF No. 1185 at 27-28. Accordingly, the Plan fully complies with the requirements of section 1123(d) of the Bankruptcy Code.

2. Section 1129(a)(2): The Plan complies with all applicable provisions of the Bankruptcy Code.

Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply with applicable provisions of the Bankruptcy Code. The legislative history to section 1129(a)(2) indicates that the principal purpose of this section is to ensure compliance with the disclosure and solicitation requirements set forth in section 1125 of the Bankruptcy Code. S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912 (“Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure.”); H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *see also In re Lapworth*, Case No. 97-34529-DWS, 1998 WL 767456, at *3, 1998 Bankr. LEXIS 1383, at *10 (Bankr. E.D. Pa. Nov. 2, 1998) (“The legislative history of [section] 1129(a)(2) specifically identifies compliance with the disclosure requirements of [section] 1125 as a requirement of [section] 1129(a)(2).”); *Official Comm. of Unsecured Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992); *In re Texaco Inc.*, 84 B.R. 893, 906-07 (Bankr. S.D.N.Y. 1988).

Section 1125(b) prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests “unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information.” This Bankruptcy Court entered the Solicitation Procedures Order, which, among other things, conditionally approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code. Solicitation Procs. Order ¶ 4, ECF No. 782 at 3. In addition, the Court

considered and, in the Solicitation Procedures Order, approved (a) the Solicitation Packages and the Non-Voting Package, (b) the timing and method of delivery of the Solicitation Packages and the Non-Voting Package, (c) the Solicitation Procedures, and (d) the timing and method of publication the Combined Hearing Notice. *Id.* ¶¶ 6-19, ECF No. 782 at 3-8.

After the Bankruptcy Court conditionally approved the Disclosure Statement and approved the solicitation procedures, the Debtor transmitted the Solicitation Packages and the Non-Voting Packages to the holders of Claims in the Voting Classes and the holders of Claims and/or Interests in the Non-Voting Classes, respectively. Certificate of Serv., ECF No. 864. The Solicitation Packages distributed to the holders of Claims in the Voting Classes contained: (a) the Solicitation Procedures Order, (b) the Disclosure Statement, (c) the Plan, along with the Plan's exhibits, (d) the Combined Hearing Notice, (e) a copy of the appropriate Ballot and voting instructions, and (f) a pre-addressed, postage pre-paid return envelope. *Id.* ¶ 4, ECF No. 864 at 1-2. The Non-Voting Packages distributed to holders of Claims and/or Interests in the Non-Voting Classes contained: (a) the Non-Voting Status Notice, and (b) the Combined Hearing Notice. *Id.* ¶ 5, ECF No. 864 at 2. The Solicitation Packages and the Non-Voting Packages were distributed promptly after the entry of the Solicitation Procedures Order and in accordance with the Bankruptcy Court's instructions. *Id.*

In addition, the Debtor caused the Combined Hearing Notice to be published in certain newspapers and magazines, as authorized by the Solicitation Procedures Order. Publ'n Notice, ECF No. 844; Voting Certification ¶ 9, ECF No. 1077 at 2. As attested to in the Voting Certification, after the Solicitation Packages and the Non-Voting Packages were distributed, and after publication of the Combined Hearing Notice, the returned Ballots of parties entitled to vote on the Plan were tabulated in accordance with the Solicitation Procedures. Voting Certification

¶¶ 10-11, ECF No. 1077 at 2-3. Classes 3 and 4, the only Classes entitled to vote, voted overwhelmingly to accept the Plan. *Id.* ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Thus, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including section 1125 of the Bankruptcy Code, and Bankruptcy Rules 3017 and 3018. Accordingly, the Plan meets the requirements of section 1129(a)(2) of the Bankruptcy Code.

While there may be some dispute over the Plan Proponents' good faith in negotiating and proposing the Plan, as more fully analyzed in the next section, there is no dispute that Votes were solicited in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Solicitation Procedures Order. Based on the Voting Certification, the Bankruptcy Court finds that the Plan Proponents, and each of their respective directors, officers, employees, agents and professionals, acting in such capacity, have acted in "good faith," within the meaning of section 1125(e) of the Bankruptcy Code.

3. Section 1129(a)(3): The Plan Proponents proposed the Plan in good faith.

Section 1129(a)(3) requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Although "good faith" is not defined by the Bankruptcy Code, the Fourth Circuit recently interpreted the good faith standard. The Fourth Circuit recognized that "a number of . . . circuits have held that a plan is proposed in good faith where it 'fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code.'" *In re Kaiser Gypsum Co.*, 135 F.4th at 193 (quoting *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 158 (3d Cir. 2012)). "The two 'recognized' objectives of the Code, in turn, are 'preserving going concerns and maximizing property available to satisfy creditors.'" *Id.* at 194 (quoting *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453 (1999)). While the Fourth Circuit was not willing to "go so far as to say compliance with the objectives of the Code conclusively establishes good faith," the Fourth Circuit did hold that "it

provides strong evidence of that standard being met.” *Id.* A court must also “consider the totality of the circumstances” in determining whether a plan has been proposed in good faith. *Id.*; *see also McCormick v. Banc One Leasing Corp. (In re McCormick)*, 49 F.3d 1524, 1526 (11th Cir. 1995) (“The focus of a court’s inquiry is the plan itself, and courts must look to the totality of the circumstances surrounding the plan . . . keeping in mind the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start.” (internal citations omitted)).

The Bankruptcy Court finds that the Plan was filed in good faith in satisfaction of section 1129(a)(3). The Plan is the product of extensive arms’-length negotiations – overseen by the Judicial Mediator, a distinguished bankruptcy judge – among Hopeman, the Committee, HII, and the FCR. The Plan serves valid bankruptcy objectives by preserving and maximizing the value of the Debtor’s assets (its insurance policies) for the benefit of its creditors (the holders of Asbestos Claims). *See In re Kaiser Gypsum*, 135 F.4th at 195 (noting that plan was proposed in good faith where it “was the ‘product of extensive arms’-length negotiations . . . and maximize[d] the value of assets available to satisfy claims.” (quoting *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW, 2021 WL 3215102, at *13, 2021 U.S. Dist. LEXIS 146354, at *38-39 (W.D.N.C. July 28, 2021), *aff’d*, 60 F.4th 73 (4th Cir. 2023), *rev’d and remanded sub nom. Truck Ins. Exch.*, 602 U.S. 268, and *aff’d*, 135 F.4th 185 (4th Cir. 2025))). That the Plan maximizes the value of assets is demonstrated by the fact that creditor recoveries are greater than could be realized if Hopeman were to liquidate. Combined Hr’g Tr. Day 1 36:14-16, 41:12-42:2, 181:6-186:6, ECF No. 1174 at 36, 41-42, 181-186; Disclosure Statement Ex. B, ECF No. 767 at 213-17 (the “Liquidation Analysis”); *see also In re Kaiser Gypsum Co., Inc.*, 2021 WL 3215102, at *13, 2021 U.S. Dist. LEXIS 146354, at *39.

The unrefuted testimony from Mr. Lascell supports a finding that the Plan satisfies the goals the Debtor had in filing this bankruptcy case – to provide a fair process for addressing unresolved Asbestos Claims, and to provide a means to try to maximize the return for creditors while also allowing the current owners of Hopeman to step aside and transfer the responsibilities to Trust fiduciaries. Combined Hr’g Tr. Day 1 at 38:18-39:9, ECF No. 1174 at 38-39. Indeed, both Mr. Lascell and Mr. Van Epps testified that the Plan represents the best opportunity for Hopeman and its creditors to exit this bankruptcy case. *Id.* 45:24-46:8; 145:8-146:7, ECF No. 1174 at 45-46, 145-46. Mr. Lascell testified that he believed the Plan has overwhelming creditor support. *Id.* 46:4-8, ECF No. 1174 at 46, which it clearly does as over 99% of holders of Asbestos Claims entitled to vote on the Plan did vote in favor of the Plan, Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. The record also supports that no holder of an Asbestos Claim has objected to the Plan.

The Plan is the result of active and extensive negotiations between the Debtor and various of its creditor constituencies. When the Debtor initially filed this case, the Debtor believed it had the framework for a confirmable plan – the Original Plan. Combined Hr’g Tr. Day 1 at 145:12-23, ECF No. 1174 at 145. However, it quickly became clear that the Original Plan was not confirmable due to the lack of support from its creditors and the Committee. *Id.* As described above and in the Disclosure Statement, the Debtor engaged in arms’-length negotiations with many parties-in-interest over the course of this Chapter 11 Case, including the Objecting Insurers. The Debtor provided substantial information to all constituencies and, thereafter, reached agreements with the Committee, the FCR, the Certain Settling Insurers, HII, and certain other parties-in-interest. that will be implemented through the Plan. *Id.* at 29:12–34:14, ECF No. 1174 at 29-34. The Debtor’s good faith in proposing the Plan is evidenced by these negotiations, the consensual settlements

reached with certain stakeholders, and the overwhelming support for the Plan by the Voting Classes. *See* Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5; *see also In re Eagle-Picher Indus., Inc.*, 203 B.R. at 274 (finding that a plan of reorganization was proposed in good faith when, among other things, it was based on extensive arms'-length negotiations among the plan proponents and other parties-in-interest). The Debtor's decision to explore its alternatives to the Original Plan, including what ultimately became the Plan, neither undercuts nor negates the good-faith actions of the Plan Proponents.

In the face of these compelling facts, some of the Objecting Insurers, nevertheless, contend that the Plan was not proposed in good faith. They argue, without sufficient factual support, that the Plan was the product of collusion, not merely the product of arms'-length negotiation. Specifically, Chubb and Liberty Mutual contend that (i) the Plan is merely the result of Hopeman's capitulation to the Committee and the holders of Asbestos Claims; and (ii) governance of Reorganized Hopeman by the same individual who will serve as the Litigation Trustee creates a fundamental conflict of interest. Chubb Plan Obj. ¶¶ 134-145, ECF No. 958 at 73-81; Liberty Mut. Plan Obj. ¶¶ 58-72, ECF No. 953 at 36-44. For the reasons explained herein, the Bankruptcy Court finds that their objections lack merit.

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

Both Chubb and Liberty Mutual argue that the Plan is not proposed in good faith because it is the product of collusion amongst the Plan Proponents and the holders of Asbestos Claims to leverage recoveries out of the Non-Settling Asbestos Insurers. The Objecting Insurers offer no evidence to support these claims. Instead, Chubb and Liberty Mutual argue that the Debtor's agreement to pivot away from the Original Plan is – by itself – sufficient evidence that the Debtor merely and improperly acceded to the Committee's wishes.

For the reasons discussed *supra*, the evidence adduced at the Combined Hearing establishes that the Debtor attempted to pursue the Original Plan, including but not limited to seeking judicial mediation to develop a path forward to confirmation. The Court rejects the suggestion that the Debtor acted in bad faith because it engaged with its creditors and took stock of its available liquidity (both for purposes of being able to confirm a plan and regarding the impact excessive administrative expenses would have on creditor recoveries), all in consultation with the Judicial Mediator. That is precisely what a Debtor is charged with doing in these circumstances. Indeed, the Fourth Circuit rejected a similar argument in *Kaiser Gypsum*, specifically holding that “a desire to maximize the relevant asset[, such as insurance coverage,] does not constitute bad faith. To the contrary—bankruptcy courts routinely allow claimants to pursue insured claims through the tort system.” *In re Kaiser Gypsum Co.*, 135 F.4th at 195. Much like the *Kaiser Gypsum* case, while Hopeman could have continued to pursue confirmation of the Original Plan, “there is nothing in the Bankruptcy Code that legally require[d] them to do so. Likewise, there is nothing in the record to suggest that their decision in this regard was rooted in anything remotely resembling bad faith. Quite the opposite—the record reflects that their decision was driven by pragmatic concerns and an understanding that they were clearly entitled to the full scope of coverage” *Id.* at 196 (affirming district court’s finding of good faith).

