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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 *
*

**MOTION TO EXTEND THE RESPONSE DEADLINE AND CONTINUE HEARING ON
THE DEBTOR'S INSURANCE SETTLEMENT PROCEDURES MOTION**

NOW INTO COURT, through undersigned counsel, come Janet Rivet and Kayla Rivet (surviving spouse and child of Tommy Rivet), Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, and Stephanie Jean Ragusa Connors (surviving spouse and children of Frank P. Ragusa, Jr.), and Erica Dandry Constanza and Monica Dandry Hallner (surviving children of Michael Dandry, Jr.) (collectively "Creditors"), who seek 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 Relief¹ (“Settlement Procedures Motion”), which hearing is currently set for September 10, 2024, to the October omnibus hearing date (October 8, 2024), and extending Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner’s deadline to file a response to the Settlement Procedures Motion from August 30, 2024 to and including October 1, 2024. The Official Committee of Unsecured Creditors (“Committee”) has filed a nearly identical motion seeking a continuance of the Settlement Procedures Motion and the Committee’s deadline to respond to the motion.² Because the Committee’s motion appears to only seek to extend its own deadline to respond, Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner are filing this motion as they are similarly situated to the creditors on the Committee and should be afforded the same deadline to respond to Hopeman’s Settlement Procedures Motion.

JURISDICTION AND LEGAL GROUNDS

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.

The bases for the relief requested herein are 11 U.S.C. §§ 105(a), Rule 9006(b) of the

¹*In re: Hopeman Brothers, Inc.*, United States Bankruptcy Court, Eastern District of Virginia, Richmond Division, No. 24-32428 KLP at Docket (“BR Doc.”) No. 54.

²BR Doc. 120.

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

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

Hopeman 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”³

Also on June 30, 2024, Hopeman 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 Relief⁴ (“Chubb Settlement Motion”). Through the Chubb Settlement Motion, Hopeman seeks this Court’s approval of its settlement with the Chubb insurers that would “monetize the applicable insurance policies,”⁵ release Hopeman’s rights to the Chubb insurance coverage⁶, and grant the Chubb insurers broad injunctive protection from having to pay out their remaining

³BR Doc. 74 at p. 3.

⁴BR Doc. 9.

⁵BR Doc. 54 at p. 3.

⁶BR Doc. 9 at p. 8.

coverage limits (to the extent the relevant coverage has limits).⁷

On July 10, 2024, Hopeman 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 Relief⁸ (“Certain Insurers Settlement Motion”). Through the Certain Insurers Settlement Motion, Hopeman seeks this Court’s approval of its settlement with certain insurers that would “monetize the applicable insurance policies”⁹, release Hopeman’s rights to the insurance coverage¹⁰, and grant the certain insurers broad injunctive protection from having to pay out their remaining coverage limits (to the extent the relevant coverage has limits).¹¹

Also on July 10, 2024, Hopeman 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. Hopeman 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.

On July 12, 2024, Hopeman filed its proposed Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code¹² (“Proposed Plan”), together with its accompanying proposed Disclosure Statement with Respect to the Plan of Liquidation of

⁷*Id.*

⁸BR Doc. 53.

⁹BR Doc. 54 at p. 3.

¹⁰BR Doc. 53 at p. 9.

¹¹*Id.*

¹²BR. Doc. 56.

Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code.¹³

On July 22, 2024, the Office of the United States Trustee formed the Committee and appointed its members.¹⁴

On July 26, 2024, Hopeman 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.

On August 1, 2024, Hopeman filed its Notice of Adjournment of Matters Scheduled for Hearing on August 6, 2024¹⁵, which, *inter alia*, continued the hearing on the Settlement Procedures Motion to September 10, 2024.

