UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: HOPEMAN BROTHERS, INC., Debtor.	Chapter 11 Case No. 24-32428 (KLP)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Appellant, v. HOPEMAN BROTHERS, INC., Appellee.	Civil Action No. 3:24cv00717

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR LEAVE TO APPEAL FROM SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY

Appellant, the Official Committee of Unsecured Creditors ("**Committee**") of Hopeman Brothers, Inc., by and through its undersigned counsel, hereby moves this Court (by this "**Motion**") for leave to appeal from the *Second Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants* (No. 24-32428-KLP, ECF No. 245) ("**Stay Order**"),[1] entered by the United States Bankruptcy Court for the Eastern District of Virginia (Phillips, J.) on September 25, 2024.

[1] A copy of the Stay Order is annexed hereto as **Exhibit A**. A copy of the partially redacted September 10, 2024 hearing transcript is annexed hereto as **Exhibit B**. Liberty Mutual Insurance Company designated as confidential certain portions of the September 10, 2024 hearing transcript in accordance with the Section III of the Confidentiality Agreement and Protective Order entered in the above-captioned bankruptcy case (No. 24-32428-KLP, ECF No. 206).

The Committee believes that the Stay Order is a final order that gives the Committee an appeal of right under 28 U.S.C. § 158(a)(1), or, in the alternative, that the Stay Order is immediately appealable under the collateral order doctrine. In either case, the Committee can present for appellate review all factual and legal issues connected with the Stay Order. Nevertheless, in an abundance of caution, the Committee makes this Motion, in accordance with 28 U.S.C. § 158(a)(3) and Rule 8004 of the Federal Rules of Bankruptcy Procedure, requesting leave of this Court to pursue interlocutory review of the questions of law described in the accompanying *Memorandum of Points and Authorities in Support of Motion of the Official Committee of Unsecured Creditors for Leave to Appeal from Second Interim Order Extending the Automatic Stay* ("**Memorandum**").

For the reasons explained in the Memorandum, the Committee requests that this Court (1) determine that the Stay Order is final and appealable as of right, or alternatively, (2) determine that the Stay Order is immediately appealable under the collateral order doctrine, or alternatively, (3) grant the Committee leave to pursue an interlocutory appeal from the Stay Order on the questions of law described in the Memorandum, and in all events (4) grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

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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.	:	

SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY TO ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS

Upon the Motion of the above-captioned debtor (the "Debtor") for Entry of an Interim and Final Order Extending the Automatic Stay to Stay Asbestos-Related Actions against Non-Debtor Defendants (the "Motion")[1] [Docket No. 7]; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334 and the *Standing Order of Reference from the United States District Court for the Eastern District of Virginia*, dated August 15, 1984; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a second interim order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and the Court having entered a first interim order, on July 3, 2024 [Docket No. 35], approving the Motion on an interim basis; and the Court having held a second hearing to consider the relief requested in the Motion on September 10, 2024 (the "Hearing"); and upon the record herein; and after due deliberation thereon; and, for the reasons stated by the Court on the record at the Hearing, all objections to the relief sought in the Motion are overruled and the Court having determined there is good and sufficient cause for the relief granted in this Second Interim Order extending the stay to the Protected Parties, as set forth herein, for an additional six month period, under sections 105(a), 362(a)(1) and 362(a)(3) of the Bankruptcy Code, it is hereby

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted on a second interim basis, as set forth herein, for a period of six months (the "Stay Period") from the date of the Hearing until March 10, 2025 (the "Stay Expiration Date").

2. The Protected Parties are identified on **Exhibit 1** annexed hereto.

3. This Second Interim Order shall operate as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of any action against a Protected Party related to any asbestos-related claim against the Debtor, Wayne Manufacturing Company, Inc. ("Wayne") and/or a current or former director or officer ("Debtor/Wayne Asbestos Claim") of either during the Stay Period, including but not limited to the Direct Action Lawsuits identified on **Exhibit 2**.

4. All acts in violation of the stay are prohibited. This prohibition includes, without limitation: (a) the pursuit of discovery from the Protected Parties or their officers, directors,

employees or agents in any action stayed by this Second Interim Order, (b) the enforcement of any discovery order against the Protected Parties in any action stayed by this Second Interim Order; (c) further motions practice related to the foregoing; and (d) any collection activity on account of an asbestos-related claim involving the Debtor, Wayne and/or a Former D&O. For purposes of clarity, nothing in this paragraph 4 shall prohibit claimants from (i) continuing or commencing actions, including the Direct Action Lawsuits, against any defendant who is not a Protected Party and from pursuing discovery and motions practice in those non-stayed actions, as long as such discovery and motions practice is not undertaken in pursuit of asbestos-related claims against the Protected Parties; or (ii) continuing or commencing actions against any insurer listed on **Exhibit 1** hereto on account of any claim unrelated to a Debtor/Wayne Asbestos Claim, including from pursuing discovery or motions practice in such non-stayed actions .

5. Notwithstanding anything to the contrary in this Second Interim Order, any party asserting any asbestos-related claim related to or against the Debtor, Wayne and/or a current or former director or officer of either, including, without limitation, against any of the Protected Parties, may take reasonable steps during the Stay Period, without leave of the Court, to perpetuate the testimony of any person subject to this Second Interim Order who is not expected to survive the Stay Period or who otherwise is expected to be unable to provide testimony if it is not perpetuated during the Stay Period. If such a need arises, notice shall be provided to the Debtor, the Official Committee of Unsecured Creditors ("Committee"), and each of the other parties below that endorsed this Second Interim Order (collectively, the "Notice Parties") by notifying counsel for each Notice Party of the need for perpetuation of such testimony. The Notice Parties shall have the right to object to the notice on any grounds they would have had if they were parties to the underlying proceeding and not subject to the terms of this Second Interim Order, and the Notice

Parties may raise any such objection with this Court. The use of such testimony in any appropriate jurisdiction shall be subject to the applicable procedural and evidentiary rules of such jurisdiction. All parties reserve and do not waive any and all objections with respect to such testimony.

6. To the extent the Debtor requests that the Court extend the relief granted in this Second Interim Order beyond the Stay Period, the Debtor must file a motion with this Court to be considered by the Court on or before the Stay Expiration Date or by such other date as the Court may order.

7. Entry of this Order is without prejudice to the rights of any party to oppose any extension of the Stay Period that the Debtor may seek or to seek to appeal the granting of any such extension without having appealed this Second Interim Order.

8. The requirement under Local Rule 9013-1(F) to file a memorandum of law in connection with the Motion is waived.

9. The Debtor is authorized to take all actions necessary or appropriate to implement the relief granted in this Order in accordance with the Motion, including without limitation seeking additional relief from this Court to enforce the terms of this Second Interim Order.

10. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.

Sep 20 2024

Dated: _____, 2024
Richmond, Virginia

/s/ Keith L Phillips
UNITED STATES BANKRUPTCY JUDGE

Entered On Docket: Sep 25 2024

WE ASK FOR THIS:

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SEEN AND NO OBJECTION AS TO FORM OF ORDER, WITH ALL OTHER RIGHTS RESERVED:

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CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)

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

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

Exhibit 1

Protected Parties

1. **Insurers Who Provide (or in the case of Liberty Mutual Insurance Company provided) Shared Insurance Coverage to the Debtor, Wayne and Former D&Os:**

a. Liberty Mutual Insurance Company

b. Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North American)

c. Westchester Fire Insurance Company

d. Continental Casualty Company

e. Fidelity & Casualty Company

f. Lexington Insurance Company

g. Granite State Insurance Company

h. Insurance Company of the State of Pennsylvania

i. National Union Fire Insurance Company of Pittsburgh, PA

j. General Reinsurance Corporation

2. **Former D&Os of the Debtor and Wayne Who Are Also Covered Under the Debtor's Insurance Policies. The following Former D&Os are named in pending Direct Action Lawsuits with the Debtor and Wayne and, with the exception of Bertram C. Hopeman, are each deceased:**

a. Albert Arendt Hopeman, Jr. (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

b. Bertram C. Hopeman (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

c. Charles Johnson (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

d. Kenneth Wood (named defendant in *Lebeouf, Jr. v. Huntington Ingalls Inc.*, 2024-04032 (Civil District Court Parish of Orleans, La.) and *McElwee v. Anco Insulations, Inc. et al.*, 2:23-cv-03137 (E.D. La.))

3. Current D&Os of the Debtor Who Have the Same Indemnification Rights as Former D&Os:

a. Christopher Lascell

b. Daniel Lascell

c. Carrie Lascell Brown

Exhibit 2

Direct Action Lawsuits

Exhibit 2

	Case Name	Case Number	Court	Claimant	Claimant's Counsel	Counsel to Avondale (Huntington)
1	Allo, III v. Huntington Ingalls, Inc., et. al.	2:23-cv-06006	USDC Eastern District of Louisiana	Charles Allo, III	David Melancon Irwin Fritchie Urquhart & Moore, LLC 400 Poydras St., Suite 2700 New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
2	Becker v. Huntington Ingalls Incorporated, et. al.	2:23-cv-06900	USDC Eastern District of Louisiana	Patricia Becker	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
3	Becnel v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-01124	USDC Eastern District of Louisiana	Darwin Kraemer, Rosanne Pierron, Cheryl Becnel and Wendy Vonlienen	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

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4	Bourgeois v. Pennsylvania General Insurance Co., et. al.	2:24-cv-00337	USDC Eastern District of Louisiana	David and Emelda Bourgeois	Erin Bruce Saucier Didriksen, Saucier and Woods, PLC 3114 Canal Street New Orleans, LA 70119	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
5	Boutte, Sr. v. Huntington Ingalls Incorporated, et. al.	2:22-cv-03321	USDC Eastern District of Louisiana	Shelton A. Boutte, Sr. and Arlene Boutte	Madeline M. Dixon The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
6	Bracy v. ABB, Inc., et. al.	2:23-cv-06937	USDC Eastern District of Louisiana	Horace L. Bracy	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
7	Brignac v. Anco Insulations, Inc., et. al.	2:23-cv-03124	USDC Eastern District of Louisiana	Percy Brignac	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
8	Chalker v. Taylor-Seidenbach, Inc., et. al.	2023-13770	Civil District Court for the Parish of Orleans, State of Louisiana	Pamela Chalker	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	N/A

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9	Constanza et al v. Huntington Ingalls Inc.	2:24-cv-00871	USDC Eastern District of Louisiana	Erica Dandry Constanza	Roussel & Clement 1714 Cannes Drive La Place, LA 70068	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
10	Daigle, III v. Anco Insoluations, Inc., et. al.	2:23-cv-01414	USDC Eastern District of Louisiana	Dennis Daigle, III, Kim Lombas, Michelle Trouilliet, Eric Daigle, and Patrick Daigle	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
11	Ditcharo v. Union Pacific Railroad Company, et. al.	2022-10935	Civil District Court for the Parish of Orleans, State of Louisiana	Anthony J. Ditcharo	Jeremiah Boling Caroline Boling Benjamin Rumph LaCrisha McAllister Boling Law Firm, LLC 541 Julia Street, Suite 300 New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
12	Duran, Jr. v. Taylor-Seidenbach, Inc., et. al.	2023-13741	Civil District Court for the Parish of Orleans, State of Louisiana	Gilbert Duran, Jr.	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

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13	Evans v. Taylor-Seidenbach, Inc., et. al.	2:23-cv-04241	USDC Eastern District of Louisiana	Marvin Evans	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
14	Gistarve, Sr. v. Huntington Ingalls Industries, et. al.	2016-05797	Civil District Court for the Parish of Orleans, State of Louisiana	Joseph Gistarve, Sr.	Ron A. Austin Austin & Associates, L.L.C. 400 Manhattan Boulevard Harvey, LA 70058	N/A
15	Gomez v. Lamons Gasket Company, et. al.	2:23-cv-02850	USDC Eastern District of Louisiana	David Gomez	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
16	Hoffman, Jr. v. Huntington Ingalls Inc., et. al.	2022-07111	Civil District Court for the Parish of Orleans, State of Louisiana	Donald M. Hoffman, Jr., Charles S. Somes, and Kathleen Whited	Stephen J. Austin Stephen J. Austin, LLC 1 Galleria Boulevard, Suite 1900 Metairie, LA 70001	N/A
17	Lagrange v. Eagle, Inc., et. al.	2:23-cv-00628	USDC Eastern District of Louisiana	Irma Lee Lagrange	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

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18	Leboeuf, Jr. et al v. Huntington Ingalls Inc.	2024-04032	Civil District Court for the Parish of Orleans, State of Louisiana	Nolan J. Leboeuf, Jr.	Landry & Swarr 1100 Poydras St. Energy Centre – Suite 2000 New Orleans, LA 70163 -and- The Cheek Law Firm 650 Poydras Street, Ste 2310 New Orleans, LA 70130	N/A
19	Lewis v. Tayler-Seidenbach, Inc., et. al.	2:23-cv-06764	USDC Eastern District of Louisiana	Brouney Lewis and Monica Kelly-Lewis	Kevin B. Milano Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
20	Marcella, et. al. v. Huntington Ingalls, Incorporated et. al.	2:24-cv-00780	USDC Eastern District of Louisiana	Norma Marcella, Scott Marcella, Troy Marcella, and Toni Herbert, Individually and as Statutory Heirs of Decendent Ronald Marcella	David R. Cannella Christopher C. Colley Kristopher L. Thompson Emily C. LaCerte Baron & Budd, P.C. 2600 CitiPlace Drive, Suite 400 Baton Rouge, LA 70808	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
21	McElwee v. Anco Insulations, Inc. et. al.	2:23-cv-03137	USDC Eastern District of Louisiana	Robert J. McElwee	Frank J. Swarr Mickey P. Landry Matthew Clark Landry & Swarr, LLC 1100 Poydras Street, Suite 2000 New Orleans, LA 70163 -and- Jeffery A. O'Connell The Nemeroff Law Firm Douglas Plaza 8226 Douglas Avenue, Suite 740 Dallas, Texas 75225	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130

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22	McIntyre v. Huntington Ingalls Incorporated, et. al.	2:23-cv-05048	USDC Eastern District of Louisiana	William McIntyre	Ivan D. Cason The Gori Law Firm 909 Poydras Street, Suite 2195 New Orleans, LA 70112	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
23	Plaisance, Sr. v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-05426	USDC Eastern District of Louisiana	Corbet J. Plaisance, Sr.	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
24	Prude v. Fidelity and Casualty Incurance Company of New York, et. al.	2:23-cv-07197	USDC Eastern District of Louisiana	William "Buddy" Prude	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809 -and- Scott M. Galante Stephanie M. Hartman The Galante Litigation Group, LLC 816 Cadiz Street New Orleans, LA 70115	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
25	Ragusa, Jr., v. Louisiana Insurance Guaranty Association, et. al.	2:21-cv-01971	USDC Eastern District of Louisiana	Frank P. Ragusa, Jr.	Gerolyn P. Roussel Perry J. Roussel, Jr. Jonathan B. Clement Lauren R. Clement Benjamin P. Dinehart Roussel & Clement 1550 West Causeway Approach Mandeville, LA 70471	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002

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26	Rivet v. Huntington Ingalls Incorporated, et. al.	2:22-cv-02584	USDC Eastern District of Louisiana	Tommy Rivet	Gerolyn P. Roussel Roussel & Clement 1550 West Causeway Approach Mandeville, LA 70471	Gus A. Fritchie Timothy Farrow Daniels David M. Melancon Alison A. Spindler Kevin Powell Diana J. Masters Connor W. Peth Kelli Murphy Miller Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
27	Robinson v. Anco Insulations, Inc., et. al.	2020-04867	Civil District Court for the Parish of Orleans, State of Louisiana	Melvin L. Robinson	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	N/A
28	Rogers v. Taylor-Seidenbach, Inc., et. al.	2:24-cv-01268	USDC Eastern District of Louisiana	John Rogers	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
29	Rudolph, et. al. v. Huntington Ingalls, Inc., et. al.	2019-04164	Civil District Court for the Parish of Orleans, State of Louisiana	Renee LaNasa Rudolph, Michael Anthony LaNasa, and Giles Paul LaNasa; on behalf of Wallace LaNasa, Jr.	Lewis O. Unglesby, Esq. Lance C . Unglesby, Esq. Jordan L. Bollinger, Esq. UNGLESBY LAW FIRM 246 Napoleon St. Baton Rouge, LA 70802 Timothy J. Falcon, Esq. FALCON LAW FIRM 5044 Lapalco Blvd. Marrero, LA 70072 J. Patrick Connick, Esq. 5201 Westbank Expressway, Ste. 100 Marrero, LA 70072 Wells T. Watson, Esq. Jeffrey T. Gaughan, Esq. B AGGETT, MCCALL, BURGESS, WATSON & GAUGHAN 3006 Country Club Rd. Lake Charles, LA 70605	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002

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30	Sandifer v. Anco Insulations, Inc., et. al.	2023-10585	Civil District Court for the Parish of Orleans, State of Louisiana	Booker Sandifer	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
31	Sewire v. Anco Insulations, Inc., et. al.	2022-00676	Civil District Court for the Parish of Orleans, State of Louisiana	Patrick Sewire	Damon R. Pourciau Pouciau Law Firm 8550 United Plaza Blvd., Suite 702 Baton Rouge, LA 70809	N/A
32	Simoneaux v. Taylor-Seindenbach, Inc., et. al.	2:23-cv-04263	USDC Eastern District of Louisiana	Michael Simoneaux	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	Brian C. Bossier Edwin A. Ellinghausen, III Christopher T. Grace, III Erin H. Boyd Laura M. Gillen Kimmier L. Paul Blue Williams, L.L.C. 3421 N. Causeway Blvd., Suite 900 Metairie, LA 70002
33	Thibodeaux et al v. General Electric Company, et al	2:24-cv-01111	USDC Eastern District of Louisiana	Reed Thibodeaux and Cynthia Thibodeaux	Ivan David Cason, Jr. Gori Law Firm 3647 McDonald Ave St. Louis, MO 63116 450 Laurel Street, Suite 1150 Baton Rouge, LA 70801	Timothy Farrow Daniels Irwin Fritchie Urquhart & Moore, LLC (New Orleans) 400 Poydras St. Suite 2700 New Orleans, LA 70130
34	Thomas v. American Automobile Insurance Company, et. al.	2022-00352	Civil District Court for the Parish of Orleans, State of Louisiana	Lisha Thomas, Samantha Thomas, and Shaundreika Shorty; wrongful death beneficiaries of Sam Thomas (aka Sam Carter Thomas)	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130 -and- Lindsey A. Cheek The Cheek Law Firm, LLC 650 Poydras Street, Suite 2310 New Orleans, LA 70130 -and- Spencer R. Doody Scott R. Bickford Larry J. Centola, III Martzell, Bickford & Centola 338 Lafayette Street New Orleans, LA 70130	N/A

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35	Wilson v. Eagle, Inc., et al.	2024-03205	Civil District Court for the Parish of Orleans, State of Louisiana	Kenneth Wilson	Philip C. Hoffman Dayal S. Reddy 643 Magazine Street, Suite 300A New Orleans, LA 70130	N/A

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EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA (RICHMOND)

In Re:	)	Case No. 24-32428-KLP
	)	Richmond, Virginia
HOPEMAN BROTHERS, INC.,	)	
	)	
Debtor.	)	September 10, 2024
	)	10:05 a.m.
----------	)	

TRANSCRIPT OF HEARING ON
1. "CASH MANAGEMENT MOTION" – MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTOR TO USE EXISTING BANK ACCOUNTS AND BUSINESS FORMS; AND (II) GRANTING THE DEBTOR AN EXTENSION OF TIME TO COMPLY WITH SECTION 345(B) OF THE BANKRUPTCY CODE [DOCKET NO. 5].
2. "NON-ASBESTOS CLAIM BAR DATE MOTION" – MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) ESTABLISHING BAR DATES FOR SUBMITTING PROOFS OF NON-ASBESTOS CLAIM; (II) APPROVING PROCEDURES FOR SUBMITTING PROOFS OF NON-ASBESTOS CLAIM; (III) APPROVING NOTICE THEREOF; (IV) APPROVING A TAILORED PROOF OF NON-ASBESTOS CLAIM FORM; AND (V) GRANTING RELATED RELIEF [DOCKET NO. 74].
3. "CAPLIN & DRYSDALE APPLICATION" – APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO RETAIN AND EMPLOY CAPLIN & DRYSDALE, CHARTED AS THE COMMITTEE'S COUNSEL, EFFECTIVE NUNC PRO TUNC AS OF JULY 22, 2024 [DOCKET NO. 112] FILED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS.
4. "CKSMM RETENTION APPLICATION" – 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].
5. "SETTLEMENT PROCEDURES MOTION" – 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].
6. "MOTION TO STAY" – MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS EXTENDING THE AUTOMATIC STAY TO STAY ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS [DOCKET NO. 7].

BEFORE THE HONORABLE KEITH L. PHILLIPS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:	TYLER P. BROWN, ESQ. HENRY P. LONG, III, ESQ. HUNTON ANDREWS KURTH LLP 951 East Byrd Street Richmond, VA 23219
Proposed Special Asbestos Counsel for the Debtor:	KAYE N. COURINGTON, ESQ. (TELEPHONICALLY) COURINGTON, KIEFER, SOMMERS, MARULLO & MATHERNE L.L.C. 616 Girod Street New Orleans, LA 70130
For Official Committee of Unsecured Creditors:	JEFFREY A. LIESEMER, ESQ. CAPLIN & DRYSDALE, CHARTERED One Thomas Circle, Northwest Suite 1100 Washington, DC 20005
Proposed Special Insurance Counsel for Official Committee of Unsecured Creditors:	DAVID S. COX, ESQ. MORGAN, LEWIS & BOCKIUS LLP 300 South Grand Avenue 22nd Floor Los Angeles, CA 90071
For Huntington Ingalls Industries, Inc.:	K. ELIZABETH SIEG, ESQ. MCGUIREWOODS LLP 800 East Canal Street Richmond, VA 23219
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

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THE CLERK: All rise. The United States Bankruptcy Court for the Eastern District of Virginia is now in session, the Honorable Keith L. Phillips presiding. Please be seated and come to order.