Hopeman established sufficient evidence of good faith in formulating the Plan. The only evidence before this Court supports a finding that there was no collusion. Mr. Lascell testified that there was no collusion in formulating the Plan, which was the product of hard-fought negotiations with the Committee. Combined Hr’g Tr. Day 1 30:19-31:8, 31:12-32:2, ECF No. 1174 at 30-31, 31-32. Such evidence is sufficient to establish good faith; and, contrary to Chubb’s and Liberty

Mutual's assertion, the Plan Proponents need not have divulged specific details regarding the conduct of the Judicial Mediation:

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

In re WR Grace & Co., 729 F.3d 332, 348 (3d Cir. 2013).

In the rare cases where courts have found bad faith based on collusion, there has been direct evidence of such collusion presented to the Court. *See id.* (3d Cir. 2013) (first citing *In re ACandS, Inc.*, 311 B.R. 36 (Bankr. D. Del. 2004); then citing *In re Am. Capital Equip., LLC*, 688 F.3d 145; then citing *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 244 (3d Cir. 2004), *as amended* (Feb. 23, 2005)). For example, in *In re ACandS, Inc.*, the bankruptcy court found that the debtor had not proposed the plan in good faith where the Court received into evidence correspondence among asbestos counsel establishing that

the plan was largely drafted by and for the benefit of the prepetition committee. It was the prepetition committee that drafted (or more likely directed debtor's counsel in drafting) the prepetition trust, and apparently chose the trustee for the trust; it was the prepetition committee that decided how the security agreement would be crafted and how many classes of security interests would be formed; and it was the prepetition committee that decided who was going to get what. ACandS was there to do their bidding, having been thrown overboard by Irex to keep what was left of that company afloat. Given the unbridled dominance of the committee in the debtor's affairs and actions during the prepetition period, its continued influence flowing from its majority status on the postpetition creditors committee, and the obvious self-dealing that resulted from

control of the debtor, it is impossible to conclude that the plan was consistent with the objectives and purposes of the Bankruptcy Code.

311 B.R. at 43. Unlike *ACandS*, the Objecting Insurers produced no evidence of collusion. Instead, the Objecting Insurers offer only conjectures concerning the pivot from the Original Plan to the current Plan.

The Objecting Insurers attempted to justify their failure to adduce specific evidence as directly attributable to the Plan Proponents' assertion of a mediation privilege. The Mediation Order provided that no party may use any communications made or provided in connection with the Mediation in any proceeding, including this Chapter 11 case. Mediation Order ¶ 8, ECF No. 443 at 2-3. Such a provision is standard in mediation proceedings and intended to encourage parties to negotiate freely and without fear that settlement discussions will be divulged if litigation continues. That being said, Chubb, Liberty Mutual, or any other party-in-interest could have sought relief from the Mediation Order to collect and introduce evidence of collusion – they did not do so. *See* Fed. R. Bankr. P. 9024; Fed. R. Civ. P. 60(b)(3) (authorizing relief from a final order due to misconduct by an opposing party, among other reasons).

Furthermore, the record supports that the Debtor did in fact provide extensive discovery to Chubb and Liberty Mutual regarding the negotiations in the mediation that resulted in the 524(g) Settlement. *See* Chubb Ex. 8; Combined Hr'g Tr. Day 1 at 279:5-20 (admitting Chubb Exhibit 8 into evidence); Combined Hr'g Tr. Day 2 172:6–173:18, ECF No. 1175 at 172-73 (discussing Chubb Exhibit 8 and the discovery provided by Hopeman regarding the mediation negotiations). After production, Hopeman clawed back the produced material as potentially violative of the Mediation Order. Chubb Ex. 8. Again, the Objecting Insurers could have sought relief from the Mediation Order to introduce any evidence of collusion that they received through that production. They did not do so.

Additionally, Chubb alleges that the Plan was not proposed in good faith because Chubb was improperly excluded from the Judicial Mediation. Such an assertion mistakes the very nature of mediation. Mediation is a voluntary process whereby parties explore the possibility of consensual resolutions. The authorization to conduct mediation does not preclude parties from engaging in other settlement discussions or discussions with other parties. *Cf.* Local Bankruptcy Rule 9019-1(A) (authorizing mediation as permitted under the rule as one available alternative dispute resolution process). Nothing prevented the Objecting Insurers from engaging in settlement discussions with other case constituents.

All parties-in-interest were on notice since the filing of the November 29 Term Sheet, that the Committee and the Debtor would pursue the possibility of a 524(g) plan. All parties-in-interest were aware of the 524(g) Settlement when it was publicly filed with the Court on March 7, 2025. *See* ECF No. 609. There is no evidence that the Objecting Insurers engaged in any good faith discussions with the Plan Proponents since the 524(g) Settlement was announced. Much like the Third Circuit, this Court “reject[s the] implication that [the debtor’s] failure to negotiate directly with [the interested party] undercut the overall Plan’s fundamental fairness, particularly when [the interested party] declined to provide comments on drafts of the Plan when they were circulated during the negotiation process.” *See In re W.R. Grace & Co.*, 729 F.3d at 347. In other words, “a creditor’s disagreement about the handling of its claim does not necessarily evince bad faith by the Plan’s proponents.” *Id.*

As described *supra*, the evidence shows that the Debtor filed this Bankruptcy Case to establish a fair and efficient process through which its remaining cash and insurance policies would be used to resolve the thousands of asbestos-related claims asserted against it. Although the Original Plan contemplated a process that included the Insurer Settlement Motions, the Debtor

simply were unable to obtain sufficient creditor support to confirm the Original Plan. Following hard-fought, arms'-length, good-faith negotiations, the Debtor and the Committee agreed to the 524(g) Settlement that memorialized the Debtor's intention to pivot away from the Original Plan to pursue confirmation of what, ultimately, became the Plan.

Separately, Liberty Mutual contends that the Plan is not proposed in good faith because it improperly targets Liberty Mutual by naming Liberty Mutual as a "Non-Settling Asbestos Insurer." Liberty Mut. Plan Obj. ¶ 5, ECF No. 953 at 9. This argument ignores both the facts and the direct actions Liberty Mutual has taken to affirmatively place itself at the center of this Bankruptcy Case. The unrefuted testimony is that even after Liberty Mutual and the Debtor entered into the 2003 Agreements, holders of Asbestos Claims and others continued to sue Liberty Mutual in Louisiana. Combined Hr'g Tr. Day 1 133:17-134:14, ECF No. 1174 at 133- 34. After Liberty Mutual took the position that it was absolved of any liability for Asbestos Claims pursuant to the 2003 Agreements, certain creditors requested that the Plan Proponents include language in the Plan to clarify whether the Plan would affect their ability to pursue Liberty Mutual, as they had done prior to the bankruptcy filing. Combined Hr'g Tr. Day 1 82:20-83:14, ECF No. 1174 at 82-83. This clarification was particularly necessary as the issue had been muddled by Liberty Mutual, which filed an adversary proceeding seeking a declaratory judgment that the 2003 Agreements effectively eliminated any liability Liberty Mutual had or could have with respect to Asbestos Claims. These revisions to the Plan were necessary to clarify that the Plan does not affect any rights, claims, or defenses that any non-debtor may have against Liberty Mutual outside of bankruptcy. Similarly, if Liberty Mutual has a defense to those claims, Liberty Mutual can assert such a defense – nothing in the Plan changes that. The Plan does not create an entitlement for asbestos claimants to sue Liberty Mutual or eliminate Liberty Mutual's defense to asbestos

claimants pursuing Liberty Mutual if one exists. Again, while Hopeman could have put forward a different plan or included different language in this Plan, “there is nothing in the Bankruptcy Code that legally require[d] them to do so.” *In re Kaiser Gypsum Co.*, 135 F.4th at 195 (recognizing that while objecting insurer had an equitable argument that certain permissible language should have been included, the exclusion of such language did not preclude a good faith finding). In light of the foregoing, this Bankruptcy Court finds there is no evidence of collusion, no improper targeting of Liberty Mutual, and more than sufficient evidence that the Plan was filed in good faith.

b. The Governance Authorized by the Plan Is Permissible.

In addition to their arguments concerning collusion, Chubb and Liberty Mutual both contend that the Plan was not proposed in good faith because the governance structure contemplated by the Plan is irreparably tainted by various conflicts of interest. Chubb Plan Obj. ¶¶ 140-45, ECF No. 958 at 78-81; Liberty Mut. Plan Obj. ¶¶ 63-72, ECF No. 953 at 39-44. The Bankruptcy Court agrees with the Plan Proponents that the conflicts of interest of which Chubb and Liberty Mutual complain simply do not exist based upon a plain reading of the relevant provisions of the Asbestos Trust Agreement and Asbestos Trust Distribution Procedures.

The Plan contemplates the creation of an Asbestos Trust:

Subject to the provisions of the Plan, the purpose of the Asbestos Trust is to assume liability and responsibility for all Channeled Asbestos Claims, and, among other things to: (a) direct the processing, liquidation and payment of Channeled Asbestos Claims in accordance with the Plan, the TDP, and the Confirmation Order, including allowing claimants with Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system; (b) preserve, hold, manage, and maximize the assets of the Asbestos Trust for use in paying and satisfying Channeled Asbestos Claims; and (c) qualify at all times as a qualified settlement fund. The Asbestos Trust is to use the Asbestos Trust’s assets and income to pay the holders of Channeled Asbestos Claims in accordance with this Trust Agreement and the TDP in such a way that such holders

of Channeled Asbestos Claims are treated fairly, equitably, and reasonably in light of the finite assets available to satisfy such claims, and to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

Asbestos Tr. Agreement § 1.2, ECF No. 1143 at 11. The Asbestos Trust, in turn, will be “administered, maintained, and operated at all times through [the Asbestos Trust Distribution Procedures] that provide reasonable assurance that the Asbestos Trust will satisfy all Channeled Asbestos Claims,” *id.*, ECF No. 1143 at 10, and such distribution procedures expressly denote their purpose as being “designed to provide fair, equitable and substantially similar treatment for all Channeled Asbestos Claims that may presently exist or may may arise in the future,” Asbestos Tr. Distrib. Procs. § 1.1, ECF No. 1143 at 110. In other words, the purpose of the Asbestos Trust is to treat all holders of Channeled Asbestos Claims fairly, equitably and reasonably in accordance with the Asbestos Trust Agreement, the Asbestos Trust Distribution Procedures, and applicable law.

The Asbestos Trust will be led by two trustees: the Administrative Trustee and the Litigation Trustee (collectively, the “Trustees”). The Administrative Trustee is charged with all duties and obligations related to the Asbestos Trust except for those related to litigation. Asbestos Tr. Agreement § 4.1, ECF No. 1143 at 25. For Asbestos Trust litigation matters only, the Litigation Trustee is responsible. *Id.* In the exercise of its fiduciary duties, the Administrative Trustee is required to consult with the TAC and the FCR. Asbestos Tr. Distrib. Procs. § 3.1, ECF No. 1143 at 112-13. The Administrative Trustee is required to only obtain the consent of the TAC and the FCR in certain enumerated circumstances. *Id.* § 2.2(f), ECF No. 1143 at 19-20. In these limited instances where consent is required, the TAC and the FCR must consider such a request “in good faith and in a timely fashion” and are prohibited from unreasonably withholding consent.

