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

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**In re:** : **Chapter 11**  
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**HOPEMAN BROTHERS, INC.,** : **Case No. 24-32428 (KLP)**  
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**Debtor.** :   
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**REPLY IN SUPPORT OF THE APPLICATION OF THE  
DEBTOR TO RETAIN COURINGTON, KIEFER, SOMMERS, MARULLO &  
MATHERNE, L.L.C. AS SPECIAL COUNSEL**

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), hereby submits this reply (this “Reply”) in support of 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] (the “Application”)¹ and in opposition to the *Objection of the Official Committee of Unsecured Creditors to Debtor’s Application to Employ Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. as Special*

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¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.



*Asbestos Counsel* [Docket No. 139] (the “Objection”). In further support of the Application and in response to the Committee’s Objection, the Debtor represents as follows:

**PRELIMINARY STATEMENT**

1. Generally, it is the Debtor’s prerogative to retain the professionals the Debtor believes will be necessary to prosecute its case. “Considerable deference must be accorded to the parties right to select the professional of their own choosing.” *In re Nordic Aviation Capital Designated Activity Co.*, Case No. 21-33696, 2022 WL 10716251 at \*12 (Bankr. E.D. Va. Oct. 18, 2022); *see also In re SBMC Healthcare, LLC*, 473 B.R. 871, 880 (Bankr. S.D. Tex. 2012 (recognizing that “a debtor-in-possession, like any client, should be able to choose its own professionals. Allowing a debtor-in-possession to choose its professionals allows it to control the progress of its bankruptcy case.”); *In re Peck*, 112 B.R. 485, 489 (Bankr. D. Conn. 1990) (holding that “[i]n ruling on disqualification matters, bankruptcy courts give deference to right of the client to choose his own counsel”) (citations omitted). The decision of Hopeman to retain the law firm of Courington, Kiefer, Sommers, Marullo & Matherne, L.L.C. (the “Courington Firm”), as special counsel for this case is an easy one, and certainly a decision within Hopeman’s reasonable exercise of its business judgment.

2. For roughly 23 years, lawyers with the Courington Firm (including at prior firms) have served as national coordinating litigation counsel in addressing Asbestos-Related Claims asserted against Hopeman. For 34 years, these lawyers have been local counsel in the Gulf region. The Debtor filed this bankruptcy case to bring to an end the decades of litigation over these Asbestos-Related Claims and resolve the claims in a more efficient manner through establishment of a trust funded by insurance proceeds. Prepetition, the Courington Firm consulted with and provided invaluable information to assist the Debtor’s professionals in

formulating the proposal represented by the proposed Chapter 11 plan filed in this case. The Courington Firm's historical and institutional knowledge of the Asbestos-Related Claims and the litany of issues that can arise in resolving these claims will be critical to assisting the Debtor postpetition in the pursuit of its proposed chapter 11 plan in this case. It will be far more efficient and beneficial to the estate for the Debtor's other professionals to work with the Courington Firm than for the Debtor's other professionals to have to educate themselves on these issues without the firm's help. *Id.* at \*14 (it is important to consider whether the proposed professional brings its institutional knowledge about the Debtor with it into this Chapter 11 case). In fact, it might be impossible to duplicate the knowledge the Courington Firm has gained about the complex issues that arise in these claims.

3. The Committee asserts two main arguments in its Objection to the Application: (i) the postpetition services of the Courington Firm are "not necessary" because "[a]ll asbestos lawsuits against the Debtor have been stayed as a result of [the Debtor's] chapter 11 filing" and, as a result, the Courington Firm's retention is not in the best interests of the estate; and (ii) given the Courington Firm's prepetition representation of the Debtor in seeking to minimize what insurers pay to asbestos claimants, that prepetition representation now makes the Courington Firm's role during this chapter 11 case "inconsistent with the estate's central role" of "maximizing the value of the Debtor's . . . asbestos-related insurance coverage." *See* Obj., ¶¶ 3-4 and 8.

