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

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

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**OBJECTION TO 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**

**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 object to the Motion 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 (“Settlement Procedures Motion”)<sup>1</sup> filed by Hopeman Brothers, Inc. (“Hopeman”), for the reasons set forth below.

Hopeman is seeking approval of the form and manner of notice of, and to establish procedures for setting hearings of its 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 Case Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief (the “Chubb Insurers Settlement Motion”)<sup>2</sup>, its 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; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief (the “Certain Settling Insurers Settlement Motion”)<sup>3</sup>, and any other Insurer Settlement Motions that may be filed in this case. Hopeman’s Chubb Insurers Settlement Motion and Certain Settling Insurers Settlement Motion are seeking injunctive relief under 11 U.S.C.S. § 105<sup>4</sup>. Furthermore, the Settlement Procedures Motion itself states that the settlements “if approved, will provide substantial monetary contributions towards payment of valid Asbestos-Related Claims asserted against the Debtor, in exchange for certain Insurer releases and injunctions”<sup>5</sup> and the form of notice proposed by Hopeman would inform potential objectors that the

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<sup>1</sup>*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.

<sup>2</sup>BR Doc. 9.

<sup>3</sup>BR Doc. 53.

<sup>4</sup>BR Doc. 9 at pp. 3, 7, 9, 17-19, 21; BR Doc. 53 at pp. 3-4, 8-9, 17-19, 21.

<sup>5</sup>BR Doc. 54 at p. 6.

settlements will provide for injunctions barring claims.<sup>6</sup> Pursuant to Federal Rule of Bankruptcy Procedure 7001 “a proceeding to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief”<sup>7</sup> is an adversary proceeding; however, Hopeman has not commenced an adversary proceeding regarding the injunctive relief it is seeking, and the Settlement Procedures Motion does not appear to contemplate the commencement of an adversary proceeding. While Rule 7001 does not require an adversary proceeding for injunctions as part of the confirmation of a Chapter 11 plan, a confirmation hearing has not yet been scheduled regarding Hopeman’s proposed plan of liquidation, and the Settlement Procedures Motion only concern procedures and the forms of notice regarding Hopeman’s Chubb Insurers Settlement Motion and Certain Settling Insurers Settlement Motion. Hopeman may not seek the injunctive relief sought in its Chubb Insurers Settlement Motion and Certain Settling Insurers Settlement Motion outside of an adversary proceeding or a confirmation hearing of its Chapter 11 plan.<sup>8</sup> Accordingly, Creditors object to Hopeman’s Settlement Procedures Motion because Hopeman is not following the procedure mandated by the Bankruptcy Code for seeking the injunctive relief sought in its Chubb Insurers Settlement Motion, Certain Settling Insurers Settlement Motion, and Insurer Settlement Motions.

Numerous courts have recognized that the proper procedure for seeking injunctive relief under the Bankruptcy Code is the filing of an adversary proceeding.<sup>9</sup> For example, in *In re Acadian*

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<sup>6</sup>BR Doc. 54 at p. 22.

<sup>7</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 762-63 (5th Cir. 1995) (“Under Rule 7001, an injunction requires an adversary proceeding.”).

<sup>8</sup>See, *In re Oakfabco, Inc.*, 571 B.R. 771 (Bankr. N.D. Ill. 2017) (approving a settlement agreement which created releases between the debtor and its insurer, but did not create third-party releases, instead making the debtor responsible for including such releases in its confirmation plan).

<sup>9</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 762-63 (5th Cir. 1995) (“Under Rule 7001, an injunction requires an adversary proceeding.”); *Lyons v. Lyons (In re Lyons)*, 995 F.2d

*Elevator, Inc.*, the minority owner of the debtor had filed a derivative action in state court, and a settlement of the estate claims asserted in the derivative case was approved under Rule 9019 of the Federal Rules of Bankruptcy Procedure.<sup>10</sup> Following approval and execution of the settlement, the minority owner of the debtor amended his state court action to remove the Debtor as a party, and recast his claims as individual claims against the majority owner of the debtor.<sup>11</sup> The majority owner

