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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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

JOINDER IN DEBTOR'S OBJECTION TO
LIBERTY MUTUAL'S MOTION TO MODIFY MEDIATION ORDER

The Official Committee of Unsecured Creditors ("**Committee**") hereby joins in the Debtor's objection [Dkt. No. 1522] to Liberty Mutual Insurance Company's Motion for Limited Modification of Mediation Order [Dkt. No. 1518] ("**Motion**") and requests that the Motion be denied. The grounds supporting this joinder are as follows.

1. By its Motion, Liberty seeks access to confidential mediation communications exchanged among the Honorable Kevin R. Huennekens (as judicial mediator), the Debtor, the

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Committee, and Huntington Ingalls Industries, Inc. during the mediation that took place from December 2024 to March 2025. But the Committee, as well as the other parties to the mediation, entered into the mediation with the express understanding that their mediation-related communications would be kept confidential, in accordance with the Court's order authorizing the mediation. *See* Order Authorizing Mediation of Chubb Insurers Settlement Motion ¶ 8 [Dkt. No. 443] ("**Mediation Order**") ("The Mediation Communications shall be confidential, shall not be subject to discovery, shall be inadmissible in any Proceeding, and also shall be subject to protection under Rule 408 of the Federal Rules of Evidence, Local Bankruptcy Rule 9019-1(J), and any equivalent or comparable state law.").

2. Liberty should not be permitted to undo the confidentiality protections that all mediation parties relied on in good faith as it would undermine the integrity of the mediation process. As the Fourth Circuit has recognized, keeping mediation communications confidential is vital: "The assurance of confidentiality is essential to the integrity and success of the Court's mediation program, in that confidentiality encourages candor between the parties and on the part of the mediator, and confidentiality serves to protect the mediation program from being used as a discovery tool for creative attorneys." *In re Anonymous*, 283 F.3d 627, 636 (4th Cir. 2002) (per curiam) (citing *In re Lake Utopia Paper Ltd.*, 608 F.2d 928, 930 (2d Cir. 1979)). "Without adequate legal protection, a party's candor in mediation might well be 'rewarded' by a discovery request or the revelation of mediation information at trial." Alan Kirtley, *The Mediation Privilege's Transition from Theory to Implementation: Designing a Mediation Privilege Standard to Protect Mediation Participants, the Process and the Public Interest*, 1995 J. DISP. RESOL. 1, 9-10.

3. Confidential mediation communications should only be discoverable under limited circumstances that are not present here. Courts "must balance the public interest in protecting the

confidentiality of the settlement process and countervailing interests, such as the right to every person's evidence." *Anonymous*, 283 F.3d at 637 (citing *In re Grand Jury Subpoena*, 148 F.3d 487, 492-93 (5th Cir. 1998)).[1] As "the party seeking disclosure of mediation communications," Liberty must "show that 'manifest injustice' would result from nondisclosure." *Food Lion, LLC v. Dairy Farmers of Am., Inc.*, No. 1:20-CV-442, 2020 WL 6947921, at *3 (M.D.N.C. Sept. 29, 2020) (citing *Anonymous*, 283 F.3d at 637). Manifest injustice requires "a party seeking discovery of settlement documents . . . [to] demonstrate a heightened showing of need and relevance to the action." *Wyeth*, 2008 WL 11509482, at *3 (citing *Anonymous*, 283 F.3d 627).

4. Liberty has not made any showing of "manifest injustice" or that its need to see confidential communications among the mediation parties outweighs the confidentiality interests of those parties. If Liberty believes Hopeman breached its so-called "Minimization Obligation" during mediation, Liberty can look to the ultimate product of that mediation: the term sheet forming the basis of the plan of reorganization proposed by the Debtor and the Committee.[2] Any communications exchanged among the mediation parties that pertain to the term sheet are unnecessary and irrelevant, as the term sheet is the definitive document resulting from the mediation. Additionally, Hopeman's conduct in negotiating the term sheet and the plan can be assessed through a wide range of non-mediation evidence, including public filings, plan-related documents, correspondence outside the mediation, and deposition testimony—all of which Liberty received as part of confirmation-related discovery.

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[1] *See also Wyeth v. Lupin Ltd.*, No. CV WDQ-07-632, 2008 WL 11509482, at *3 (D. Md. Mar. 28, 2008) ("While the Fourth Circuit has not recognized a settlement privilege, it has indicated that it would apply enhanced protections to settlement documents and communications sought in discovery.").

[2] *See* Mot. for Expedited Status Conf. Ex. B (§ 524(g) Settlement Term Sheet) [Dkt. No. 609].

5. For these reasons, Liberty cannot show that "the harm caused by non-disclosure [of mediation communications] will be manifestly greater than the harm caused by disclosure" because it already has access to materials outside the mediation regarding its theory about the so-called "Minimization Obligation." *Anonymous*, 283 F.3d at 637; *cf. E.I. Dupont de Nemours & Co. v. Kolon Indus., Inc.*, 269 F.R.D. 600, 608 (E.D. Va. 2010) (substantial need for disclosure of privileged work product cannot be shown where information can be sought through other available means).[3] Because Liberty has failed to show a compelling need for the mediation communications, those communications should remain protected and the Mediation Order should remain unchanged.

6. For the reasons stated above and in the Debtor's objection, Liberty's Motion should be denied.

[Signature of counsel on following page]

[3] Pointing to Federal Rule of Evidence 408(b), which allows the admission of settlement-related evidence "for another purpose," Liberty contends that mediation communications may be disclosed when used for a purpose unrelated to the mediation. *See* Mot. ¶¶ 24-25. This analogy does not work because the Fourth Circuit in *Anonymous* specified that "the party seeking disclosure . . . [must] demonstrate that the harm caused by non-disclosure will be manifestly greater than the harm caused by disclosure." *Anonymous*, 283 F.3d at 637. The purpose for which the mediation or settlement communications is sought is already baked into the manifest injustice analysis. *See Wyeth*, 2008 WL 11509482, at *3 (finding that the *Anonymous* opinion "strongly suggests . . . that a party seeking discovery of settlement documents must demonstrate a heightened showing of need").

Respectfully submitted,

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