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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO EXTEND THE RESPONSE DEADLINE AND CONTINUE THE HEARING
ON THE DEBTOR’S INSURANCE SETTLEMENT PROCEDURES MOTION**

The Official Committee of Unsecured Creditors (“**Committee**”), by and through its undersigned counsel, represents as follows in support of this motion (“**Motion**”):

RELIEF REQUESTED

1. The Committee seeks entry of an order, substantially in the form annexed hereto as **Exhibit A**, continuing the hearing on the Motion of the Debtor for Entry of an Order (I) Establishing Procedures to Schedule Hearings to Consider the Insurer Settlement Motions; (II) Approving Form



and Manner of Notice Thereof; and (III) Granting Related Relief [Docket No. 54] (“**Settlement Procedures Motion**”), which hearing is currently set for September 10, 2024, to the October omnibus hearing date (October 8, 2024), and extend the Committee’s deadline to file a response to the Settlement Procedures Motion from August 30, 2024 to and including October 1, 2024.

JURISDICTION AND LEGAL GROUNDS

2. This Court has subject-matter jurisdiction to hear and decide this Motion under 28 U.S.C. §§ 157(a) and 1334(b) and the Standing Order of Reference from the United States District Court for the Eastern District of Virginia, dated August 15, 1984. This matter is a core proceeding under 28 U.S.C. § 157(b), and this Court has authority to adjudicate this Motion consistent with Article III of the United States Constitution.

3. The bases for the relief requested herein are 11 U.S.C. §§ 105(a), Rule 9006(b) of the Federal Rules of Bankruptcy Procedure, and Rule 9013-1(J) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Virginia (“**Local Rules**”).

BACKGROUND

4. On June 30, 2024, the Debtor commenced the above-captioned case by filing its petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to act as a debtor-in-possession in accordance with §§ 1107(a) and 1108 of the Bankruptcy Code.

5. The Debtor asserts that it commenced its chapter 11 case “to utilize [its] remaining cash and its unexhausted insurance policies issued by solvent insurers to address the over 2,700 asbestos-related personal injury claims asserted and unresolved against the Debtor as of June 23, 2024, as well as likely-to-be asserted prepetition asbestos-related personal injury claims against the Debtor” Debtor’s Mot. for Order (I) Establishing Bar Dates for Submitting Proofs of Non-Asbestos Claim; (II) Approving Procedures for Submitting Proofs of Non-Asbestos Claim;

(III) Approving Notice Thereof; (IV) Approving a Tailored Proof of Non-Asbestos Claim Form; and (V) Granting Related Relief ¶ 9, at 3, Docket No. 74.

6. Also on June 30, 2024, the Debtor filed the Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement and Release Between the Debtor and the Chubb Insurers; (III) Approving the Sale of Certain Insurance Policies; (IV) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief [Docket No. 9] (“**Chubb Settlement Motion**”). Through the Chubb Settlement Motion, the Debtor seeks this Court’s approval of its settlement with the Chubb insurers that would “monetize the applicable insurance policies,”¹ release the Debtor’s rights to the Chubb insurance coverage,² and grant the Chubb insurers broad injunctive protection from having to pay out their remaining coverage limits (to the extent the relevant coverage has limits).³

7. On July 10, 2024, the Debtor filed the Motion of the Debtor for Entry of an Order (I) Approving the Settlement Agreement and Release Between the Debtor and Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (IV) [*sic*] Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) [*sic*] Granting Related Relief [Docket No. 53] (“**Certain Insurers Settlement Motion**,” and together with the Chubb Settlement Motion, the “**Insurance Settlement Motions**”). Through the Certain Insurers Settlement Motion, the Debtor seeks this Court’s approval of its settlement with certain insurers that would “monetize the applicable insurance policies,”⁴ release the Debtor’s rights to the insurance coverage,⁵ and grant the certain

¹ Settlement Procedures Motion ¶ 3, at 3.

² Chubb Settlement Motion ¶ 21(d), at 8.

³ *Id.*, Ex. B ¶ 9 (proposed form of approval order).