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923, 924 (9th Cir.1993) (holding that when a Rule 7001 category is at issue the movant “may obtain the authority he seeks only through an adversary proceeding”); *In re Bora Bora Inc.*, 424 B.R. 17, 24-25 (Bankr. D.P.R. 2010) (“A request for injunctive relief must be brought by adversary proceeding. Fed. R. Bankr. P. 7001(7)”); *In re Cincom iOutsource, Inc.*, 398 B.R. 223, 227 (Bankr. S.D. Ohio 2008) (“Under Rule 7001, an injunction requires an adversary proceeding.”); *Balt. Cty. v. IHS Liquidating LLC (In re Integrated Health Servs.)*, 2006 U.S. Dist. LEXIS 8403, at \*9 (D. Del. Mar. 6, 2006) (“One type of bankruptcy dispute that must be resolved in an adversary proceeding is ‘a proceeding to obtain an injunction.’ Fed. R. Bankr. P. 7001(7).”); *In re Martin*, 268 B.R. 168, 172 (Bankr. E.D. Ark. 2001) (“In order to ensure that due process and property rights are preserved, Rule 7001, Federal Rules of Bankruptcy Procedure, establishes a list of proceedings which may only be commenced by the filing of an adversary proceeding. Rule 7001(7) requires that a request to obtain an injunction, or other equitable relief be filed as an adversary proceeding. Thus, the debtor must file a complaint, provide for issuance of a summons, and thereafter serve the summons and complaint pursuant to Rule 7004. Since, the debtor may not obtain an injunction by motion, the motion must be denied.”); *In re Swallen's Inc.*, 205 B.R. 879, 880 (Bankr. S.D. Ohio 1997)(injunctive relief was denied for failure to request it through adversary proceeding); *In re Hunter*, 190 B.R. 118, 119 (Bankr. D. Colo. 1995) (“Fed.R.B.P. 7001 which expressly provides that injunctive or equitable relief and actions to recover money or property shall be sought by way of an adversary proceeding.”); *In re Nasco P.R., Inc.*, 117 B.R. 35, 38 (Bankr. D.P.R. 1990)(“A party wishing to invoke the Court's injunctive power under Section 105(a) must file an adversary proceeding... and must follow the traditional standards for the issuance of an injunction.”); *In re Venegas Munoz*, 73 B.R. 283, 285 (Bankr. D.P.R. 1987) (“a request for injunctive relief under 11 U.S.C. 105 comes under Part VII of the Bankruptcy Rules (Rules 7001(7) and 7065) which require the filing of an adversary proceeding”); *In re Ennis*, 50 B.R. 119, 122 (Bankr. D. Nev. 1985) (“The Court also notes that the proper procedure for requesting injunctive relief is by an adversary proceeding, not by motion.”); *In re Innovative Comm'n Co., LLC*, 2008 U.S. Dist. LEXIS 39739, at \*9 (D.V.I. Apr. 30, 2008) (“Pursuant to Federal Rule of Bankruptcy Procedure 7001 (“Rule 7001”), injunctive relief may only be obtained in a bankruptcy matter through an adversary proceeding.”); *In re B & F Associates, Inc.*, 55 B.R. 19, 20 (Bankr. D. Colo. 1985) (“Bankruptcy Rule 7001(7) requires any proceeding in a bankruptcy court ‘to obtain an injunction or other equitable relief’ to be brought as an adversary proceeding.”).

<sup>10</sup>*In re Acadian Elevator, Inc.*, 2017 Bankr. LEXIS 1019, at \*2-3 (Bankr. W.D. La. Apr. 11, 2017).

<sup>11</sup>*Id.*

of the debtor filed a motion to interpret and enforce the order approving the settlement agreement seeking an injunction under 11 U.S.C.S. § 105 barring the minority owner of the Debtor from proceeding to trial in state court.<sup>12</sup> The Bankruptcy Court for the Western District of Louisiana explained that under the Bankruptcy Code the majority owner could not seek injunctive relief by mere motion, and instead had to commence an adversary proceeding:

Although Myers requests the court to interpret and enforce the Trustee's Settlement Agreement, the remedy he seeks is an injunction under 11 U.S.C. § 105 barring Plaintiff from proceeding to trial on May 15th. The problem with this remedy is that a request for injunctive relief under section 105 requires the commencement of an adversary proceeding. Rule 7001 of the Federal Rules of Bankruptcy Procedure provides that a "proceeding to obtain an injunction or other equitable relief, except when a Chapter 9, Chapter 11, Chapter 12, or Chapter 13 plan provides for the relief" is an adversary proceeding that is subject to the procedures set forth in the Federal Rules of Bankruptcy Procedure. These rules require the commencement of a separate adversary proceeding, service of process, and other safeguards applied to adversary proceedings. Here, Acadian Elevator commenced this case under Chapter 7, so there is no Chapter 11 plan to support the relief requested. Hence, injunctive relief in this case requires an adversary proceeding, not the motion practice initiated by Myers as a contested matter. See also 2 Collier on Bankruptcy ¶ 105.03[4][a] (2009) ("Courts have been near universal in reversing injunctions that have been issued without compliance with Rule 7001.")<sup>13</sup>

