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**CAPLIN & DRYSDALE, CHARTERED**
Kevin C. Maclay (*pro hac vice* pending)
Todd E. Phillips (*pro hac vice* pending)
Jeffrey A. Liesemer (VSB No. 35918)
Nathaniel R. Miller (*pro hac vice* pending)
1200 New Hampshire Avenue NW, 8th Floor
Washington, DC 20036
Telephone: (202) 862-5000

*Proposed Counsel for the*
*Official Committee of Unsecured Creditors*

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

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

**OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTOR'S APPLICATION TO EMPLOY COURINGTON, KIEFER, SOMMERS, MARULLO & MATHERNE, L.L.C. AS SPECIAL ASBESTOS COUNSEL**

The Official Committee of Unsecured Creditors ("**Committee**") of Hopeman Brothers, Inc. ("**Debtor**"), by and through its undersigned counsel, hereby objects to the *Application of the Debtor for Entry of an Order (I) Authorizing the Appointment of Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. as Special Asbestos Counsel Effective as of the Petition Date and (II) Granting Related Relief* (Docket No. 72) ("**Application**" or "**App.**"). For the reasons explained below, the Court should deny the Application.

**ARGUMENT**

1. This Court may approve Courington as the Debtor's special asbestos counsel only if (1) Courington is being employed "for a specified special purpose, other than to represent the



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trustee in conducting the case"; (2) Courington's employment as special asbestos counsel is "in the best interest of the estate"; and (3) Courington "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which . . . [Courington] is to be employed." 11 U.S.C. § 327(e). "All three elements of § 327(e), the 'special purpose,' 'best interests of the estate,' and 'adverse interest' tests, must be satisfied." *In re Running Horse, L.L.C.*, 371 B.R. 446, 453 (Bankr. E.D. Cal. 2007); *see also In re Johnson*, 433 B.R. 626, 635 (Bankr. S.D. Tex. 2010) (finding that that the three elements must be met (citing *In re Potter*, No. 7-05-14071, 2009 WL 2922850, *1 (Bankr. D.N.M. June 12, 2009))). The Debtor has the burden of proof to show that Courington's proposed employment satisfies these requirements. *See Johnson*, 433 B.R. at 635 (citing *Needler v. Rendlen* (*In re Big Mac Marine*), 326 B.R. 150, 154 (8th Cir. BAP 2005)). As explained below, the Debtor's employment of Courington is not in the best interest of the Debtor's estate. That alone is sufficient to warrant denial of the Application.

2. Courington is a defense litigation law firm located in Louisiana.[1] Before the Debtor entered chapter 11, Courington defended the Debtor in asbestos-related lawsuits nationwide and even served as the Debtor's national coordinating counsel overseeing litigation against the Debtor that involved asbestos claims.[2]

3. According to the Application, the Debtor envisions Courington's role as providing "the Debtor with legal advice with respect to the pending Asbestos-Related Claims" and "communicating with plaintiffs' counsel who have asserted Asbestos Claims against the Debtor regarding the bankruptcy case."[3] But the "legal advice" and "extensive communications with

[1] App. Ex. A ¶ 4, Docket No. 72 ("**Courington Decl.**").

[2] *Id*. ¶ 5.

[3] App. ¶ 13.

counsel to claimants"[4] that the Debtor contemplates are not necessary given the posture of this chapter 11 case and are thus not in the best interests of the estate.

4. All asbestos lawsuits against the Debtor have been stayed as a result of its chapter 11 filing. *See* 11 U.S.C. § 362(a). In addition, the Debtor has filed a motion to "extend" the automatic stay to enjoin asbestos-related actions against certain nondebtors ("**Stay Motion**"), particularly insurance companies.[5] Although the Committee objects to the Stay Motion to the extent it seeks to enjoin direct actions against Liberty Mutual Insurance Company ("**Liberty**"), the Committee is doing so at least in part because the Debtor has disclaimed any interest in Liberty's asbestos-related insurance coverage. In sum, while the automatic stay remains in place, there will be no need for the Debtor to call upon its defense counsel, Courington, for "legal advice" on its asbestos defenses in the tort system. Similarly, there will be no need for Courington to have "extensive communications" with asbestos plaintiffs' counsel while asbestos lawsuits are stayed. And, if communications "with plaintiffs' counsel . . . regarding the bankruptcy case" are to be had, they should be between such counsel and the Committee, not Courington.

5. The Debtor is asking the Court to approve proposed settlements with its asbestos insurance carriers[6] and proposes that the proceeds from those settlements, if they are approved, be placed in a postconfirmation liquidation trust.[7] Under the Debtor's proposed plan of liquidation, eligible asbestos claimants would share in and be paid from those proceeds in accordance with the

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4 *Id.* ¶ 11.

5 *See* Debtor's Mot. for Order Extending Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defs. ¶ 9, Docket No. 7.

6 *See* Debtor's Mot. for Order (I) Approving Settlement Agreement and Release Between Debtor and Chubb Insurers; (II) Approving Assumption of Settlement Agreement and Release Between Debtor and Chubb Insurers; (III) Approving Sale of Certain Insurance Policies; (IV) Issuing Inj. Pursuant to Sale of Certain Insurance Policies; and (V) Granting Related Relief, Docket No. 9; Debtor's Mot. for Order (I) Approving Settlement Agreement and Release Between Debtor and Certain Settling Insurers; (II) Approving Sale of Certain Insurance Policies; (IV) [*sic*] Issuing Inj. Pursuant to Sale of Certain Insurance Policies; and (V) [*sic*] Granting Related Relief, Docket No. 53.