MR. BROWN: Good morning, Your Honor.

THE COURT: Good morning.

MR. BROWN: Tyler Brown of Hunton Andrews and Kurth, here on behalf of the debtor Hopeman Brothers, Inc. Your Honor, this morning with me at counsel table is my colleague Toby Long.

And I want to introduce the Court to two people you'll hear from today. The first on the very right in the back, is Mr. Christopher Lascell. He is the president of Copeland Brothers, Inc., and he's come down from the Boston area. And to his right is Ronald Van Epps. He is with Stout and has come in from Chicago today.

THE COURT: Good morning.

MR. BROWN: Your Honor, I want to thank the Court for addressing a number of the certificates of no objection that were filed. And we have a number of the orders now entered. So it cleared out the docket a bit, if you will. We do have a couple of uncontested matters, which I propose we take up first, and then three contested matters, the last of which I think will probably take the most time, which is the motion to stay. And then I should mention, as well, there's an emergency

motion for a protective order, which we certainly ascended to being heard today, and that probably should slide in just before the motion to stay.

All right. So with that, Your Honor, I don't know if the Court maybe had some questions about the first two matters, but I'd ask Mr. Long, my colleague, to address the Court on those changes that were made.

THE COURT: All right. Very well.

MR. LONG: Morning, Your Honor.

THE COURT: Good morning.

MR. LONG: Toby Long from Hunton Andrews Kurth on behalf of the debtor. As Mr. Brown said, we thank Your Honor for entering a number of the orders. In the uncontested items, two of the orders were not entered, and I don't know if they're stuck in docketing limbo or if Your Honor has questions, but I'm here happy --

THE COURT: Well, I did have a question about the nonasbestos claim bar date motion. I don't recall the other order that I --

MR. LONG: Yes, sir. And I'll go ahead. So the first one was with respect to the cash management order. It was the final order that's been fully endorsed by the United States Trustee. We got a couple of limited comments --

THE COURT: I thought I had -- I thought I had signed that order.

MR. LONG: Okay.

THE COURT: It was my intention to sign it.

MR. LONG: Yes, sir. I will set that one aside and move on to the nonasbestos bar date. And Your Honor, by that motion, the debtor simply is seeking to set a bar date for nonasbestos claims. As we've indicated in our first day pleadings, the debtor's material obligations are its asbestos claims. As we move forward to confirmation, we need to be crystal clear on what our other liabilities are. We don't think they're a lot, but we need to know those so we can move forward with an orderly liquidation.

We got a couple limited comments from the committee on that order, and one was to further define the definition of asbestos claims. I have a blackline, if Your Honor would like that, to help the discussions.

THE COURT: Well, it wasn't so much that as the amount of time that's being provided in the proposed order where the deadline, I believe, was October --

MR. LONG: October 15th.

THE COURT: 15th.

MR. LONG: Yes, sir. When we initially filed the motion, we intended to have it heard on August 6th. And we'd set the deadline -- I think it was September 15th. And so the goal was to give people thirty days' notice, nine days more notice than what's required under the Rules. We --

THE COURT: But don't the local rules typically require ninety days from the date of the first --

MR. LONG: From the petition date would put you to November 4th. But in this case, we'd also filed our plan and our disclosure statement. And our goal is to sort of jump ahead into other items is to get our settlement motion set. Get that set for November 12th. And then set our disclosure statement hearing shortly thereafter. And so by setting this bar date at October 4, October 15th, it allows us to know a complete picture of what our unsecured claims are so we can move forward, then, with our plan and disclosure statement.

THE COURT: Well, there's a complication. The clerk, for some reason, sent out a notice of commencement of case, which is typically what the clerk's supposed to do but in these types of cases, would not do if they had seen that I'd approved the debtor's noticing motion. And so that notice indicated that the bar date would be November 4th, which is typically what it would be in most cases.

And now, that notice wasn't served on many people. I think only several were served with it. But it's on the docket, and it does say November 4th. So there is some inconsistency there that some creditors may raise if they're late filing their claim. And so to me, the easiest solution would just be making it November 4th as the bar date, rather than the October 15th date. But tell me why that would be a

problem.

MR. LONG: Your Honor, that would be fine if we set it for November 4th. We saw that the clerk sent out that notice. I think our new complex case procedures are new to all of us. And under those procedures, the clerk isn't supposed to do that in a complex case. And then they've done it in some of our other cases before. And the committee gave us language to put in the order that did say that that notice is null and void.

THE COURT: Oh, okay. Vacating the prior.

MR. LONG: Correct. So the order would then make that clear. But again, if Your Honor wants it set --

THE COURT: Well, I saw that in the revised order. So everybody else is fine with that date, apparently, but like I said, if for some particular reason why it needs to be accelerated, you've indicated you'd like to know what all the claims are before the confirmation.

MR. LONG: We just want -- as you're going to hear a number of times today, we just want to move this case forward.

THE COURT: Right.

MR. LONG: This is not a case to let languish in bankruptcy. But again, if Your Honor wants it on November 4th, we have no objection --

THE COURT: You're talking about three weeks longer?

MR. LONG: Yes, sir.

THE COURT: That might be better in terms of avoiding

any potential complications further down the road. I know we could probably put something on the docket that notifies everyone that the original deadline is vacated. But if the debtor is -- unless somebody has a problem with it, I think going to November 4th might just make it easier.

MR. LONG: Again, Your Honor, that is just fine.

THE COURT: Okay.

MR. LONG: And if Your Honor doesn't object, what we'll do is we'll just amend the revised order to change the general bar date to November 4th and put the same in the notice --

THE COURT: All right.

MR. LONG: -- and resubmit that, if that's okay with Your Honor. Unless, of course, anybody else has any --

THE COURT: Well, and then you wouldn't need to vacate the original notice unless it's -- I mean, that's just a generic notice to all creditors, so I don't know if that creates --

MR. LONG: Well, the only thing difference is it doesn't tell where creditors where to file claims. And so the notice we submitted gives specific instructions about where to file claims. So if we take it up later where people aren't sending them to the right spot, that could just avoid confusion.

THE COURT: All right. Well, then let's make it

November 4th, unless somebody else has some comments they want to raise.

All right. November 4th. So if you'll revise that order --

MR. LONG: Yes, sir.

THE COURT: -- I'll enter that order. And then that takes care of -- you said there was one other that we cleared up and --

MR. LONG: There's one other. There's the Caplin & Drysdale retention application. And I'll pass the podium over to committee counsel.

THE COURT: Well, I thought I'd signed that too. Maybe there's some that the clerk just hadn't docketed yet.

MR. LIESEMER: Your Honor, Jeffrey Liesemer of Caplin & Drysdale, Chartered on behalf of the official committee of unsecured creditors. We submitted last night a certificate of no objection. And I understand that the proposed order was uploaded.

THE COURT: I'd already signed the order before you even --

MR. LIESEMER: Yeah.

THE COURT: -- submitted the certificate. So I don't think that's an issue either.

MR. LONG: With that, Your Honor, then we can jump into the contested item, and I'm going to hand the podium back

to Mr. Brown.

THE COURT: Very good.

MR. LONG: Thank you, Your Honor.

MR. BROWN: Thank you, Your Honor. Again, Tyler Brown for the debtor. The next matter on the docket, Your Honor, concerns, what I call, the Courington firm, rather than referring to CKSMM, which is what the papers --

THE COURT: I'm good with that.

MR. BROWN: That's what I thought you would think. We had, of course, noticed it up and did receive from the committee an objection. And the committee is still standing on that objection. I will point out that Ms. Kaye Courington is now visible to the Court and is online.

Your Honor, just say a couple of words, and then I would propose to put on a proffer from Mr. Lascell who could testify if necessary, but he's certainly subject to cross. The debtor firmly supports the Court approving the retention of the Courington firm under 327(e) of the Code. In support, as I said, we intend to offer just one witness, Mr. Lascell. And if the Court will allow, I'm glad to read a proffer and make him subject to cross.

THE COURT: Any objections to a proffer? The witness will be subject to cross.

MR. LIESEMER: No objection, Your Honor.

THE COURT: All right. Thank you.

You may proceed.

MR. BROWN: Yes, sir. Your Honor, Mr. Lascell is present in the courtroom. If called to testify on the subject of the application of the Courington firm would testify as follows.

He is the president of Hopeman Brothers, Inc. He began serving as president in 2016, after his father, David Lascell, then the sole officer of Hopeman and his prior general counsel passed away. Mr. Lascell would testify when he first became president, he quickly learned that Kaye Courington, a lawyer in New Orleans, was invaluable to him and helped him to manage the claims and the insurance process against the company. Ms. Courington and her firm had been serving as national litigation defense counsel for over twenty years, and Ms. Courington personally have been involved over thirty years in handling matters in Louisiana and the Gulf states and then managing matters across the country.

Mr. Lascell has had numerous interactions with Ms. Courington over the last eight years, and her advice and assistance has been instrumental to him in handling the company's affairs. Mr. Lascell would testify that Ms. Courington has also been invaluable to the company on a great many issues that arose pre-petition into preparing to file this bankruptcy case, and in fact, post-petition.

Mr. Lascell would testify that Ms. Courington's firm

was charged post-petition with coordinating the filing of suggestions of bankruptcy in all of the jurisdictions around the country in which we had matters pending. He would testify that since that time, she has handled numerous inquiries, not only from plaintiff's lawyers, but from defense counsel and others regarding the case. He would testify that she has managed the collection and maintenance of historical information for the debtor for years. Remember, the debtor has no employees. Mr. Lascell came into this late, long after the company no longer was in business.

Ms. Courington is the person with the most knowledge about the facts and where to find the facts and also has been involved in handling the claimants' information, collection, and then assessing, of course, the claimants' claims to decide whether or not to contest the claim or whether they appear to be valid.

Mr. Lascell would testify the result of her long-term role for Hopeman, Ms. Courington and members of her firm have gained invaluable knowledge of the law in Louisiana as it applies to asbestos claims, know most of the claimants' counsel, and know the intricacies and the facts needed to establish or defeat an asbestos bodily injury claim against Hopeman. Mr. Lascell can confirm that Ms. Courington continues to assist Hunton, its bankruptcy counsel, Blank Rome, its coverage counsel, and Stout, its insurance and financial

adviser by providing them with information and consulting with them about Hopeman and matters relating to the claims in the post-petition period.

As I mentioned, because Hopeman has no employees to rely on, it necessarily relies on the Courington firm for facts. And in fact, if the Hopeman was going to try to educate someone else about what she knows, what the firm knows, it would take the personal involvement of Ms. Courington to do that. It would be much more efficient to rely and have the ability to rely on the Courington firm than to educate someone new.

Certainly, Your Honor, if Louisiana lawsuits are allowed to be filed based on opposition to the motion to stay to be heard later today, Ms. Courington will be the one we would turn to to help deal with matters in the Louisiana courts. She has already been a source of Louisiana law expertise on matters that arose very early post-petition in this case by some of the objectors in the courtroom today.

Mr. Lascell would testify that Ms. Courington is well aware of the desire to establish through this Chapter 11 a fair and equitable process. And even though that may mean the end of much of her work, she has gladly cooperated and assisted us with formulating some of those plans.

Mr. Lascell would testify that he has reviewed the disclosures that her firm has made, and he's not aware of any

conflict that causes him concern or concern to the debtor of the estate of an adversity. In addition, nothing in Mrs. Courington's disclosures give him any concern about working with her in the future to carry out the goals of the case.

And then finally, Mr. Lascell would testify that for all these reasons, he believes that the debtor retaining Ms. Courington's firm is the best -- is in the best interest of the estate.

Those are the -- that is the testimony from Mr. Lascell, and I'd offer him for cross at this point.

THE COURT: Does anyone wish to cross-examine Mr. Lascell?

MR. LIESEMER: No, Your Honor.

THE COURT: All right. Thank you.

Then I will accept that testimony. Is there any other evidence you'd like to offer?

MR. BROWN: No other evidence, Your Honor. The debtors rest.

THE COURT: All right. Thank you.

Does anyone else wish to offer any evidence in connection with this application?

MR. LIESEMER: No, Your Honor.

THE COURT: No? All right. Any arguments?

MR. BROWN: Yes, Your Honor. Your Honor, as the Court is well aware, debtor typically is given a wide latitude to

decide which professionals to employ to prosecute the case. And that particularly applies in a Chapter 11 case. And in this kind of case where the debtor has a long history of retaining a counsel, relying on a counsel, that's an important factor to consider whether or not to employ someone as special counsel. And as the evidence reflects, Hopeman has employed some of these lawyers for close to thirty years and used them as national counsel for twenty years.

There is significant institutional knowledge not only of the facts, but of, also, of course, the law and the nuances that apply in considering asbestos bodily injury claims that have been asserted against Hopeman. The firm knows Louisiana law, which has been raised by a number of the objectors. And of course, as I mentioned from Mr. Lascell, in the event we need Louisiana counsel, she is available.

The decision to retain the firm, to us, was obvious. She brings a world of knowledge, a world of great business acumen, and knows the facts like no one else. And without an employee to know the facts, she really is critical.

Your Honor, I'm not sure I appreciate fully why the committee opposes the retention. Perhaps it's merely because Ms. Courington for many years has been on the other side, representing someone against the claimants. But the guardrails of Section 327(e) are met here. The only restrictions, of course, are that the counsel must be retained for a specialized

purpose, not to represent the debtor in conducting the case. We're restructuring counsel. She has her lane with respect to asbestos-related matters. We have Blank Rome, who has got their lane on insurance coverage issues. And we have Stout, of course, who has got their lane. We, as debtors' counsel, of course, will be in charge of monitoring and making sure everyone stays in their lane. But she satisfies that prong, Your Honor.

Then the firm also doesn't represent or hold an interest adverse to the matters on which they're going to represent the debtor. We see absolutely no adversity, nothing on the list that gives Mr. Lascell any cause, and nothing that the restructuring lawyers gives us any concern about.

So Your Honor, we think Ms. Courington's firm satisfies 327(e). She easily passes that test. And Your Honor, I think that the two issues that were really raised by the committee are that they don't think Ms. Courington's firm's services are necessary.

THE COURT: Yeah, that was what I understood. It was not so much who it is, but whether it's necessary.

MR. BROWN: Well, we certainly think she is necessary. We have relied on her, both pre-petition and post-petition. She has served a valuable role in dealing not only with suggestions of bankruptcy, in dealing with stay violations that have happened since we have filed. She has advised about

Louisiana law subjects that have been raised. She's advised about nuances that relate to how particular coverages are resolved in Louisiana courts. Lots of issues, and we expect many more. And her services have been very valuable.

I mentioned as well that she is the keeper of the facts, and what I mean by that is there is a warehouse in Waynesboro. I think I explained this on the first day. 6,000-square feet of historical records and employee records, records about construction projects, about the joiner packages, all of that stuff is stored, and her firm has helped access and knows where to find the information that they need to address particular claims. That is valuable information. That's going to be valuable information down the road, hopefully when we get to a trust and begin resolving some of these claims.

But secondly, the argument is that her role somehow is inconsistent with the role for a fiduciary of the estate, and we disagree. Just because Ms. Courington was defending claims and trying to identify which claims were valid versus which claims were not valid, that doesn't mean she was trying to minimize recoveries from the insurance policies we had. She was trying to resolve claims, and to the extent we had a settlement, her interests were to maximize recoveries from the insurance companies to save the estate money. So I see zero inconsistency with those roles, Your Honor.

I think that the arguments of the committee are

fundamentally flawed, and I think there couldn't be a more obvious case that employing the Courington firm will be efficient, save the estate money, and is in its best interest. So I think the Court should find that the exercise of its discretion by the debtor to employ Ms. Courington's firm under 327(e) should be approved, and it's in the best interest of the estate. Thank you.

THE COURT: Thank you.

MR. LIESEMER: Good morning, Your Honor.

THE COURT: Good morning.

MR. LIESEMER: Jeffrey Liesemer, on behalf of the committee. I think Your Honor said it right. Our concern pertains to the mission that the Courington firm is proposed to undertake. This is not about personal vendettas at all. We are reminded repeatedly -- this is also in the debtor's reply briefs filed yesterday -- that this is a case of finite amount of resources, limited resources in the estate to pay professionals. And this would be the debtor's fourth professional that it would be bringing on to be paid out of the estate.

As you heard, Your Honor, the Courington firm has been a long-time national coordinating defense counsel for the debtor. In this case, the debtor has set this Chapter 11 case on a trajectory in which it will monetize its remaining insurance coverage, it will put the settlement proceeds from

those settlements into a Chapter 11 liquidating trust, and then claimants will be able to -- will have recourse against that trust. And whether they have claims eligible for payment will turn on whether the eligibility is found in the claims resolution procedures that have already been proposed in connection with the debtor's plan of liquidation.

So from the committee's perspective, our concern is, well, do we really need a long-time pre-petition asbestos defense lawyer here, when really the central issue in this case as it's been presented by the debtor, is monetizing the insurance and getting the debtor underway with a liquidation. Since the debtor doesn't have an operating business, it's not returning to the tort system. And so the mission and the proposal here seems mismatched for a case of limited resources.

THE COURT: Well, isn't the mission typically undertaken by general counsel for the debtor? That's their responsibility. But then in the meantime there are peripheral matters that require special counsel. I mean, I note proposed special insurance counsel for the official committee of unsecured creditors is on some of the pleadings, the Morgan Lewis firm. So it's not unusual for the professionals in the case to seek assistance from specialized practitioners. Right.

MR. LIESEMER: Right. And we found out yesterday -- and this was in Mr. Brown's proffer, we found out yesterday that the Courington firm has been coordinating the filing of

suggestions of bankruptcy around the country. Has been addressing stay violations. I have a feeling that these are inadvertent stay violations, but they need to be addressed, nevertheless.

And so we don't want to -- there is a role and some work that's already been undertaken post-petition that we don't feel that necessarily that the Courington firm should be cut off from and not receiving any sort of compensation.

We suggest, in light of the new evidence, that a balanced approach be taken, in which the Courington firm is allowed to proceed as an ordinary course professional, and we arrange some sort of fee cap, such as 25,000 dollars. And this is similar in other cases with ordinary course professionals. If the work of the Courington firm exceeds the fee cap, then the Court has discretion to raise the cap for cause. But we don't think it's necessary here to bring the Courington firm on as a full-time estate professional.

THE COURT: I understand.

Does anyone else wish to be heard in connection with the application for the Courington firm?

Mr. Brown, do you have something else you'd like to add?

MR. BROWN: Just very quick comments, Your Honor. First of all, we think the ordinary course is just ignoring the issue. Let's deal with the issue under 327(e), rather than

push it into a category where nobody looks. This is an important issue.

I think it's also important to talk about limited resources. Ms. Courington's firm charges 200, 300-dollars an hour. Compare that with some of the retention applications you've just considered.

Ms. Courington's firm already has contributed post-petition to the claims procedures that we've talked about. And of course, you've heard that she has made other contributions. It's not a big role. We don't think it's going to be a big role. But if there are concerns about what the firm undertakes, that can be reviewed fee application time. That's a different issue than the retention of chosen counsel under 327(e). Thank you, Your Honor.

THE COURT: Well, I don't really see this as a ordinary course situation myself. And I do think, as you point out, that there are mechanisms to -- or guardrails in place to monitor the fees. In fact, even a better guardrail, perhaps, because the fees would need to be approved on an ongoing basis.

Well, I have looked at the application and the declarations and the objection and the reply and note that there are no other objections, other than the committee. The U.S. Trustee has raised no objection. And case law does establish that the Court should give deference to the debtor and its right to choose its counsel. I don't know that the

choice of counsel is the issue here.

But I do believe that the debtors have set forth a reasonable basis to employ special asbestos counsel. And I believe that the proposed retention of the Courington firm complies with the requirements of 327(e) of the Bankruptcy Code. It's consistent with the good faith judgment of the debtor. And I do find that the Courington firm is disinterested under Sections 101, 14, and 328(c). And I will approve its employment as special counsel if you'll submit that order.

MR. BROWN: We will. Thank you, Your Honor.

THE COURT: And please have the U.S. Trustee endorse the order for its form.

MR. BROWN: Yes. We will.

THE COURT: Okay. Thank you.

MR. BROWN: Thank you, Judge. The next step is the settlement procedures motion. I'd ask Mr. Long to take that as well.

MR. LONG: Morning, again, Your Honor. For the record, Toby Long on behalf of the debtor. The next item, as Mr. Brown indicated, is the settlement procedures motion.

Your Honor, by this motion, and as in the revised order that we filed with the Court attached to our reply, what we're asking this Court to do today is two things. Is, one, to set a hearing on the two pending insurance settlement motions.

This is the Chubb insurance settlement motion that we filed way back on the petition date on, on June 30th at docket number 5. And it's what we call the certain settling insurers settlement motions. It's a mouthful, so I'm just going to call them the settlement motions. But that, we filed shortly after the petition date on July 10th at docket number 53.

We are asking this Court to schedule those for a hearing no earlier than sixty days. We have an omnibus hearing on November 12th. That is what we're going to ask the Court today.

Second, we're asking --

THE COURT: And I noticed that you have submitted a revised order. You're asking only that these two settlement motions be heard. So is there still opposition or a significant opposition in light of the revisions?

MR. LONG: I haven't heard that those revisions resolved any objections. And I think, when we jump ahead and talk about the opposition, what we saw from the -- three objections, Your Honor. And so to jump ahead, one was filed by Huntington, one was filed by the committee, and one was filed by a group of Louisiana claimants that are all represented there. Louisiana law firm is the Roussel firm. So in our papers, we call them the Roussel claimants.