⁴ Settlement Procedures Motion ¶ 3, at 3.

⁵ Certain Insurers Settlement Motion, ¶ 21(d), at 9.

insurers broad injunctive protection from having to pay out their remaining coverage limits (to the extent the relevant coverage has limits).⁶

8. Also on July 10, 2024, the Debtor filed its Settlement Procedures Motion, which asks this Court to establish procedures for scheduling the hearing on the Insurance Settlement Motions and to approve the form and manner of notice of the Insurance Settlement Motions. The Debtor originally filed a notice setting a hearing on the Settlement Procedures Motion for August 6, 2024, and the deadline for filing any objections or responses to the Settlement Procedures Motion on July 30, 2024.

9. On July 12, 2024, the Debtor filed its proposed Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code [Docket No. 56] (“**Proposed Plan**”), together with its accompanying proposed Disclosure Statement with Respect to the Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code [Docket No. 57].

10. On July 22, 2024, the Office of the United States Trustee formed the Committee and appointed its members. Appointment of Unsecured Creditors Committee, Docket No. 69.

11. On July 26, 2024, the Debtor and the Committee reached an agreement that, *inter alia*, extended the Committee’s deadline to file a response to the Settlement Procedures Motion to and including August 30, 2024.

12. On August 1, 2024, the Debtor filed its Notice of Adjournment of Matters Scheduled for Hearing on August 6, 2024 [Docket No. 89], which, *inter alia*, continued the hearing on the Settlement Procedures Motion to September 10, 2024.

13. On August 14, 2024, the Committee served the Debtor with its interrogatories and requests for production of documents in connection with the pending Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against

⁶ *Id.*, Ex. B ¶ 8 (proposed form of approval order).

Non-Debtor Defendants [Docket No. 7] (“**Stay Motion**”). Because the Stay Motion is set for hearing on September 10, 2024, and because the Committee’s deadline to respond to the Stay Motion is August 30, 2024, the Committee asked the Debtor to answer the interrogatories and produce responsive documents no later than August 23, 2024. (Unfortunately, with its discovery objections and responses served on August 23, 2024, the Debtor largely obstructed this stay-related discovery, refusing, for example, to produce any documentation or offer any substantive explanation to support its assertion that insurance issued by Liberty Mutual Insurance Company—the Debtor’s primary and umbrella insurer for decades—is “exhausted.”)

14. In addition to the interrogatories and document requests already served, the Committee intends to file shortly a motion for leave to examine the Debtor under Bankruptcy Rule 2004 to investigate and obtain information regarding, *inter alia*, the Debtor’s liability insurance program, the terms and aggregate limits (if any) of the relevant insurance policies, any agreements that purport to govern or limit the Debtor’s insurance coverage, such as coverage-in-place agreements and any previous settlement agreements, the nature and substance of the negotiations between the Debtor and its insurers that resulted in the proposed settlements reflected in the Insurance Settlement Motions, and the grounds on which the Debtor believes these settlements are reasonable. This information will help the Committee understand, evaluate, and take a position on the proposed insurance settlements.

DEBTOR’S POSITION

15. In accordance with Local Rule 9013-1(J), during a meet-and-confer on August 20, 2024, the Committee asked the Debtor to agree to a continuance of the hearing on the Settlement Procedures Motion and an extension of the Committee’s response deadline. The Debtor declined the Committee’s request at the meet-and-confer and in email correspondence dated that day. The Debtor reiterated its refusal to agree to a continuance at a meet-and-confer with the Committee’s counsel on

August 23, 2024. The Debtor asserted its apparent belief that it is important for the Settlement Procedures Motion to go forward on September 10, especially since the relief sought in the motion is procedural, not substantive. In addition, the Debtor has voiced its concern that agreeing to a modest continuance now could lead to a slippery slope of additional continuances, which could put the Court's consideration of the Insurance Settlement Motions into next year, where the estate would be at risk of running out of money to pay administrative expenses. The Committee believes that the Debtor's position does not adequately consider the Committee's concerns or give the Committee adequate time to conduct its insurance-related due diligence. The Committee also disagrees with the Debtor's position for the reasons explained below.