Additionally, in *Feld v. Zale Corp. (in Re Zale Corp.)*, the U.S. Fifth Circuit reversed the decision of the bankruptcy court enjoining appellants' potential tort claims against the settling nondebtor insurer, because the Bankruptcy Court failed to conduct the requisite procedures for temporarily enjoining appellants' contract claims.<sup>14</sup> The Fifth Circuit explained that:

Including a matter governed by Rule 7001 in another matter already before the court, however, does not satisfy the procedural rules required by Rule 7001. See *Brady v. Andrew (In re Commercial Western Finance Corp.)*, 761 F.2d 1329, 1337 (9th Cir.1985) (requiring party to comply with adversary proceeding requirements rather

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<sup>12</sup>*In re Acadian Elevator, Inc.*, 2017 Bankr. LEXIS 1019, at \*2-3, 14 (Bankr. W.D. La. Apr. 11, 2017).

<sup>13</sup>*In re Acadian Elevator, Inc.*, 2017 Bankr. LEXIS 1019, at \*14 (Bankr. W.D. La. Apr. 11, 2017).

<sup>14</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 766 (5th Cir. 1995).

than dispose of third party's claim in reorganization plan); *In re McKay*, 732 F.2d 44, 48 (3d Cir.1984) (holding that party cannot merely include Rule 7001 matter in reorganization plan, but must "file a complaint seeking [resolution of the matter] with the bankruptcy court and serve a copy of it on each [affected] creditor"). Accordingly, CIGNA and Zale failed to initiate properly their request for injunctive relief.<sup>15</sup>

The Fifth Circuit has explained that the Bankruptcy Code requires requests for an injunction be brought via an adversary proceeding so that the proper procedural protections will be afforded:

Under Rule 7001, an injunction requires an adversary proceeding. *Lyons v. Lyons (In re Lyons)*, 995 F.2d 923, 924 (9th Cir.1993) (holding that, when a Rule 7001 category was at issue, the movant "may obtain the authority he seeks only through an adversary proceeding"). Rule 7001 proceedings incorporate much of the Federal Rules of Civil Procedure, *In re Haber Oil Co.*, 12 F.3d at 437 (noting that adversary proceeding rules "generally "either incorporate or are adaptations of most of the Federal Rules of Civil Procedure." (quoting Fed.R.Bankr.P. 7001 adv. comm. note)), and they equate to full-blown lawsuits, see *Toma Steel Supply, Inc. v. Transamerican Natural Gas Corp. (In re Transamerican Natural Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir.1992) (describing adversary proceedings as "full blown federal lawsuits within the larger bankruptcy case,' ... which are governed by all of the rules in Part VII of the Bankruptcy Rules...." (quoting *Matter of Wood & Locker, Inc.*, 868 F.2d 139, 142 (5th Cir.1989))), cert. dismissed, U.S., 113 S. Ct. 1892, 123 L. Ed. 2d 646 (1993). In contrast, contested matters require fewer procedural protections. *In re Transamerican Natural Gas Corp.*, 978 F.2d at 1416 ("Contested matters are "subject to the less elaborate procedures specified in Bankruptcy Rule 9014.' Contested matter proceedings are generally designed for the adjudication of simple issues, often on an expedited basis." (quoting *Matter of Wood & Locker, Inc.*, 868 F.2d at 142)).

In order to initiate an adversary proceeding, a party seeking equitable relief must file a complaint and serve each affected party. See *Village Mobile Homes, Inc. v. First Gibraltar Bank (In re Village Mobile Homes, Inc.)*, 947 F.2d 1282, 1283 (5th Cir.1991) (stating that while a motion suffices for contested matters, an adversary proceeding requires filing a complaint in keeping with Bankruptcy Rule 7003); *In re Perkins*, 902 F.2d 1254, 1258 (7th Cir.1990) (stating that an adversary proceeding "must be commenced by a properly filed and served complaint" and a Rule 7001 matter initiated by motion rather than by complaint "fails on procedural grounds").<sup>16</sup>

Furthermore, the Fifth Circuit warned that Bankruptcy Courts that dispense with adversary proceedings are apt to fail to conduct the proper analysis for the granting of injunctions:

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<sup>15</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 763 (5th Cir. 1995).

<sup>16</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 762-63 (5th Cir. 1995).