On August 14, 2024, the Committee served Hopeman with 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 Non-Debtor Defendants¹⁶ ("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 Hopeman to answer the interrogatories and produce responsive documents no later than August 23, 2024. The Committee has stated that Hopeman has largely obstructed these discovery requests by refusing to produce any documentation or offer any substantive explanation to support its assertions regarding the insurance issued to it by Liberty Mutual Insurance Company.¹⁷

Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux,

¹³BR. Doc. 57.

¹⁴BR Doc. 69.

¹⁵BR Doc. 89.

¹⁶BR Doc. 7.

¹⁷BR Doc. 120 at p. 5.

Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner are the surviving family members of individuals who developed and died from mesothelioma following exposure to asbestos from Hopeman's operations (i.e. contracting activities) at Avondale Shipyards. Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner are similarly situated to the creditors on the Committee, and should be afforded the same relief as the Committee regarding the deadline to respond to Hopeman's Settlement Procedures Motion.

DEBTOR'S POSITION

In accordance with Local Rule 9013-1(J), during a meet-and-confer on August 20, 2024, the Committee asked Hopeman to agree to a continuance of the hearing on the Settlement Procedures Motion and an extension of the Committee's response deadline. Hopeman declined the Committee's request at the meet-and-confer and in email correspondence dated that day.¹⁸ Hopeman reiterated its refusal to agree to a continuance at a meet-and-confer with the Committee's counsel on August 23, 2024.¹⁹ Hopeman 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.²⁰ In addition, Hopeman 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.²¹ Creditors believe that Hopeman's position does not adequately consider the

¹⁸BR Doc. 120 at p. 5.

¹⁹BR Doc. 120 at pp. 5-6.

²⁰BR Doc. 120 at pp. 5-6.

²¹BR Doc. 120 at p. 6.

Committee's concerns or give the Committee or the Creditors' adequate time to conduct insurance-related due diligence.

ARGUMENT

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. In regards to Louisiana, the U.S. Fifth Circuit has explained that:

The Louisiana Direct Action Statute explicitly states that when an insured is in bankruptcy, an injured person or his survivors may bring an action directly against the insurer without joining the insured. La. Rev. Stat. § 22:1269(B)(1) (Supp. 2012). We have held a direct action claimant may assert waiver even where the insured is not a party to the litigation and has received a discharge in bankruptcy. *Duffy*, 47 F.3d at 149-50; *F.D.I.C. v. Duffy*, 835 F. Supp. 307, 308, n.1 (E.D. La. 1993), *aff'd*, 47 F.3d 146 (5th Cir. 1995) ("Duffy received a discharge in bankruptcy, which relieved him of any potential liability Hence the sole defendant remaining in this proceeding is Duffy's alleged insurer").²²

The Fifth Circuit also explained that "The purpose of Louisiana's Direct Action statute is to safeguard the rights of injured persons," and that it "creates a 'contractual relationship which inures to the benefit of any and every person who might be negligently injured by the insured as completely as if such injured person had been specifically named in the policy.'"²³ The Bankruptcy Court for the Middle District of Louisiana has stated "The substantive law of the state of Louisiana law grants persons a right of direct action against the insurers of an alleged tortfeasor, without the necessity of first bringing an action against the insured or even making the

²²*Sosebee v. Steadfast Ins. Co.*, 701 F.3d 1012, 1021 (5th Cir. 2012).

²³*Id.* (citing *FDIC v. Duffy*, 47 F.3d 146, 150 (5th Cir. 1995) (quoting *Shockley v. Sallows*, 615 F.2d 233, 238 (5th Cir. 1980))).

insured a party to the lawsuit.”²⁴ Louisiana’s Supreme Court has held that the direct action statute created “substantive rights on third parties to contracts of public liability insurance, which become vested at the moment of the accident in which they are injured”.²⁵

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 and Creditors need 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 Hopeman’s liability insurance policies. Because the proposed insurance settlements were entered without any input from the Creditors or any other asbestos claimants’ representatives, and propose to (improperly) cut off asbestos claimants’ rights in the coverage, the Committee and Creditors seek to conduct a sufficiently thorough investigation of the extent of Hopeman’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. Hopeman’s professionals have had almost an entire year to study Hopeman’s insurance and litigation status, negotiate with insurers, and prepare for this chapter 11 case. Hopeman would nevertheless restrict the Committee and Creditors to mere weeks.