We've resolved Huntington's objection. If you saw and I'm happy to pass forward the revised order of the blackline,

Huntington was -- Huntington was easy, Your Honor. In paragraph 3, all Huntington asked us to do in the second sentence is delete "absent for this further notice and approval of the Court". So the second sentence of that paragraph is now going to be, "No other insurer settlement motions shall be considered at the approval hearing." It makes crystal clear that these settlement procedures only relate to the two insurance settlement motions that are pending.

There was some fear that maybe a third one would be filed and we would get limited notice out, but no, that is not the case. We filed those settlement procedures very early on in the case because, as Mr. Leissner was just indicating, the critical issue in this case is these insurance settlement motions. We could have just set those on twenty-one days' notice under the Bankruptcy Rules, under our local rules. But as is common in complex cases with significant relief, with sale motions, with settlement motions, we wanted the Court to approve those procedures early in this case so we could get notice out as quickly as possible and as soon as possible.

And with the revisions we now have in this order, I think the issue before this Court, no one's objected to the proposed procedures. It's just objected to when we schedule it. And the motion to continue is asked us to push out the settlement procedures motion to --

THE COURT: And there is a pending motion to continue,

which perhaps I should take up first? Does that make sense?

MR. LIESEMER: That is correct, Your Honor. There is actually two. Yes.

MR. LONG: What I think, Your Honor, is, is that the key point that we want to make and what I think is the issue today for all of these reliefs and why we filed the consolidated reply is, is sixty days sufficient notice to consider the relief in the settlement motions. I mean, as we discussed with Your Honor, you'll talk about the motion to stay.

THE COURT: Sure.

MR. LONG: But as we discussed with Your Honor, the first day motion on the motion to stay, it is critical in these cases to set these pleadings for a hearing. Once you set these for a hearings, people start to move quickly. They move quickly with their discovery. You have deadlines. You move this case. This is a case that needs to move forward. As Mr. Liesemer just said, this is a case with limited resources that we don't want to languish in bankruptcy.

And so I think the question before us is, is sixty day notice enough notice and before sort of hand the podium over to take over Mr. Liesemer's motion to continue, there were comments that were made in that motion to continue about the debtor obstructing discovery. And I want to be crystal clear, and I hope it was crystal clear in our reply, that we have not

obstructed discovery in any way.

The biggest issue, as we pointed out in reply, as soon as the committee was pointed back on July 22nd, we gave them a confidentiality agreement. We said, sign this confidentiality agreement. We got a lot of confidential information. Somebody said, we need to get you, and we can't get you under the notice provisions, under the confidentiality provisions in those agreements. Sign this confidentiality agreement. It wasn't until yesterday that we got that signed confidentiality agreement back.

The only discovery that's been served on us by the committee was in connection with the motion to stay. They served that discovery on us. It involved eleven interrogatories. It involved twenty-seven document requests. They served that on us and asked for responses in nine days.

I didn't talk to my family. I didn't sleep. I was working to get them those responses. We got them 4,200 pages of documents. We answered all eleven of their interrogatories. We answered all twenty-seven of their document requests. And in those, we made crystal clear, there is one confidential document that's relevant to the motion to stay. Sign your confidentiality agreement, and we'll get it to you.

So I personally, for the effort I put in, take offense when they say we've obstructed effort. If there's any problem with them not getting responsive documents at this stage in the

case, Your Honor, that's squarely on the committee.

But as we sit here, that's a problem that's easy to rectify. We set the sixty days out. That's a lot of time to do discovery. At this point, the motions have been pending for over two months. It is time. There's a lot more people out there in the committee that we need to see this very significant relief that we want to be involved.

If they want a discovery, let them have that opportunity. Let them know where these documents are. But we can't do this. We can't move this case forward unless we set it for a hearing. And we submit, Your Honor, that that sixty days is plenty of time.

THE COURT: Well, the motions were filed early on in the case, but the committee's counsel probably wasn't appointed until somewhat more recently --

MR. LONG: July 22nd.

THE COURT: Okay.

MR. LONG: So twelve days after the motion.

THE COURT: All right.

MR. LONG: And so almost two months ago.

THE COURT: Well, and as I perceive it, the real issue is whether there's sufficient time to conduct discovery because, as you indicated, these are significant issues in the case. And I'm sure that's what the committee's going to suggest is they need more time to prepare.

And so have the parties discussed an accelerated discovery procedure or some type of discovery that would enable you to be able to conduct a hearing in November?

MR. LONG: Well, we'd encouraged them to give us document requests that relate to what we finally had, the confidentiality agreement so we can start to work on it. But at this point in time, other than the document request with related to the motion to stay, we haven't gotten any document requests beyond that.

THE COURT: Okay.

MR. LONG: And so yes, you're right, Your Honor. We need to move forward. And I think sixty days is more than sufficient time. And I would urge the committee to send us those document requests so we can absolutely move forward. But again, I think we'll all be helped if we set it for the hearing and to give other people the opportunity to participate as well.

THE COURT: All right. Very well. Well, the --

I'm sorry. Yes, ma'am.

MS. SIEG: For the record, Your Honor, Beth Sieg representing Huntington Ingalls Industries. Very happy to be back in my home court.

THE COURT: Nice to see you.

MS. SIEG: Mr. Long is correct. We did resolve our objection to the procedures motion as he described.

I just wanted to note for the record that we don't take a position on when the procedures motion should be set for final hearing. I didn't want to suggest that we're opposed to what you're about to hear from the parties that want to set it at a later date. But we have resolved our objection to the order.

THE COURT: All right. Very good. Thank you.

MS. SIEG: Thank you, Judge.

MR. LIESEMER: Jeffrey Liesemer, again, on behalf of the committee. Your Honor, this is the first time that committee counsel has been before you. When we were before you last time, the committee had not been appointed yet. And so I think this would be a good time, although I tend to -- will speak to the issues, I think this would be a good time to give the Court the benefit of the committee's preliminary perspective of where this case is going and what is at stake here because that does inform what the timing should be.

So this case involves a debtor with a significant asset that is responsive to only one class of claims. And that asset, of course, is the liability insurance coverage. And the claims are those of the debtor's asbestos victims. The insurance asset is very valuable.

Oddly enough, the debtor in in in its settlement motions has not identified what it thinks the value of the coverage is, even in the range. We have preliminarily

estimated that it could be as high as hundreds of millions of dollars. But the debtor and the insurers have nevertheless settled the coverage for fifty-million dollars. And then the committee is concerned that this could be a pennies-on-the-dollar settlement and compromising a very valuable source of compensation for the asbestos victims.

I'm not aware of any instance in which asbestos claimants and their representatives were consulted about the debtor's settlement efforts or participating in any negotiations. And the debtor spent as much as ten months pre-petition preparing for this bankruptcy and negotiating with the insurers. But the committee and its creditors are being left with a much shorter time.

And so we don't understand what this mad rush is about in terms of trying to get these settlements that we want to know more of. We want to understand the merits of those settlements better. But it's a difficult process, and we seem to be being squeezed.

The committee is asking for a modest extension, moving the hearing on this procedures motion to the October omnibus date with the committee's objection deadline set one week before. This modest extension would permit two things to be accomplished. One is to understand better the insurance situation and the basis for the settlements. And I will turn the podium very shortly over to our cocounsel, the proposed

special insurance counsel, Mr. David Sean Cox, to address that.

I think the modest extension would also enable the parties to negotiate a sensible pre-trial schedule. I mean, this is central to the case that the proposed procedures order right now is silent about. For example, why not put in a deadline for substantial compliance with document production? Why not build in time to resolve discovery disputes and perhaps even motions to compel? How about a time for fact and expert depositions? It's not in the current procedures order.

We understand, we found out through a deposition, that the debtors have engaged an expert to estimate the debtor's asbestos liabilities. And apparently, this is going to be in connection with the insurance settlement motions. How about a date in which that expert has to deliver his or her report? And obviously, the committee is going to want to depose that person. The committee is probably going to want to have a rebuttal expert engaged. And so we need to talk about timing, rather than just waiting for this report to drop at the eleventh hour.

And how about a sensible briefing schedule with a reply brief deadline that includes a reply brief deadline that is not at noon on the business day before the hearing, just like with respect to this hearing. Yesterday, before noon, the debtor filed a whole slew of papers. These were pleadings, obviously, and exhibits. It was in the hundreds of pages.

This case is complex enough that that just doesn't give enough preparation time for the recipients of these documents.

And there are out-of-town counsel here that have to travel on the day before the hearing. And so that even limits their preparation time more. So we think a sensible briefing schedule, rather than the usual at-noon-the-day-before-the-hearing is appropriate.

Now, let me turn the podium to Mr. Cox, and then I would like to come back.

THE COURT: Let me just ask you a couple of questions before you --

MR. LIESEMER: Sure.

THE COURT: So originally, this was going to be heard in August. I thought August 6th, perhaps. So it was continued by agreement. The debtor agreed to give you about another month, a little over a month, to address all the issues that I assume you are raising now that you could have raised over the past month. Has there been any discussion about briefing or discovery or anything like that, experts for the past month?

MR. LIESEMER: We are still in those early stages. And the committee has been paying attention to the motions that are being heard today immediately. We served discovery, as Mr. Long referred to. We served interrogatories. We served document requests. These were in connection with the stay motion, but they were also directed to obtain foundational

information about the insurance because we think that that's relevant to the stay motion.

The debtor did produce some documents. We got policies. We got copies of complaints. But we didn't get everything. And in fact, the debtor decided in certain cases to stand on ceremony and say, well, this is not relevant to the stay motion or this is too burdensome to produce. They were on a short schedule to produce it. And we did get documents, of course, but we didn't get everything. It wasn't a full response, from our perspective. So I think we will have to do follow-up discovery.

In addition, we filed a motion for 2004 examination of the debtor, and a big part of that examination is obviously the insurance. Because of the way we read the complex case rules, we set an objection deadline on that motion before the October omnibus. So it's out there. It's pending. If Your Honor -- I would be thrilled if Your Honor -- if Your Honor wishes to take up the 2004 motion sooner than that, I would be thrilled because it will allow the case to move ahead.

So in response to Mr. Long's comment, I think there will be more discovery to be had here and will be sought.

THE COURT: Well, the Court is more than happy to accommodate the parties in arranging some type of scheduling on an expedited basis and is available for hearings on shortened notice to discovery disputes. There's always the prospect of

filing a motion prior to November 10th --

MR. LIESEMER: November 12th, yeah.

THE COURT: -- November 12th, seeking continuance if there's delays in responding to discovery, if there's violations of the scheduling order, or if there's legitimate reasons to continue the hearing.

But it seems to me that if the issue today is whether or not these procedures are satisfactory, I'm not sure continuing this hearing to address the procedures at a later time makes sense so --

MR. LIESEMER: Well, Your Honor, I would like Mr. Cox to make a presentation because I think it's going to relate --

THE COURT: All right. That would be find.

MR. LIESEMER: -- more substantively to the insurance.

THE COURT: And I believe there was the other continuous motion. I'll give that party an opportunity to argue as well.

MR. LIESEMER: Right, right, right. I do want to address a couple of comments from Mr. Long that I thought were unfair. The committee in its motion did not use the word "obstruct". I don't know what the sensitivity of what comment the committee made that Mr. Long interpreted it that way.

And there were there was also comment in the reply brief filed yesterday in support of the procedures motion, saying that we haven't taken any meaningful action to initiate

discovery. Well, I just went through what we've done in connection with the stay motion. The Rule 2004. So the committee is working diligently.

And as for the casting aspersions on the committee about the confidentiality agreement, Your Honor, the committee had some real concerns. I mean, this was not, from the committee's perspective, a clean document.

THE COURT: That doesn't really concern me. I haven't really heard any aspersions casted yet at this point --

MR. LIESEMER: Well, it was in their papers.

THE COURT: -- compared to some cases.

MR. LIESEMER: And I wanted to address it in case the Court had any concerns so --

THE COURT: Well, everybody hopefully will continue to get along in this case and work together because as we all know, the goal is to maximize the funds available for asbestos claimants.

MR. LIESEMER: Absolutely. Absolutely, Your Honor.

THE COURT: And we all share that goal, correct?

MR. LIESEMER: All right. Let me briefly turn the podium over to Mr. Cox, and then I'd like to come back with a couple more comments.

THE COURT: All right.

MR. COX: Good morning, Your Honor.

THE COURT: Good morning.

MR. COX: David Cox of Morgan, Lewis & Bockius for the committee. Mr. Liesemer referred to me as David Sean Cox, but really, only my mother says that and only when I'm in trouble. So David Cox is just fine.

Your Honor, I want to start with what you just said is that our objective here is to maximize the funds that are available to compensate asbestos claimants. And I want to take the opportunity to talk to Your Honor about the claimants' unique interest in these settlements and in the insurance program of Hopeman as a whole.

Obviously, as we've discussed, the most meaningful asset the debtor has is that liability insurance coverage. We have received some policies, not all of them, and this is a work in progress, but this is a chart of the coverage that was issued to Hopeman over the years. And as Mr. Van Epps testified last week, it's literally hundreds of millions of dollars' worth of coverage, probably more than a billion because we have more than a hundred-million dollars in years from the late '70s to the early 1980s.

And uniquely, under statutes in New York and in Virginia, where these policies were apparently delivered, the victims of a tort have an interest in the liability insurance of a tortfeasor. And that right accrues, that interest accrues the time the person has been injured. And in the asbestos context, and this is a position Hopeman took itself, and it's

pretty widely understood, that the injury commences and it progresses thereafter at the time that the claimant, the victim, is exposed to asbestos. The first time that they're exposed, at or near that time.

And so the interest in the liability insurance of Hopeman under New York Insurance Law, Section 3420, under the similar statute of Virginia Code Annotated, Section 38.2-2200, that right to the insurance coverage accrues at the time of injury. And it can't be diminished. And it can't be diluted by subsequent agreements or settlements or compromises between the policyholder and the insurer.

The Virginia Supreme Court has referred to liability insurance contracts as a tri-party contract between the tort victim, the policyholder, the tortfeasor, and the insurer, and those rights can't be disturbed once accrued by a subsequent agreement between the insurer and policyholder. So what does that mean? What that means is if we were outside the bankruptcy court context and claimants were bringing their claims against Hopeman in the ordinary course and they received a judgment against Hopeman, Hopeman couldn't satisfy it under these statutes.

As a judgment creditor, the claimants could then proceed against all this liability insurance coverage, hundreds of millions of dollars of liability insurance coverage to satisfy the claims. That's if we were proceeding in the

ordinary sense, and that's if we were trying to maximize the amount of money that's available to these insurance carriers.

But now, what brings us to this settlement that we're concerned about -- these two settlements that we're concerned about, right, and these settlements are described in the debtors motion as the linchpin to their plan to maximize the recoveries paid to valid asbestos claimants. But really, our concern is that the real motivation for the settlement is for the insurers to minimize their exposure to these claimants because under the statute I've just described, their exposure is bound by their policy limits.

And what we have here is, as Mr. Liesemer already said, we have hundreds of millions of dollars of insurance coverage that's being compromised for literally pennies on the dollar. The Chubb settlement, we're talking about somewhere in the neighborhood of 300-million dollars of coverage. And that's any way you calculate the coverage, whether it's subject to an aggregate limit or not. And that's a separate issue. A thirty-one-million-dollars settlement for several hundred million dollars in coverage.

The Chubb settlement, again, not -- or rather the other settlement, the other insurers' settlement. The mouthful that we were just referring to, that's less-than-nineteen-million dollars for somewhere in the neighborhood of a hundred-million dollars in coverage. So we're very, very concerned

about these settlements and whether they actually are valid effort to maximize the recovery for the claimants.

And there's another problem with these settlements, Your Honor. These settlements involve insurance. This is an illustration of the Chubb settlement. So the highlighted policies are the ones that would be subject to the settlement. And as I said, it's several hundred million dollars in limits here.

But by taking less than that several hundred million dollars in limits, you potentially put a ceiling on the entire program, and you've forfeited the ability to access the coverage above it. So not only are we potentially selling out hundreds of millions of dollars of coverage for pennies on the dollars, you might be forfeiting your right to go higher than that, to access coverage above that.

So there are a lot of concerns. I don't think these can all be addressed in sixty days, which is our concern here, because there's a lot that we need to ask for. And we asked for insurance policies. And they were produced, but not all of them. We haven't gotten all of them. We haven't gotten an explanation for why we don't have all of them, including the insurance policies that are subject to this motion.

We've asked for the debtor's previous settlements and compromises with its other insurers. And actually, they've had previous compromises with the insurers of the subject of this

motion, which we haven't seen. These are listed on the schedule of assets, and they haven't been produced to us, but we've asked for them, because they're "confidential". And we have a confidentiality agreement. So hopefully, they will now start flowing in.

We have an understanding of the extent to which the limits underneath this coverage, or the subtle coverage itself, has been impaired by the payment of claims. Mr. Liesemer alluded to this, the debtor's valuation of its liability. How much are these claims worth? Maybe if the claims are worth five-million dollars, a fifty-million-dollar settlement's reasonable.

But I think the claims are worth a lot more than that. And that's still a month away, according to Mr. Van Epps' testimony. So we don't have that now, and we won't have it for a while, just how the settlement amounts were reached, and that's not going to be just a discovery of claimant. We're going to be dealing with insurance companies as well.

So this is a lot of work to do. And of course, we are cognizant of the need for expediency here. But this is a massive asset. It is the only real asset of the debtor. And we are trying to maximize recoveries and very, very concerned that a rush-to-judgment's going to impair our ability to allow you, Your Honor, to make the informed and thorough decision that you need to make in order to determine that these

settlements are fair and equitable and in the best interests of the estate. Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. LIESEMER: Just one brief last comment. This was in our papers. We raised the concern that in the motion there was a statement that, under the proposed procedures, nonobjecting affected claimants would be treated as consenting to the settlements and the sales free and clear. The debtor in reply yesterday said that we raised this issue prematurely since it is a substantive objection related to the settlement motions themselves. Your Honor, I'm happy not to press that issue today with the understanding that our rights are preserved to raise those arguments, again, if necessary, in the future.

And for all those reasons, we ask that you grant our modest extension of continuance.

THE COURT: All right. Thank you.

MR. BENDER: Morning, Your Honor.

THE COURT: Morning.

MR. BENDER: Kollin Bender on behalf of certain asbestos claimants of the debtor. Here with me today is Mr. Jonathan Clement. He has been admitted pro hac vice as of August 7th. I'm going to go ahead and cede the podium to him.

THE COURT: Thank you.

Mr. Clement.

MR. CLEMENT: Good morning, Your Honor.

THE COURT: Good morning.

MR. CLEMENT: Jonathan Clement on behalf of the creditors from the Roussel & Clement law firm. I believe our firm was brought up in some of the arguments already. We represent certain Louisiana claimants. We also filed a motion to continue, as well as an objection to the settlement procedures motion. I don't want to duplicate anything that he said. I'll rely on the comments that counsel for the committee stated.

The only thing I do want to add, he did cite some of the Virginia and I believe New York law, which indicates that the rights that third-party victim has under the policies attaches at the time of the exposure. And it's the same thing under Louisiana law. So that would apply to the Louisiana claimants as well. And that's the Cole v. Celotex case, which is a Louisiana Supreme Court case.

And also the fact that there may be settlements that occurred between the insurer and the insured subsequent to the policies being issued, those settlement agreements don't affect the rights of third-party victims. He cited the law for that for Virginia and New York. The same is true in Louisiana. And we fought that issue in the Coralville (ph.) case. And there is also a Supreme Court precedent on that in Louisiana.

So I just wanted to bring those additional things up

as it applies to Louisiana claimants. And I'll just rely on what the counsel for the committee said.

THE COURT: And you're asking for the same thing, a month extension on the procedures?

MR. CLEMENT: Yeah. Part of our concern is because they are seeking this injunction, underneath, as part of the settlement motion, they're seeking to enjoin future claims, we have the same concerns that the amount of money which they're seeking to put in is so little compared to what the actual liability is. So when they're coming in and seeking an injunction and not doing it pursuant to an adversarial proceeding, which we believe is required under Section 105 to get an injunction, you're preventing the ability to have those same rights that you would have under an adversary proceeding, which would be to conduct a full discovery to determine whether the settlement is appropriate in this instance.

THE COURT: Why can't you do discovery as a contested matter? What more benefit would you have for it an adversary proceeding?

MR. CLEMENT: I just think you have the protections in place to have the complaint filed. Being able to answer the complaint. I feel like they're trying to do this on an expedited basis, whereas if it's an adversary proceeding, you wouldn't be able to do it on an expedited basis. You'd have to go through the full procedure of discovery and responding to

discovery.

If you try to do it in sixty days on same issues that he brought up, having to take depositions of insurers, determining the policy limits, whether they're exhausted or not exhausted, whether there's aggregate limits, I'm not sure that's something that could be done. And that --

THE COURT: Well, if I were to order this motion to be converted to an adversary proceeding, why wouldn't we just pick up with the motion and the responses and the discovery that's already been initiated? How would it change under if it were designated an adversary proceeding?

MR. CLEMENT: If it's designated, I don't know that it changes the discovery. I just, what my impression, he's trying to get the hearing in November. I'm not sure that it can be completed in November. And I figured the adversary proceeding gives you the safeguards that we were able to conduct a full discovery that is necessary.

THE COURT: All right. Thank you.

MR. MINTZ: Your Honor, Mark Mintz. I'm admitted pro hac vice on behalf of, I think, as the debtors have called it, the Hoffman claimants. We did not file anything with regards to this motion, but we did want to be heard briefly to say, while we certainly agree and support what the committee has been saying regarding the insurance settlement motion, the merits of it, and we do not oppose a continuance to as the

result claimants have suggested and as the committee has suggested, we do take no position on the continuance itself. And the reason I'm going to explain this is it's a little hard, honestly, because we want it moving faster. And we're going to be in front of you immediately saying that the stay motion needs to be denied, and we need to be able to proceed.

I fully recognize that these are all part and parcel with each other. But I do support the concept that we are trying to move quickly towards an injunction-type world. And that's a difficult position, I think, for the claimants who are being put in. I do think it's a modest extension that they are -- that the committee is asking for to allow the parties to at least sit down and do a real briefing schedule that is going to be required.