Id. §§ 5.7(a), 5.7(b) 6.6(a), 6.6(b), ECF No. 1143 at 38-40, 44-45 (setting forth the processes for consultation with and obtaining consent of the TAC and the FCR, respectively). Furthermore, if either the TAC or the FCR decide to withhold consent, they are required to “explain in detail its objections to the proposed action.” *Id.* §§ 5.7(b)(ii), 6.6(b)(ii), ECF No. 1143 at 39-40, 45. In the event of a dispute between the Trustees, the TAC, and the FCR, the Asbestos Trust Agreement sets forth an appropriate procedure for ensuring such conflicts are resolved with the oversight of an impartial decisionmaker while preserving the parties’ rights to seek review of such third-party decisionmaker’s decision with the Bankruptcy Court de novo. *Id.* § 7.13, ECF No. 1143 at 52-53.

Both Trustees owe fiduciary duties to the Asbestos Trust, Asbestos Tr. Agreement § 2.1, ECF No. 1143 at 13, and are prohibited from acting as attorneys to a Channeled Asbestos Claimant, *id.* § 4.9, ECF No. 1143 at 31. In contrast, the TAC owes a fiduciary duty only to all holders of present Channeled Asbestos Claims. *Id.* § 5.2, ECF No. 1143 at 34. The FCR owes a fiduciary duty only to holders of future Channeled Asbestos Claims. *Id.* § 6.1, ECF No. 1143 at 40.

Subject to one exception more fully explained below, this framework includes adequate mechanisms designed to avoid conflicts amongst the various fiduciaries and to protect the interests of all Channeled Asbestos Claimants (both the holders of present Channeled Asbestos Claims and future Demands). In addition, while the Trustees must, in certain instances, consult with the TAC and the FCR, the Asbestos Trust Agreement only requires the Trustees to obtain their consent on items necessary to protect the divergent interests of their constituencies. This does not create a conflict; rather, it creates rights in favor of each of these fiduciaries to serve their respective constituencies.

Liberty Mutual objects to the proposed members of the TAC on the grounds that they will breach their fiduciary duty “because they have a vested interest in funding payments to their own

clients . . . to the detriment of others.” Liberty Mut. Plan Obj. ¶ 65, ECF No. 953 at 40. The Bankruptcy Court agrees with the Debtor that this objection is without merit – the members of the TAC owe a fiduciary duty to all holders of current asbestos claims. There is no legal or factual basis to support a determination at this stage that members of the TAC will breach their fiduciary duties.²⁸ The Bankruptcy Court also finds that Liberty Mutual’s concerns regarding the TAC’s ability to veto actions the Litigation Trustee wishes to take when such actions may be detrimental to the member’s clients to be unfounded. *See* Liberty Mut. PFFCL ¶ 83, ECF No. 1184 at 23. Not only does that presume that the TAC members will breach their fiduciary duties to all holders of current claims by improperly restricting the Litigation Trustee, but the Asbestos Trust Agreement has protections to remedy an improper veto.. Asbestos Tr. Agreement § 7.13, ECF No. 1143 at 52-53. If the TAC improperly withholds consent, the Trustees may seek to override their veto through alternative dispute resolution or by returning to the Bankruptcy Court.

However, the Court shares Liberty Mutual’s and Chubb’s concerns regarding section 4.9 of the Asbestos Trust Agreement, which permits the Litigation Trustee to also serve as a director and officer of the Reorganized Debtor. *Id.* § 4.9, ECF No. 1143 at 31. The Objecting Insurers assert that such a dual role will result in “an irreconcilable conflict” caused by the Litigation Trustee’s alleged “incentive to sabotage Reorganized Hopeman’s defense that is created by his

²⁸ In support of their objection, Liberty Mutual points to an email from one of the proposed members of the TAC, as purported evidence that such member is incapable of fulfilling his fiduciary duty to holders of present Asbestos Claims. The Bankruptcy Court agrees with the Plan Proponents – at the time the email was sent, this person was not acting as a member of a committee, but instead, was representing an individual creditor. The email was consistent with the duties he had at the time of the email (which duties were solely to his clients) and is not indicative in the slightest of whether that person will adhere to his fiduciary duties as a member of the TAC.

This argument also ignores the bankruptcy reality of creditors’ committees like the one appointed in this Bankruptcy Case. Official committees of unsecured creditors are composed of individual creditors who are charged with the fiduciary duty to act on behalf of all unsecured creditors – not just to pursue their own self-interest.

contingency fee compensation in his role as Litigation Trustee.”²⁹ Chubb Plan Obj. ¶ 144, ECF No. 958 at 80-81; *see also* Liberty Mut. Plan Obj. ¶ 71, ECF No. 953 at 44.

Much for the same reasons that this Bankruptcy Court was disinclined to find that members of the TAC would breach their fiduciary duties to future claim holders, the Court is not willing to find that the Litigation Trustee would breach his duties owed to the Asbestos Trust or that the sole officer and director of the Reorganized Debtor would breach his duties owed to the Reorganized Debtor. The Bankruptcy Court did not hear sufficient evidence to indicate one way or another whether this dual role creates impermissible conflicts of interest.

Indeed, the evidence adduced at the Combined Hearing and throughout the pendency of this Bankruptcy Case is that the Debtor, the Reorganized Debtor, the Asbestos Trust, and holders of present and future Asbestos Claims all have a vested interest in ensuring that no action is taken that jeopardizes the Asbestos Insurance Policies through which the vast majority of the Channeled Asbestos Claims, if meritorious and entitled to payment, will be satisfied. And it is that concern which gives the Bankruptcy Court pause. The Plan Proponents did not offer evidence why it was necessary or appropriate for the Litigation Trustee to also serve as a director and officer of the Reorganized Debtor. While it is not the role of a court to override the reasonable exercise of a debtor’s business judgment, this Bankruptcy Court has concerns about whether such a dual role may create an unnecessary risk of appearing to violate the Asbestos Insurance Cooperation Obligations, arguably giving rise to coverage defenses.³⁰ Perhaps the Plan Proponents will be able

²⁹ Chubb Plan Obj. ¶ 144, ECF No. 958 at 80-81; *see also* Liberty Mut. Plan Obj., ¶ 71. The Litigation Trustee is entitled to compensation in the amount of 1/3 of all fees recovered in litigation in favor of the Asbestos Trust. Asbestos Tr. Agreement § 4.5(b), ECF No. 1143 at 28.

³⁰ To be clear, the Bankruptcy Court does not find an inherent conflict of interest created by the dual position, as alleged by the Objecting Creditors. *See, e.g.*, Chubb PFFCL ¶¶ 115-18, ECF No. 1189 at 44-45. The Bankruptcy Court does agree with the Plan Proponents that both positions share the same basic goal of maximizing insurance coverage. Moreover, the officer and director of reorganized Hopeman owes a fiduciary duty to its shareholder, the Asbestos Trust. *See Schnelling v. Crawford (In re James River Coal Co.)*, 360 B.R. 139, 170 (Bankr. E.D.

to provide more information concerning the exercise of the Debtor's business judgment in the creation of this dual role in the proceedings before the District Court. But without such information, the Bankruptcy Court recommends that the second sentence of section 4.9 of the Asbestos Trust Agreement be struck. Subject to this modification, the Bankruptcy Court recommends overruling the pending objections and concluding that the Plan Proponents proposed the Plan in good faith in accordance with section 1129(a)(3).

4. Section 1129(a)(4): The Court approves certain payments provided under the Plan as reasonable.

In accordance with section 1129(a)(4), all fees to which parties may be entitled in connection with the Chapter 11 Case, including Professionals' Fee Claims,³¹ are subject to the approval of the Bankruptcy Court. Plan § 2.2, ECF No. 1185 at 23. Although the Bankruptcy Court has authorized the interim payment of the fees and expenses incurred by Professionals³² in connection with the Chapter 11 Case, Order (I) Establishing Procs. for Interim Comp. & Reimbursement of Expenses of Pros. & (II) Granting Related Relief, ECF No. 162, all such fees and expenses remain subject to final review for reasonableness by the Bankruptcy Court, Plan § 2.2, ECF No. 1185 at 23. Finally, the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the

Va. 2007) (first citing Va. Code § 13.1-690; then citing *Byelick v. Vivadelli*, 79 F.Supp.2d 610, 623 (E.D. Va.1999). While it may be hard to imagine a situation where their fiduciary duties diverge, the Plan Proponents have not explained to the satisfaction of the Bankruptcy Court why it is a reasonable exercise of the Debtor's business judgment that these positions should be held by one individual as opposed to two.

³¹ "Professional Fee Claim means any Claim of a (a) Professional for allowance of compensation and/or reimbursement of costs and expenses, and (b) member of the Committee for reimbursement of costs and expenses, in each case incurred in the Chapter 11 Case on or before the Effective Date." Plan § 1.96, ECF No. 1185 at 18-19.

³² The term "Professional" means "any person retained or to be compensated pursuant to section 327, 328, 330, 363, 503(b), or 1103 of the Bankruptcy Code." Plan § 1.95, ECF No. 1185 at 18.

Plan. Plan § 12.1(g), ECF No. 1185 at 55. Accordingly, the Plan fully complies with the requirements of section 1129(a)(4).

5. Section 1129(a)(5): The Plan sufficiently discloses the identity of proposed management and the compensation of insiders, and the management proposed is consistent with the interests of creditors and public policy.

Section 1129(a)(5)(A) has two requirements for a plan to be confirmable.³³ First, the plan proponent must disclose the names and affiliations of the proposed officers and directors of Reorganized Hopeman. 11 U.S.C. § 1129(a)(5)(A)(i).³⁴ While the term “affiliations” is not defined as used in this subsection, a leading treatise has explained that “[t]he affiliations should be those of interest to creditors and interest holders under the ‘adequate information’ standard of section 1125 (since such affiliations, if so qualifying, will have to be disclosed in any event).” *Collier on Bankruptcy* ¶ 1129.02 (Richard Levin & Henry J. Sommer eds., 16th ed.). Second, the appointment of any proposed officer or director must be consistent with the interests of creditors and with public policy. *Id.* § 1129(a)(5)(A)(ii).

Here, the Plan Supplement identifies Mr. Richardson as the individual proposed to serve as Reorganized Hopeman’s sole officer and director. Initial Plan Suppl. Ex. D, ECF No. 853 at 193. The Plan Supplement also discloses Mr. Richardson’s affiliation with Wyche, P.A., his employer. *Id.* (listing Mr. Richardson’s address at Wyche, P.A.’s Columbia, South Carolina office and providing his Wyche, P.A. email).

Chubb was provided with the opportunity to conduct discovery regarding Mr. Richardson’s affiliations. Chubb Plan Obj. ¶ 144 & n.288, ECF No. 958 at 80-81. As reflected in the Chubb

³³ Section 1129(a)(5)(B) provides additional disclosure requirements for insiders. 11 U.S.C. § 1129(a)(5)(B). As no insiders will serve as officers or directors of Reorganized Hopeman, section 1129(a)(5)(B) is inapplicable.

³⁴ Section 1129(a)(5) does not apply to the Trustees, the TAC, and the FCR. *In re Eagle-Picher Indus.*, 203 B.R. at 267. Although not required by section 1129(a)(5), the Plan Supplement further discloses the identities of the Trustees, the TAC, and the FCR. Am. Plan Suppl. Ex. A, ECF No. 1143 at 54-55.