4. Both of the Committee's arguments are flawed. As to the necessity of services, the Committee itself is contesting the Debtor's motion to extend the automatic stay temporarily to keep its insurers and certain others from having to face litigation in Louisiana over Asbestos-Related Claims during the bankruptcy. If the Committee (and other objecting parties) are

successful, the Debtor undoubtedly will be dragged into litigation between the plaintiffs and the insurers. Those disputes will involve complex factual issues that will require discovery from the Debtor on both the evidence relevant to the underlying claims and on insurance coverage issues.<sup>2</sup> Most if not all of such litigation will occur in Louisiana, where the Courington Firm is based and has handled cases for the Debtor for decades. For the Committee, on the one hand, to support the postpetition recommencement of litigation that will cause the Debtor to incur significant administrative expenses to the detriment of the estate, and then to argue, on the other hand, that retention of the Courington Firm is unnecessary when that firm is the very firm that will be needed to address the litigation is nonsensical.

5. Moreover, the Debtor has needed and will need in the future the services of the Courington Firm even with the threatened litigation stayed. Although the Debtor does not anticipate a big role for the Courington Firm now that the chapter 11 plan and the related liquidation trust claim resolution procedures are on file, as discussed in more detail below Hopeman occasionally continues to utilize the services of the Courington Firm postpetition. The Courington Firm, for example, has assisted in the coordination of the filing of suggestions of bankruptcy in venues across the country, has assisted in resolving postpetition stay violations when claimants have pursued litigation against the Debtor postpetition, and has assisted the Debtor in analyzing how Asbestos-Related Claims have been defended and resolved, including under Louisiana law. Indeed, early in this case Louisiana claimants' counsel and the Committee raised issues specific to Louisiana law, and the Courington Firm has been a valuable resource for the Debtor in providing advice on Louisiana law and especially the historical context for how

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<sup>2</sup> In prior insurance coverage litigation initiated by Hopeman in 2017, a member of the Courington Firm sat for two days of deposition testimony regarding the complex issues that arise in litigation involving Asbestos-Related Claims asserted against Hopeman. That knowledge is invaluable to the Debtor.

such matters have been addressed by Hopeman in the past 35 plus years of litigation in Louisiana and the Gulf region.

6. As for the Committee's second main argument, the Courington Firm's prepetition role as defense counsel in addressing Asbestos-Related Claims is not inconsistent with her role in assisting the Debtor in establishing a fair and efficient process for addressing unresolved Asbestos-Related Claims in this bankruptcy. The Courington Firm's goal as national defense counsel was to defend the Debtor against claims asserted against it and to facilitate settlement and payment to legitimate creditors, not to minimize insurance payments as the Committee alleges. The firm even facilitated payments to former employees of Hopeman who never filed suit and were compensated voluntarily by the company. Moreover, the Courington Firm is not being retained to address issues with respect to insurance recoveries; the Debtor has special coverage counsel and will ensure that special counsel stay in their assigned lanes of specialty. The Committee's mere speculation of a potential conflict with no evidentiary support beyond the Committee's own musings is not sufficient to deny retention.

7. Accordingly, and for the reasons set forth below, the Committee's arguments are meritless. The Debtor's proposed retention of the Courington Firm complies with all of the requirements set forth in section 327(e) of the Bankruptcy Code, is within the good faith business judgment of the Debtor, and is in the best interests of the estate. Accordingly, the Committee's Objection should be overruled by this Court.

### **REPLY**

8. Section 327(e) of the Bankruptcy Code provides:

The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or

hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e). The Debtor has broad discretion in retaining the professionals it deems necessary to prosecute its case. Section 327(e) is a tool available to the Debtor so that it can retain special counsel with historical knowledge to assist on discrete issues efficiently, which is exactly the purpose of the retention of the Courington Firm. The Debtor's retention for the firm as Special Asbestos Counsel fits squarely within what is contemplated in section 327(e).

9. First, the retention of the Courington Firm is “for a specified special purpose” and not for “conducting the case.” See 11 U.S.C. § 327(e). “In selecting professionals, it is reasonable for a debtor to consider a professional’s specialization.” *Nordic Aviation*, 2022 WL 10716251, at \*12; see *In re Retail Group, Inc.*, 2022 WL 9722306, at \*10 (Bankr. E.D. Va. Aug. 30, 2022), adopted as modified by *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 2022 WL 4287200 (E.D. Va. Sept. 16, 2022) (quoting *In re Wash. Furniture Mfg. Co.*, 283 B.R. 201, 203 (Bankr. N.D. Miss. 2002)). “[F]or a specified special purpose” means that the debtor “is not permitted to use [section 327(e)] to employ counsel to assist [it] in the general administration of the estate.” *In re Roper & Twardowsky, LLC*, 566 B.R. 734, 750 (Bankr. D.N.J. 2017). “The reference to “conducting the case” in Section 327(e) includes those matters that form a part of the administration of the case under the Code.” 3 Collier on Bankruptcy ¶ 327.04 (16th ed. 2021).