If that can be done in sixty days, I'm not above working. I doubt that Caplin is above working and trying to do that and get it done. I just have every belief, Your Honor, from seeing this in other cases and other mass tort situations that I've been involved in, that the high hopes of everybody moving in sixty days tends not to work. But with that said, Your Honor, we just wanted to make those comments.

THE COURT: All right. Thank you.

Does anyone else wish to be heard in connection with the continuance motion?

Mr. Long.

MR. LONG: Thank you, Your Honor. Again, for the record, Toby Long on behalf of the debtor.

Your Honor, unless Your Honor has more questions, I'm going to respond very, very brief. There was one comment made about whether or not the settlement motion should be brought through an adversary proceeding. I think Your Honor would agree with me that I think that's not appropriate. These are settlement motions under 9019 and a motion to sell free and clear under 363(f). And there's no support for that being brought through an adversary proceeding.

THE COURT: Well, I'm not inclined to convert it at this point. I think it's been set up as a contested matter. And it may be, when you get to the substance of this motion, there'll be a lot of roadblocks for you, which you'll have to contend with. And they're all being signaled now.

MR. LONG: Yes, sir. And I'm sorry, not to interrupt, Your Honor, but I think you were taking my point. We heard a lot about the substance of these motions, and we need to move forward with the substance of these motions.

THE COURT: And as I understand it, the reason you need to move forward quickly is because of limited resources?

MR. LONG: Yes, Your Honor.

THE COURT: And what else is there, other than we always like to get these cases to move along quickly?

MR. LONG: Your Honor, yes, sir. This isn't an

operational business. We have limited resources. Let's move this case forward.

The first, Your Honor asked committee counsel if we had a discussion about the procedures. We heard a lot about the settlement. We heard very little about the procedures in those discussions from the opposition.

THE COURT: I really haven't heard a complaint about the actual procedures. It's more about --

MR. LONG: No.

THE COURT: -- when are you going to have this hearing.

MR. LONG: Correct, Your Honor. And I think -- and I think the question is, is, as Your Honor, as I presented Your Honor before, is, is sixty days appropriate. What we would propose, as we do customarily in these cases, is we set the settlement motions for a hearing. And then I think we and all the opposing parties can then work out discovery briefing schedules. But the key thing we need is to set it for a hearing.

And if Your Honor can set it for a hearing, again, we propose to set it in sixty days. That's forty days more than is required under the Bankruptcy Rules for a settlement motion, for a sale and use of estate property. And then we can then work out with committee and the other objecting parties discovery schedule.

In all these cases, Your Honor has worked in these cases. Mr. Brown and I have appeared before Your Honor. Give us discovery requests. Give us informal requests. We want to move this case forward. We believe our settlement is appropriate. We want to show that to you. Give us a request, and we'll work with you. And again, as Your Honor pointed out, if we have issues there are mechanisms to come back before Your Honor. But the key is setting these settlement motions for a hearing.

THE COURT: All right. And has the debtor engaged expert witnesses in connection with this hearing in November?

MR. LONG: We have Mr. Van Epp but --

MR. BROWN: I can respond to that, Your Honor. Stout is, of course, our financial advisor and insurance consultant. And one of Mr. Van Epps' colleagues is working on some modeling. We have not technically directed him exactly what he is to do, but I know they're working on modeling, and that is what the question was about in the in the examination of Mr. Van Epps that happened last week. So we submitted to a deposition last week, too, Your Honor.

So anyway, we would certainly agree to sit down with any party who wants to sketch out expert discovery to sketch out all the discovery, the briefing schedule, and as Mr. Long has said, give us a date. We'll work backwards with them. And if we can't have a settlement conference with Your Honor -- a

scheduling conference with Your Honor, we'll figure it out. But the theme, of course, is set the date, and then we can all work toward that. Thank you.

THE COURT: All right. Thank you.

Does anyone else wish to be heard in connection with the settlement procedures motion or the motion to continue that motion?

All right. Well, I think that the real issue here is whether or not the hearing should be continued, not whether there is an issue with the procedures motion itself, in the sense that nobody has really raised any concerns about the procedures and the noticing and that type of thing. Really just about it's premature to have the hearing because there's a lot of preparation and discovery to finish. And it's a very significant issue in the case, even though it's been limited to these two settlement motions.

So I will again indicate that I don't consider denying a motion to continue the settlement procedures motion precludes the Court from continuing the hearing, if that becomes necessary. And I've already indicated why that could become necessary. And as Mr. Long has indicated, getting it on the books means things start happening. And I will be available to entertain issues about scheduling, discovery, expert witness depositions, and reports and will certainly be interested in whether the parties are prepared to go forward on November

10th.

I think that it is a good idea to get this moving. I don't see any problems with the actual procedures that have been indicated so -- and I do see that there has been a revision so that it's only these two settlement motions that will be heard that day, which have been on the books for quite some time.

So the question is whether sixty days is sufficient. And it may be that it's not, but I don't think that that's going to preclude me from approving the settlement motion itself and setting that date, at least initially.

I do find that the proposed procedures comply with the applicable Bankruptcy Rules and law. And the settlement procedures motion has been filed for quite some time. The parties could have or perhaps should have been more fully involved at this point. But that being said, again, I will reiterate that this is a very important matter that will be taking place in November. And if the parties need assistance in getting to that date or even a subsequent date, I'm certainly available to offer that assistance.

But the purpose of this hearing is not to address these substantive issues, but whether the form and procedures for giving notice are adequate. And the Court does find that the proposed notice is adequate. And so for that reason, I will overrule the -- well, I'll deny the motion to continue and

overrule the objections to the settlement procedures motion. And I will enter the revised order that's been submitted, unless there's some other issues with respect to the order.

MR. LONG: No, Your Honor, not from the debtor.

THE COURT: All right. All right. Well, thank you. The last thing is the motion for the stay?

MR. LONG: The motion to stay, Your Honor. I'm going to hand the podium back to Mr. Brown.

MR. BROWN: Thank you. Thank you. Tyler Brown on behalf of the debtor.

Your Honor, there actually was an emergency motion that has been filed, and we've agreed to have that heard. And I think it's appropriate to hear it in advance of the motion to the stay. Certainly, one of the issues that we raised with Liberty Mutual's counsel is there may be discussion about the Liberty Mutual settlement during this hearing today. I don't think I need to introduce the agreements themselves. And so I've put it on the list if we need to, but I would ask that counsel for Liberty be heard on their protective order motion. And they resolved that.

THE COURT: Makes sense. Go ahead.

MR. BROWN: Thank you.

MR. FOLEY: Good morning, Your Honor.

THE COURT: Good morning.

MR. FOLEY: Doug Foley with Kaufman & Canoles for

Liberty Mutual Insurance Company.

First of all, I would like to thank the Court for scheduling the hearing for today. We did file a motion yesterday. There was a lot of activity over the weekend regarding certain confidentiality agreements and the like, and we weren't sure what was going to be disclosed today at the hearing. So we filed that motion.

The only correction that we filed later in the day yesterday was to correct some communications between us and counsel for the debtor. There was no substantive changes to the motion. No substantive changes to the requested protective order.

With me today is Kevin Finnerty from the Choate Hall & Stewart firm in Boston. And I filed a motion for admittance pro hac vice yesterday at docket number 172. Mr. Finnerty is admitted in good standing in the Commonwealth of Massachusetts. And I would ask the Court to admit him for purposes of today's hearing to address the substance of our motion for protective order.

THE COURT: Very good.

MR. FOLEY: Thank you, Your Honor.

THE COURT: You are so admitted.

MR. FINNERTY: Good morning, Your Honor.

THE COURT: Good morning.

MR. FINNERTY: I appreciate the opportunity to be

here. Like my cocounsel said, Kevin Finnerty, Choate Hall & Stewart, on behalf of Liberty Mutual.

So Your Honor, Liberty as straightforward asked today that the debtors have assented to. There's three agreements that are confidential settlement agreements entered into between the debtor and Liberty, one executed in 1990, two executed in 2003, which are sensitive commercial information and are protected by confidentiality restrictions. So we're asking the Court enter a protective order that maintains the confidentiality of those documents while allowing for their use in these proceedings.

So as I mentioned, there are three nonpublic and commercially sensitive agreements hammered out between debtor and Liberty. The confidentiality provisions were negotiated extensively. Those are material parts of the agreements, and there are strict confidentiality provisions. We cite them in our motion. I don't know if Your Honor has had a chance to see that.

THE COURT: When you say they were negotiated, you mean with the debtor?

MR. FINNERTY: Correct, Your Honor, between liberty and the debtor. And they effectively preclude the disclosure of these agreements absent specific circumstances. Now, at the same time, the debtor indicated that it's received discovery requests from three different parties, and it believes that

these agreements are responsive to those discovery requests. It also advised Liberty that the agreements might be discussed during the hearing today.

So in the Fourth Circuit and elsewhere, when you have confidential, sensitive, commercial information that might be relevant or is ostensibly relevant to proceedings, courts generally enter a protective order that strikes the balance between allowing the use of those documents in the proceedings while protecting their confidentiality. And this is exactly what we tried to do with our proposed protective order that we attached to our motion. It effectively maintains the confidentiality of the three Liberty agreements, allows their use in these proceedings reasonably, but ensures that they won't be entered in the public docket, to be discuss publicly, or otherwise be disseminated by parties that received them in these proceedings.

Now, again, as I mentioned, courts inside and outside the Fourth Circuit generally take this approach with respect to settlement agreements. They're sort of the prototypical example of a sensitive, commercial, confidential document. Therapia (ph.), which is a case we cite in our motion, is an Eastern District -- or is a District of South Carolina case from 2021. And that's a pretty instructive decision. That's about a settlement agreement between a party and its administrator of workers' compensation claims.

Court decided that it should be protected by a protective order because it was sensitive, commercial information because it was a confidential settlement agreement. The court decided, with respect to a motion to seal, that there was no less drastic alternative than sealing it. The court decided that the public's interest in seeing the document was substantially outweighed by the fact that it was a sensitive, confidential agreement. And the court protected that document and ordered it sealed.

And that's basically exactly the treatment that we're asking for here for the Liberty agreements. Not disseminated to other parties outside of these proceedings. If they're filed, they should be filed under seal. And to the extent they're discussed in open court, that should be protected in some way.

Now, there's some flexibility in our proposed protective order. The parties are supposed to meet-and-confer when they will be discussed in court to try to figure out the best way to redact it. I would say, in the context of today, when there's twenty people on the line and everything, the best approach wouldn't be to discuss them or at least discuss them at a high level without discussing the substance of the terms. But at a minimum, keep the transcript confidential for a period of time until the parties have an opportunity to discuss redactions, I think, would be a pretty good approach.

Now, as was mentioned earlier, the debtor is has negotiated confidentiality agreements with the UCC and Huntington. Those don't just apply to the Liberty agreements. They apply more generally to the debtor's materials. But I think the point is important for two reasons. And as part of that, they haven't negotiated a confidentiality agreement with the Hoffman law firm claimants.

So the two reasons that's important is, one, parties generally agree with the premise here that there should be some confidential material that's maintained as confidential. And that's exactly what we're asking for is the Liberty agreements are confidential.

And two, the fact that not every party has agreed to one of these confidentiality agreements demonstrates that doing this piecemeal or on an ad hoc basis isn't going to work. Having an omnibus order that applies to everybody, fairly allows for the use of these agreements, but maintains their confidentiality now, since they're going to be discussed perhaps today and have already been disclosed or are subject to discovery requests, would make more sense and just be the easiest, cleanest way to make sure these documents stay confidential while being used in these proceedings.

I understand that the UCC is going to object to this motion. Again, we filed it on short notice, but we briefly spoke today. My understanding is that the two main sources for

that objection are, A, the portion of the protective order that discusses the fact that documents should be filed under seal, and B, there is a provision in the protective order that states that to the extent documents will be used in open court, the parties will attempt to meet and confer in good faith at least seventy-two hours beforehand to discuss the best way to redact the material.

On the first point, again, when it comes to confidential, sensitive commercial information, courts routinely seal that type of information in court. I referenced that Therapia decision for 2021, the District of South Carolina. The court said, "The interest in maintaining confidentiality substantially outweighed the public interest in accessing these documents." That's a typical approach to take. It happens in mass tort proceedings. It happens in bankruptcy proceedings. It happens in settlement agreements all the time. That's the approach we're asking for here.

And second, I just want to note that the confidentiality agreement that the UCC agreed to has a provision saying that confidential information that falls within Bankruptcy Section 107, which is confidential research, development, or commercial information will be filed under seal. So the UCC agrees with the premise that some documents here should be filed under seal.

The basis for their objection, that these very

specifically confidential Liberty agreements shouldn't be filed under seal isn't clear to me. Again, this is commercial transactions that have been nonpublic for thirty and twenty years. The confidentiality was a material part of those agreements. And it's a significant impact of Liberty.

I don't know why it makes sense that the UCC would be okay with some portion of confidential materials filed under seal, but they have an issue with the Liberty agreements being filed under seal. It makes much more sense, since they're confidential, to protect those via sealing process.

And as I mentioned, the UCC also has an issue with the proposed requirement that the parties confer seventy-two hours before using documents in court. The provision we propose, again, there's some flexibility there. It just says the parties will attempt to confer in good faith to figure out the best ways or discuss the best ways to redact the information.

Whether it's seventy-two hours or forty-eight hours, we understand it's hard. We understand that bankruptcy moves quickly. We're not trying to jam anyone up or prevent anyone from using the materials as they see fit. We just want there to be some process for, again, discussing whether it makes sense to redact a transcript or designate a transcript confidential or take some other approach to ensure that when these are discussed in court, the confidentiality of the agreements are maintained.

Again, and that's the fundamental point here, is we're not trying to disrupt these proceedings. We're trying to facilitate fair flow of information in these proceedings and the use by the parties of the information. But at the same time, Liberty is just trying to protect its legitimate confidentiality interests in these agreements and related documents.

So for those reasons, Your Honor, it's squarely within the protections afforded by Rule 26, and we'd ask that the Court adopt Liberty's proposed protective order or a similar order that effectively accomplishes the same thing. Thank you.

THE COURT: All right.

MR. FINNERTY: And thanks again for letting us present this today.

THE COURT: All right. Thank you.

MR. BROWN: Your Honor, Tyler Brown on behalf of the debtor. I'm going to give the Court our perspective. Our perspective is we have a number of agreements that all say they are confidential, including the Liberty Mutual one. But we need to deliver to the committee and any others who ask for it the other agreements as well. And guess what? Not all of the confidentiality provisions read the same.

Quite frankly, Liberty's is fairly straightforward. We reached out to Liberty upon getting a request, and we shared with them the request so that we could show them we've been

asked to give the document. And rather than go run in and seek our own protective order, we thought, as in most cases, we'd be able to work out a confidentiality agreement with the committee and we'd be able to then deliver it and then not have to have, I don't know, what's a dozen or fifteen different agreements. Have different negotiations about protective orders with each one of the other side of those confidentiality agreements.

So the mission one was to deal with liberty. We thought we could handle that with confidentiality agreement. It turns out we now have, but we have the broader issue of how do we use it in court. As I mentioned at the outset today, I don't think I need to get into the specifics or introduce the exhibit, but it is helpful to the debtor to have a road map for how we would if we need to.

We, the debtor, will be coming back to you with a protective order process with respect to all of the other agreements. We think it makes sense to do it in an omnibus manner. We can have Liberty stand alone, but we have a lot more information that's deemed confidential.

And what the debtor doesn't want to do -- this is important -- you saw the map that was laid out, and I'll have a witness talk about the coverage map. We don't want to jeopardize any of our coverage by violating agreements with our insurers. That's really important. Maybe a little less with Liberty, but we're still honoring our pre-petition agreement

with Liberty to keep it confidential.

So our perspective is whatever will solve the problem, we're happy to sign on. We provided some comments there. They weren't major. It was a pretty commercial protective order in our experience, so we're okay with it. We certainly understand the committee might have concerns, but I think we can work through those issues in terms of sealing, in terms of releasing information under the proposed process as it's laid out. Thank you, Judge.

THE COURT: All right. Well, thank you. And so you've looked at the order. You've made comments.

MR. BROWN: Yes, sir.

THE COURT: You're okay with this --

MR. BROWN: Yes, sir.

THE COURT: -- form of the order?

MR. BROWN: Yes, sir.

THE COURT: All right. Thank you.

Does anyone wish to be heard in connection with the motion for a protective order?

MR. COX: Yes, Your Honor. Thank you. David Cox, again, of Morgan Lewis for the committee.

Your Honor, as you just heard, this is an issue that's likely to recur, and it's one of the reasons that the flow of information hasn't been forthcoming, is the need to address confidentiality agreements -- confidentiality provisions in

these agreements. And frankly, the thing that delayed finalization of the confidentiality agreement that we now have with the committee is our strong belief that this process needs to be transparent, it needs to be open, and it has to be consistent with the presumptions in 11 U.S.C. 107, that documents filed in a bankruptcy proceeding are presumptively open to the public and that sealing is an extraordinary remedy, and it shouldn't be lightly undertaken.

And it's incumbent upon the -- so and let me stress, we've agreed to keep the settlement agreements confidential, including the Liberty settlement agreement. There is a confidentiality agreement. We understand we're not intending to post this to the internet. We're not going to send it to the Washington Post, not that anybody reads newspapers anymore. That's not what we're talking about.

But we don't want to be fettered in our ability to present our case to you. And we don't want to have our hands tied talking in open court about these agreements if we need to. And we don't want to find out a day before a hearing, you know what, I think I want to talk about this, this document, but actually, there was a seventy-two-hour window that I was supposed to comply with. So we agree that it's confidential, but our concern is -- we agree to maintain the confidentiality of these of these agreements, if Hopeman designates them as such and if the insurers believe that they are sensitive. But

we are really reluctant to agree to, as a wholesale, filing them under seal or restraining from talking about them in open court.

11 U.S.C. enumerates certain categories of protected information. And there's no personal identifying information. It's not defamatory content. There's no trade secrets involved. The sliver of the statute that Liberty is clinging to and then I anticipate other insurers will claim to is that, well, this is private, confidential "commercial information". But just labeling it as such doesn't entitle you to a protective order. An agreement to confidentiality doesn't entitle you to a protective order or filing under seal.

It's incumbent upon Liberty and any other insurer that wants to impose these burdens on litigants in this court to show good cause, which means an evidentiary showing of -- and I'll quote from U.S. IBM from the Southern District of New York in 1975, 67 F.R.D 40, 46, "a clearly defined and very serious injury to his business". There has to be a specific showing of injury here. There hasn't been any in the papers. You didn't hear any here at all, other than to say this is a prototypical document that is entitled to some protection.

But what's the injury? What is the injury here --

THE COURT: Mr. Brown articulated that the possibility of the insurance companies could deny coverage if the confidentiality provisions are breached. Do you not share that

concern?

MR. COX: It's not a breach of the confidentiality provision, Your Honor, if they are produced and they're filed under court -- referred to in court. And it's not -- and Mr. Brown's not the proponent here of this motion either. It's Liberty Mutual. It's Liberty Mutual that has to claim and show the injury to it. And what I can submit --

THE COURT: But you started off by saying that you agree to maintain confidentiality of this agreement so --

MR. COX: We do, Your Honor.

THE COURT: And this motion only refers to this agreement. Right. Mr. Brown indicated that there'll be an omnibus motion or something to deal with the other potential agreements. And so a lot of what you've raised seems like something you could raise at that time if that motion is brought.

But with respect to this particular Liberty Mutual agreement, which you've already indicated you'll agree to maintain confidentiality, tell me what's wrong with the order that's been circulated.

MR. COX: What's wrong with the order that's been circulated is it requires it to be filed under seal. From what I can tell, it precludes parties from talking about it in court, or we're going to have to -- I guess we'll have to redact the transcript. I mean, I just got this yesterday, Your

Honor. I haven't fully digested it.

THE COURT: Well, I understand. You haven't had a lot of time to look at it.

MR. COX: But that is concerning to me. And it is true, Your Honor, that -- this is the first time this issue has been raised, and so I am bringing it up almost prophylactically because I am more worried about it with the other settlement agreements because actually, the Liberty -- I mean, the irony here is that the Liberty policies are not even listed as an asset of the estate. The policies have been released by virtue of the settlement agreement.

And so it's not -- I am much more concerned about what actually is an asset of the estate, which is the other agreements that have these confidentiality provisions. And one of the things that we've agreed to do in our confidentiality agreement with the debtor is to, together, go into the court and say we need relief or instruction as to how we're going to deal with these confidentiality provisions and so --

But I do want to signal to you that I'm very skeptical, Your Honor, of any real injury that Liberty or any other insurance company can show from the disclosure of a settlement agreement that, in the case of Liberty, one is thirty-four-years old. The other the other two documents are twenty-one, I think, years old. And whatever commercial sensitivity they might have had in 2003 surely has evaporated

by now.

And the cases cited by counsel, the courts have entered settlement agreements -- or entered protective orders with respect to settlement agreements. Of course, that's based on a showing of good cause, a showing of particularized injury, that warrants and merits that level of protection. Here, again, the presumption is that, really, a First Amendment right to access to court filings. And I think that it's even more pronounced in a bankruptcy setting that this should all be transparent.

And so for that reason, Your Honor, we do object to the proposed protective order asked for by liberty.

THE COURT: So what order would you suggest be entered in connection with this motion, since you've already said you'll protect the confidentiality of this agreement?

MR. COX: Your Honor, if it doesn't -- if the document isn't going to be discussed or entered into evidence, then I don't think anything needs to happen today. My concern is, again, if it becomes -- if it becomes relevant to some issue in the case and it needs to be submitted, I don't think it needs to be submitted under seal. I think it's entitled to -- it needs to be open and transparent.

THE COURT: So you don't think it should be confidential at all? So you're backtracking on what you said?