7 *See* Plan of Liquidation § 8.2(b), Docket No. 56.

trust distribution procedures that already accompany the Debtor's proposed plan.[8] Thus, based on the Debtor's own conceived roadmap for this case,[9] there is no need for the defense-related "legal advice" or "extensive communications" with asbestos plaintiffs' counsel that the Debtor envisions for Courington. Retention of a special counsel under § 327(e) is only in the "best interest of the estate" if "property of estate is threatened and the need for services is real." *In re Roper & Twardowsky, LLC*, 566 B.R. 734, 752 (Bankr. D.N.J. 2017). "Employment [of a special counsel] cannot be based on some hypothetical or speculative benefit." *Id.* When it comes to Courington's proposed services, the Debtor has not shown that estate property is threatened and thus the need for Courington's services is real. *See id.* Courington's retention is not in the estate's best interest.

6. Special counsel positions under § 327(e) are not boondoggles or sinecures to be given in recognition of longtime prepetition service. "[T]he need for special counsel must be for the benefit of the estate and not merely for the . . . benefit of the debtor." *Johnson*, 433 B.R. at 639 (quoting *In re J.S. II, L.L.C.*, 371 B.R. 311, 320 (Bankr. N.D. Ill. 2007)). This chapter 11 case involves many claims and complex issues for the estate's and the Committee's professionals to address. And the estate resources available to pay those professionals are finite. In its most recent monthly operating report, the Debtor reported current assets, as of July 31, 2024, of approximately $3.8 million.[10] Moreover, it is not enough to say that, instead of challenging Courington's retention, the Committee can object to Courington's fee applications. Courington's contemplated role and whether that role would be in the estate's best interest must be addressed now, at the proposed retention stage, and not through *seriatim* fee objections.

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[8] *Id.* at Ex. B § 8.3(a).

[9] The Committee reserves its rights to object to the proposed insurance settlements and the proposed plan of liquidation at the appropriate time.

[10] Monthly Operating Report at 2, Docket No. 114.

7. In addition, Courington's connections with the Debtor's asbestos insurance companies should give this Court pause. Courington reports that it defends Liberty in "certain lawsuits" that are "unrelated to the . . . chapter 11 case" and "defends certain insureds on behalf of Liberty in direct action lawsuits where Liberty issued insurance policies to such insureds."[11] Courington also identifies one of the Debtor's insurers, Zurich Insurance Group Ltd., as an active client in "unrelated matters."[12] Courington has also represented another of the Debtor's asbestos insurers, Fidelity Insurance Company of New York ("**Fidelity**"), reportedly securing Fidelity's dismissal from a direct-action lawsuit where Fidelity was named as a defendant alongside the Debtor.[13] Courington asserts that its representation of Fidelity, now a party to one of the Debtor's proposed insurance settlements, is a "matter[] unrelated to this chapter 11 case."[14]

8. Even if these so-called "unrelated" matters do not present interests adverse to the estate, they do at the very least raise questions of whether Courington's retention is in the estate's best interest. In the tort system, Courington's role as defense counsel is to *minimize* what asbestos insurers pay out to claimants. Here, the estate's role is to *maximize* the value of the Debtor's principal asset: its asbestos-related insurance coverage. *See Johnson*, 433 B.R. at 638 (stating that a "debtor in possession performing the duties of the trustee is the representative of the estate and is saddled with the same fiduciary duty as a trustee *to maximize the value of the estate available to pay creditors*" (emphasis added) (quoting *Cheng v. K & S Diversified Invs.* (*In re Cheng*), 308

[11] Courington Decl. ¶ 26.

[12] App., Sch. 2, at 1.

[13] Courington Suppl. Decl. Supp. Appl. Authorizing Appointment of Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. ¶ 7, Docket No. 118.

[14] *Id.*

B.R. 448, 455 (9th Cir. BAP 2004), *aff'd*, 160 F. App'x 644 (9th Cir. 2005))).[15] Courington's services as an insurance defense counsel in asbestos cases are inconsistent with the estate's central role here. And no amount of defense-related "legal advice" or "communications" with asbestos plaintiffs' counsel will change that. The Application should be denied.

## CONCLUSION

For the reasons explained above, the Court should deny the Application.

Respectfully submitted,

**CAPLIN & DRYSDALE, CHARTERED**

*/s/ Jeffrey A. Liesemer*

Kevin C. Maclay (*pro hac vice* pending)
Todd E. Phillips (*pro hac vice* pending)
Jeffrey A. Liesemer (VSB No. 35918)
Nathaniel R. Miller (*pro hac vice* pending)
1200 New Hampshire Avenue, NW, 8th Floor
Washington, DC 20036
Telephone: (202) 862-5000
Facsimile: (202) 429-3301
kmaclay@capdale.com
tphillips@capdale.com
jliesemer@capdale.com
nmiller@capdale.com

*Proposed Counsel for the*
*Official Committee of Unsecured Creditors*

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[15] *See also Johnson*, 433 B.R. at 638 ("[A] debtor in possession holds its powers in trust for the benefit of creditors. The creditors have the right to require the debtor in possession to exercise those powers for their benefit." (quoting *Yellowhouse Mach. Co. v. Mack* (*In re Hughes*), 704 F.2d 820, 822 (5th Cir. 1983))).