ARGUMENT

16. The law nationally is that persons injured by an insured obtain rights under the insured's liability insurance policies that cannot be impaired by the actions of the insured and the insurer. These rights accrue *immediately* upon injury. Some states consider injured persons "third-party beneficiaries" under the insured's liability policies. Other states deem the insured's policies to be "tri-party" contracts between the insured, the insurer, and injured persons:

Sections 38.1-380 and 38-1.381 voice the public policy of this State and by force of their provisions, they are a part of the policy of liability insurance. Quite an anomalous situation would exist if rights and interests of injured parties for whose benefit and protection this legislation was enacted could be defeated by actions at law or in equity solely between the other two parties to what the statutes make a tri-party contract.

Storm v. Nationwide Mut. Ins. Co., 97 S.E.2d 759, 764 (Va. 1957).

17. It is not appropriate for this Court to consider the Settlement Procedures Motion at this time because, before it can engage with the Debtor over procedures, the Committee needs to understand and take a position on the substance of the proposed insurance settlements, including as to whether settlements are even appropriate at this time given the direct rights the asbestos claimants

have in the Debtor's liability insurance policies. The Debtor has only very recently begun producing documents to the Committee, and the Committee's professionals have only recently started to analyze information pertaining to the Debtor's liability insurance program, its rights under the relevant insurance policies and any related agreements, and the underpinnings of the proposed insurance settlements. The Committee was appointed about a month ago and 12 days after the Settlement Procedures Motion was filed. Because the proposed insurance settlements were entered into before the Committee was formed, without any input from the asbestos claimants' representatives, and propose to (improperly) cut off asbestos claimants' rights in the coverage, the Committee seeks to conduct a sufficiently thorough investigation of the extent of the Debtor's insurance coverage to determine whether the proposed insurance settlements are fair and reasonable, whether they need to be objected to or renegotiated, or whether settlement is even advisable at all. The Debtor's professionals have had almost an entire year to study the Debtor's insurance and litigation status, negotiate with insurers, and prepare for this chapter 11 case. The Debtor would nevertheless restrict the Committee to mere weeks.

18. When the Debtor draws a dividing line between settlement substance and settlement procedures, it creates a boundary that is artificial and untenable. This Court should not consider settlement procedures and forms of notice to creditors when the Committee has not yet vetted the proposed insurance settlements for the benefit of those creditors for whom it is an estate fiduciary and whose rights in the insurance policies cannot under state law be terminated by the unilateral actions of the Debtor and its insurers.

19. Based on the very limited information currently available to it, the Committee is concerned that the proposed settlement amounts are unreasonably low and that the proposed settlement agreements are objectionable for other reasons as well. It can be estimated from available

information that the insurance policies that would be released under the proposed settlements offer at least \$300,000,000 in per occurrence limits for asbestos-related bodily injury claims and more than \$400,000,000 in aggregate limits—if indeed, the underlying claims are subject to aggregate limits of liability at all. Yet, under the proposed settlements, the proposed settling insurers would pay only \$49.9 million,⁷ at best a mere fraction of the total available coverage. And, in return for this mere fraction, the proposed settling insurers would receive broad injunctive relief to protect them from paying out their remaining coverage limits.⁸ As such, without the discovery that might better inform the Committee of the underlying merits of these settlements, which appear substantially favorable to the insurers, the interests of asbestos claimants—the only creditors with access to the insurance—would be better served if the settlements were rejected.

20. Another asbestos bankruptcy that eventually resulted in a confirmed chapter 11 liquidation,⁹ *In re ON Marine Services Co. LLC*,¹⁰ provides support for granting this Motion. There, with proposed insurance settlements in hand, the debtor filed a motion substantially similar to the Settlement Procedures Motion.¹¹ The *ON Marine* creditors' committee moved to adjourn the hearing on that motion on the ground that the committee and the debtor needed to address issues and objections relating to the proposed insurance settlements before the debtor's proposed settlement

⁷ See Settlement Procedures Motion ¶ 3, at 3.

