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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** | * | |
| | * | |

**OPPOSITION AND OBJECTION TO MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS EXTENDING THE AUTOMATIC STAY TO STAY ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS**

**NOW INTO COURT**, through undersigned counsel, come the Boling Law Firm and Law Office of Philip C. Hoffman (collectively the "Law Firms"), who files this *Opposition* (this "Opposition") to the *Motion for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* ("Extension Motion") filed by Hopeman Brothers, Inc. ("Hopeman" or the "Debtor").





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**PRELIMINARY STATEMENT**

1. The Extension Motion should be denied. The Law Firms represent plaintiffs in 35 Direct Action Lawsuits pending against non-Debtor third parties including the Former D&Os and Insurers.

2. The Debtor's Extension Motion, which contains scant facts and conclusory allegations fails to show the "unusual circumstances" needed to justify relief. *Credit Alliance Corp. v. Williams*, 851 F.2d 119, 121 (4th Cir. 1988).

3. In the Extension Motion, the Debtor offers no real evidence, that continuing the Direct Action Lawsuits against the non-debtor defendants will have an immediate adverse economic impact on the Debtor's estate. Indeed the Extension Motion's sole basis for extending the stay to non-debtors consist of the following five generic and unsupported conclusory statements:

(a) The [a]sbestos actions against the Protected Parties will deplete the Debtor's insurance coverage"[1]

(b) The "asbestos-related actions are tantamount to claims against the Debtor itself—they will reduce the Debtor's estate to the detriment of all creditors."[2]

(c) The asbestos related actions against the Protected Parties will diminish assets of the Debtor's estate, they constitute an infringement of this Court's exclusive control over property of the estate, and thus such actions should be stayed pursuant to Section 362(a)(3) of the Bankruptcy Code.[3]

[1] Extension Motion, pp. 8-9.

[2] Extension Motion, pp. 8-9.

[3] Extension Motion, p. 12.

(d) The "asbestos related actions would seek to recover from the insurance policies and provide shared coverage to the Debtor, Wayne and the Former D&O's."[4]

(e) "Without the requested extension of the stay, claimants would … attempt to recover from the insurance proceeds that the Debtor proposes to channel to the liquidation trust through the chapter 11 plan" and "the liquidation trust will assume liability for all asbestos-related claims and will use its assets, including its available insurance coverage, to resolve and make distributions on account of the asbestos-related claims."

4. The proposed justifications, each of which is conclusory and generic and unsupported by any admissible evidence lacks both legal and factual merit to justify the extraordinary relief of extending the stay to the non-debtors. The Debtor simply falls short of the required showing-to warrant a request for a preliminary injunction- that the Debtor must make in order to justify an extension of the stay. *See Rodriguez v. AMGP Rest. Corp.,* No. 17-4870, *2018* U.S. Dist. LEXIS 225400, 2018 WL 4378164, at *2 (E.D.N.Y. June 5, 2018) (holding that the non-bankrupt defendants' "conclusory and generic allegations" about the potential impact on the bankruptcy proceeding did not warrant an extension of the automatic stay)(*citing Hernandez v. Immortal Rise, Inc.,* No. 11-4360, 2014 U.S. Dist. LEXIS 33823; 2014 WL 991715, at *5 (E.D.N.Y. Mar. 13, 2014)).

5. Other creditors have likewise highlighted these deficiencies and to the extent applicable, the Law Firms adopt and incorporate by reference the *Opposition and Objection to the Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* filed by Janet Rivet and Kayla Rivet,

[4] Extension Motion, p. 9.

Maxine Becky Polkey Ragusa, Valerie Ann Ragusa Primeaux, and Stephanie Jean Ragusa Connors , and Erica Dandry Constanza and Monica Dandry Hallner [Dkt. No. 86] (the "First Objection").