Objection, through this discovery, the Plan Proponents disclosed that Mr. Richardson is currently co-counsel and part of a fee-sharing arrangement with the Committee's co-chair, Mr. Branham – who will also serve as a member of the TAC – in an asbestos-related lawsuit. *Id.* Chubb contends this connection violates section 1129(a)(5). Chubb PFFCL. ¶ 117, ECF No. 1189 at 44-45. However, such a contention ignores the plain language of section 1129(a)(5).

The Bankruptcy Code has extensive provisions regarding the engagement of professionals. Section 327 requires any proposed professional to be “disinterested” as such a term is defined in section 101(14)(C) of the Bankruptcy Code. That definition focuses on the “direct and indirect relationship[s],” “connection[s],” and “interest[s]” of such a professional. *Id.* § 101(14)(C). Similarly, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure requires a proposed professional to disclose their “connections” with the debtor, creditors, parties-in-interest, the foregoing's professionals, the United States Trustee, and any employee of the United States Trustee. Fed. R. Bankr. P. 2016(a)(2)(F), (a)(3). If either standard applied, Chubb would be correct and such connections would need to be disclosed.

However, section 1129(a)(5) does not require either “disinterestedness” or disclosure of the more attenuated “connections.” Instead, Congress chose to limit the disclosures required by section 1129(a)(5) solely to affiliations. Mr. Richardson is affiliated with the Wyche, P.A., firm. That affiliation has been disclosed. Therefore, the Plan satisfies the requirements of section 1129(a)(5)(A)(i), and Chubb's objection on that point should be overruled.

The Court further finds that the selection of the proposed officer and director is consistent with the interests of creditors and public policy as required by section 1129(a)(5)(A)(ii). The Debtor disclosed Mr. Richardson's proposed role in the Initial Plan Supplement, Initial Plan Suppl. Ex. D, ECF No. 853 at 193 (filed on June 6, 2025), allowing any creditor the opportunity to object

to such selection prior to the Combined Hearing, Solicitation Procs. Order ¶ 6, ECF No. 782 at 4 (setting a June 23, 2025, deadline to object to either the adequacy of the Disclosure Statement and/or confirmation of the Plan). No holder of an Asbestos Claim filed an objection. While there is scant case law on the subject, “the public policy requirement would enable it to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed management.” *Collier on Bankruptcy* ¶ 1129.02 The Bankruptcy Court has no such concerns and, as such, section 1129(a)(5)(A)(ii) is satisfied.

6. Section 1129(a)(6): Inapplicable.

Section 1129(a)(6) is not applicable because the Debtor’s current business does not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after Confirmation. Combined Hr’g Tr. Day 1 37:25-38:3, ECF No. 1174 at 37-38.

7. Section 1129(a)(7): Best Interests of Holders of Claims and Interests.

In order for a plan to meet the requirements of section 1129(a)(7) of the Bankruptcy Code, each holder in an impaired class must either accept the plan or “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.” 11 U.S.C. § 1129(a)(7)(A). To put it plainly, the best interests test, as it is colloquially known, requires that each holder of an impaired claim or interest either accepts the plan or will receive as much as such holder would have received in a Chapter 7 liquidation, based on a liquidation analysis. “The ‘best interests’ test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan.” *Bank of Am. Nat’l Tr. & Sav. Ass’n v. 203 N. Lasalle St. P’ship*, 526 U.S. at 441 n.13.

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 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, *see In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2006), “but it is not an exact science,” *In re Multiut Corp.*, 449 B.R. at 344.

[T]he process entails a considerable degree of speculation. Thus, the court need only make a well-reasoned estimate of the liquidation value that is supported by the evidence on the record. It is not necessary to itemize or specifically determine precise values during this estimation procedure. Requiring such precision would be entirely unrealistic because exact values could only be found if the debtor actually underwent Chapter 7 liquidation.

In re W.R. Grace & Co., 475 B.R. 34, 142 (D. Del. 2012) (internal citations omitted).

In this case, the Plan was almost universally accepted by the two voting classes: Class 3 and Class 4. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5; Plan §§ 4.3(c); 4.4(c), ECF No. 1185 at 24, 25. However, 7 out of 2,416 holders of Class 4 Channeled Asbestos Claims did not vote in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Even though these creditors did not object to the plan, because these creditors did not vote to accept the Plan, the Court must determine whether the Plan is in their best interests. *See 203 N. Lasalle St. P’ship*, 526 U.S. at 441 n.13.

In connection with the Disclosure Statement, the Plan Proponents provided the Liquidation Analysis, ECF No. 767 at 213-17, which compares the projected distribution to creditors and equity under the Plan with a hypothetical liquidation under Chapter 7 of the Bankruptcy Code,³⁵ Liquidation Analysis, ECF No. 767 at 215.

³⁵ The methodology used to estimate the total liquidation proceeds available for Distribution and the principal assumptions and considerations underlying the liquidation analysis are described in the Disclosure Statement and the Liquidation Analysis. At a high level, the Liquidation Analysis assumes immediate conversion to Chapter 7; (ii) the orderly liquidation of the Debtor’s assets by a court-appointed Chapter 7 trustee; and (iii) the liquidation of Asbestos Claims outside of a 524(g) trust. *See* Disclosure Statement § IX.B, ECF No. 767 at 51.

(\$ in Thousands)	Chapter 11	Chapter 7
Assets		
Cash	\$ 801.3	\$ 801.3
Accounts Receivable	\$ 117.9	\$ 117.9
Ongoing Business Investment	\$ 350.0	\$ -
Resolute Settlement Proceeds	\$ 18,395.0	\$ 18,395.0
Other Asbestos Insurance	\$ 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	\$ 12,500.0	\$ 12,500.0
Asbestos Trust Start-Up Costs	\$ 250.0	\$ -
Ongoing Business Investment	\$ 350.0	\$ -
Priority Tax Claims	\$ 35.0	\$ 35.0
Priority Non-Tax Claims	\$ 5.4	\$ 5.4
Secured Claims	\$ -	\$ -
United States Trustee Fees	\$ 90.0	\$ 90.0
Chapter 7 Trustee Fees	\$ -	\$ 890.5
Chapter 7 Trustee's Professional Fees and Expenses	\$ -	\$ 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	\$ 121.7	\$ 121.7
Asbestos Claims	Unknown	Unknown
Total Unsecured Claims	Unknown	Unknown

Id. As indicated in the foregoing table, there are two major identified variables in the Liquidation Analysis: (1) the amount of asbestos insurance proceeds that will be available in a Chapter 11 as opposed to a Chapter 7; and (2) administrative costs associated with a Chapter 7 liquidation. *Id.*

The category “Other Asbestos Insurance” includes Hopeman’s rights under asbestos insurance policies issued by and related contracts with Non-Settling Asbestos Insurers, and the anticipated ability of holders of Asbestos Claims to recover from Non-Settling Asbestos Insurers when such holders become judgment creditors against Reorganized Hopeman. *Id.* ¶ 6, ECF No. 767 at 216. As these amounts are uncertain, the Plan Proponents estimated a range of outcomes under either a Chapter 11 scenario or a hypothetical Chapter 7 scenario. *Id.* For the low-end of the Chapter 7 scenario, this liquidation analysis estimates a recovery of \$31.5 million, based on the proposed settlement entered into on the eve of bankruptcy between the Debtor and Chubb and

on the further assumption that additional insurance would not be recoverable. *Id.* For the high-end, the liquidation analysis assumes an incremental additional recovery of \$8.5 million from existing insurance policies for a total recovery of \$40 million. *Id.* In contrast, under the Chapter 11 scenario, the liquidation analysis projects that the insurance recoveries will be materially higher, since the Plan's structure will provide an enduring framework under which holders of Asbestos Claims will be able to pursue litigation in the tort system and either enter settlements of their lawsuits payable by one or more of the Non-Settling Insurers or secure judgments that will permit claimants to pursue insurance coverage litigation to recover on their judgments. *Id.* This structure will have a significantly longer duration that will lead to more claimants receiving compensation for their injuries, and the availability of the channeling injunction through the Plan will offer certainty to insurers and could incentivize settlements. *Id.*

The other significant departure is noted in the line items for Chapter 7 Trustee Fees and Chapter 7 Trustee's Professional Fees and Expenses. The Chapter 7 Trustee Fees are determined by statute. *See* 11 U.S.C. § 326; Liquidation Analysis ¶ 11, ECF No. 767 at 217; Combined Hr'g Tr. Day 1 184:6-10, ECF No. 1174 at 184. The Chapter 7 Trustee could, and undoubtedly would, hire professionals in a hypothetical Chapter 7 liquidation. Mr. Tully, a Senior Managing Director for FTI, the Court-approved financial advisor to the Committee, testified that the Chapter 7 trustee's professionals will "need to get up to speed on everything that happened here. That would be costly." Combined Hr'g Tr. Day 1 184:17-23, ECF No. 1174 at 184. After the professionals became familiar with the case, they would then have to figure out how to address the claims.

Unlike the orderly process contemplated by the Plan, *see* Plan §§ 8.12-8.13, ECF No. 1185 at 35-38, in a hypothetical Chapter 7 liquidation, any Asbestos Claim or Demand that the trustee is unable to settle cannot be resolved by the Bankruptcy Court and must be resolved in the tort

system. *See* 28 U.S.C. § 157(b)(5) (requiring personal injury tort and wrongful death claims, such as these Asbestos Claims, either be heard by “the district court in which the bankruptcy case is pending, or . . . the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.”). In that scenario, the Chapter 7 trustee would need to engage litigation counsel in numerous other courts to defend and liquidate the Asbestos Claims outside of this Bankruptcy Court. Liquidation Analysis ¶ 12, ECF No. 767 at 217. The Plan Proponents used Hopeman’s historical annual costs of defending Asbestos Claims, as well as a review of comparable situations, to estimate the litigation cost to be \$8.5 million. *Id.*; Combined Hr’g Tr. Day 1 185:4-8 (testimony of Mr. Tully that “Hopeman spent four or five million a year, for decades”).

Under either the Plan or a Chapter 7 liquidation, holders of Class 3 General Unsecured Claims would receive payment in full. Liquidation Analysis, ECF No. 767 at 215. The Plan Proponents project that total assets available for distribution among the holders of Class 4 Channeled Asbestos Claims will be \$86 million to \$126 million under the Plan, as compared to \$28 million to \$37 million in a Chapter 7 liquidation. *See id.* Based on the Liquidation Analysis, no non-accepting holder of a Class 3 General Unsecured Claim or a Class 4 Channeled Asbestos Claim will receive less under the Plan than such holder would receive in a liquidation of the Debtor’s assets. Combined Hr’g Tr. Day 1 181:10–186:6, ECF No. 1184 at 181-86. In other words, the Liquidation Analysis demonstrates that the holders of Asbestos Claims in Class 4 who did not vote in favor of the Plan will receive as much value under the Plan, if not more, than they would receive in a hypothetical Chapter 7 liquidation. Liquidation Analysis, ECF No. 767 at 213-17.

The Objecting Insurers take issue with the assumptions underlying and the methodology

utilized in the Liquidation Analysis. First, the Objecting Insurers believe that the calculations are fundamentally wrong because the Liquidation Analysis assumes that the total amount of Asbestos Claims will be the same in a Chapter 7 as in a Chapter 11. The Objecting Insurers argue that only holders of current Asbestos Claims would be entitled to a distribution in a Chapter 7 case, whereas holders of future Asbestos Claims, i.e., Demands, would also be entitled to payment in a Chapter 11 case. If that is the case, the Plan Proponents would need to determine the total amount of current Asbestos Claims and future Asbestos Claims to calculate the percentage distribution that would be available to holders of current Asbestos Claims *only* under either scenario.