⁸ See Chubb Settlement Motion, Ex. B ¶ 9; Certain Insurers Settlement Motion, Ex. B ¶ 8; see also Proposed Plan § 10.4 (“Policy Injunction”).

⁹ Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosures Contained in the First Amended Combined Disclosure Statement and Plan of Liquidation of ON Marine Services Company LLC Pursuant to Section 1125 of the Bankruptcy Code and (II) Confirming the Second Amended Combined Disclosure Statement and Plan of Liquidation of ON Marine Services Company LLC Pursuant to Section 1129 of the Bankruptcy Code, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Feb. 7, 2023), Docket No. 1399.

¹⁰ No. 20-20007-CMB (Bankr. W.D. Pa.).

¹¹ See Debtor's Motion for an Order (I) Scheduling a Hearing to Consider Motions to Approve Insurance Settlement Agreements, (II) Approving Form and Manner of Notice Thereof, and (III) Granting Related Relief, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Jan. 2, 2020), Docket No. 20.

procedures could be considered.¹² Thereafter, the parties engaged in mediation and eventually renegotiated the insurance settlements, resulting in amended and restated settlement agreements and an amended chapter 11 plan.¹³ As a result, the debtor's estate in *ON Marine* saved the costs of noticing (and litigating) the initial insurance settlements that were later renegotiated and superseded by consent.

21. The Committee's continuance request is modest, particularly considering the direct rights the asbestos claimants have in the Debtor's liability insurance policies. Adjourning the hearing on the Settlement Procedures Motion from September 10 to October 8 is a continuance of less than 30 days. On the other hand, hearing the Settlement Procedures Motion and granting the relief requested therein on September 10 would likely prejudice the Committee because it would interfere with and cut short the time available to the Committee to conduct its insurance-related due diligence. This is because the Settlement Procedures Motion contemplates that the hearing on the Insurance Settlement Motions will occur within as little as 14 days after the Debtor provides notice of the Insurance Settlement Motions to creditors, and objections to those motions would be potentially due

¹² See Motion of the Official Committee of Asbestos Personal Injury Claimants (A) to Adjourn the Objection Deadline and Hearing Regarding Debtor's Motion for an Order (I) Scheduling a Hearing to Consider Motions to Approve Insurance Settlement Agreements, (II) Approving Form and Manner of Notice Thereof, and (III) Granting Related Relief, and (B) for Mediation ¶¶ 8-12, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Dec. 31, 2020), Docket No. 466.

¹³ See Debtor's Motion for an Order (I) Approving the Amended and Restated Settlement Agreement and Release Between the Debtor and Federal Insurance Company, (II) Approving the Sale of Certain Insurance Policies, and (III) Recognizing Certain Related Relief in Connection with the Plan of Liquidation, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Oct. 24, 2022), Docket No. 1222; Debtor's Motion for an Order (I) Approving the Amended and Restated Settlement Agreement and Release Between the Debtor and Fireman's Fund Insurance Company and Fireman's Fund Insurance Company of Ohio, (II) Approving the Sale of Certain Insurance Policies, and (III) Recognizing Certain Related Relief in Connection with the Plan of Liquidation, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Oct. 24, 2022), Docket No. 1223; Combined Disclosure Statement and Plan of Liquidation of ON Marine Services Company LLC Under Chapter 11 of the Bankruptcy Code, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Oct. 24, 2022), Docket No. 1224, *superseded by* Second Amended Combined Disclosure Statement and Plan of Liquidation of ON Marine Services Company LLC Under Chapter 11 of the Bankruptcy Code, *In re ON Marine Servs Co.*, No. 20-20007-CMB (Bankr. W.D. Pa. Feb. 1, 2023), Docket No. 1377.

in as little as seven (7) days after notice is served.¹⁴ It would not be in the best interests of the Debtor's estate or its creditors to force the Committee, potentially prematurely, into a litigation posture over these proposed settlements absent sufficient information. Moreover, the Debtor's estate should not bear the costs now of noticing proposed settlements that likely will be renegotiated and superseded. Accordingly, it would be most efficient to continue the Settlement Procedures Motion for a period of less than 30 days to give the Committee breathing room to pursue its due diligence and potentially negotiate with the Debtor and the proposed settling insurers over the proposed settlement terms and any notice issues.