MR. COX: Your Honor, I respectfully, I don't think

I'm backtracking. I think I am -- what I am saying is anything that's given to me that is designated as confidential is, of course, I'm willing to maintain the confidentiality, except to the extent that if we are -- if we need to use it in open court, there's a presumption that -- there's a presumption that court proceedings are open and should be transparent and that documents or items should not be filed under seal except under extraordinary circumstances.

And what we've agreed to do is say, well, look, there are -- certainly, I would imagine there are going to be documents that come in that are entitled to that level of protection, extra level of protection to be filed under seal and not to be available to the public despite being in a court proceeding, despite the presumptions in favor of openness. And under those circumstances, we agree that -- we've agreed in our protective order. We'll file those under seal.

My quarrel here is whether this document, these three documents, rise to that level of protection thirty-four and twenty-one years later after they were executed -- after they were executed without any showing what the harm would be -- what the harm would be to Liberty Mutual. We don't even know what provisions Liberty Mutual believes are sensitive. They just waved the document -- and haven't waved the document. But they alluded to the document and said the entire thing needs to be filed under seal. And we don't even know what's sensitive

from their perspective.

But I am skeptical that the terms of a release or the amount paid, which has been, if not discussed specifically, has certainly -- the amount has been already been discussed in filings in this court, the total, the aggregate amount, I don't know why that would be entitled to that level of protection today.

THE COURT: You don't think Liberty Mutual is still Insuring asbestos defendants?

MR. COX: I'm sure Liberty Mutual is still insuring asbestos defendants. Yes.

THE COURT: So you don't think a settlement of their insurance coverage is relevant for today -- a previous settlement would still be relevant?

MR. COX: I don't think so, Your Honor, but that's my take on it. Yeah.

THE COURT: All right. Thank you.

MR. COX: Thank you, Your Honor.

THE COURT: Does anyone else wish to be heard in connection with the motion for a protective order?

MR. FINNERTY: Your Honor, I'd be happy to respond briefly to the harm to Liberty Mutual, if you'd like to hear it, and specifically on that point.

So, yes, the agreements were negotiated thirty-one and twenty-one years ago, but as Your Honor referred to, Liberty

Mutual continues to insure thousands of policyholders with this type of insurance policy. It's CGL coverage. It's not like these settlements were a moment in time that happened to Liberty and nobody else could use those and argue that their own circumstances are similar or something else, right? Liberty is an ongoing insurer. It's a massive insurer. It has a lot of policyholders with a lot of different claims. What happened in one particular settlement, which was incredibly complex with decades of coverage and huge liabilities, could obviously be attempted to be used by other people in other situations against Liberty. It's not like this was a discreet thing that happened. Liberty continues to have these policies, again with thousands of policyholders. So of course it's an ongoing thing. It's not stale at all.

The only other point I want to respond to is you heard from Mr. Cox that we need to show good cause here. First of all, we have shown good cause here. Second of all, under Section 107, we don't. It's mandatory. Courts have said that. We cited a few in our motion. If it falls within categories enumerated by Section 107, including commercial information, it's entitled to protection.

So I think we have shown good cause. But under the bankruptcy rules, we don't even need to. Thank you, Your Honor.

THE COURT: Thank you. Does anyone else wish to be

heard in connection with the protective order motion?

All right. Well, I do think this falls within the parameters of Section 107. And I note that the only objective party, that UCC, has already executed a confidentiality agreement which would recognize that there is some confidential information. Nevertheless, I do think there's commercially, at least based on the pleadings, commercially sensitive information that should be protected. And so I do intend to enter a protective order. And I have not had time to really review the terms of that order. I do think it should specify that it only applies to this one instance. And to the extent that there'll be future motions, similar motions, if there can be some type of omnibus motion that would be applicable, I would like everyone to work together to come up with something that hopefully is satisfactory to everyone.

But with respect to this particular motion, I'm prepared to entertain competing orders. If the parties wish to submit competing orders. I'll look for the order that's submitted by Liberty. And if I don't receive any other orders by tomorrow, I'll assume that's the only order I'm going to receive. All right. But I will grant the motion.

MR. FINNERTY: Thank you, Your Honor.

MR. BROWN: Your Honor, Tyler Brown for the debtor.

And I certainly will represent the Court we will endeavor to work with other parties on the protective order

that we will be seeking on an ominous basis. We hope to be prepared to circulate that later this week.

Your Honor, the final matter on the docket concerns the -- what we call the motion to stay. The Court did, of course, enter an interim order on July 3. So this is technically our request for a final order, but I would certainly want to clarify that. There isn't anything permanent we're seeking in this final order. We're not seeking permanent injunctions of claims against the debtor. We're seeking temporary relief during the case with all parties --

THE COURT: You just want it for the pendency of the case.

MR. BROWN: Absolutely, Your Honor. So I just -- I didn't want to throw anybody off on that. We're not seeking anything but a pause in the litigation. We're not seeking, as was recited by someone, a nonconsensual release. That's not provided in our motion or plan.

The list of the parties that we are seeking protection for has now been made in exhibit, so that's real clear. It's Exhibit A. And, Your Honor, as I mentioned earlier, we can just very briefly touch on Liberty. And without getting into the specifics, I think -- we will have one witness, and that's Mr. Ron Van Epps. But before I call him, Your Honor, it might make sense if we could go through the exhibit list that we filed, because I don't think there's dispute about much of

these. And I provide some clarity on the front end. And maybe we could straighten that out and make sure we can streamline this.

THE COURT: All right. Well, that would be helpful. But before we start this --

MR. BROWN: Yes, Judge.

THE COURT: -- session of the hearing, I'm going to take a short break.

MR. BROWN: Yes, sir.

THE COURT: Maybe that will give the parties an opportunity to address the evidence.

MR. BROWN: Great.

THE COURT: And then we can admit by agreement the exhibits that you wish. But in the meantime, I'll take a short recess. And we'll reconvene at about ten, fifteen.

MR. BROWN: Thank you, Your Honor.

THE CLERK: All rise. Court is now in recess.

(Recess from 11:37 a.m. until 11:54 a.m.)

THE CLERK: Court is now in session. Please be seated and come to order.

MR. BROWN: Tyler Brown, again, Your Honor, on the motion to stay. Thank you for the time as well during the break to work through the exhibit issues.

Your Honor, I think we have reached agreement on the ones we need to reach agreement. Your Honor, if I may, I do

have a notebook the court and for the witness. If I may approach.

THE COURT: You may.

MR. BROWN: Opposing counsel has one as well.

THE COURT: Thank you.

MR. BROWN: Your Honor, with respect to exhibits, Exhibit 1 is really just the first-day declaration, already came in and first-day hearing. No need to redo that.

The Exhibit 2 here is just our request that was attached to our motion as to who we wanted to protect, so I don't think that needs to come into evidence either.

But Exhibits 3 through 8, the committee counsel has agreed with us they can come in as exhibits.

3, 4, and 5 are just examples of these direct-action complaints. We just picked one from each of the firms that were involved. And then included within Exhibit 4 is one of the third-party complaints that Huntington has filed against Liberty, insurer for Wayne. That's in that -- that's in that document.

6 are just the bylaws of the company. And certainly Mr. Lascell could verify those. But no one has disputed what the bylaws say.

Exhibit 7 is one of our insurance policies that just reflects that there's shared insurance.

And then Exhibit 8 is just a list of the Louisiana

direct action lawsuits that were out there when we filed for bankruptcy.

9 and 10 I'll address with our witness. And 11 is the Liberty settlement agreements, which we're not offering up. So they're not in your notebook. We took them out from you, Your Honor, because they're private at the moment.

THE COURT: Let me just recap. So --

MR. BROWN: 3 through 8.

THE COURT: I'm sorry, the --

MR. BROWN: 3 through 8 are the exhibits we ask you to enter.

THE COURT: Okay, so 3 through 8. Does anybody object to the admission of Exhibits 3 through 8? All right. You're okay with that? Committee is okay with that?

MR. LIESEMER: Yes, Your Honor.

THE COURT: All right. So Exhibits 3 through 8 are admitted.

(Agreed-upon exhibits were hereby received into evidence as Debtor's Exhibit 3 through 8, as of this date)

THE COURT: And then those are the only ones you're asking right now. But then you're going to also ask for 9 and 10 when you get to the witness.

MR. BROWN: Yeah. I may not ask for 9 to be admitted, Your Honor, but I'm going to examine the witness on it.

THE COURT: All right. Very good.

MR. BROWN: Okay. With that, Your Honor, I'd call Mr. Ron Van Epps, Ron Van Epps to the stand.

THE COURT: Mr. Van Epps, would you please approach the clerk right over here and raise your right hand so you can be sworn in? Right here.

(Witness sworn)

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. BROWN:

Q. You comfortable? I am.

Q. Great. Would you please tell the Court your name?

A. Ron van Epps.

Q. And are you employed?

A. I am.

Q. By whom?

A. Stout.

Q. What is Stout?

A. Stout is a global advisory firm that specializes in corporate finance, valuation, and disputes.

Q. Do you have a title in Stout?

A. I do.

Q. What is it?

A. I'm a managing director.

Q. What do you do for Stout?

A. What do I do for Stout? So my primary role is working with

clients in the insurance recovery industry. So my specialty is working with policyholders, pursuing insurance coverage on large, complex insurance matters.

Q. And where are you based?

A. In Chicago.

Q. And do you have clients all over the country?

A. I do.

Q. All right. And how long have you provided services in the insurance industry?

A. Just short of thirty years.

Q. Prior to joining Stout, were you with another firm?

A. I was.

Q. What was that called?

A. It was called the Claro Group.

Q. What happened to the Claro Group?

A. We formed the Claro Group in 2005, shortly after leaving Anderson. I was one of the founding members from '05 till 2017. We -- or I'm sorry, until 2022. We operated the Claro Group, sold it to Stout two years ago in September.

Q. And when you said Anderson, is that Arthur Anderson?

A. Arthur Anderson. I'm sorry.

Q. Okay. And did you have a stop between Arthur Andersen and the Claro Group?

A. Yes. I was at a firm called LECG doing the same type of work for three years between Anderson and -- and the formation

of the Claro Group.
Q. Do you have a present role in working with Hopeman Brothers, the debtor in this case?
A. I do.
Q. What is present role?
A. I think my present role is financial advisor and insurance consultant to the bankruptcy process.
Q. When did you first become involved in assisting Hopeman?
A. In late 2004.
Q. And what were you doing or asked to do at that time?
A. At that time, Liberty had just ended their participation in the program. Hopeman was scrambling to find funds. They were not an operating company. So my job was to come in and work with the excess carriers that were -- that had refused to pay at the time.
Q. Okay. So is it fair to say you were trying to get the excess carriers to start paying?
A. That was the objective, yes.
Q. Okay. All right. Now, what was one of your first tasks then at Hopeman related to insurance?
A. Well, so the first task is we had to understand the exhaustion, up until that point, what policies had been exhausted. We had to understand the entire coverage program, which we'll get into later, in terms of how they would operate and how they would respond to the damages. And then in

discussions with the excess carriers, at least one of them, the London Market made it clear that they were interested in a policy buyback. And so we were required to start to look at future forecasts and what could the liability look like over the coverage program.

Q. Okay. So as part of that work -- and you're familiar with the insurance portfolio that Hopeman has with respect to liability insurance?

A. Yes, I am.

Q. Okay. Let me get a document in front of you so we can talk for a little bit more about that. Exhibit 9 in your notebook.

A. Okay.

Q. It's fairly small print in here. But tell the Court what this is.

A. So this is a graphic representation of Hopeman Brothers liability coverage program from 1959 to 1985.

Q. Do you know who created this coverage map originally?

A. This was created by Dickstein Shapiro who was the law firm that hired us.

Q. All right. And Dickstein Shapiro is now known as Blank Rome?

A. The folks that were at Dickstein Shapiro are now at Blank Rome. Yes.

Q. That's a better way to say it. Thank you. And have you seen other versions of this document?

A. Yes, I have.
Q. And what do the other versions sometimes look like?
A. You -- we would shade the different carriers to -- to show which ones are insolvent. We would shade the certain carriers if we were talking to them to show where they were. We've - we've drawn this to show where the exhaustions, the current exhaustions lie, so you overlay that on the map. So we've used this for a number of purposes.
Q. Okay. And this particular version, can you tell when this one was last edited or created?
A. I believe this one would have been edited in 2017.
Q. Do you work with a form of this document on a regular basis?
A. Yes, I do.
Q. What do you use it for?
A. Well, you use it to understand where the coverage sits, what will be next up in the program. As you work your way up the program, they have lots of limits. You can see that from this map. But the point is, even though I have limits, some of them are way up here. You can't access them. There's a -- there's a method to how you're going to get to those limits. So it's important to understand what the map looks like and understand which plaintiffs will be hitting what part of the map. So yes, it's very important.
Q. Is it fair to say then that this is an overview of what the

debtor's liability portfolio looks like?
A. Yes. If I didn't say that, that -- I should have. This is just an overview. You have to go to the specific policies, because all the policies have different language unique to those, different treatment of the occurrences, of the defense. So this is very much just an overview.
Q. The Court is seeing this for the first time. Can you help walk the Court through how you read this?
A. Yes. So along the X axis here are the years, as I said, start from '59, go to '85 when the policies then had asbestos exclusions after that point in time. Along the Y axis are the dollars, so the size of the limits and then where the next limit attaches so you can kind of see that where the higher level excess policies come into play.

Along the bottom, you'll see Liberty Mutual is noted on every one of the first boxes along the bottom of the map. That is because they were the primary carrier from, well, earlier than 1959, as early as 1937 up until 1989. You see Liberty all the way through that entire -- through the entire map at that first level. And that first level is called primary insurance. So when we're talking about primary insurance, we're talking about that first level related to Liberty.

Now, as you go across the map, you'll see other of the insurance companies, Travelers. You see INA, which is now known as Chubb. You see the London Market up there at the top

of this first page. So you'll see that you have carriers all throughout this.

What you'll also see then is you have Liberty Mutual, in addition to being a primary carrier starting in 1974, also picks up an excess piece. So they've got five million dollars of excess insurance coverage right above their primary layer starting there. So that's also instructive. And then those are the limits that were in play with Liberty. And then --

Q. How about within the box? Each of the particular boxes has some other information. What is that all about?

A. Right. So a good example -- pick one that you can see. Look at the London one that sits up at the top of page 1.

Your Honor, if you see.

So that London, right below it, London is the -- and mine is a little complicated because there are multiple participants to this program. But there's a policy number right below it, then the dates. It starts March 2nd of '67, runs through April 4th of 1970. And then what you see below that is twenty million excess -- twenty million, excess .3 million. So what that means is that this layer is a twenty-million-dollar layer. That's the first twenty. It sits excess of a twenty-million-dollar layer, which you see below that. And it sits excess of a 300,000-dollar layer, which is the primary Liberty layer. So as you go up the map, you can see at any of those boxes, okay, this is where it sits, and this is what's below it.

Q. Okay, great. Why does this chart start in 1959?
A. Because that was the first known where they had the actual copy of the policy and the policy numbers. There's strong secondary evidence that there were a policies issued going back to 1937, but the policy numbers were not available. And the policies in many cases couldn't be located.
Q. And so the details about those policies may not be available either?
A. Correct.
Q. How about -- and then I think you mentioned it, but so the Court understands, why does it stop with 1985 or at the end of 1984?
A. So, beginning at that point in time, it was -- for Hopeman, asbestos coverage was commercially unavailable for them. They weren't able to get that coverage. And in and around that time, the insurance market in general stopped covering asbestos exposures in and around 1984. Some got longer, some shorter. For Hopeman, it ended in '84.
Q. So except for the policies that couldn't be found pre-1959, is this a fair depiction or overview of the policies that are in play with Hopeman with respect to asbestos claims?
A. I think it's a graphic representation, yes.
Q. Okay. Is there any significance to the year 1977 with respect to the portfolio?
A. Yeah. '77 is important because after that time, asbestos

was not used by Hopeman in their operations. And so later in this discussion, we're going to talk about the nature of certain claims and whether they are a completed operations claim or what would be deemed an operational claim. And operational claims are loosely defined as happening during the operation, in Hopeman's case, the cutting, the sawing of the -- of the boards. After that point in time, they -- they no longer used asbestos in their contracts. So that -- that's an important date.

Q. Okay. So if you look at this, and you were in the courtroom for counsel's argument earlier about the coverage map and there being apparently a lot of coverage, I think the term was hundreds of millions of dollars. Is that correct?

A. Yeah. There are hundreds of millions of dollars of limits, yes.

Q. Then why did Hopeman have to file for bankruptcy?

A. Well, let's go back to when we first got retained in 2004. Liberty had paid all their limits that they -- that they said related to their property -- to their completed operations. And at that point, Hopeman is a nonoperating company. They don't have money to -- to make any additional payments. And so the only carriers that were willing to start paying were Travelers at the beginning of this program right there in the 1965 timeframe, they had three years, and international the last two years. The other carriers weren't willing to pay.

And so you've got a gap if you assume over a twenty or a thirty-year period and you only have five years of that willing to make payments, you have to get access to the rest of those limits. And the carriers going back to early 1980s often fought about who of the insurance industry was responsible for covering the plaintiffs. Was it when they were exposed? Was it when they got diagnosed? When did that happen? And so because of those disputes, no one was paying. Hopeman was forced to do deals to generate an ability to satisfy the plaintiffs' claims. And so we started working through the program.

And so it is true that you have hundreds of millions of dollars of coverage, but you can't just go to the top of the map and say, you wrote coverage, you have to pay me. You have to exhaust all of the layers below those. And in some cases, those insurers are long gone. They're insolvent. You have to figure out a way to fill that insolvent hole. If you look at the map, on page 2 of the map, there's a -- and it's actually shaded, Home Insurance wrote a five-million-dollar layer for three years and a very important time for this coverage program. Home has been insolvent since the early 2000s, so they were not paying. So when you have a hole like that in the program, you have to figure out how to fill that. And you have to work your way up the program either horizontally or vertically, and it's not clear which way. That's another

dispute that comes up.

So while there's a lot of insurance, you can't access all the insurance. And the carriers aren't going to run to write you a check. So it's about --

Q. Yeah. Were the carriers articulating to you in the argument about why they weren't paying?

A. Yes. There were multiple arguments. The biggest one was, you know, which of the cares is responsible, when does the damages attached, does it attach at the date of first exposure, does it attach at a later point, but also arguing about whether it's a completed operations claim or an operational claim. And so the carriers that sat right above Liberty weren't convinced that Liberty had paid for -- had fully exhausted all of their limits, and there was an operational component to the claims. And that was a big issue that we were dealing with as well.

Q. So how did you address that issue then?

A. Well, we met with the carriers, and we presented a series of projections on what the future could look like and a series of allocations under multiple allocation scenarios, some directed by them, some directed by us. We looked at scenarios where there was a certain percentage of the claims that were deemed to be operational and not subject to go up the map. So we ran a lot of different scenarios in the settlement context to try to arrive at settlements that worked for both Hopeman and the carriers.

Q. Okay. Well, then why then if you reach the settlements did that not solve Hopeman's problems forever more?
A. Well, it got us from 2004 to 2024. And now we find ourselves with less than four million dollars of cash. And because of the settlements that we've done in the past to try to be able to fill the holes, Hopeman is responsible for somewhere in the neighborhood of thirty-five to forty percent of any of the dollars that come in today. That has to come from previous settlements because they don't have any additional funds. And so if you're spending ten or fifteen million a year, thirty-five percent of ten million, you know, is three and a half million dollars. So that would eat up anything that's remaining of their cash. So they have a hole in their program, and they don't have enough cash to be able to continue to -- continue to go down the path that we've been doing for twenty years.
Q. When you were talking about thirty, thirty-five percent, when you talk about in indemnity claims, were you talking about defense costs as well or what were you --
A. There's slightly different numbers, but it's pretty similar in terms of their share, both indemnity and defense. It's a little different.
Q. All right. When you mention indemnity in this context, describe to the Court what you mean.
A. I think in the insurance context, it is that the insurance

company will indemnify their policyholder for the tort that was alleged under the policy. So that, I think, is the basis for the indemnification language.

Q. Okay. So if Hopeman settles a claim and pays it, the insurance company paying Hopeman, is that what you would term an indemnity claim payment?

A. Right.

Q. Okay.

A. That's --

Q. And tell the Court then what defense costs includes.

A. So the defense costs are all the costs associated with defending the claim in the underlying matter. So looking at product ID, looking at the exposure dates, looking at the medicals, looking at all of the things relevant to defending that underlying matter and tracking the open cases and everything that goes along with that.

Q. Okay. Do some carriers in Hopeman policies -- some cover defense costs and some not?

A. Yes.

Q. You have to look at every policy to determine that?

A. Correct.

Q. Okay. Is there anything about the nature of asbestos claims that complicates the coverage analysis? You mentioned earlier about when they accrue. Are these typically involving multiple years of policies in the analysis?

A. Yeah. I mean, that's one of the things that complicates it because it is an ongoing -- it is an ongoing disease. And so there are questions about when you were first exposed and then how that disease develops and when it manifests itself. And so there are questions in different venues about how the policies then respond to those -- those injuries.

Q. So as an example, just picking out something here, if you had a date of first exposure in maybe 1974 and the disease didn't manifest itself until 2020, which policies on this chart might be involved?

A. Well, depending on what venue you're in, you could pick any of those within that '74 to -- in this case, you can't go past '85 because you don't have coverage that's responsive to asbestos. But there are some venues that will say you have to spread that evenly. So it's just not an easy answer.

Q. It's complicated?

A. It's complicated.

Q. And you have to go through that process to figure out which stack you can reach, how high up the stack you can reach; is that fair?

A. Yes.

Q. Okay. All right. Going back to the coverage map, you mentioned Liberty is across the bottom, correct?

A. Yes.

Q. And are you aware at the time you arrived, working with

Hopeman -- through LEFG? Is that the name of the --

A. LECG.

Q. LECG at the time, what was the Status of Liberty at the time you arrived, the policies?

[redacted]

Q. Okay. So your testimony is that Liberty had been paying on their primary policy, correct?

A. Correct.

Q. Any sense of how much they paid under their primary policies?

[redacted]

Q. Okay. And then were you made aware that there was an actual agreement with Liberty reached, settlement agreement reached?