10. In this case, not only does the Courington Firm have institutional knowledge, it is a firm that is well-versed in addressing Asbestos-Related Claims, has familiarity with many of claimant’s counsel in this case, and has considerable expertise in relevant Louisiana law, which may have a bearing on some of the claim and insurance coverage issues in this case. Retaining the Courington Firm is the very definition of economy in administration and avoiding wasteful expense and delay in this case.

11. The Debtor’s proposed retention of the Courington Firm meets the section 327(e) guardrails. The Courington Firm’s proposed legal services are limited to issues surrounding the Asbestos-Related Claims the firm handled for the Debtor for decades prepetition. The Debtor does not seek to retain the firm to represent it in the administration of this chapter 11 or to pursue insurance recoveries as the Committee implies. With decades of experience representing the Debtor in resolving Asbestos-Related Claims, the firm’s institutional and historical knowledge of the intricacies of the claims, the complex legal issues such claims can involve, and how those issues have been resolved by Hopeman in the past will be critical to the Debtor’s efficient pursuit of its goals in this chapter 11 case. *See Jackson v. Lewis (In re Jackson)*, 448 F. Supp. 3d. 775, 783 (E.D. Mich. 2020) (observing that section 327(e) is designed to “promote[] economy in administration” and recognizes that “continuing the retention of pre-petition counsel will avoid wasteful expense and delay that might result from having to hire disinterested counsel unfamiliar with the subject matter.”) (internal citation omitted).

12. Second, the Committee’s Objection rests on the mistaken notion that the Courington Firm’s legal services are “not necessary” because the Asbestos-Related Claims have been stayed as to the Debtor pursuant to the imposition of the automatic stay. *See* Obj., ¶¶ 4-5. Hence, according to the Committee, the Courington Firm could not possibly provide value to the Debtor. *See id.*, ¶ 5. For the foregoing reasons, this argument similarly fails.

13. The Application fully acknowledges the Asbestos-Related Claims have been stayed. *See id.*, ¶ 11. The Application never contemplated the Courington Firm’s postpetition services as Special Asbestos Counsel were to be limited to solely addressing the litigation stayed in connection with the Asbestos-Related Claims. *See id.* Rather, through the proposed retention, the Courington Firm is expected to “continu[e] to render services to the Debtor post-petition

*related to the Asbestos-Related Claims*”. App., ¶ 11 (emphasis added). Indeed, the Debtor has only been under chapter 11 bankruptcy protection for a little over two months, and yet the Courington Firm already has been instrumental in several roles for the Debtor.

14. First, the Courington Firm acted as coordinator, on a national level, overseeing the circulation and filing of suggestions of the Debtor’s chapter 11 bankruptcy in the many venues in which lawsuits are pending regarding Asbestos-Related Claims. Numerous questions were addressed by the Courington Firm from counsel and modifications made to address peculiarities in the filings of the suggestions in some courts.

15. Moreover, as the Debtor anticipated, despite the Courington Firm’s coordination of the filing of the suggestions of bankruptcy, the Debtor has been named in pleadings, including third-party cross-claims, filed postpetition in litigation involving the Asbestos-Related Claims by co-defendants put on notice of the Debtor’s chapter 11 case in violation of the automatic stay. *See id.* (stating that the Debtor expects that Asbestos-Related Claims will continue to be asserted against the Debtor postpetition). The Courington Firm also has responded to numerous calls and emails concerning the bankruptcy filing, and the firm has been utilizing its lawyers’ relationships developed over the last twenty plus years<sup>3</sup> spent representing the Debtor as its prepetition defense counsel in communicating with the various counsel involved in the Asbestos-Related Claims, including in reiterating that the automatic stay prohibits, by operation of law, the continuation in any form of existing lawsuits against the Debtor and the commencement of new claims or cross-claims.

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<sup>3</sup> As mentioned in the Application, while the Courington Firm itself has represented the Debtor since 2011 with regarding to litigation involving the Asbestos-Related Claims, partner Kaye Courington has represented the Debtor since 1991 in such lawsuits prior to joining her present firm. *See App.*, ¶ 10. Accordingly, the Courington Firm stands to provide invaluable knowledge learned over the course of such long-standing representation of the Debtor and to utilize relationships developed with other counsel over that time to attempt to solve issues that will arise.