6. This Opposition, while incorporating the arguments set forth in the First Objection, further elaborates on additional grounds for why the Debtor's requested relief is unwarranted. Specifically, following the Purdue Pharma decision, the justifications offered by the Debtor for extending the stay or enjoining the Direct Action Lawsuits are invalid and cannot support such relief. Moreover, the Debtor has failed to demonstrate that the non-debtor Defendants in the Louisiana Direct Action Lawsuits are entitled to indemnification by the Debtor. For these reasons, as detailed in both the First Objection and this Objection, the Court should deny the Extension Motion.[5]

## ARGUMENT

### A. Post-Purdue Pharma, the Automatic Stay Cannot Be Extended to Direct Action Lawsuits Under the Present Circumstances.

7. It is axiomatic that the automatic stay affords protection only to debtors and does not extend to other non-debtor defendants. In fact, in this circuit, absent "unusual circumstances," the automatic stay does not extend to non-debtors. *In re Midway Airlines Corp*., 283 B.R. 846, 851-52 (E.D.N.C. 2002); *Travelers Cas. & Sur. Co. v. E. Coast Welding & Constr. Co*., No. 21-1992, 2022 U.S. Dist. LEXIS 218493, at *6-*7 (D. Md. Dec. 2, 2022); *Cosmo Imp. & Exp., LLC v. Anolik*, No. 22-1222, 2024 U.S. Dist. LEXIS 84963, at *6-*7 (D. Md. May 9, 2024). Here, the Debtors seek to stay the Direct Action Lawsuits.

[5] Notwithstanding the intended scope of the Motion to Extend, any relief must be narrowly tailored to specific parties with instructions to proceed against non-protected parties in all pending matters. Regardless, the Court should not grant the extraordinary relief being requested here.

8. Under Louisiana law, pursuant to the Louisiana Direct Action Statute, LA. REV. STAT. § 22:1269 plaintiffs enjoy "a separate and distinct cause of action against the insurer for which an injured party may elect in lieu of his actions against the tortfeasor." *Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 51 (1954); *Jackson v. State Farm Mut Automobile Ins. Co.*, 29 So. 2d 177 (La. 1946). Louisiana's Supreme Court has held that the direct action statute creates "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." W*est v. Monroe Bakery, Inc.,* 46 So. 2d 122, 123 (La. 1950). As such, courts interpreting Louisiana's Direct Action statute have held that direct action claims against the insurer of a bankrupt insured does not violate the automatic stay. *Landry v. Exxon Pipeline Co. Mendoza Marine, Inc.*, 260 B.R. 769, 795 (Bankr. M.D. La. 2001).

9. Despite the substantive rights of the Law Firms' clients to pursue the insurers under Louisiana's direct action statute, the Debtor seeks to extend the stay to the non-debtor insurers and the Former D&O's. In support of this, the Debtor provides that "the directors and officers of Hopeman who have been sued are insured and have rights under the Debtor's insurance coverage."[6] And that "both the indemnity claims of the directors and officers and the potential drain on Hopeman's insurance coverage related to Wayne must be addressed in any plan providing for the use of the Debtor's cash and available insurance to address the Asbestos Related Claims."[7] The Debtor further provides that the Direct Action Lawsuits will diminish assets of the Debtor's estate as they constitute an infringement of this Court's exclusive control over property of the estate. The Debtor's ultimate goal is to "channel to the liquidation trust through the chapter 11

[6] Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc., Rec. Doc. No. p. 10, fn. 5.

[7] *Id.*

plan" and "the liquidation trust will assume liability for all asbestos-related claims and will use its assets, including its available insurance coverage, to resolve and make distributions on account of the asbestos-related claims." In other words, the Debtor is hoping to obtain a non-consensual third party release in favor of insurers, and reducing potential recovery of the Estate and its creditors.

10. The Debtor relies on *A.H. Robins Co. v. Piccinin,* 788 F.2d 994, 999 (4th Cir. 1986) for the proposition that you can stay the Direct Action Lawsuits because the failure to enjoin would affect the bankruptcy estate and would adversely or detrimentally influence and pressure the debtor through the third party. *Id.*at 1003. However, *A.H. Robins* was decided at a time when non-consensual third-party releases were more broadly accepted under bankruptcy jurisprudence. The Supreme Court's ruling in *Harrington v. Purdue Pharma L.P.* fundamentally alters the landscape.