A. Then you're talking about the 2003 settlement agreement or the 1990?

Q. Well, let's start with the 1990. When you first arrived, did someone inform you about the fact that Liberty had agreements in place?

A. Yes.

Q. And I'm not going to go into the particular terms of any of those agreements, but what was your understanding of the substance of the agreement?

[redacted]

Q. So let's talk particularly about what were the issues being resolved that you're aware of in your agreement? Again, not telling me how particular the agreement resolves all of them, but what were the issues being resolved?

A. Okay. So understand that I didn't participate in that agreement.

Q. Understood.

A. I was not part of it. So anything that I'll tell you is based on our conversations. [redacted]

[redacted]

Q. But do you understand that those issues were settled?

A. Those were settled.

[redacted]

[redacted]

Q. And are indemnity provisions in your experience pretty typical in a settlement agreement with an insurer?

A. Very common.

Q. And what would typically be an indemnity agreement? What would it cover?

A. Well, the settling carrier would want indemnity from the policyholder for anybody else that comes in to make a claim. So another affiliate, another subsidiary that they don't necessarily control that would come in and make a claim and try to break up whatever agreement they had, they want protection from that. They also want protection against contribution rights from other insurance carriers. So you work hard to get -- they release their contribution rights and get the

release of contribution rights from other settling insurers.

So what they're looking for when they -- in my experience, what the insurers are looking for is some level of finality. And if they -- if they don't have the indemnity back, they may make payments and then have other people coming, making claims on the same limits. And that's not part of their business model.

Q. Are you aware of whether Liberty has suggested they will bring an indemnity claim against Hopeman if they are not protected by the motion of stay

A. Yes.

Q. Does that surprise you?

A. No.

Q. Why not?

A. I would fully expect them to make an indemnity claim.

Q. Okay. Are you familiar with the Louisiana direct action lawsuits that have been brought against some of the former directors and officers?

A. I am familiar that they've been brought, yes.

Q. Okay. And do you know whether Liberty has been sued in those direct action lawsuits as insurer for Wayne?

A. Yes, that's my understanding.

Q. And to date do you know whether they have been named as defendants as insurer for Hopeman?

A. I -- unless they were named recently, and I don't think

they could have named them until they -- we were in bankruptcy. So I'm not -- my answer is no.

Q. Yeah. Are you aware of who defended Liberty in the litigation when they were named as an insurer for Wayne?

A. Kaye Courington would have been defending.

Q. Would that have been at Hopeman's cost?

A. Yes. Hopeman would have paid her bills.

Q. And would Hopeman have presented those bills to excess carriers for payment?

A. Yes, those would have been part of the bill sent to the carriers.

Q. And if those lawsuits were settled in which Liberty was named as an insurer for Wayne, who paid the money to pay the settlements?

A. Well, it got paid out of either the Liberty trust fund or from the money we received from the excess carriers that we settled with.

Q. Now, after Liberty Mutual had made the payments required by the agreement that you testified about before, did you take on any role with Hopeman respect to tracking issues?

A. Yes. We began tracking the payments that were made and the exhaustions across the coverage block in 2009.

Q. What's the difference between tracking payments that were made and tracking exhaustion?

A. Well, the payments, I'm talking about payments that are

made to the underlying plaintiff. So the defense and indemnity payments, so keeping track of those and understanding that. On the exhaustion is then taking those indemnity and defense payments and allocating those over the coverage block according to the CIP agreements that we have with the various carriers. So you have to follow the terms of the coverage-in-place agreements to determine what the exhaustion looks like.

Q. Let's break that down a little bit. You mentioned the coverage block. Tell me what that is with respect to kind of looking at this map. What's the coverage block you're talking about?

A. So the coverage block is 1965 to 1985.

Q. Or a shorter period?

A. Or a shorter period, if -- so the allocation -- and it depends on the coverage-in-place agreement, right? So -- but if you're -- most of the coverage in place agreements we have, the allocation would start with the data first exposure. So in the underlying case, you have to identify were you at our shipyard, when we were at that shipyard. If you were, payroll records prove you were there. Get the date when were they first there. And then you would allocate the damages evenly from that date until the end of the coverage program, 1984 to the end of the asbestos coverage.

Q. Okay. You said CIP and then later said coverage-in-place agreement. Can you explain conceptually what those involve as

opposed to a settlement agreement?
A. Right. Well, coverage-in-place I would also deem as a settlement agreement, but it differs as opposed to a commutation or buyback where the carrier says here's twenty million dollars, we're done, go away, spend it on asbestos claims. That's a commutation. The coverage-in-place agreement is an agreement that says we will agree to pay when you present these claims to us under this criteria. So, you know, it has to meet a list of things to make sure there's product ID and to make sure its medical diagnosis is proper. There's generally going to be guardrails on approvals above certain levels for settlements, those type of things, and that they will pay within thirty days or sixty days, whatever it is, based upon the formula. And that agreement will tell you exactly how that exhaustion formula will work.
Q. Okay. And then how do this coverage-in-place agreements you're talking about, how do they interact with -- or how do they relate at all to the Liberty settlement or buyback that you talked about? Do they -- are they somehow interlaced?
A. They interrelate because they all come on top of the Liberty exhaustion. And so in arriving at those agreements, we still have to deal with the underlying issue of exhaustion by Liberty and the operational nature of certain of the claims. So it was very much an issue throughout the whole thing.
Q. Okay. You mentioned some of the excess carriers raising

the issue of exhaustion, correct? Which ones?
A. All of the excess carriers that I negotiated with and dealt with raised the issue of proper exhaustion of the Liberty policies. That would include London. That would include INA. That would include MMO. That would include Lexington. That would include CAN. That would include Gentry, all of those.
Q. So discussing those issues with all of them and trying to reach agreements with all of them, that's what you were doing?
A. That was part of what we were doing, yes.
Q. Did you reach agreements, put agreements in place with each one of them?
A. We were able to get agreements in place with each one of them.
Q. Okay. Now, you mentioned you were tracking exhaustion. How did you get the information you needed to do that?
A. So SES maintains the database of the -- they pay the plaintiff firms on the defense side. They make the indemnity payments. They track that in a database. They send that to us. And then we utilize that to then allocate the damages over the coverage program and track the exhaustions.
Q. Who is SES?
A. SES is a claims administrator that Hopeman hired after Liberty Mutual was done administering their claims.
Q. Okay. Hired somebody actually used to be at Liberty, correct?

A. Don Ward who started SES was the claims handler for Hopeman on behalf of Liberty. Yes.
Q. So tell me how they do their work. They would collect information about which claims to pay? Is that how it -- tell me how it works.
A. Well, it starts with the claim gets submitted. So, you know, they get the notice that they have a claim. They have to enter that into the database. They have to work with, then assign local counsel and then gather the information on the complaint and track all of the lead-ups to the case and the discovery and track all of that in their database. They're paying local counsel bills and accumulating those. And then they then will transmit those database with the defense and the indemnity to us so that we've got a record of that. If we have questions, then we interact with them on certain open items.
Q. And do you then -- does Stout then convert that database into a different format?
A. Yes, because SES operates with a database called FileMaker Pro. It's very old. Nobody can operate with it. And so we simply convert FileMaker Pro into Microsoft Access so that -- because we have turned this database over to the insurers as we've been going through negotiations and make it available to them. And they can utilize access much easier. So we do nothing to it other than convert it from FileMaker Pro to Access.

Q. And did you get a copy of that database effective as of the petition date from SES?
A. I did.
Q. And did you convert it to a usable format?
A. We did.
Q. And after the confidentiality agreement was received from the committee yesterday, have you orchestrated transferring a copy of the database to the committee?
A. I believe we have, yes.
Q. Now, as part of its tracking, did Stout track both indemnity payments and defense costs separately?
A. When you say track, I would say, you know, we monitor it. SES I think is tracking. But yes, we were monitoring both the indemnity and the defense.
Q. Okay. This document's already in evidence, Exhibit 7. If you return to that policy that's behind that tab. I've got a question for you about that.
A. Tab 7?
Q. Yes, sir.
A. Okay.
Q. Is that representative of one of the policies that were on the coverage map?
A. Yes, it is.
Q. All right. And does this indicate in any way that Hopeman shares the insurance coverage with any other party?

A. Yes, it does.
Q. Who does it share it with?
A. It shares it with the other -- the directors and officers. It shares it with Wayne and other subsidiaries.
Q. All right. And if a claim against one of this shared insureds under the policy is paid, does that reduce the policy for the benefit of the others?
A. Yes.
Q. All right. Let me get you to turn to Exhibit 10 in the notebook, designated as Exhibit 10. It's a two-page documents printed on both sides. What does that document represent?
A. So this document was prepared by Stout using the databases that we just talked about. So on the first page, this is looking at the indemnity dollars. And this first column, you can see down the left hand side, you see the years. So it's last five years. You can see the settlement, counsel. These are indemnity settlements in the first column in Louisiana, and in the second column, settlements for all the state settlements over that point in time. So what you see is that over the last five years, about eleven percent of the claims have been settled in Louisiana as compared to all of the states.

Then if you slide to the right side of this chart, you're looking at indemnity dollars. So these are the dollars associated with the indemnity settlements that are represented on the left-hand side. So you see that over the last five

years, seventy-one percent -- almost seventy-one percent of the indemnity dollars from settlements have come out of Louisiana related indemnity settlements.

Q. Compared to the total of the claims, were about ten percent related to Louisiana, correct?

A. Yes.

Q. So disproportionate payments?

A. It is disproportionate.

Q. Okay. Let's flip to the second page. And tell me what -- explain what this is all about, and walk the Court through this page.

A. So the second page is the similar look, but it's just looking at defense dollars. So these are the defense dollars associated with on the left all of Hopeman's defense during those times of the asbestos matters. And in the second column, the 18.8 million is the defense associated with the Louisiana cases during that time. And you see that the percentage of the defense dollars are similar to the indemnity in that they're about seventy-three percent of the total spend relates to Louisiana.

Q. In the top two columns on the very right, it's got LA and -- sorry. Maybe I missed you explaining that. Did you explain that?

A. No. I was going to. Thank you. So Kaye Courington , who does the majority of the work in Louisiana, was also covering

the Mississippi cases and had not broken it out separately. So a portion of the 2019 and 2020 relate to Mississippi matters in addition to Louisiana.

MR. BROWN: Your Honor, I'd offer that as Exhibit 10.

THE COURT: Any objections?

MR. COX: No objection, Your Honor.

THE COURT: Exhibit 10 is admitted.

(Stout document was hereby received into evidence as Exhibit 10, as of this date)

Q. But based on that information and your working with the company for a lot of years, if multiple plaintiffs are allowed to pursue litigation post-petition against Liberty Mutual, are you concerned about the defense costs then?

A. Yes.

Q. Why?

A. We have less than four million dollars of cash available. And in my experience, these issues are very messy and would be very complicated. And it's going to cost a lot of money.

Q. What would the defense cost be spent on if this litigation were to continue?

A. Well, I think specific to Liberty, if Liberty gets sued, I believe they'll make an indemnity claim back to Hopeman. That's going to require Hopeman to spend a lot of money. I also think they will make an indemnity claim to Chubb and to Resolute and those carriers as well which will then funnel back

to -- I believe those claims will funnel back to Hopeman as well. So I think there'll be a number of parties making claims back to them if this goes forward.

Q. Okay. In addition to claims, are you anticipating that the debtor will incur fees to deal with these issues?

A. Well, yeah. I mean, that was -- the point is when it comes back, I think they're going to have to spend money to then deal with the issues that are raised by the carriers.

Q. It would have to deal with discovery issues?

A. Right, yes.

Q. It would have to deal with coverage fights?

A. I believe they would, yes.

Q. Where would you expect coverage fights to break out?

A. Where?

Q. Where?

A. All those carriers are going to be looking at each other for why it's not their responsibility and why they're already out of it. So that's been the common theme. From the time that we started, it was, you know, it's not our responsibility, it's someone else's. I mean, if you look at that map, you had three years of London coverage in the middle of this program right above Liberty that refused to pay for more than ten years. And a company that doesn't have excess money has to try to figure out a way to fill that hole in. And so the fights -- it would be surprising if there were not significant fights

amongst the carriers that will involve Hopeman on who should be responsible for these claims.
Q. Do you have concerns that those expenses would be more than nominal?
A. Yes.
Q. Are you familiar with the motion to stay that's before the Court today?
A. I am.
Q. And if the relief sought is denied, do you have any concern about any impact on Hopeman's insurance coverage?
A. I do.
Q. What would that concern be?
A. Well, the concern is that it'll quickly exhaust the limited funds that we have to be able to continue the matter. And it could also impact the other assets within the coverage block.
Q. If litigation is filed or continues against of former directors and officers who have been named as defendants, are you concerned that may have an impact on the estate?
A. Yes.
Q. What would be the impact?
A. Well, again, it's the limited funds that -- I believe Hopeman would have to -- Hopeman has indemnified the D&Os. So Hopeman is going to have to step up to defend them, and it's going to cost money to do that.
Q. And let me get you to turn to Exhibit 6 which has been

admitted into evidence. Are you there?
A. Yes.
Q. Okay. What does that document?
A. These are the bylaws of Hopeman brothers.
Q. All right. And do the bylaws include obligations to indemnify directors and officers?
A. It does.
Q. Okay. And you testified earlier that directors and officers shared coverage. We looked at a policy together, correct?
A. Correct.
Q. So could there be two impacts then, of them having to defend themselves, making bylaw claims, indemnity claims, and making claims on the policy?
A. Yes.
Q. All right. Do you believe the relief sought in the motion to stay is important to the debtor?
A. I do.
Q. Do you think it's critical to the success of this case?
A. I do.

MR. BROWN: Those are all the questions I have, Your Honor.

THE COURT: Cross-examine.

MR. COX: Very limited, Your Honor, as it relates to point of clarification.

CROSS-EXAMINATION

BY MR. COX:

Q. Good afternoon, Mr. Van Epis. My name is David Cox. I think you were in the courtroom when I was speaking earlier. I think you testified that Hopeman might have a duty to identify Liberty under one of the settlement agreements. Do I have that correct?

A. You do.

Q. Do you have in mind which agreement would impose that duty to indemnify?

A. Well, there was -- there -- there is -- which of the two agreements?

Q. Let me clarify my thinking. So we were provided with two documents from 2003. One was a settlement agreement. Another was a hold-harmless and indemnity agreement. Is your concern based -- does your belief that Hopeman would have an obligation to indemnify flow from the hold-harmless and indemnity agreement?

A. Wait, let me clarify.

Q. Sure.

A. I didn't say they'd have an obligation to indemnify. I said they're going to get an indemnity claim that would be lodged against them and they would have to fight it.

Q. Okay. And what's the basis of that belief?

A. Liberty has already told them if they get sued, they're

going to make an indemnity claim.
Q. Liberty told who?
A. Liberty told counsel.
Q. And what was the basis for Liberty's indemnity?
A. I wasn't part of the discussion. The question posed to me was, do you expect Liberty to make an indemnity claim against Hopeman. My answer is yes.
Q. Is there any -- again, I'm just trying to separate the two agreements. Is there any obligation within the -- distinguished between the settlement agreement and the hold-harmless agreement -- do you have the two agreements in mind?
A. I do.
Q. Okay. To your knowledge, is there any obligation within the settlement agreement that would impose upon Hopeman to indemnify?
MR. BROWN: Your Honor, let me object to the extended calls for legal conclusion about the terms of the settlement agreement. Mr. Van Epps testified generally about his expectation, not specifically the terms of the agreement. So I simply think it calls for a legal question.
THE COURT: Response?
MR. COX: Your Honor, I'm trying to understand what forms the basis for the belief that there will be an indemnity claim and what the indemnity claim would stem from.
THE COURT: Well, to the extent that calls for a legal

conclusion, I'm going to sustain the objection.
Q. Mr. Van Epps, I think you testified that didn't believe that an indemnity claim would be valid. What's the basis for that belief?
A. Wait. Can you say that again?
Q. I think you distinguished between Hopeman's receipt of an indemnity claim versus whether it was a valid claim or not.
A. No, I didn't try to distinguish that. All I said is I'm not trying to say whether it's valid or not valid. The question posed to me was, do -- would you expect Liberty to file an indemnity claim. And my answer was yes. I didn't get into whether it's a good claim, a valid claim, whether it'll stand up. That's not really for me.
Q. Do you have any familiarity with the hold-harmless agreement?
A. I've read it.
MR. COX: Your Honor, this goes back to the motion to seal. I have a question to pose about the hold-harmless agreement that is subject to Your Honor's order. And so I don't know if I need to clear the courtroom. I need to seek guidance from you as to how to examine the witness on this document.
THE COURT: Well, to the extent that you would be disclosing any confidential information, then we've already -- I've already indicated that I'm not going to allow that. So

parties could tell me -- maybe you can confer with Mr. Brown and indicate what it is you intend to get into. And then I can hear from Mr. Brown what he believes is appropriate.

MR. COX: Okay. Thank you, Your Honor.

Your Honor, I'll withdraw the question. And no further questions. Thank you.

THE COURT: Anyone else wish to cross-examine the witness?

MR. MINTZ: Your Honor, again, for the record, Mark Mintz on behalf of the Hopeman claimants.

CROSS-EXAMINATION

BY MR. MINTZ:

Q. Mr. Van Epps, I wanted to clarify for the record and make sure I was understanding a little bit of what I heard. You are not an attorney; is that correct?

A. That's correct.

Q. Did you help put together the plan of reorganization that's involved in this case?

A. I participated in that.

Q. Okay. Do you understand generally its terms?

A. I do.

Q. You understand that the terms of that plan of reorganization do include injunctions, permanent injunctions against the debtor and against settling insurers?

A. You're getting into legal questions. I'm not really

comfortable --
Q. I'm just asking if you understand that those provisions are in play. If the answer is you don't understand that, that's fine.
A. I don't understand that.
Q. Okay. You did discuss the indemnity claims. And I think you clarified with the counsel's questions earlier that you believe Liberty would make a claim for indemnity; is that correct?
A. That is correct.
Q. However, you are expressing no opinion as to whether or not the claim is valid, has a defense, or anything like that; is that correct?
A. That's correct.
Q. You also are expressing no opinion as to whether or not the claim would be subject to any objection by the debtor or any other party-in-interest; is that correct?
A. Well, that question wasn't posed to me. Why don't you restate what you --
Q. Well, isn't it true that such a claim that would be filed for indemnity would be subject to objection in this Court by the debtor?
MR. BROWN: Objection. Calls for legal conclusion. He's not an attorney.
THE COURT: Sustained.

Q. So you are not expressing an opinion as to whether or not there would be an objection; is that correct?
A. That's correct.
MR. COX: Wow, I managed to break that. I apologize, Your Honor. I'm going to leave that there.
THE COURT: It seems to be working. You can leave that there.
MR. COX: Thank you.
Q. So the other question that I had I wanted to understand, we went through Exhibit 1- in your book, which was the database you put together, the number of claims versus in Louisiana versus the total states. I believe you testified that it was eleven percent of the total claims were in Louisiana; is that correct?
A. No. I testified that those were the settled claims. So during those five years, that was the percentage of claims that were settled in Louisiana versus those settled in other states.
Q. Okay. And then you said but seventy percent of the dollars were settled dollars, I guess, for the Louisiana claims; is that correct?
A. Yeah. The indemnity dollars paid for seventy percent of the total indemnity dollars paid during that period.
Q. And then the second chart -- that's what I don't understand. What is the difference between this first chart talking about indemnity dollars and the second chart was

seventy-three percent of the total spent was in Louisiana?
A. Defense dollars. So the second chart is defense only. The first chart are indemnity payments made to the claimants. The second chart are defense fees paid to local counsel and NCC.
Q. And though according to your chart, those are paid by Hopeman; is that correct?
A. Well, those are paid out of the funds from Hopeman, from the funds from one of those excess carriers or paid as part of the CIP.
Q. Okay. And so is the point of the chart to show that the Louisiana costs are disproportionate to everyone else?
A. The point is just to present the information that there are very large -- that it's -- a very significant portion of our spend relates to Louisiana matters.
Q. But you're not making any commentary I assume -- I will ask it this way. Are you making a commentary on the quality of claims or the severity of claims that would come out of Louisiana versus anywhere else?
A. I'm making no judgment or comment on that at all.
Q. Right. And that's not what -- that's not what that chart is about. It is simply stating in a vacuum what the dollars were in Louisiana versus other states; is that correct?
A. It's just stating the facts. This is what happened.
Q. Okay. But you're not giving -- you're not giving an opinion as to why that happened?

A. I'm not giving an opinion as to why that happened.

MR. COX: No further questions, Your Honor.

MS. SIEG: Good afternoon. For the record, Beth Sieg of McGuireWoods for Huntington Ingalls Industries.

CROSS-EXAMINATION

BY MS. SIEG:

Q. Just a couple questions for you, sir. How long did it take you to prepare Exhibit 9, which is the -- I believe the coverage map? I have a copy at the podium.

A. We -- to be clear, we didn't prepare a coverage -- we didn't prepare the coverage map. It was prepared by the law firm before we joined.

Q. Have you ever prepared a similar coverage map like that?

A. Yes.

Q. How long would that typically take you.

A. For a coverage map like this, it would take a long time to read all of the policies and get all the appropriate language. It would take a considerable amount of time.

Q. And when you spoke about the indemnity claim that Liberty might file, were you referring to the proof of claim process in the bankruptcy case or something else?