16. Further, as mentioned above, there are a number of other matters that *relate to* the Asbestos-Related Claims for which the Courington Firm’s services as Special Asbestos Counsel will be critical to the efficient progression of the Debtor’s chapter 11 case. These matters include, but are not limited to, utilizing the firm’s institutional knowledge surrounding topics such as the intricacies of the Debtor’s legacy prepetition operations and details regarding the Asbestos-Related Claims that will be relevant throughout these cases even if litigation is stayed.

17. Indeed, the Debtor has consulted lawyers with the Courington Firm on matters raised by the Committee and counsel for Louisiana claimants concerning the Debtor’s request to extend the automatic stay to certain protected parties. In their objections to the Debtor’s motion to stay, the Committee and other objecting parties raise issues about the nature of the claims (*e.g.*, product vs. non-product claims) and make assertions concerning Louisiana law issues. The Courington Firm, having litigated many of these same issues on behalf of the Debtor for the past two decades, has been instrumental in assisting the Debtor to consider and analyze the issues raised, understanding how Hopeman historically has dealt with such issues, and in developing a strategy for addressing the issues going forward.

18. Moreover, it would be nearly impossible, or at a minimum, time-consuming, costly, and inefficient for the Debtor, at this juncture, to replace the immense experience and knowledge the Courington Firm provides—by either seeking to retain counsel other than that firm as Special Asbestos Counsel or not seeking to retain any professional to replace them as Special Asbestos Counsel. The Committee’s claim that the Debtor should do so undercuts the purpose of retaining estate professionals pursuant to section 327(e) to aid in the efficient administration of the estate. *See Jackson v. Lewis (In re Jackson)*, 448 F. Supp. 3d. at 783 (“continuing the retention of pre-petition counsel will avoid wasteful expense and delay that

might result from having to hire disinterested counsel unfamiliar with the subject matter.”) (internal citation omitted).

19. Finally, the Committee attempts to make much ado about nothing with respect to the Courington Firm’s representation of certain insurers in matters that the firm attests are not adverse to the Debtor or its estate. *See* Obj., ¶ 7. The Courington Firm represents various insurers and insureds not related to the Debtor in mass tort and other litigation in Louisiana. That does not prevent the firm from assisting a long-term client such as Hopeman. None of those disclosed representations result in the Courington Firm representing or holding any interest adverse to the Debtor or the estate *with respect to the matters for which it is to be retained*, as section 327(e) requires. The Debtor’s proposed restructuring counsel has responded to the Committee’s inquiries about the Courington Firm’s disclosures of past representations, and the Courington Firm has filed two supplemental declarations disclosing its connections. None rise to the level of that firm representing or holding an adverse interest or conflict. *See* Docket Nos. 118 and 129.

20. The Committee’s Objection is devoid of any evidence demonstrating or even suggesting that the Courington Firm’s disclosed connections with parties-in-interest in this case are adverse to the Debtor or its estate, let alone adverse with respect to the matters for which that firm is to be retained. Mere speculation as to a professional’s adverse interests to those of the debtor and its estate does not give rise to a proper basis for disallowing such professional’s retention pursuant to section 327(e). *See, e.g., In re Boy Scouts of Am.*, 630 B.R. 122, 130 (D. Del. 2021) (stating that “a professional holds a prohibited ‘adverse interest’ when that professional holds or represents interests in competition with the debtor that would actually (as opposed to speculatively) impair its service as an estate fiduciary.”). As such, these empty

assertions made by the Committee serve as nothing more than a weak attempt to cast aspersions on the Courington Firm due to their reliable work for the Debtors prepetition, and they do not amount to grounds for disqualification for the Debtor to retain the firm pursuant to section 327(e).

21. For the foregoing reasons, the Courington Firm meets the requirements of section 327(e) of the Bankruptcy Code to be retained as Special Asbestos Counsel to the Debtor. The Debtor is entitled to retain those professionals that the Debtor believes are necessary to efficiently prosecute its case. The Committee's Objection offers no valid reasons otherwise, and the Committee's Objection, therefore, should be overruled.

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**WHEREFORE** the Debtor respectfully requests that, for the reasons set forth in the Application and this Reply, the Court should overrule the Committee's Objection and enter an order approving the Application.

Dated: September 9, 2024  
Richmond, Virginia

/s/ Henry P. (Toby) Long, III

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