When Hopeman 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 proposed insurance settlements have not yet been vetted for the benefit of those creditors whose rights in the insurance policies

²⁴*Landry v. Exxon Pipeline Co. Mendoza Marine, Inc.*, 260 B.R. 769, 778 (Bankr. M.D. La. 2001).

²⁵*West v. Monroe Bakery, Inc.*, 217 La. 189, 191, 46 So.2d 122, 123 (1950).

cannot under state law be terminated by the unilateral actions of Hopeman and its insurers.

Another asbestos bankruptcy that eventually resulted in a confirmed chapter 11 liquidation²⁶, *In re ON Marine Services Co. LLC*²⁷, 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.²⁸ 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 procedures could be considered.²⁹ 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.³⁰ As a result, the debtor's estate

²⁶Findings 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.

²⁷No. 20-20007-CMB (Bankr. W.D. Pa.).

²⁸See 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.

²⁹See 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.

³⁰See 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

in *ON Marine* saved the costs of noticing (and litigating) the initial insurance settlements that were later renegotiated and superseded by consent.

The continuance request is modest, particularly considering the direct rights the asbestos claimants have in Hopeman'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 and Creditors because it would interfere with and cut short the time available to conduct 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 Hopeman provides notice of the Insurance Settlement Motions to creditors, and objections to those motions would be potentially due in as little as seven (7) days after notice is served.³¹ It would not be in the best interests of Hopeman's estate or its creditors to force the Committee or Creditors into a litigation posture over these proposed settlements absent sufficient information. Moreover, Hopeman'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 and Creditors breathing room to pursue due

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.

³¹BR Doc. 54 at p. 6.

diligence and potentially negotiate with the Debtor and the proposed settling insurers over the proposed settlement terms and any notice issues.

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

RESERVATION OF RIGHTS

Creditors 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, Creditors 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

While the Committee has previously requested that the hearing on the Settlement Procedures Motion be continued, the Committee only sought to extend its own deadline to respond to the Settlement Procedures Motion.³² No previous request has been made for the extension of the deadline for Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner to respond to the Settlement Procedures Motion has been made to this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

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.

CONCLUSION

WHEREFORE, Janet Rivet and Kayla Rivet (surviving spouse and child of Tommy

³²R. Doc. 120.

Rivet), Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, and Stephanie Jean Ragusa Connors (surviving spouse and children of Frank P. Ragusa, Jr.), and Erica Dandry Constanza and Monica Dandry Hallner (surviving children of Michael Dandry, Jr.) submit that 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.

Dated: August 28, 2024

Respectfully submitted,

/s/Kollin G. Bender

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2024, I caused a true and correct copy of the foregoing Motion to be electronically served by the Court's CM/ECF system, which thereby caused an electronic notification of filing to be served on all other registered users of the ECF system who have filed notices of appearances in this case; I further certify that a true and correct copy of this Motion was also served via electronic mail to the following parties:

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EXHIBIT A

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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	*	
	*	

**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 Janet Rivet, Kayla Rivet, Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Jean Ragusa Connors, Erica Dandry Constanza and Monica Dandry Hallner (collectively “Creditors”) Motion to Extend the Response Deadline and Continue the Hearing on the Debtor’s Insurance Settlement Procedures Motion (“Motion”); 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 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 Creditors' 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 Creditors 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 Creditors to respond to, object to, or otherwise oppose or be heard on the Settlement Procedures

Motion.

7. The Creditors are 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:

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Monica Dandry Hallner*

CERTIFICATION OF ENDORSEMENT UNDER BANKRUPTCY RULE 9022-1(c)

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

/s/Kollin G. Bender