This Bankruptcy Court believes this argument is flawed and contrary to existing caselaw that acknowledges that the Bankruptcy Code's definition of "claims" and section 524(g)(5)'s definition of "demands" are, essentially, overlapping. This Bankruptcy Court agrees with the other courts that have addressed this issue that "future unknown Asbestos Personal Injury Claims are 'claims' within the meaning of section 101(5) of the Bankruptcy Code. Accordingly, it is appropriate to take the value of future Asbestos Personal Injury Claims into account in determining the Claims that would be required to be paid in a liquidation under chapter 7 of the Bankruptcy Code." *In re Eagle-Picher Indus.*, 203 B.R. at 275; *see also In re W.R. Grace & Co.*, 446 B.R. 96, 127 (Bankr. D. Del. 2011) (recognizing, in addressing objecting party's argument the best interests test was not satisfied, that "[i]n this bankruptcy case, in addition to the current Libby claims that remain to be liquidated there will be future demands due to the nature of asbestos disease.").

In *Grady v. A.H. Robins, Co.*, the Fourth Circuit squarely addressed whether future tort claims were "claims," albeit in the context of the automatic stay. 839 F.2d 198 (4th Cir. 1988). The term "claim" is defined in section 101(5) of the Bankruptcy Code to mean a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent,

matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 105(A). A contingent right to payment is statutorily a “claim” under section 101(5). Thus, under the *Grady* standard, persons who had not yet manifested injury but who had used the [defective product] prior to the debtor’s bankruptcy filing held “claims.” *Grady*, 839 F.2d at 203. In so holding, the Fourth Circuit adopted the conduct test, which “merely require[s] the events giving rise to a claim must occur pre-petition.” *In re Camellia Food Stores*, 287 B.R. 52, 57 (Bankr. E.D. Va. 2002) (first citing *Grady*, 839 F.2d at 202-03; then citing *Zeitler v. Martel (In re Zeitler)*, 255 B.R. 172, 177 (E.D.N.C. 1999)).

There is no dispute that the asbestos exposure allegedly giving rise to current and future Asbestos Claims occurred prior to the Debtor’s bankruptcy filing. Applying the conduct test, “future asbestos claimants have § 101(5) claims against the debtors. The manufacture and distribution of debtors’ asbestos products and the future claimants’ exposure thereto arose prior to the petition date, and the basis for liability is the debtors’ prepetition conduct.” *In re Eagle-Picher Indus.*, Case No. C-1-96-206, 1996 U.S. Dist. LEXIS 22742, at *22-23 (S.D. Ohio Sep. 25, 1996) (not reported on Westlaw).

Second, the Objecting Insurers take issue with the Liquidation Analysis’ assumption that “the claims are the claims.” Combined Hr’g Tr. Day 1 232:16, ECF No. 1174 at 232. The Liquidation Analysis lists the amount of total Asbestos Claims as “unknown.” Liquidation Analysis, ECF No. 767 at 215. However, the Plan Proponents take the position that it is not necessary to estimate the amount of Asbestos Claims – if the total amount of claims are the same in both scenarios, then creditors must fare better in Chapter 11 as there will be more dollars to distribute. The Objecting Insurers argue that the pool of claims in a Chapter 7 case may be smaller since a Chapter 7 bankruptcy typically includes the imposition of a bar date for filing claims.

Without an estimate of the claims that would be allowed in a Chapter 7, the Objecting Insurers argue that the Plan Proponents have failed to meet their burden that the best interests test is met.

This issue is a much closer call, although the total amount of claims that would be filed in a Chapter 7 is speculative at best.. Mr. Tully testified during the Combined Hearing that the Plan Proponents had retained experts to prepare asbestos claims estimation reports. *See* Combined Hr’g Tr. Day 1 192:6-19, 234:7-235:25, ECF No. 1174 at 192, 234-35. These estimates were not included in the Liquidation Analysis presented to the Court. It is regrettable that this information was not presented during the Combined Hearing as it may have preemptively and conclusively addressed this part of Chubb’s objection. However, even without the presentation of claim estimations, the Bankruptcy Court finds the logic of *W.R. Grace* to be compelling in accepting the Liquidation Analysis presented at the Combined Hearing:

[T]he [Objecting Party] fail[s] to take into account the practical implications of what Chapter 7 liquidation would entail in this case. As the Bankruptcy Court properly noted, valuation of Grace creditors’ claims under Chapter 7 is highly speculative due to the uncertainty associated with future claims related to latent pleural disease. These future claims are not and cannot yet be known. The Joint Plan accounts for this uncertainty in its proposed structure, and guarantees all claimants—both current and future—some degree of recovery. In contrast, a liquidation under Chapter 7 has no such reassurance in place. Rather, creditors’ claims in a Chapter 7 proceeding would be put into a pool that would not distribute payments until all claims in the class were liquidated and all the assets were reduced to cash value.

Given the latent nature of asbestos-related pleural disease, excessive time could pass until all future claims are ascertained. Thus, a Chapter 7 liquidation would need to be held open for a seemingly indefinite amount of time while all personal injury claimants pursued jury trials and settlements in the tort system. Such a process would result in inevitable delay and disparate – or, even worse, unavailable – recovery amongst personal injury claimants. Such uncertainty is certainly not within the creditors’ best interests.

In re W.R. Grace & Co., 475 B.R. at 144-45 (internal citations omitted).

This Bankruptcy Court is cognizant that the Plan Proponents must provide evidence upon which the Court can make independent findings that the Plan is in the best interests of creditors. *In re Smith*, 357 B.R. at 67. The Bankruptcy Court finds that, given the uncertainty inherent in asbestos cases, there is sufficient evidence to permit the Court to so find.³⁶ If converted to Chapter 7, this case would be incredibly difficult to administer in a fair yet efficient manner. On one hand, the Chapter 7 trustee would have to consider the imposition of an arbitrary claims bar date. In that case, creditors with timely-filed Asbestos Claims may potentially receive a higher distribution, but at the expense of other creditors who may not have manifested the disease and, consequently, are unfairly excluded from distributions. On the other hand, the Chapter 7 trustee could seek an extended bar date and wait to assess the entire pool of claims; however, since Chapter 7 is not structured to provide for interim distributions, absent some extraordinary remedy, holders of Asbestos Claims would have to wait until all Asbestos Claims had been filed in order to receive any distribution. By that time, many of these holders may have suffered or died without compensation. Under these facts and circumstances, the Court finds that the evidence adduced by the Plan Proponents sufficiently shows that the Plan is in the best interests of holders of Asbestos Claims and, therefore, satisfies section 1129(a)(7)(A).³⁷ *See In re W.R. Grace & Co.*, 475 B.R. at 142 (requiring the court to only make a well-reasoned estimate supported by the evidence).

³⁶ By Order entered on August 22, 2025, the Court excluded Chubb's proposed expert witness, finding that the proposed testimony was unhelpful and, therefore, inadmissible. Order Granting Mot. in Lim. of the Debtor to Exclude the Expert Test. of Marc C. Scarcella, ECF No. 1147. The Objecting Insurers did not offer any other evidence in support of their arguments that the best interests test was not met.

³⁷ Chubb argued that a hypothetical Chapter 7 liquidation may not entail more delay or create additional fees, as the Chapter 7 trustee could just agree to lift the automatic stay to allow claimants to promptly pursue and recover on their claims from insurance. While possible, there was no evidence to suggest that a Chapter 7 trustee would do so, rather than first trying to negotiate settlements directly with insurance, especially since the Debtor had already been able to negotiate the settlements provided in the Resolute Order and the Chubb Settlement Motion.

8. Section 1129(a)(8): Acceptance of the Plan by Each Impaired Class.

All classes of Claims have either accepted the Plan or are unimpaired. The Plan provided for five classes. Plan § 3.1, ECF No. 1185 at 23-24. Classes 1 and 2 are unimpaired under the Plan and, therefore, are presumed to have accepted the Plan. *Id.*; 11 U.S.C. § 1126(f) (“[A] class that is not impaired under a plan, and each holder of a claim . . . of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims . . . of such class is not required.”). Classes 3 and 4 are impaired and entitled to vote on the Plan. Plan § 3.1, ECF No. 1185 at 23-24. The only holder of a Class 3 General Unsecured Claims who voted, holding a Class 3 claim in the amount of \$7,005.44 for voting purposes only, voted in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Out of the 2,416 ballots received by the Plan Proponents from holders of Class 4 Channeled Asbestos Claims, 2,409 creditors holding Claims in the amount of \$2,409, for voting purposes only, voted in favor of the Plan. *Id.* In other words, 99.71% in number of creditors and 99.71% in amount of claims in Class 4 Channeled Asbestos Claims voted in favor of the Plan. *Id.* Therefore, Classes 3 and 4 both voted in favor of the Plan. *Id.*; 11 U.S.C. § 1126(c) (“A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors”); 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb) (requiring any class “of the claimants whose claims are to be addressed by a [524(g)] trust . . . [to] vote[], by at least 75 percent of those voting, in favor of the plan). However, Class 5 Equity Interests will not receive anything on behalf of their Interests and, as such, it is deemed to reject the Plan. Plan § 4.5, ECF No. 1185 at 25; 11 U.S.C. § 1126(g) (“[A] class is deemed not to have accepted a plan if such plan provides that the . . . interests of such class do not entitle the holders of such . . . interests to receive or retain any property under the plan on account of such . . . interests.”). Accordingly, the Plan does not satisfy

section 1129(a)(8). Notwithstanding, the Plan is confirmable because, as set forth below, the Plan satisfies section 1129(b).

9. Section 1129(a)(9): Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.

The Plan also meets the requirements regarding the payment of Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims, as required by section 1129(a)(9). Section 2.1 of the Plan provides that, subject to certain bar dates and unless otherwise agreed by the holder of an Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction of its Administrative Claim, cash equal to the allowed amount of such Administrative Claim either: (a) as soon as practicable after the Effective Date; (b) the first Business Day that is at least thirty calendar days after the date on which such Administrative Expense Claim becomes Allowed; or (c) on such other date as may be agreed to by the holder of such Allowed Administrative Expense Claim and Reorganized Hopeman. Plan § 2.1, ECF No. 1185 at 22-23. Section 2.3 of the Plan provides that Priority Tax Claims against the Debtor (which include Claims entitled to priority other than Administrative Expense Claims and Priority Non-Tax Claims) will be paid on: (a) the Effective Date, (b) thirty days after the date such Priority Tax Claim becomes an Allowed Claim, or (c) the date such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy law. *Id.* § 2.3, ECF No. 1185 at 23. Accordingly, the Plan satisfies the requirements set forth in section 1129(a)(9).

10. Section 1129(a)(10): Acceptance By at Least One Impaired, Non-Insider Class.

As shown in the Voting Certification and as reflected in the record of the Combined Hearing, at least one Class of Claims that is impaired under the Plan has voted to accept the Plan, determined without including the acceptance by any insider, thereby meeting the requirements of section 1129(a)(10). Specifically, Class 3 General Unsecured Claims and Class 4 Channeled

Asbestos Claims, which are not insider Classes and are the only voting Classes under the Plan, voted to accept the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Accordingly, the Plan satisfies section 1129(a)(10).