22. For the reasons stated above, the Court should grant the requested continuance and extension.

RESERVATION OF RIGHTS

23. The Committee reserves the right to seek further continuances of the hearing on the Settlement Procedures Motion and extensions of the Committee's deadline to respond to that motion. In addition, the Committee reserves all rights to respond to, object to, or otherwise oppose or be heard on the Settlement Procedures Motion and the Insurance Settlements Motion.

NO PRIOR REQUEST

24. No previous request for the relief requested herein has been made to this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

25. This Motion incorporates the memorandum of points and authorities into this single pleading. Additionally, under Local Rule 9013-1(F)(2)(e), a memorandum of points and authorities need not accompany a motion for a continuance.

¹⁴ See Settlement Procedures Motion ¶ 14, at 6.

CONCLUSION

For the reasons explained above, this Court should grant this Motion and enter the proposed order annexed hereto as **Exhibit A**, continuing the hearing on the Settlement Procedures Motion to October 8, 2024 (the October omnibus hearing date in this case) and extending the Committee's deadline to file a response to the Settlement Procedures Motion to and including October 1, 2024.

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

/s/ Jeffrey A. Liesemer

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*Proposed Special Insurance Counsel for the
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Dated: August 26, 2024

EXHIBIT
A

CAPLIN & DRYSDALE, CHARTERED
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

**ORDER GRANTING THE MOTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO EXTEND
THE RESPONSE DEADLINE AND CONTINUE THE HEARING ON
THE DEBTOR'S INSURANCE SETTLEMENT PROCEDURES MOTION**

Upon the *Motion of the Official Committee of Unsecured Creditors to Extend the Response Deadline and Continue the Hearing on the Debtor's Insurance Settlement Procedures Motion* (“**Motion**”);¹ and the Court having reviewed the Motion; and the Court finding that: (i) the Court has jurisdiction over this matter under 28 U.S.C. §§ 157(a) and 1334(b) and the Standing Order of

¹ Capitalized terms used but not defined in this Order have the meanings given in the Motion.

Reference from the United States District Court for the Eastern District of Virginia, dated August 15, 1984; (ii) this matter is a core proceeding under 28 U.S.C. § 157(b); (iii) this Court has authority to adjudicate the Motion consistent with Article III of the United States Constitution; (iv) notice of the Motion and the hearing thereon was sufficient under the circumstances and no other notice need be provided; (v) the relief sought in the Motion is in the best interests of the Debtor, its estate, creditors, and all parties in interest; and (vi) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED in its entirety.
2. Objections, if any, to the relief requested in the Motion that have not been withdrawn or resolved by this Order are overruled in all respects.
3. The Committee's objection deadline for the Motion of the Debtor for Entry of an Order (I) Establishing Procedures to Schedule Hearings to Consider the Insurer Settlement Motions; (II) Approving the Form and Manner of Notice Thereof; and (III) Granting Related Relief [Docket No. 54] ("**Settlement Procedures Motion**") is extended to and including October 1, 2024.
4. The hearing on the Settlement Procedures Motion is continued and will take place at 10:00 a.m. prevailing Eastern Time on October 8, 2024.
5. This Order is without prejudice to the rights of the Committee to apply for further extensions on the objection deadline and further continuances of the hearing of the Settlement Procedures Motion.
6. This Order is without prejudice to the rights of the Committee to respond to, object to, or otherwise oppose or be heard on the Settlement Procedures Motion.

7. The Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

8. The Court shall retain jurisdiction, to the extent such jurisdiction exists, to hear and determine all matters arising from the implementation of this Order.

9. Notwithstanding any provision in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2024
Richmond, Virginia

HONORABLE KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

CAPLIN & DRYSDALE, CHARTERED

/s/ Jeffrey A. Liesemer

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**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Jeffrey A. Liesemer