11. In *Harrington v. Purdue Pharma L.P.*, the U.S. Supreme Court held that the "bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a non debtor without the consent of affected claimants." *Harrington v. Purdue Pharma L.P.*, No. 23-124, 144 S. Ct. 2071, 2088, 219 L. Ed. 2d 721 (2024) [hereinafter "*Purdue Pharma"*]. In *Purdue Pharma*, the Supreme Court rejected the argument that 11 U.S.C. § 1123(b) permits a bankruptcy court to release and enjoin claims against a nondebtor without the claimants' consent. *Purdue Pharma*, 144 S. Ct. at 2081-83 (citations omitted).

12. Since Purdue Pharma, the Bankruptcy Court for the District of Delaware specifically found that "[f]ollowing Purdue Pharma, success on the merits [for a stay injunction] cannot be based on the likelihood that the non-debtor would be entitled to a non-consensual third-

party release through the plan process." *In re Parlement Techs., Inc.*, 2024 Bankr. LEXIS 1627, 2024 WL 3417084, slip op. at at *1.

13. Given the Supreme Court's clarification in *Purdue Pharma*, the Debtor's reliance on *A.H. Robins* to enjoin the Direct Action Lawsuits on the grounds that they might impact the reorganization efforts is misplaced. Under current jurisprudence, including the Fifth Circuit's precedents and the recent *Purdue Pharma* decision, a Debtor seeking to extend the automatic stay to non-debtors must demonstrate "unusual circumstances" that would justify such an extension. This standard is stringent and requires a clear showing that failing to enjoin the Direct Action Lawsuits would significantly harm the debtor's reorganization efforts, beyond merely causing inconvenience or financial strain.

14. However, as outlined in the First Objection, the Debtor has not met this burden. The Debtor has failed to provide sufficient evidence of any unusual circumstances that would warrant an extension of the stay to cover non-debtor insurers and former directors and officers. The Debtor's arguments largely rest on hypothetical scenarios of potential financial impact and general assertions about the depletion of insurance assets. These claims do not rise to the level of "unusual circumstances" required to justify such an extraordinary measure.

15. Moreover, the Debtor's inability to demonstrate that the Direct Action Lawsuits would directly and materially threaten the debtor's estate or its ability to reorganize undermines its position. The mere potential for insurance depletion or indemnity claims is insufficient. Courts have consistently found that for a stay to be extended to non-debtors, there must be compelling and specific evidence showing that the continuation of such lawsuits would irreparably harm the debtor's reorganization process—evidence that the Debtor has not provided.

16. In light of this, the Debtor's attempt to invoke *A.H. Robins* and its progeny as a basis for enjoining the Direct Action Lawsuits fails both legally and factually. The standard for proving "unusual circumstances" has not been met, and as such, the Court should deny the request to extend the automatic stay to the non-debtor parties. The substantive rights of creditors under Louisiana's Direct Action statute should not be overridden absent clear and compelling justification, which is lacking in this case.

17. In the Fifth Circuit, where nonconsensual nondebtor releases were never permitted, the court has held that the proceeds of liability policies are generally not property of the bankruptcy estate. *Sosebee v. Steadfast Ins. Co.* 701 F.3d 1012, 1023 (5th Cir. 2012); *In re Edgeworth*, 993 F.2d 51, 56 (5th Cir. 1993). For example, the Fifth Circuit in *Sosebee* held that where plaintiffs had sued the insurer directly for personal injuries allegedly resulting from a collision with the debtor's vessel, the insurance policy proceeds were not property of the debtor's estate. *Sosebee*, 701 F.3d at 1023; *see also La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1401 (5th Cir. 1987)(finding that proceeds from insurance policies are not property of the estate).