11. Section 1129(a)(11): Feasibility of the Plan.

Section 1129(a)(11) requires that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11). As reflected in the Plan and the Reorganized Hopeman Projections, Reorganized Hopeman will generate cash flows through the real-estate investment contemplated by the Restructuring Transactions and will be capitalized with an additional \$150,000 in Net Reserve Funds that will be invested in high-quality fixed income securities. Plan § 8.10, ECF No. 1185 at 35; Initial Plan Suppl. Ex. F, ECF No. 853 at 199-228 (the “Restructuring Transactions”); Initial Plan Suppl. Ex. I, ECF No. 853 at 233-35 (the “Projections”).

As the Projections demonstrate, Reorganized Hopeman will have the ability to fund its ongoing operations from cash flow generated by the investment acquired through the Restructuring Transactions and through interest earned on the Net Reserve Funds (as well as through the Asbestos Trust Assets, which will be used to satisfy Reorganized Hopeman’s obligations to the holders of Channeled Asbestos Claims, including to provide notice, cooperate, and take whatever actions are necessary to maintain insurance coverage). Projections, ECF No. 853 at 235 The Restructuring Transactions, as evidenced by the Projections, ensure that Reorganized Hopeman generates positive cash flow into the future. *Id.* (projecting annual positive cash flow through 2030). The Debtor, through cash on hand by virtue of the Net Cash Reserves, the revenue that will be generated by the Restructuring Transactions, and the Asbestos Trust Assets available to the holders of Class 4 Channeled Asbestos Claims, will be able to fund the obligations imposed

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

12. Section 1129(a)(12): Payment of Bankruptcy Fees.

The Plan complies with section 1129(a)(12) by providing that all fees payable pursuant to 28 U.S.C. § 1930 will be paid in cash on or before the Effective Date. Plan § 13.6, ECF No. 1185 at 60.

13. Section 1129(a)(13): Inapplicable.

Section 1129(a)(13) is not applicable because Hopeman does not maintain any retiree benefits, as defined in section 1114 of the Bankruptcy Code. Combined Hr'g Tr. Day 1 38:4-6, ECF No. 1174 at 38.

14. Section 1129(b): No Unfair Discrimination; Fair and Equitable.

The Plan has been accepted by Classes 3 and 4, the only voting Classes. Plan § 3.1, ECF No. 1185 at 23-24; Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. However, it is deemed to be rejected by Class 5 Equity Interests. Plan § 4.5, ECF No. 1185 at 25; 11 U.S.C. § 1126(g). The Plan may be confirmed even though Class 5 has not accepted the Plan because the Plan meets the "cramdown" requirements for confirmation under section 1129(b).

Section 1129(b) permits confirmation of a plan where (1) all other provisions of section 1129(a) other than subsection (8) are met; and (2) "if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b). As more fully discussed herein, other than the requirement in section 1129(a)(8) with respect to Class 5, all the requirements of section 1129(a) have been met. The Plan does not discriminate unfairly and is fair and equitable with respect to

Class 5. No Class of Claims or Interests junior to Class 5 will receive or retain any property on account of their Claims or Interests, and no Class of Claims or Interests senior to Class 5 is receiving more than full payment on account of the Claims and Interests in such Class. The Plan therefore is fair and equitable, does not discriminate unfairly with respect to Class 5, and complies with section 1129(b).

15. Section 1129(c): Only One Plan.

There is only one plan that is being confirmed in the Chapter 11 Case, the Plan, thereby satisfying the requirements of section 1129(c) of the Bankruptcy Code.

16. Section 1129(d): Purpose of Plan.

The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933. Combined Hr'g Tr. Day 1 37:15-20, ECF No. 1174 at 37.

D. The Bankruptcy Court Recommends Finding that the Plan Complies with Section 524 of the Bankruptcy Code.

As provided in section 524(g) of the Bankruptcy Code, the Plan includes a channeling injunction, which would prevent entities from taking legal action to recover, directly or indirectly, payment in respect of Asbestos Claims or Demands against Reorganized Hopeman. *See* 11 U.S.C. § 524(g)(1)(A) (A “court that enters an order confirming a plan of reorganization under chapter 11 may [also] issue . . . an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.”). This channeling injunction “allows a debtor to address in one forum all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor.” *Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 237 (4th Cir. 2025) (internal quotations and citations omitted); 11 U.S.C. § 524(g)(1)(B)

(The 524(g) injunction “enjoin[s] entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that . . . is to be paid in whole or in part by a trust described in paragraph (2)(B)(i).”). In addition to the requirements of section 1129, a plan that contains a channeling injunction must also comply with section 524(g)(2). *In re W.R. Grace & Co.*, 475 B.R. at 91. For the reasons stated below, the Bankruptcy Court finds that the Plan Proponents have met the requirements of section 524(g) and, as such, the asbestos channeling injunction should be approved.

1. The Asbestos Trust Satisfies the Requirements of Section 524(g)(2)(B)(i).

An asbestos trust must:

- (I) . . . assume the liabilities of a debtor which . . . has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;
- (II) . . . be funded in whole or in part by the [debtor’s] securities . . . and by the obligation of such debtor or debtors to make future payments, including dividends;
- (III) . . . own, or . . . be entitled to own if specified contingencies occur, a majority of the voting shares of— (aa) each such debtor; (bb) the parent corporation of each such debtor; or (cc) a subsidiary of each such debtor that is also a debtor; and
- (IV) is to use its assets or income to pay claims and demands.

11 U.S.C. § 524(g)(2)(B)(i). “Only if a trust satisfies all four of these requirements will it be considered proper under the statute.” *In re W.R. Grace & Co.*, 475 B.R. at 93. In this case, the Bankruptcy Court finds that the Asbestos Trust contemplated by the Plan satisfies all four requirements set forth under section 524(g)(2)(B)(i) and, as such, is proper.

Section 524(g)(2)(B)(i)(I) requires that an asbestos trust assume the liabilities of a debtor that, as of the petition date, has been named as a defendant in actions to recover damages for asbestos-related claims. 11 U.S.C. § 524(g)(2)(B)(i)(I); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement by its express terms, which state that “liability for all

Channeled Asbestos Claims shall automatically, and without further act, deed, or court order, be channeled exclusively to and assumed by the Asbestos Trust. Plan § 4.4(b), ECF No. 1185 at 25; *see also id.* § 8.3(h), ECF No. 1185 at 32. By assuming the Hopeman’s asbestos liability, the Asbestos Trust will be responsible for resolving Channeled Asbestos Claims in conjunction with the actions permitted under sections 8.12 and 8.13 of the Plan.

Much like *Kaiser Gypsum*, there is no real dispute that the Asbestos Trust assumes the Debtor’s liabilities as to Channeled Asbestos Claims. “And rightly so—those claims are directly submitted to the [Asbestos] Trust for resolution.” *In re Kaiser Gypsum Co.*, 135 F.4th at 197. However, the Objecting Parties contest whether the Non-Channeled Asbestos Claims are being assumed by the Asbestos Trust. The Bankruptcy Court agrees with the Fourth Circuit – section 524(g)(2)(B)(i)(I) is satisfied where the Trust has assumed the Debtor’s rights to insurance coverage. *Id.* To that end, if a claimant holding a Non-Channeled Asbestos Claim received a favorable judgment in the tort system, the judgment would first be paid through any applicable insurance policy. *Id.* Just like in *Kaiser Gypsum*, “the Trust effectively assumes the Debtors’ liabilities, either by directly resolving uninsured claims through the Trust’s administrative process, or by indirectly resolving insured claims through a combination of tort system litigation, coverage under the Truck policy, and the Trust’s other assets.” *Id.* at 198. This structure satisfies section 524(g)(2)(B)(i)(I). *See id.*

Section 524(g)(2)(B)(i)(II) requires that the trust “be funded in whole or in part by the [debtor’s] securities . . . and by the obligation of such debtor . . . to make future payments, including dividends.” 11 U.S.C. § 524(g)(2)(B)(i)(II); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement in part by providing that all Reorganized Hopeman Common Stock will be issued to the Asbestos Trust. Plan § 8.6, ECF No. 1185 at 34. The Plan

Proponents and the Objecting Insurers disagree, however, about whether the Plan obligates the debtor to make future payments, including dividends, as required by the statute.

Section 524(g)'s funding requirement is intended to ensure an evergreen source of funds to pay both current and existing asbestos liability. "[T]he statute doesn't expressly require indefinite future payments or a minimum payment amount." *In re Kaiser Gypsum Co.*, 135 F.4th at 198-99. Rather, the evergreen source of funding may be insurance proceeds. *Id.* Applying this standard articulated by the Fourth Circuit in *Kaiser Gypsum*, the Plan satisfies section 524(g)(2)(B)(i)(II).

Nevertheless, the Objecting Insurers contend that the Plan Proponents have not satisfied section 524(g)(2)(B)(i)(II) due to an "ongoing business" requirement that they argue is required by the statute and not satisfied by the Plan. *See* Chubb Plan Obj. ¶¶ 55-77, ECF No. 958 at 29-41; Liberty Mut. Plan Obj. ¶¶ 26-44, ECF No. 961 at 19-29; Travelers Plan Obj. ¶¶ 87-91, ECF No. 944 at 53-55. The Plan Proponents disagree. The Plan Proponents argue that the plain language of section 524(g)(2)(B)(i)(II) does not contain an ongoing-business requirement, and, even if an ongoing-business requirement were grafted onto the statute, that requirement is satisfied by the Plan. Having carefully reviewed the arguments of the Plan Proponents and the Objecting Insurers, the authorities cited by each, and having conducted an independent review of the relevant law, the Court rejects the Objecting Insurers' contention and finds that the Plan Proponents have satisfied section 524(g)(2)(B)(i)(II).

The Court "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 241 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)). The statute is unambiguous – the plain language of section 524(g)(2)(B)(i)(II) is devoid of any reference to an ongoing-business requirement. *Cf. In*

re Kaiser Gypsum Co., Inc., 135 F.4h at 198 (reciting 524(g)’s funding requirements, without any mention of an ongoing-business requirement). “In light of the many express requirements laid out in § 524(g), . . . had Congress intended § 524(g) require a debtor to operate a viable, ongoing, pre-petition business, it would have included statutory language to that effect in § 524(g)(2)(B).” *In re Flintkote Co.*, 486 B.R. at 131. Accordingly, “where, as here, the statute’s language is plain, ‘the sole function of the courts is to enforce it according to its terms.’” *Ron Pair Enters. Inc.*, 489 U.S. at 241 (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)). The plain language of section 524(g)(2)(B)(i)(II), alone, is sufficient to dispose of the Objecting Insurers’ assertions regarding the ongoing-business requirement.