A. No, I was referring to something else.

Q. What would that be?

A. If they get sued, I would expect them to file a claim as a result of being sued.

Q. Where would that be?
A. Where would what be?
Q. Where would they file that claim?
MR. BROWN: I'm going to simply object. Again, legal conclusion. He's not a lawyer to prosecute claims. He doesn't know where they'd be filed.
MS. SIEG: I don't want a legal conclusion. I'm exploring what his understanding is of the potential claim by Liberty. And you may say you don't know where they would file it. But I'm trying to understand what the debtor's expectation is.
They've explained to Your Honor they're very concerned about defense costs being paid, but we know that Liberty would have an unsecured proof of claim for those costs, and they would not be payable immediately by the estate. So I'm trying to ask the debtor's financial advisor if he has an understanding about how Liberty would allege and recover on that claim, separate from whether it's in the enforceable or eventually payable or not.
MR. BROWN: Same objection, Your Honor, legal conclusion.
THE COURT: Well, I do think it verges on legal conclusion, but I also think he did testify to some extent about the debtor having to contribute costs. So I'm going to allow the question.

A. I'm okay answering that part of it. It's going to -- I'm not talking about the proof of claim form that Liberty, if they're successful gets that. What I was talking about is, if they make the claim, we are going to -- Hopeman will have to defend against that claim. They will have to spend money. And we have -- they have less than four million dollars. It will quickly exhaust the funds that they have available for the plaintiffs. That's the concern.

BY MS. SIEG:

Q. And as the debtor's financial advisor, is it your understanding that Liberty would have the ability to file and prosecute that claim and require the debtor to pay those defense costs immediately in the bankruptcy case?

MR. COX: Again, calls for legal conclusion, Your Honor. Objection.

THE COURT: Yeah. I'm going to sustain that. I don't think the mechanism for how or when that debtor would pay is part of what he did testify or that -- I do think that involves legal opinion.

MS. SIEG: Thank you, Judge. That is all I -- oh, actually, no, let me, let me correct that.

Q. Exhibit 10, I believe, is the historicals or payouts. Did you prepare that document or compile it from information the debtors already have?

A. Yes.

Q. How long did that take?
A. Less than a day.
Q. Okay. And that's with access to all of the supporting documents that have the underlying information that populates that document?
A. Yes.
MS. SIEG: Thank you. That's all, Your Honor.
THE COURT: Does anyone else wish to cross-examine? Redirect?
MR. BROWN: None, Your Honor.
THE COURT: All right. Was it your intention to move for admission of Exhibit 9?
MR. BROWN: It was not, Your Honor. I offered that for demonstrative purposes only.
THE COURT: All right. Very well. Thank you.
All right. Mr. Van Epps, you may step down.
MS. SIEG: And with that, Your Honor, we rest on our motion.
THE COURT: Does anyone else wish to offer evidence in connection with this motion? All right. Apparently not.
Wish to make arguments?
MR. BROWN: We would, Your Honor.
Your Honor, we did file an extensive reply yesterday with a lot of case law in it. I'm sorry to have hit you with that yesterday. It was filed when it was supposed to be filed,

at least by the time it was supposed to be filed. And there's a lot of law. But I'm not going to go into all the law. I think you need it, it's there.

But what I do want to say is really the theme that was in the reply which is the motion really seeks to accomplish exactly what the automatic stay is supposed to accomplish in a case like this. It's to preserve estate assets. It's to avoid the depletion of its policies, to address only a subset of claimants. It's to avoid the occurrence of attorneys' fees to deal with claims, to deal with discovery. It's to avoid the triggering of potential indemnity claims and fights about indemnity claims, whether they're valid or not.

We need to avoid unnecessary incurrences, fees and unnecessary interference with this Court's administration of this case. The only asbestos claimants that are opposing our motion to stay are Louisiana claimants and a subset of them who want to prosecute their own direct action claims against the debtor's insurers and the former directors and officers. They want to substitute for Hopeman in existing litigation our insurance companies. That's what they want to do.

So talk about identity interests, debtor got sued, stay comes in. They want to substitute someone else who has the exact same interest as the debtor. Your Honor, there are thirty-five of those lawsuits pending, and each of them names the debtor. Some of them name Liberty directly as an insurer

for Wayne, and some of them involve third party complaints that Huntington has brought in. Either way, Liberty is in there currently as insurer for Wayne but not currently in those lawsuits as insurer for the debtor. That's a different move. So these plaintiffs aren't ready to go to trial on claims they haven't filed yet. So we're not interfering with litigation to put a pause in addition to the automatic stay pause that happened upon Hopeman's filing.

Your Honor, what I think they want is they want somebody else in a settlement chair so they can negotiate with them. Well, Hopeman filed. And no one should be in that chair in substitution of Hopeman, especially when they are negotiating with the assets of this estate which you heard are the primary assets are -- the liability insurance proceeds that are available. The coverage that's available is the central asset in this case. And it needs to be doled out fairly and not have a subset jump ahead of others, win the race to the courthouse. That's why we filed, to stop it. And we filed it because of the cash burn to fill the hole that Mr. Van Epps talked about in our insurance program. We have to pony up money to get the excess carriers to pay. We are running out of money. And so what you're causing by a run-around or an end run-around the automobile is the debtor to have to protect its interest, to incur costs at a time when it can't afford to do it, and to risk losing coverage that otherwise would be

available to other claimants.

As Mr. Van Epps testified, it would be a mess. You'd have carriers making claims against each other left and right and making arguments about Liberty and whether that exhausted -- the settlement exhausted their policies. And that affects everybody.

You look at the stack of insurers and insurance policies. It's not a stack of cards, a house of cards, Judge, but it's also not a skyscraper that's built solidly. You pull one string on what is a fabric of deals, and you pull it all out. It all crumbles. And so we've got an impact that will be caused by a small subset of claimants to the detriment of the rest. That's what we're trying to avoid in addition to the stem. That --

THE COURT: How would it work if they -- a direct action against, say, Liberty, and Liberty has a right to ask the debtor to contribute but can't because the debtor is in -- how would that work?

MR. BROWN: Right. So it would make claims, presumably against the other excess insurers as well to say this is your coverage that's actually a stay, I'm out.

THE COURT: But the debtor would still be involved in the outcome?

MR. BROWN: Of course. And be involved in the outcome and be involved in discovery because the fights about, well,

what happened in the Liberty deal would all come back to debtor discovery. The fights between what were the settlements with all the other excess carriers would come back to the debtor. And the debtor have to protect its interests because its interests are the policies, and we wouldn't want collateral estoppel or other issues decided that would necessarily impact our estate.

Again, Judge, I like to say they know it's going to be a mess. It would be a mess. You heard from the only testimony that's been offered. It would be a mess. That's the evidence we stand on.

In terms of the legal grounds, how we get there, Judge, to get protection, 362(a)(3), of course, which protects interest of property of the estate, we think the case law is very clear in this circuit where a debtor is facing mass torts like they are in this case. Thinking about the A.H. Robins case that came out when I first started practicing law. We know the takeaway from that is in unusual circumstances where a debtor is facing massive tort claims, and they have limited policies to answer for that. We're going to make sure we contain that and we don't let piecemeal actions take away from what would be the best of the collective good. We're not going to let those parties interfere with the administration and the setting up of a trust in a way that makes sense. So there is authority --

THE COURT: Well, the Robbins case applied 362(a)(3).

MR. BROWN: It did.

THE COURT: Without an adversary proceeding.

MR. BROWN: That's correct. That's correct, Your Honor.

THE COURT: Under very similar circumstances to what we have here.

MR. BROWN: That's correct, Your Honor. We're talking about in that case, Louisiana direct action claims as well. Same party, same kind of --

THE COURT: So I don't have any choice other than the follow the Robins case?

MR. BROWN: I don't think you do under 362(a)(3) with respect to the policies, Your Honor. I think also 362(a)(1) gives you help. And I always pronounce this wrong, probably Piccinin case. A.H. Robins-Piccinin --

THE COURT: That's why I said Robbins.

MR. BROWN: Robins. The Robins case, the court said there are really four ways that you as a judge can consider granting relief. You can look at 362(a)(1) and say, well, the parties suing here, are they really -- really have an identity of interest with the debtor. And we would say yes. You're substituting Liberty on the same claim against the debtor. Liberty has threatened to make an indemnity claim. We would fight it. But the fight itself, according to the case law

we've cited to you, is enough to implement the identity of interest concern. So that's 362(a)(1). 362(a)(3) is the concerns assets at BSA. T

he two other ways the Fourth Circuit said in Piccinin you might think about dealing with this is to use those statutes themselves to extend additional coverage to other players. And you can also do that under 105(a) in combination with 362(a). And that circumstance is when the court decided to look at the preliminary injunction standard and go through each of the four typical Blackwelder test or standard and did apply in that case.

And the fourth was in the Court's equitable power as a court to control its docket and control interference with the administration of these estate.

So they said there were really four ways to do it. And again, they were talking in that case like we are here about cases against nondebtors, protecting officers, protecting insurers, protecting the assets, avoiding the unnecessary interference with the case. Same facts. That's what we have here. And we've cited lots of other case law in support as well, Judge.

But the real problem here is we've got a small set claimants that really want to restart the burn, which is what would happen and potentially sabotage this case, this bankruptcy case. And this case is much -- is very unlike the

cases that have been in bankruptcy involving asbestos claims, Bestwall and some of the other ones. We don't have a Texas Two Step in this case, nor do we have a case that lingers for a couple of years trying to get to a plan. We followed our plan the first week. Why did we do that? Because the path here is clear. These assets, the insurance and whatever cash is left needs to go to a trust. It needs to be a fair process. Nobody should win a race. And it should get doled out fairly. And we're done with it. We're not trying to protect the business on the side. We're trying to push this money effectively over to claimants. That's all we have. So we can't get bogged down. We can't spend all of our money on other fights. We need to get down to how we convey these assets over.

And if the debtor ends up conveying the assets as policies as opposed to settlements, okay, then they didn't like our settlement we worked on very hard. If they don't like them, then the Court might decide that they're not the best deal. We think they are the best deal. But if not, then the rights will go to the trust.

The problem is, how do we pay for the trust? How do we pay for all of these attorneys? How do we pay for all these consultants if we don't have money? And Mr. Van Epps made it very clear the reason we filed bankruptcy is because there's a gap and there's a cash burn. We can't afford to stay in bankruptcy to do it. And we couldn't afford outside of

bankruptcy to do it.

So when you -- Judge, when you come down to it, I think both 362(a)(1) and (a)(3) do it. But then if you apply the four-part standard using 105, clearly there is --

THE COURT: Did your evidence support the four-part standard?

MR. BROWN: Yes, sir, I think it does. 1, we've got a plan on file. And we've got an opportunity to pursue a plan in the bankruptcy. And so the chances of success are that we have an opportunity to pursue a plan that is realistic.

Second is that the harms to the estate are harmful. You heard the testimony on that. And it outweighs the harm to the other side. What's the harm to the other side? Sitting tight and waiting for a little while. They can sever their claims. They can go settle with the other ten defendants they've sued or however many they have. These things can sit there. And nothing in our plan says that they're taking nonconsensual discharges or injunctions against claimants who might have claims against delivery. The settling insurers that's being talked about by Mr. Mintz, we're talking about if Chubb, if the other settlers get this Court's approval, then we would seek protection for them permanently like we did, like we're seeking in the settlement itself.

We're not talking about protecting Liberty Mutual. They have their deal from 20 years ago. We're not going

seeking additional protection from them. Either their deal is subject to being blown up or it's not. They're on their own. But what we don't want to do is have -- while we're in bankruptcy pursuing this plan, have all those fights erupt and disrupt our ability to get to the finish line in this case.

So that's why we need your help. We think we satisfy the four-part standard, the last part being the public interest. Certainly, the public interest supports trying to get a company through a process that puts in place something for the benefit of the creditors.

Your Honor, I'm happy to answer any questions you have.

Oh, let me address two last issues, which is an issue was raised I think maybe by Mr. Mintz and his clients about the Purdue Pharma case. That doesn't apply in this case. We're not seeking permanent relief. We're seeking a temporary protection during the case. Judge Goldblatt answered that question very recently. It's cited in our materials. That is different than the Herrington and Purdue Pharma case.

And then finally, back to the issue they've also raised, which is adversary proceeding versus a motion, the Court in the Fourth Circuit made it clear as well. You can ant the relief we're talking about under 362. Judge Humrickhouse in the case we've cited made it clear. Just extending the stay that's already there, that's -- a motion is fine by that. But

think about the practicalities here. What we're seeking in this case is to stop not only these thirty-five plaintiffs but anybody from trying to sue our directors and officers and to sue our insurers while we're in case. Who do we name as defendants in that lawsuit besides the thirty-five? I don't know who to name. So we brought it by way of motion so that the Court could grant the relief and grant as broad relief as possible.

But as we said in our brief, I don't think there's a practical reason to apply to convert it. We have the people who have been filing those claims to date noticed. Some decided to respond. They've all gotten our motion. It's all been served on the plaintiffs in those cases. So what's the benefit from that? And so I don't think there's a practical reason. But certainly to the extent the Court concludes practically we should do that, we're happy to convert it, happy to file an AP if that's what you need. But I think we've got before you what we need to have before. Thank you.

THE COURT: Response.

MR. LIESEMER: Jeffrey Liesemer on behalf of the committee.

Your Honor, our particular objection is a limited objection. It's very limited. We are only objecting to the stay to the extent that it applies to direct actions against Liberty because we see Liberty as separately situated from the

other insurers. But one thing the debtor hasn't --

THE COURT: So you're in agreement that the stay should be extended to all the other parties named in the exhibit?

MR. LIESEMER: Correct. But we included at the end of our limited objection the reservation of rights to seek a lifting of the stay if information comes to light during discovery that the stay is inappropriately imposed.

So apart from worker's compensation coverage, which is not relevant here, there's no Liberty Insurance on the debtor's schedules. And the debtor's witness, Mr. Lascell, in his declaration, which is Exhibit 1, says that the Liberty coverage is exhausted and released. So there's no reported interest in Liberty insurance coverage from the debtor standpoint, and so there's no property of the estate that's implicated under 362(a)(3).

By contrast, the direct action claimants do have an interest in the Liberty coverage. Liberty couldn't cut off the vested interests of the claimants. This is part of what Your Honor heard earlier. When there's exposure, the claimants get a vested interest in the insurance coverage. And that's not something that the -- at that point that the insurer and the insured tortfeasor can cut off.

And we cite the relevant authorities in paragraphs 2, 7, and 8 of the limited objection. In there you heard

principles this morning. And with respect to the Comardele (ph.) case, which is the district court of Eastern District of Louisiana in 2014, that's cited in paragraph 40 of the debtor's reply, they contend that if -- there's no interest if the debtor at the time bought back -- I'm sorry, the insurer bought back the policy, that there's an interest if the debtor or the insurer didn't know about -- didn't know about the claims. But we don't think that case remains good law, particularly in light of the Courville case which was decided about six years later out of the Louisiana Court of Appeals. And we've cited and discussed that case in paragraph eight of our limited objection, so I will not dwell on that.

The debtor contends that the stay can be extended under 362(a)(1) based on unusual circumstances and identity of interest. They've mentioned in the reply, that they think that without the stay, direct actions against Liberty, they would be forced to respond to discovery on underlying claims and coverage disputes. I don't think forced is really the outcome here because they can't take discovery of the debtor without Your Honor lifting the stay. And Your Honor would have to find cause under those circumstances.

They express concern that if the direct actions were allowed to continue, the debtor couldn't avoid collateral estoppel and would have to monitor its interests. Well, the debtor is protected in Chapter 11. I can't see how a final

judgment that's entered against different defendants, nondebtor defendants, can have nonmutual offensive collateral stoppable effect on a debtor that's protected by the automatic stay.

And this debtor is not an operating business. It's going to be liquidating in Chapter 11 and has proposed a liquidation Chapter 11 plan. So whatever decisions, adverse decisions affect Liberty are not going to affect the debtor here in bankruptcy. The debtor really should be indifferent about what happens down in Louisiana at this stage.

THE COURT: Despite the indemnification obligation?

MR. LIESEMER: I'm turning to that.

With respect to the identification litigation, we see it as a post hoc rationalization. It's very convenient for Liberty to threaten indemnification in order to get stay protection. We think the debtor's actions speak to the contrary. The debtor didn't list Liberty as a contingent creditor in it schedules. The debtor didn't mention the risk of an indemnity claim from Liberty in its original motion. And Mr. Van Epps, who testified, acknowledged that he thought there would be a claim, but he's not an attorney, and he said he didn't say that there was an obligation.

So I think the debtor's burden has not been met here in terms of a risk has been identified, but is the risk real. We think based on the circumstantial evidence that the answer is no.

As for the traditional PI factors, which the debtor had raised for the first time on reply, the debtor cites the standard from the (indiscernible) case, the traditional four factors. But the very first factor is there must be a reasonable likelihood of a successful reorganization. And as we all know, the debtor is not seeking a reorganization here.

The debtor suggests in its papers, nevertheless, that it can apply in liquidations when the actions to be enjoined would interfere with the rehabilitative process, and they're citing apparently Buchanan (ph.) at page 1003 in that case. But again, there's nothing to rehabilitate here. There's no operating business, no going concern to preserve, no jobs to save. This is a liquidating debtor.

And at the end of the day, Liberty is not entitled to permanent injunctive relief. That's -- the debtor is not seeking 524(g) channeling injunction protection for any non-debtors. It can't because it's not pursuing a reorganization. This is liquidation. So under --

THE COURT: I mean, didn't the -- the debtor cited the Briar Creek Corporation, which in turn quoted the Robbins case to say that ample power under Section 105 to enjoin actions excepted from the automatic stay which might interfere in the rehabilitative process, whether in a liquidation or in a reorganization case.

MR. LIESEMER: Right, right. The key language there

is rehabilitative process. There's nothing to rehabilitate. There's no operating business. There's no going concern. There's no --

THE COURT: So what did they have in Robbins that was necessary to rehabilitate that we don't have here?

MR. LIESEMER: Robbins was, as we all know, a reorganization.

THE COURT: But it still resulted in a trust in order to or still resulted in a stay to enable the debtor to fund the trust.

MR. LIESEMER: Right. And there was a channeling injunction, as there would be. That's analogous to 524(g) relief and channeling injunction. But --

THE COURT: So isn't that the import of the decision that -- why would they say whether reorganization or liquidation?

MR. LIESEMER: Because there might be some sort of liquidations that have a rehabilitative effect, such as selling off, for example, maybe departments -- underperforming department stores. So at least the profitable department stores in the business can move on and reorganize. That would have some sort of rehabilitative effect. But I don't see rehabilitative effect here because there's no operating business.

THE COURT: All right. Well, I suppose it depends on

how you define rehabilitative, but all right. Anything else?

MR. LIESEMER: Well, as I was getting into, Liberty is not entitled to any permanent injunctive relief or non-debtor releases. As I said, this is not a 524(g) case. Purdue Pharma, I think, forecloses that kind of permanent relief.

The Supreme Court has held in a case long ago that if an entity is not subject to permanent injunctive relief, then it can't get preliminary injunctive relief, either. And that's the De Beers Consolidated Mines v. the United States at 325 U.S. --

THE COURT: Is that what it meant in the context that it -- a temporary injunction -- I mean, the permanent injunction in that case is not the same as what we're talking about here. We're talking about a temporary stay during the pendency of the case.

MR. LIESEMER: Well, if I remember De Beers correctly, the United States sought an asset freeze order against the defendants on a preliminary basis. And the Supreme Court found that that preliminary asset freeze order was not acceptable because the United States, at the end of the day, couldn't get a permanent asset freeze order. And that's the import of that whole thing.

THE COURT: I don't know if that's the same context, but you -- continue.

MR. LIESEMER: All right. Well, Your Honor, as I

said, for these reasons, we think that the objection to staying the direct actions against Liberty should be sustained.

I do want to add one other thought that's more broader than that, because as you pointed out, we're not opposing the stay as to other insured parties. The debtor has listed the protected parties by name in Exhibit A of its reply brief. This is the first time on the public record that the debtor has identified the protected parties by name.

We think in the final stay order, these protected parties should be listed by name as well. And we think that's consistent with Federal Rule of Civil Procedure 65(d), which requires specificity in reasonable detail. And the purpose of that is to avoid confusion, because what I have been told is that there has been -- the interim stay order because it didn't identify the protected parties by name, has caused confusion in at least one Louisiana proceeding -- and so because they couldn't interpret Your Honor's order. And so I think they did a very overprotective application of that order. And we think in order for the stay to be properly tailored, that the protected party should be identified by name.

THE COURT: All right. Well, I assume Mr. Brown wouldn't have listed him if he didn't intend to include him in the order, but --

MR. BROWN: Happy to have him attached. I think that would be helpful.

THE COURT: All right.

MR. LIESEMER: Very well, Your Honor. Thank you.

THE COURT: Thank you. Anyone else wish to argue the motion?

MR. CLEMENT: Again, Jonathan Clement on behalf of Janet Rivet, Kayla Rivet, Maxine Ragusa, Valerie Ann Ragusa Primeaux, Stephanie Ragusa Connors, Erica Dandry Constanza, and Monica Dandry Hallner. Those are the list of claimants that we represent in a total of three Louisiana cases. And the cases, I'll refer to them as Dandry, Rivet, and Ragusa, because those were the individuals who sustained the disease and who are now deceased.

Similar to what counsel for the committee said, we are seeking a very limited objection to the extension of the stay. And what we are seeking is an objection to the stay, as it applies to Liberty Mutual as the insurer of Hopeman. And what becomes important there, we are not seeking any objection to the stay as it may apply to Liberty insuring Wayne Manufacturing or any directors and officers.

You heard counsel for the debtor get up and talk about how there was a bylaws agreement. And under the directors and officers, officers get indemnity under that. We don't have any claims against the directors and officers from my three cases. We don't have claims against Wayne. We're solely looking to go against Liberty Mutual as the insurer of Hopeman.