**B. The Debtor Failed to Establish that the Non-Debtor Defendants Are, or Even May Be, Subject to Indemnification.**

18. The Extension Motion fails to provide factual support that any of the Former D&O's are or will be entitled to indemnification or have "shared" coverage with the Debtor. The Debtor contends that there are two Direct Action Lawsuits that name the Former D&Os of the Debtor and Wayne. The Debtor also contends that it has a potential obligation to indemnify Former D&Os of the Debtor and Wayne under its By-laws." And, that "prior to the petition date, the Debtor would take on the defense of the Former D&Os as part of its overall defense of the asbestos claims without the need for the D&Os to make a formal demand for indemnity." The Debtor's

First Day Declaration further provides that "the directors and officers of Hopeman who have been sued are insured and have rights under the Debtor's insurance coverage. And that "both the indemnity claims of the directors and officers and the potential drain on Hopeman's insurance coverage related to Wayne must be addressed in any plan providing for the use of the Debtor's cash and available insurance to address the Asbestos Related Claims.[8] However, aside from these statements, no concrete evidence has been provided by the Debtor to establish any right to indemnity for the Former D&Os in the Direct Action Lawsuits. These statements are self-serving and conclusory, and do not justify enjoining the Direct Action Lawsuits against the Former D&Os or others. For instance, in *In re First Cent. Fin. Corp.*, the court refused to enjoin actions against the non-debtor directors and officers simply because they shared *potential* insurance proceeds with the debtor. 238 B.R. 9, 16-18 (Bankr. E.D.N.Y. 1999). The Extension Motion fails to substantiate the blanket application of the stay that the Debtor advocates against the former D&Os.

19. If a standard corporate obligation to indemnify officers or directors for liability arising from their duties were sufficient to warrant a preliminary injunction, such relief would be far from extraordinary. *In re Parlement Techs., Inc. (f/k/a Parker LLC, f/k/a Fader, Inc.)*, No. 24-10755 (CTG), 2024 Bankr. LEXIS 1627, 2024 WL 3417084, slip op. at *1 (Bankr D Del. July 15, 2024). Although in certain cases, a preliminary injunction may be justified if the interests of co-defendants are so closely linked that a judgment against them would impact the debtor's reorganization, such a finding must be based on more than conjecture or speculation. *McCartney v. Integra Nat'l Bank North,* 106 F.3d 506, 509-11 (3d Cir. 1997).

[8] Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of HOpeman Brothers, Inc., p. 10, fn. 5.

20. In similar tort cases, courts routinely deny extending the stay to affiliated entities, such as the Former D&Os. In Diocese of Buffalo v. Doe (In re Diocese of Buffalo), the bankruptcy court acknowledged that actions against non-debtors might be subject to a stay under section 362(a)(3) if they threaten to deplete insurance proceeds shared with the debtor. 618 B.R. 400, 406-407 (Bankr. W.D.N.Y. 2020). However, the court found insufficient support for applying section 362(a)(3), noting that the debtor "has supplied only an outline of insurance coverage. While this presentation is helpful, it falls far short of proof sufficient to establish that litigation against Affiliated Entities would necessarily affect property of the bankruptcy estate." Id. at 406. Similarly, in Rochester v. AB 100 Doe (In re Diocese of Rochester), the court reached the same conclusion, stating that "the Diocese made no effort to provide evidence showing that a specific CVA case would have a materially adverse impact on the per-occurrence limits of a specific policy of insurance." 2022 Bankr. LEXIS 1469, *15-16 (Bankr. W.D.N.Y. May 23, 2022).

21. Likewise, the Debtor has presented nothing to establish a right to indemnity or that these Direct Action Lawsuits would have a materially adverse impact on the bankruptcy estate. While it is true that in such a context, every dollar of indemnity that the debtor may owe to its former officers would operate to dilute the recoveries of other creditors, that is not, without more, a sufficient basis to conclude that minimizing the debtor's indemnity obligation is critical to the success of this bankruptcy case. See In re Parlement Techs., Inc., 2024 Bankr. LEXIS 1627, 2024 WL 3417084, slip op. at at *1. The debtor bears the burden of proof on this issue and has provided none. Without evidence showing a right to indemnity for the Former D&Os and imminent and significant impact on the reorganization process, the Extension Motion should be denied.

Dated: August 30, 2024

BOLING LAW FIRM and
LAW OFFICE OF PHILIP C. HOFFMAN

/s/ Jennifer J. West

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served via CM/ECF on this 30TH day of August 2024 on the Office of the United States Trustee, Counsel for the Debtors, and all parties receiving notice in the above-captioned case, constituting all necessary parties.

/s/ Jennifer J. West