Ignoring the plain language of the statute, the Objecting Insurers maintain that an ongoing business is required, relying on dicta in the Third Circuit’s decision in *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004).³⁸ In *Combustion Engineering*, the Third Circuit was called upon to address a number of challenges to a debtor’s section 524(g) plan, including arguments by a group of objecting insurers that the plan did not meet the requirements of section 524(g)(2)(B)(i)(II). *Id.* at 248. After reviewing section 524(g)(2)(B)(i)(II), the Third Circuit commented that “[t]he *implication* of [the funding] requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an ‘evergreen’ funding source for future asbestos claimants.” *Id.* at 248 (emphasis added). Noting that the debtor’s “post-confirmation business operations would be, at most, minimal,” the Third Circuit observed that “it [was] *debatable* whether [the debtor] could satisfy § 524(g)(2)(B)(i)(II),”

³⁸ The Objecting Insurers also refer to two other cases, neither of which are binding or applicable here. *In re Lloyd E. Mitchell, Inc.*, Case No. 06-13250-NVA, 2012 WL 5988841, at *3 n.6, 2012 Bankr. LEXIS 5531, at *11 n.6 (Bankr. D. Md. Nov. 29, 2012) (mentioning an ongoing business requirement under section 524, but in the context of adjudicating a motion to lift the automatic stay); *In re Am. Capital Equip., LLC*, 688 F.3d at 160 (plan was unconfirmable for a plethora of reasons, including that it was being funded exclusively from mandatory surcharges on claims processed by the trust).

but declined to address the issue because “[w]hile the Objecting Insurers argue that § 524(g)(2)(B)(i)(II) is not satisfied, *they do not have standing to raise this matter. Therefore, we need not address it.*” *Id.* (emphasis added).

In *Quigley*, the United States Bankruptcy Court for the Southern District of New York, correctly recognized that the *Combustion* court’s musings about an implicit ongoing-business requirement were dicta. *In re Quigley Co.*, 437 B.R. 102, 140 (Bankr. S.D.N.Y. 2010) (“In dicta, the *Combustion Engineering* Court stated the provision [section 524(g)(2)(B)(i)(II)] implied that the reorganized debtor must be a going concern, such that it is liable to make future payments into the trust to provide an evergreen funding source for future asbestos claimants.”) (internal citation and quotation marks omitted); *see In re Flintkote Co.*, 486 B.R. at 129 (“The Court of Appeals in *Combustion Engineering* stated, in dicta, that the “implication of [§ 524(g)(2)(B)(i)(II)] is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an ‘evergreen’ funding source for future asbestos claimants.” (citation omitted)).

While section 524(g)(2)(B)(i)(II) does not contain an ongoing-business requirement, the Bankruptcy Court concludes that if there were such a requirement it would be satisfied here. Pursuant to the Restructuring Transactions provided for in the Plan, “Reorganized Hopeman will acquire a minority interest, and receive net cash flows on account of that interest, in a multifamily property near Houston, Texas.” Restructuring Transactions, ECF No. 853 at 200. Reorganized Hopeman will also be capitalized with an additional \$150,000, “which will be invested in high quality fixed income securities, anticipated to earn a market rate of interest of approximately 4%.” *Id.* From these two investments, the Reorganized Hopeman anticipates receiving dividends and distributions. *Id.* After payment of necessary expenses under the Plan, any remaining dividends and distributions may be transferred by the Reorganized Hopeman to the Asbestos Trust, thereby

becoming part of the Asbestos Trust Assets. *Id.*; Plan §§ 1.64, 8.2(a)(ii), ECF No. 1185 at 15, 30 (providing that the Trust will be funded on an ongoing basis from Excess Net Reserve Funds). In other words, Reorganized Hopenman is obligated to make future payments as required by section 524(g)(2)(B)(i)(II).

Prior to the Petition Date, the Debtor was engaged in the business of managing Asbestos Claims and its insurance assets, including investing its cash and proceeds of insurance settlements in low-risk assets to generate a return to be used to satisfy claims, Combined Hr’g Tr. Day 1 15:3-17:7, ECF No. 1174 at 15-17, which is part of what Reorganized Hopenman will do after the Effective Date, Restructuring Transactions, ECF No. 853 at 200 (describing Reorganized Hopenman’s post-confirmation investments). As such, the Plan contemplates that the Debtor will continue its pre-Petition Date business after the Plan becomes effective, thereby satisfying any ongoing-business requirement.

The Plan goes one step further by providing for another ongoing income stream as a source of funding for the Asbestos Trust – the Debtor’s investment in certain real property. Courts have determined similar post-confirmation transactions are sufficient for an ongoing business requirement. *See, e.g., In re Flintkote*, 486 B.R. at 131 (owning and leasing real estate was sufficient); Disclosure Statement for Am. Ch. 11 Plan of Reorganization of Gulfmark Offshore, Inc. § II.C, *In re Gulfmark Offshore, Inc.*, Case No. 17-11125-KG (Bankr. D. Del. June 27, 2017), ECF No. 173 at 24 (“The Debtor is a holding company, the sole assets of which (other than bank accounts and the intercompany notes receivable), are shares and LLC interests in its immediate subsidiaries.”), *as subsequently confirmed*, Findings of Fact, Conclusions of Law & Order Confirming the Am. Ch. 11 Plan of Reorganization of Gulfmark Offshore, Inc., *In re Gulfmark Offshore, Inc.*, Case No. 17-11125-KG (Bankr. D. Del. Oct. 4, 2017, ECF No. 328; *see generally*

Sander L. Esserman & David J. Parsons, *The Case for Broad Access to 11 U.S.C. § 524(g) in Light of the Third Circuit's Ongoing Bus. Requirement Dicta in Combustion Eng'g*, 62 N.Y.U. Ann. Surv. Am. L. 187 (2006). For these reasons, the Plan satisfies section 524(g)(2)(B)(i)(II) of the Bankruptcy Code.

Section 524(g)(2)(B)(i)(III) requires that the trust own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares “of each debtor.” 11 U.S.C. § 524(g)(2)(B)(i)(III); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement. The Plan provides that, upon the Effective Date, the Asbestos Trust will receive 100% of the Reorganized Hopeman Common Stock. Plan § 8.6, ECF No. 1185 at 34. Accordingly, the Plan complies with the language of section 524(g)(2)(B)(i)(III).

Section 524(g)(2)(B)(i)(IV) requires an asbestos trust “to use its assets or income to pay claims and demands.” 11 U.S.C. § 524(g)(2)(B)(i)(IV). Here, the Asbestos Trust will assume the liability and responsibility for all Channeled Asbestos Claims, Plan § 8.3(a), ECF No. 1185 at 30, and will use its assets – the Asbestos Trust Assets, including the Asbestos Insurance Rights – to pay and satisfy Channeled Asbestos Claims in accordance with the Plan, the Asbestos Trust Agreement, and the Asbestos Trust Distribution Procedures, *id.* § 8.3(h), ECF No. 1185 at 32, thus satisfying the requirements of section 524(g)(2)(B)(i)(IV).

2. The Asbestos Trust Satisfies the Requirements of Section 524(g)(2)(B)(ii).

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

Section 524(g)(2)(B)(ii)(I) requires the court to find that “the debtor is likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction.” 11 U.S.C. § 524(g)(2)(B)(ii)(I). This requirement is clearly met in the case at bar. Here, the Debtor’s asbestos-related liabilities are Asbestos Claims asserted against it allegedly arising out of the asbestos-containing products used in Hopeman’s ship joining business. Lascell First Day Decl. ¶ 2, ECF No. 8 at 2; Combined Hr’g Tr. Day 1 18:4-16, ECF No. 1174 at 18. Since 1979, claimants have asserted more than 126,000 Asbestos Claims against Hopeman. Lascell First Day Decl. ¶ 20, ECF No. 8 at 7; Combined Hr’g Tr. Day 1 19:3-6, ECF No. 1174 at 19. As of the Petition Date, over 2,700 unresolved Asbestos Claims have been asserted against Hopeman. Combined Hr’g Tr. Day 1 19:7-9, ECF No. 1174 at 19.

Based on the substantial number of Asbestos Claims asserted against Hopeman and related personal injury lawsuits that were filed in the past and were continuing to be filed prior to the Petition Date, Hopeman would likely be subject to substantial future Demands for payment arising from the same or similar conduct or events that gave rise to the Channeled Asbestos Claims. *Id.* 38:7-17, 139:14-22, 140:11-23, ECF No. 1174 at 38, 139, 140. Accordingly, section 524(g)(2)(B)(ii)(I) is satisfied.

Section 524(g)(2)(B)(ii)(II) requires a court to find that “the actual amounts, numbers, and timing of such future demands cannot be determined.” 11 U.S.C. § 524(g)(2)(B)(ii)(II). Hopeman is unable to predict with any degree of confidence the amounts, numbers and timing of future Demands in respect of alleged Asbestos Claims. Combined Hr’g Tr. Day 1 38:14-17, 140:11-23, ECF No. 1174 at 38, 140. Accordingly, section 524(g)(2)(B)(ii)(II) is satisfied.

Section 524(g)(2)(B)(ii)(III) requires a finding that “pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan’s purpose to deal equitably with claims and future demands.” 11 U.S.C. § 524(g)(2)(B)(ii)(III). Under the Plan, Channeled Asbestos Claimants, current and future, will receive equitable treatment in accordance with the Asbestos Trust Distribution Procedures. Plan § 8.3(h), ECF No. 1185 at 32; Asbestos Tr. Distrib. Procs. § 1.1, ECF No. 1143 at 110. Without the Plan confirmed under section 524(g): (i) future claimants’ interests would not be protected at all; and (ii) there would be no mechanism to bind future claimants to the mechanism provided in the Plan that provides an orderly process for the fair and equitable distribution of assets to asbestos claimants. *See* Combined Hr’g Tr. Day 1 20:19-22, 103:2-23, ECF No. 1174 at 20, 103. Accordingly, the requirements of section 524(g)(2)(B)(ii)(III) are met.

Section 524(g)(2)(B)(ii)(IV) requires a court to find that, as part of the confirmation process, the terms of the channeling injunction proposed, including “any provisions barring actions against third parties,” are set forth in the plan of reorganization and the disclosure statement in support of the plan. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(aa). A court must also find that “a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan.” 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). As part of the confirmation process in the Chapter 11 Case, the Debtor included the terms of the Asbestos Permanent Channeling Injunction, including provisions therein barring actions against identified parties, in both the Plan and the Disclosure Statement. Plan § 10.3, ECF No. 1185 at 44; Disclosure Statement § I, ECF No. 767 at 9. Hopeman also designated Class 4 under the Plan for all Channeled Asbestos Claims. Plan § 4.4, ECF No. 1185 at 25. The voting Claim holders in Class 4 overwhelmingly accepted the Plan, with 99.71% voting in favor

of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Therefore, section 524(g)(2)(B)(ii)(IV) is satisfied.

Finally, ***Section 524(g)(2)(B)(ii)(V)*** requires a court to find that

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

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

Specifically, the Asbestos Trust Distribution Procedures provide for the processing and payment of the Uninsured Asbestos Claims, including the uninsured portions of Insured Asbestos Claims, that would have been paid by the Debtor prepetition, on an impartial, first-in- first-out basis, while also permitting the Channeled Asbestos Claimants whose claims are Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system. Asbestos Tr. Distrib. Procs. § 2.2, ECF No. 1143 at 111-12. To ensure substantially equivalent treatment of all present and future Uninsured Asbestos Claims, the Administrative Trustee will be required to determine, with the consent of the TAC and the FCR, the percentage of value that holders of present and future Uninsured Asbestos Claims are likely to receive from the Asbestos Trust (i.e., the “Payment Percentage”). *Id.* §§ 4.1, 4.2, ECF No. 1143 at 113-14. This determination will take account of, among other things, estimates of the Asbestos Trust’s assets and liabilities (including projected

expenses). *Id.* § 2.3, ECF No. 1143 at 112. Further, at least once every three years, the Administrative Trustee will be required to reconsider the then-applicable Payment Percentage based on current information. *Id.* § 4.2, ECF No. 1143 at 114. In determining whether to adjust the Payment Percentage, the Administrative Trustee is obligated to assess whether the then-applicable Payment Percentage is based on accurate, current information, and, if after reconsideration, the Administrative Trustee believes a change to the Payment Percentage is necessary, then the Administrative Trustee may effectuate such change with the consent of the TAC and the FCR. *Id.* Each Distribution made to an asbestos claimant will reflect the Payment Percentage in effect at the time of such Distribution. *Id.* § 4.3, ECF No. 1143 at 115. To further ensure equitable treatment of similarly-situated claims, in the event the Administrative Trustee determines it appropriate to increase the Payment Percentage, and such proposed increased Payment Percentage is subsequently adopted in accordance with the terms of the Asbestos Trust Distribution Procedures, the Administrative Trustee will be required to make supplemental payments to all asbestos claimants who previously liquidated their Asbestos Personal Injury Claims based on a lower Payment Percentage. *Id.*, ECF No. 1143 at 115-16. Accordingly, the Asbestos Trust Distribution Procedures provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Asbestos Personal Injury Claims and future asbestos-related Demands in substantially the same manner. The Plan and the Asbestos Trust Distribution Procedures contemplated therein satisfy the requirements in section 524(g)(2)(B)(ii)(V).