Moreover, we find no indication in the record that the bankruptcy court conducted the proper analysis and made the requisite findings for entry of a preliminary injunction. See *Commonwealth Oil Ref. Co. v. U.S.E.P.A. (In re Commonwealth Oil Ref. Co.)*, 805 F.2d 1175, 1188-89 (5th Cir.1986) ("The legislative history of § 105 makes clear that stays under that section are granted only under the usual rules for the issuance of an injunction."), cert. denied, 483 U.S. 1005, 107 S. Ct. 3228, 97 L. Ed. 2d 734 (1987); *In re Eagle-Pitcher Indus., Inc.*, 963 F.2d at 858 ("When issuing a preliminary injunction pursuant to its powers set forth in section 105(a), a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to Federal Rule of Civil Procedure 65.").

The four prerequisites to the issuance of a preliminary injunction are: (1) a substantial likelihood that the movant will prevail on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to the movant outweighs the threatened harm an injunction may cause the party opposing the injunction; and (4) that the granting of the injunction will not disserve the public interest.

*In re Commonwealth Oil Ref. Co.*, 805 F.2d at 1189 (internal citations omitted); accord *In re Eagle-Picher Indus., Inc.*, 963 F.2d at 858. Because the bankruptcy court focused only on the fairness of the settlement to the estate, it failed to address these issues, that is, whether CIGNA and Zale had satisfied the Rule 65 prerequisites. We therefore hold that there was no compliance with Rule 7001, constructive or otherwise. Moreover, we feel this case demonstrates the "difficulties that are apt to arise if the bankruptcy court too easily permits parties to circumvent the rules governing adversary proceedings." *In re Haber Oil Co.*, 12 F.3d at 440.<sup>17</sup>

Similarly, the District of Delaware has warned that Bankruptcy Courts risk reversible error if they fail to utilize adversary proceedings to resolve disputes which requires an adversary proceeding, such as a "proceeding to obtain an injunction"<sup>18</sup>:

Adversary proceedings in bankruptcy court are the analogue to lawsuits in district court -- both are initiated by the filing of a complaint, and both are governed by the same rules of discovery. See Fed. R. Bankr. P. 7004, 7026-7037. Contested matters, on the other hand, are initiated by motion, and the applicability of the discovery rules is at the discretion of the court. See Fed. R. Bankr. P. 9014. Thus, adversary proceedings offer the litigants more formality and more discovery rights than

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<sup>17</sup>*Feld v. Zale Corp. (in Re Zale Corp.)*, 62 F.3d 746, 765 (5th Cir. 1995).

<sup>18</sup>*Balt. Cty. v. IHS Liquidating LLC (In re Integrated Health Servs.)*, 2006 U.S. Dist. LEXIS 8403, at \*9 (D. Del. Mar. 6, 2006) ("One type of bankruptcy dispute that must be resolved in an adversary proceeding is 'a proceeding to obtain an injunction.' Fed. R. Bankr. P. 7001(7).")

contested matters. See *Nantucket Investors II v. Cal. Fed. Bank (In re Indian Palms Assocs., Ltd.)*, 61 F.3d 197, 204 n.11 (3d Cir. 1995). Consequently, a bankruptcy court's erroneous conclusion that a dispute need not be resolved in an adversary proceeding may be a ground for reversal. See, e.g., *MFS Telecom, Inc. v. Motorola, Inc. (In re Conxus Communs., Inc.)*, 262 B.R. 893, 899 (D. Del. June 4, 2001).<sup>19</sup>

The Bankruptcy Code is clear: proceedings “to obtain an injunction or other equitable relief, except when a chapter 9, chapter 11, chapter 12, or chapter 13 plan provides for the relief” “are adversary proceedings”.<sup>20</sup> Accordingly, because Hopeman has not commenced an adversary proceeding in regards to the injunctive relief it is seeking, and because the Settlement Procedures Motion does not appear to contemplate the commencement of an adversary proceeding, the Settlement Procedures Motion violates the Bankruptcy Code, and should be denied.

**WHEREFORE**, 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.) submit that Hopeman Brothers, Inc.’s Motion 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<sup>21</sup> should be denied.

Dated: August 30, 2024

Respectfully submitted,

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<sup>19</sup>*Balt. Cty. v. IHS Liquidating LLC (In re Integrated Health Servs.)*, 2006 U.S. Dist. LEXIS 8403, at \*8-9 (D. Del. Mar. 6, 2006).

<sup>20</sup>USCS Bankruptcy R 7001.

<sup>21</sup>BR. Doc. 54.



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### **CERTIFICATE OF SERVICE**

I hereby certify that on August 30, 2024, I caused a true and correct copy of the foregoing Objection 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 Objection was also served via electronic mail to the following parties:

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