3. The Extension of the Asbestos Permanent Channeling Injunction to Third Parties, as Permitted by Section 524(g)(4)(A)(ii), Is Appropriate.

Section 524(g)(4)(A)(ii) designates certain entities that are protected by a channeling injunction entered pursuant to section 524(g)(1)(A). Specifically, this section provides that such a channeling injunction:

- may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—
- (I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;
 - (II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;
 - (III) the third party's provision of insurance to the debtor or a related party; or
 - (IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to —
 - (aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or
 - (bb) acquiring or selling a financial interest in an entity as part of such a transaction.

11 U.S.C. § 524(g)(4)(A)(ii). The Plan proposes to extend the Asbestos Permanent Channeling Injunction to “Protected Parties.” Plan § 10.3(a), ECF No. 1185 at 44-45. The term Protected Parties is defined as “(a) Hopeman or Reorganized Hopeman; (b) current and former directors, officers, or employees of Hopeman, or any past or present Affiliate of Hopeman, solely in their respective capacities as such; or (c) any Settled Asbestos Insurer, solely in its capacity as such.” Plan §1.98, ECF No. 1185 at 19. Thus, as required by section 524(g)(4)(A)(ii), the Plan clearly identifies either by name or by identifiable group each third-party subject to the Asbestos Channeling Injunction. In addition, the Plan defines Protected Party to include those parties that fit within the categories listed in section 524(g)(4)(A) of the Bankruptcy Code. Accordingly, the

Court may, and should, extend the Asbestos Permanent Channeling Injunction to protect all Protected Parties from liability for any Channeled Asbestos Claims.

4. The Court Has Appointed a Legal Representative to Protect the Rights of Persons Who Might Subsequently Assert Demands as Required by Section 524(g)(4)(B)(i).

In order for the Asbestos Permanent Channeling Injunction to be effective against future asbestos claimants, section 524(g)(4)(B) requires “the court appoint[] a legal representative for the purposes of protecting the rights” of future claimants. 11 U.S.C. § 524(g)(4)(B)(i). In accordance with that subsection, the Bankruptcy Court appointed the FCR on May 14, 2025. *See* FCR Appointment Order, ECF No. 732. Although the FCR Appointment Order has been appealed, Notice of Appeal, ECF No. 745, the effectiveness of the FCR Appointment Order has not been stayed. The FCR was appointed as part of proceedings leading to issuance of the Asbestos Permanent Channeling Injunction for the purpose of protecting the rights of all persons, whether known or unknown, that might subsequently assert, directly or indirectly, against Hopeman a Channeled Asbestos Claim that is a Demand addressed in the Asbestos Permanent Channeling Injunction and transferred to the Asbestos Trust. FCR Appointment Order ¶ 2, ECF No. 732 at 2. The FCR reviewed the Plan and the procedures related to the Asbestos Trust. Combined Hr’g Tr. Day 2 58:25-59:23, ECF No. 1175 at 59. Based on the representations of counsel at the Combined Hearing, the FCR supports the Plan as the best option for “maximum recovery to future claimants.” *Id.* Accordingly, the Plan Proponents have met the requirements of section 524(g)(4)(B)(i).

5. Entry of the Asbestos Permanent Channeling Injunction Is Fair and Equitable with Respect to Future Asbestos Claimants as Required by Section 524(g)(4)(B)(ii).

In addition to the appointment of the FCR, section 524(g)(4)(B) also requires a court to determine that entry of the channeling injunction, and the protection from liability that is afforded to the parties named therein, “is fair and equitable with respect to the persons that might

subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.” 11 U.S.C. § 524(g)(4)(B)(ii). In accordance with that section, the Debtor and/or Reorganized Hopeman, on behalf of all the Protected Parties, are contributing certain assets to the Asbestos Trust. Plan § 8.3, ECF No. 1185 at 30-34. On the Effective Date of the Plan, (a) the Debtor and/or Reorganized Hopeman will contribute the Asbestos Trust Assets to the Asbestos Trust, *id.* § 8.3(a), ECF No. 1185 at 30; (b) the Debtor and/or Reorganized Hopeman will contribute the Asbestos Insurance Rights to the Asbestos Trust, *id.* § 8.3(b), ECF No. 1185 at 31; (c) 100% of Reorganized Hopeman’s Common Stock will be issued to the Asbestos Trust, *id.* § 8.6, ECF No. 1185 at 34; and (d) Reorganized Hopeman will contribute the Excess Net Reserve Funds, if any, to the Asbestos Trust, *id.* § 8.5, ECF No. 1185 at 34. The contribution of the Asbestos Trust Assets, including the contribution of Asbestos Insurance Rights, will enable the Asbestos Trust to make substantial, meaningful distributions to the holders of Channeled Asbestos Claims. Plan § 8.3(k), ECF No. 1185 at 33. In light of these benefits, the Court finds that the Asbestos Permanent Channeling Injunction is fair and equitable.

E. The Bankruptcy Court Recommends Concluding that Hopeman Is Entitled to a Discharge.

The Objecting Insurers argue that the Debtor is not entitled to the supplemental discharge under section 524 – regardless of whether the Plan Proponents have complied with the requirements of section 524(g) – because the Debtor allegedly does not qualify for a discharge under section 1141 of the Bankruptcy Code. Chubb Plan Obj. ¶¶ 55-65, ECF No. 958 at 29-34; Liberty Mut. Plan Obj. ¶¶ 29, 42, ECF No. 961 at 21, 27-28. The Bankruptcy Court disagrees and recommends overruling the objections. The Debtor is entitled to both a discharge under section 1141 of the Bankruptcy Code, as well as a supplemental discharge under section 524.

Pursuant to section 1141(d)(3) of the Bankruptcy Code, a debtor is not entitled to a discharge if

- (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
- (B) the debtor does not engage in business after consummation of the plan; *and*
- (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3) (emphasis added). “Since the provisions of § 1141(d)(3) are in the conjunctive, if any one provision does not apply, confirmation of a plan results in the discharge of debt.” *In re River Cap. Corp.*, 155 B.R. 382, 387 (Bankr. E.D. Va. 1991)

The first element that must be met to find that a debtor is ineligible for a discharge is that the plan must provide “for the liquidation of all or substantially all of the property of the estate.”

11 U.S.C. § 1141(d)(3)(A). As Mr. Lascell confirmed in his unrefuted testimony, the Plan does not provide for the liquidation of all or substantially all of the property of the estate. Combined Hr’g Tr. Day 1 35:7-36:13, ECF No. at 35-36. In fact, no assets are being liquidated under the terms of the Plan. Instead, property of the estate is being transferred – either to Reorganized Hopeman (the successor to the Debtor) or to the Asbestos Trust (the owner of Reorganized Hopeman). The Asbestos Trust will receive the Asbestos Trust Assets. Plan § 8.3(a), ECF No. 1185 at 31. As part of the Asbestos Trust Assets, the Debtor will also transfer, not liquidate, the Asbestos Insurance Rights to the Asbestos Trust, the newly formed owner of Reorganized Hopeman, to maintain the Debtor’s Asbestos Insurance Rights in their existing unliquidated form for the benefit of the holders of Channeled Asbestos Claims. *See id.* § 8.3(b), ECF No. 1185 at 31. All other property of the estate will be transferred to Reorganized Hopeman. *Id.* § 9.2, ECF No. 1185 at 42. There is no mention of liquidation of any assets and, therefore, this first element is not satisfied.

Having determined that one of the three elements set forth in section 1141(d)(3) is not present, the Debtor is entitled to a discharge. *See In re River Cap. Corp.*, 155 B.R. at 387. As further support for the issuance of a discharge, the Court finds that the second element of section 1141(d)(3) is also not present. Section 1141(d)(3)(B) restricts a debtor's entitlement to a discharge if "the debtor does not engage in business after consummation of the plan." 11 U.S.C. § 1141(d)(3)(B). Reorganized Hopeman will engage in business after the Effective Date. If the Plan is confirmed, "Hopeman will, as a reorganized debtor, continue to exist after the Effective Date." Plan § 8.11, ECF No. 1185 at 35. Under the Plan, Reorganized Hopeman is specifically authorized to continue to "operate its business and may use, acquire, and dispose of property and compromise or settle any Claims without supervision or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or Confirmation Order." *Id.*

Reorganized Hopeman will receive the Net Cash Reserve as capitalization, which it will use for investments that will generate cash flow through distributions and/or dividends for the foreseeable future, Restructuring Transactions, ECF No. 853 at 199-228, much like the Debtor did prior to the bankruptcy filing, Combined Hr'g Tr. Day 1 15:3–17:7, ECF No. 1174 at 15-17. *See also In re Flintkote*, 486 B.R. at 132 ("The requirement under the statute in order to a receive a discharge, is simply to 'engage in business after consummation of the plan.' There is no . . . language qualifying what level of business activity is sufficient." (citation omitted)).

Accordingly, because the Plan does not provide for the liquidation of all or substantially all the property of the estate and Reorganized Hopeman will be engaging in business after consummation of the Plan, the Court finds that the Debtor qualifies for a discharge pursuant to section 1141(d)(3). Having qualified for a Chapter 11 discharge pursuant to section 1141(d)(3)

and having met all the requirements set forth in section 524(g), the Debtor is entitled to both a discharge under section 1141 of the Bankruptcy Code, as well as a supplemental discharge under section 524.

III. CONCLUSION

Section 11.1 of the Plan contains conditions precedent to Confirmation that must be satisfied or duly waived pursuant to Section 11.3 of the Plan. Plan §§ 11.1, 11.3, ECF No. 1185 at 48-53, 54. Based on the proposed findings contained herein, all conditions precedent set forth in Section 11.1 have been satisfied.³⁹

For the foregoing reasons, the Bankruptcy Court submits these Proposed Findings of Fact and Conclusions of Law to the District Court and recommends confirmation of the Plan as proposed herein.

Dated: October 31, 2025

/s/ Keith L. Phillips
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: October 31, 2025

³⁹ For the avoidance of doubt, section 1146 of the Bankruptcy Code would apply at confirmation. 11 U.S.C. § 1146(a). As such, the following shall not be subject to any stamp tax or similar tax: (i) the creation of any Encumbrances; (ii) the making or assignment of any lease or sublease; (iii) the execution and implementation of the Asbestos Personal Injury Trust Agreement, including the creation of the Asbestos Personal Injury Trust and any transfers to or by the Asbestos Personal Injury Trust; (iv) any Restructuring Transaction; or (v) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan. *See id.*