The debtor argues that unusual circumstances exist in this case, warranty and an extension of the stay to a non-debtor Liberty, because the claims could potentially deplete the estate. And like the counsel for the committee argued, number one, there is no more interest in the policies because they've been released. But even if there was, even if Hopeman had listed those Liberty Mutual policies as part of the schedule of assets, we believe these sort of cases that are at issue for my three groups of clients are the types that would not deplete the estate, and that's what distinguishes it from H.A. Robbins, which was cited already, the Ine re: Johns Manville case, which H.A. Robbins relied upon it. And this is why.

And I think the -- Mr. Van Epps who got up, kind of alluded to this is you have operations claims versus products slash completed operation claims. H.A. Robbins, Johns Manville, those are more of the product type claims. And historically, when you're looking at general liability policies for those type of claims, there are aggregate things. And so when the courts in H.A. Robbins and In re: Johns Manville talk about trying to prevent a race to the courthouse, trying to prevent one group of creditors getting a benefit by going after the insurers to the detriment of other creditors, that's not going to happen in this instance. And that's because the type of claims that my three cases have are solely operations

claims.

When you look at Hopeman's activities at Avondale Shipyards, where my clients work, it was all operations or exposures during the actual cutting of the wallboard aboard ship. That's not disputed. So those would fall -- those are not completed operations or product hazard claims. Those are operations claims. There are no policy limits. So there's nothing for -- to be depleted in the in the estate.

And so we would argue that actually by allowing these three Louisiana claimants, these cases to go forward against Liberty Mutual, who the debtor has indicated they're not even going to be seeking money from Liberty Mutual in the future, that it actually benefits the estate and benefits the other creditors, because if we're allowed to seek our claims against Liberty Mutual and we'll be able to resolve those against Liberty Mutual, essentially you're removing three cases and seven creditors from the list of creditors that would go after Hopeman. So we think in this instance, and that's why it's different from H.A. Robbins and In re: Johns Manville, because the policy limits are uncapped as to operations claims, and therefore it would benefit the estate to allow Louisiana claimants like my clients to go after Liberty Mutual.

I know there were some things brought up about a fight between the excess carriers and whether Chubb or some of these insurers that sought to file a settlement motion. But my

objection does not seek to interfere with that. We're not seeking to go after these excess insurers in the -- in the tort actions of the three cases that I have pending in Louisiana. We're solely seeking to go after Liberty on behalf of Hopeman.

The only potential, I think, thing that was brought up is these threatened indemnity claims that counsel for Liberty could potentially bring against Hopeman. I'm in agreement with the counsel for the committee. I don't think that the basis for that has been submitted. The only thing that was talked about was a potential threat from Liberty. There's nothing indicating that there actually is an indemnity claim or that an indemnity claim was found. I don't think that should be something that should prevent my clients from getting to proceed against Liberty Mutual in the tort action.

One of the things that they brought up in the reply brief, I think talking about having to expend money because the claimants might seek discovery against Hopeman Brothers in those tort actions, or they may need Hopman's involvement to challenge the validity of the Hopeman settlement agreement. We disagree with that.

We litigate these cases all the time against insurers where insurers are bankrupt. Insurers have not been around for twenty years. We can solely seek our discovery against Liberty Mutual. In fact, that Coralville case that was talked about, that was a situation where we were litigating against Liberty

Mutual. The insurer insured in that case was Riley Benton, who was bankrupt. They weren't involved in that case. And we litigated that all the way up to the appellate court in Coralville, strictly against Liberty Mutual.

So these cases can be handled against the insurer only. And they're routinely done that way when you don't have the insured involved. And there's a stay against Hopeman. So they wouldn't be involved in the cases.

So we believe, or at least I believe, as to my three group of cases, Dandry, Rivet, and Ragusa, that we should be allowed to go against Liberty Mutual for Hopeman.

And I don't think that violates what the Court said in H.A. Robbins, because in footnote ten of that decision, the Court actually alluded to or talked about the In re: White Motor Credit case, where in that case there was an agreement, even though it was a product liability case, there was an agreement between both sides that the claims at issue would not exceed the amount of policy limits. So they were allowed to go forward in that instance. And that's why I think our case is more akin to that case that's cited in the footnote, because for our claims, the operations claims, there are no aggregate limits. So it's not something where the claims can exceed any policy limits or any proceeds of the estate.

So we believe that the objection on our behalf should be sustained for my three clients.

THE COURT: Is Liberty currently a defendant in your action?

MR. CLEMENT: They're not. We have Hopeman. We did not bring Liberty in because we didn't need to because we had Hopeman. I would have to amend to bring Liberty in solely for Hopeman.

THE COURT: Right. So -- in none of your none of your cases.

MR. CLEMENT: All three cases. Liberty --

THE COURT: Liberty is currently not a -- you're seeking permission to institute or to add to the litigation.

MR. CLEMENT: Exactly. Now, they may -- I think there is one where Huntington Ingalls, Avondale's Shipyard may have them in as a third-party for -- Liberty, for maybe for Wayne. I'm not seeking to add that. I'm asking -- I'm seeking to add Liberty for Hopeman. But no, I did not or my clients did not bring against Liberty for Hopeman.

THE COURT: All right. Thank you. Anyone else?

MS. SIEG: Thank you, Judge. Again for the record, Beth Sieg for Huntington Ingalls Industry.

Our objection is a little bit different and hopefully more practical. I've already forgiven him for doing this this morning, but Mr. Long called me easy. And I think I've already forgiven him because I know he didn't mean it that way. I'd like to propose what I think of as an easy solution here.

What we've asked the Court to do is set the motion to stay for a final hearing on the November omnibus date. And the reason we've asked Your Honor to do that is you've heard a lot of testimony on the motion to stay today that was from the debtor's perspective.

The insurance policies that are subject to the motion to stay were produced. Most of them at least were produced to us only a couple of weeks ago. And yesterday, we got the Liberty agreement that is the basis for the assertion that there's an identity of interest related to the indemnity claim.

The parties just have not had enough time to conduct discovery. And Your Honor doesn't have a complete factual record. And I think given the scrutiny that has been given by our district court when it comes to impact on third-party claims in bankruptcy cases, and also, that's a big subject in in the Supreme Court lately, I think it behooves all of us lawyers to make sure that you have an adequate factual record before you enter this injunction on a quasi-permanent basis that would last the duration of the bankruptcy case.

We think it makes much more sense because the legal issues, while their context is different, the determinations you're being asked to make are very similar to what you'll be asked to make in the 9019 context. Here, it's whether you should extend the stay to -- for the benefit of non-debtors. But to make that determination, you have to decide which

policies are property of the estate. The issue of exhaustion impacts that decision because there's obviously case law that suggests where there's no aggregate limits, as some have alleged, those policies aren't property of the estate.

So -- and in addition, Your Honor, you have the issue with Wayne. It's entirely unclear. And there's no evidence in the record right now to support why an insurer for Wayne, who is a non-debtor, would get the benefit of any stay. So we think there are significant factual questions that the parties haven't had time to fully vet and explore.

And we think again, as I said, it's the same thing that you'll be asked to decide in the 9019 motions: what is the extent of the coverage, and how does that compare with what the debtors have proposed as their settlement amount? The context is different, but the legal issues are the same. And you heard this morning about all of the complexities and understanding the scope of the coverage, what's been exhausted. All of those things are very complex. And the debtor's witness even admitted that it would take him a considerable amount of time to understand and digest the information that's in that coverage map, for which we don't even have the complete set of policies yet.

And that's not a dig on debtor's counsel. We've actually had productive discussions. They've been giving us documents on a rolling basis. These things just take more time

than we've had. And we have not yet had an opportunity to depose the debtor's witnesses on this issue.

And so that's why we're asking Your Honor to set this for a final hearing on the November omni. And there's no harm to the debtors. They have the benefit of the stay in the interim. That would simply allow parties opposing the stay enough time to develop the record to come to Your Honor and say, you know, maybe it makes sense for these parties. Maybe it doesn't make sense for that policy, but you just don't have the record in front of you today to approve that on a final basis for the duration of the bankruptcy case.

And I think doing so would only add to the expense because a preliminary injunction like this is, is immediately appealable. So we don't need to get into a situation where we're having to appeal on a less than complete factual record that doesn't serve anyone's interest. And I do appreciate -- a final note in the debtor's reply in response to our objection, asking for this to be set over for a final hearing, they said. Well, just go ahead and enter it now, and then if you have a problem with it, you can come back later and ask for relief.

And the reason that doesn't work here, and I appreciate the offer and the concept. We do that all the time in bankruptcy cases as a way to try to get past an impasse. It doesn't work to do it that way here, because it's the debtor's burden to establish the factual record necessary to obtain a

preliminary injunction. So the burden shouldn't be put on my client to develop the evidence, to come back in, and ask for a relief. We think that the best solution, since they already have their interim order, we think the best solution is to continue the final hearing to the November date.

THE COURT: So your -- Huntington Ingalls third-party Liberty in the Louisiana litigation, what other defendant or what other party that's being sought to be protected, might your client want to go after?

MS. SIEG: It could be the other settling insurers. And to be honest, Your Honor, when the motion was first filed, it wasn't abundantly clear to us who was the subject of the potential stay. We -- Huntington obviously knew it related to the Liberty causes of action because they were the Huntington Liberty cases, because they were an exhibit to the motion. Those obviously impact us. The protected parties are also the other potential settling insurers. And our clients have contingent contribution claims that may be asserted under a direct action statute as well, but those haven't actually been filed yet.

So to the extent the stay applies to those entities, it would also impact us. But the only pending claims are the ones that were listed on the debtor's exhibit to the motion.

THE COURT: So the possibility exists that you may want to pursue other insurance companies, but at this point

you're not doing that?

MS. SIEG: That's correct. Yeah. And part of the reason for the discovery is we need to understand what the -- what the picture is of the debtor's insurance coverage. And you've heard their testimony about why they think the -- why they think it's been exhausted as to Liberty. And you're -- we anticipate that they will give you a record as to why their proposed settlements are fair in comparison to what coverage is potentially available. But those are the discovery issues that have to be addressed. And that's why I say the issues are so similar with respect to the two motions.

And if it takes us at least sixty days, as everyone now agrees to evaluate that in the context of the 9019 that would involve a permanent bar to asserting those claims against the protected parties, why isn't it necessary and appropriate to give our clients the same amount of time to evaluate a temporary injunction, while there's no harm to the estate because they already have an existing one for the interim? So that's our position.

THE COURT: All right. Thank you.

MS. SIEG: Thank you, Judge.

THE COURT: Does anyone else wish to address this motion?

MR. CLARK: Your Honor, this is Matt Clark from Louisiana. May I have just two or three moments?

THE COURT: Yes, sir.

MR. CLARK: Thank you very much. And I'm sorry. I'm hearing an echo. I don't really know what to do about that. Do y'all hear it, too?

THE COURT: I can hear you.

MR. CLARK: Okay. Good.

So I want to address the notion that there's an indemnity (indiscernible) or writ the bankruptcy to Hopeman. That was addressed during the examination of Mr. Van Epps, and it did address a couple points in argument today.

And I think the way that it's been addressed, particularly by debtor's counsel, is as though the debtor could not be in the bankruptcy proceeding, protected by the stay order that's already in place if Louisiana litigants continued to prosecute their claims or made claims against the Liberty Mutual. Liberty Mutual shouldn't have any exalted status over people like my clients or Mr. Jonathan Clement's clients.

What he said today, I thought, was to the point and to me, very well taken. I don't want to rehash anything that -- I just want to make sure that everybody understands. Liberty could be stayed from making any indemnity claim, any discovery motion against the debtor while in the tort system. Just like my client can't make a discovery motion or claim against the debtor. Liberty is a non-debtor, just like my client. And it shouldn't have any exalted status over my clients.

If my clients are successful in litigating the tort system against Liberty, then Liberty wants to exercise whatever indemnity right it may have, and we don't even know yet that it does. But we're just speculating it does have one and that it might exercise one. Then it can go into the bankruptcy proceeding that the debtor is setting up with adequate funds, get in line, just like the debtor is asking my clients to get in line in a bankruptcy proceeding. Thank you.

THE COURT: All right. Thank you. Mr. Mintz?

MR. MINTZ: Thank you, Your Honor. Mark Mintz, again, for the record, on behalf of the Hoffman claimants, as identified in the debtor's papers.

Your Honor, and again, it's always hard going towards the end because you don't want to rehash, but I want to go through just a couple of points. We did adopt Mr. Clement's original objection, as if in full. We do agree with his arguments and will adopt his argument as well.

You know, I want to refocus this, I think, back on the automatic stay itself and what we're actually trying to get to here. 362, the debtor has proceeded to say, really, this isn't an extension of the stay. It's an asking a motion to confirm the stay. That was really, I think, the basis of the reply, at least the way that I understood it.

And they explained under 362(a)(1), this is really an action against the debtor. Well, 362(a)(1) tells us that it

means against the debtor. So we're talking about Liberty Mutual. As we're talking about them, that's not the debtor. And you can say, well, in other states, and this is why the Louisiana direct action makes sense or is important here is because in other states, that is the way the indemnity works from an insurance company. You sue the debtor, the tortfeasor, and then they make a claim against insurance. And maybe you can third-party them in, or maybe there'll be an additional direct claim.

In Louisiana, it is a direct claim against the insurer, and that is a substantive right that is conferred by Louisiana law. Now, we can all agree. We can all disagree. Unfortunately, that is the decision of the Louisiana legislature for those rights for Louisiana citizens.

So it's not a claim against the debtor as to the claims against Liberty Mutual. And then we heard, well, let's -- exercising control of property of the estate. Now, that's a really interesting statement, really, to make. The first issue here is the Supreme Court has already told us in City of Chicago that 362(a)(3) really should not be read nearly as broad as it used to be. Now, that was completely about a different issue. I completely am conceding that it's about a different issue, but it does talk about how far we go in reading 362(a)(3).

What the Fifth Circuit has said, and the Sixth Circuit

has said as well, and I'm sure the Fourth Circuit has said it, I just wasn't able to find it immediately, is that the mere fact that the debtor may have to exhibit or spend funds or expend funds, the mere fact that the debtor might be subject to discovery, that is not implicated by the automatic stay.

Commonwealth Oil, 805 F.2d 1175, that's a Fifth Circuit case from 1986, that is exactly what it says. So the mere fact that there could be claims against the debtor, claims that would be -- have to be filed in this Court. Mr. Van Epps was very clear that he is not a legal expert. Your Honor was very clear that he's not a legal expert. He does not know where the claims will be filed. We are legal, at least lawyers. We do know where they're going to be filed. They're going to need to be filed and litigated in this Court, which is where they should be.

Liberty can have a claim if it thinks it has one. Whether 502(e) allows that claim to be allowed against the estate or not is something this Court will figure out. It is something this Court is fully equipped to figure out. But that's not today's issue.

The issue is does 362(a)(3) prohibit or, you know, extend the stay despite the terms of saying it only applies to the debtor, does it extend it -- and property to the debtor, does it extend it to Liberty Mutual?

And it's also interesting because as counsel said for

the committee, Liberty Mutual is not listed as property of the estate, the Liberty Mutual policies at issue. So if there's a claim against them, they're about as far removed as you could be.

So that leaves only the preliminary injunction standard that we've been talking about. And I adopt again what everyone has said. But I do want to talk about something because I went different in my papers and, you know, decided to bring up the case that nobody wants to talk about, which is Purdue. But I did it for an important reason. And it's what the debtor just said or what the debtor argued at the beginning, and then it was put out here.

You go through the four factors. And the first one was opportunity of success. And the debtor keeps talking about this is not a permanent injunction. It's just very temporary. Yeah, it's a final order, but it's just very temporary. We're not trying to do any permanent injunctions. This is their plan.

But the record that's filed at docket 56, Section 10.4 policy injunctions, in fact all the Article 10, as most of them are (indiscernible) injunctions, releases, and settlements for insurers for third parties.

Now, could it be consensual? It could be. We could get there. But let's not pretend for a second that this is not an injunction-type case, that we're not seeking types of third-

party releases. It's a hundred percent what we're seeking. If it isn't what we were seeking, they want it settled. I'm not saying you can't enter into settlements. Of course you can. But let's call a spade a spade and talk about what we're actually talking about.

And so let's talk about the case that debtor cited and that actually we cited. We brought it up first, the first Goldblatt case out of Delaware -- Parliament. What's it called? Parliament. And in the Parliament case what Judge Goldblatt said is a hundred percent Purdue Pharma does not mean, and I'm not arguing that it means, that you cannot extend the stay. I'm a big believer that in exactly what Judge Goldblatt said and exactly what the Supreme Court said. Purdue Pharma says what it says and is limited to what it says.

But it does mean, and this is what Parliament says, that you cannot base the opportunity of success criterion on the possibility of these third-party releases. That's what Parliament stands for.

Insofar as A.H. Robin (sic) says that, and I recognize that is the law of the circuit. And I'm not here to tell you that it isn't. But I am here to tell you that to the extent that it says that you can base the opportunity of success criterion on third-party releases, like the ones we were seeing in this plan at the moment, then that has been overruled by Purdue Pharma. And that's the unfortunate truth about where we

are today.

So that was the point of adding this in. It wasn't to say this is so far, you know, beyond and Purdue Pharma, it should be extended beyond what the arguments are. It is this narrow point of where they were basing for their preliminary injunction.

So this opportunity of success area or the likelihood of success or whatever you want to call it, criterion, if they can't meet that, the rest of the balance of harms, it really falls by the wayside. And so where I'm getting at, Your Honor, is especially with regards to Liberty Mutual, where we have direct actions, where you've had briefing on the (indiscernible) arguments that happen under Louisiana law, as Huntington Ingalls has pointed out.

It is not as simple as saying, oh, this small part can be stayed and that won't affect everything else. It actually does affect everything else.

The final point that I raised that was slightly different than others is I do not believe the debtor has met its burden with regards to the directors and officers. At the time that I raised the issue, we had not seen nearly as much as we have seen now that came in the reply and was presented to the Court.

I want to withdraw my objection on the director and officer portion in the interest of making this whole thing

easier. So we are going to withdraw our objection on extending the stay as to the directors and officers. We maintain it as to Liberty Mutual, and I think that is important that we're really all arguing the same thing. And I think that's an important point that Your Honor can use in deciding.

Finally, I think -- then as you talk about this effect on the estate concept, the debtor really bears a heavy burden of putting that forward. And what we heard from the debtor's witness was not this is the heavy burden. What we heard from the debtors witness was, I think there might be a claim. He has expressed no opinion. I asked him these questions, no opinion whatsoever on the amount of claim, what was a valid claim, how and where it could be filed. What that claim from Liberty Mutual would even look like. Expressed no opinion on the event. All he has stated is there have been defense costs.

Well, they were litigating claims beforehand. We don't know if these were the quote unquote, and I hate using this term, but the bad claims. We don't know anything about the claims that when he gave us this listing, all he said was and he confirmed for us, it was just the simple math of how much was spent.

And based on some agreement, maybe, there might be a claim, we think possibly to repay that. Well, that's going to be part of a settlement that apparently is occurring or not occurring, but it doesn't change the fact that the Louisiana

clients or the Louisiana claimants do have direct actions against Liberty Mutual, that that policy is not property of the estate, and that any preliminary injunction to proceed, the debtor has not met what is admittedly a higher burden of doing so.

So for those reasons, Your Honor, we do urge you to deny the motion to extend as to Liberty Mutual. We withdraw our objections as to the others. And I appreciate your time.

THE COURT: All right. Thank you.

Does anyone else wish to address this motion? Mr. Brown?

MR. BROWN: Tyler Brown for the debtor. Your Honor, I won't belabor it. We've been going a long time.

I do appreciate the concession by Mr. Mintz that his clients won't sue D's and O's. That's great. Like protection for everybody else. So they won't sue D's and O's. So that doesn't solve our problem.

THE COURT: Yeah. I've heard really just it's all focused on Liberty Mutual, other than Ms. Sieg saying she thinks it should, that you shouldn't have to step -- as to any of the insurance companies.

MR. BROWN: Yeah, that's right. So the Ms. Sieg points out --

THE COURT: Although, she offered to allow an extension through November.

MR. BROWN: Right. And it seems to me, Judge, that's a kind offer, but we have an evidentiary hearing today. It was noticed up long ago for August. We filed this, you know, in late June. It was heard the first time July 2nd. Court entered an interim order. People have had all this time to look at it. And today was the day.

We have evidence from one party, and that's the debtor. And you heard Mr. Van Epps testify very carefully and artfully concerning the harms that he thinks will come to this estate by the continuation or commencement, more precisely, of new litigation. And I do want to focus on that point for a minute, which is no one, not a single arguer here today said to you why they can't sit tight. Nothing. There's no reason they can't sit tight.

Mr. -- I'm sorry, Jonathan. Jonathan was very frank in responding to the Court, I haven't added them yet. I haven't amended yet. He's not ready to go to trial. He's not even ready to start getting ready to go to trial. So why can't they sit tight? Two months isn't long enough, Judge. You know, if the Court decides that it wants to enter a six month order and then see where we are four or five months into it, we're fine with that. We want to get down the road with this bankruptcy.

We -- you can also, you know, specifically acknowledge, what I think is already baked in essentially to

the Code, which is if someone needs relief for a particular reason, circumstances have changed, come back and seek relief. That's fine too. We have no problem with that concept.

But I don't want to go through this drill hours again to two months from now, when today was the day and there's no other evidence that there will be harm to the estate. The only harm not just from directors and officers, but from suing Liberty itself, is what we talked about with Mr. Van Epps. All of the other policies stack up above it, are baked based on how Liberty was worked out. And that means there are gaps in our coverage there. There are holes that need to be filled. We don't have the cash to fill them. And if you pull the string of Liberty, that causes ripple effects all through the excess policies.

It's naive. And again, it's not as simple as they'd like to say. Well, I just want to sue Liberty, so leave me alone and I'll be fine. It's not isolated. The coverage goes across coverage blocks. There are coverage defenses. There are exhaustion. There are allocation issues that apply across the board.

And so we have a risk to the very asset that's going to support this case, which is our entire portfolio depends on it being cohesive and sticking together. And what we risk is a bleeding of all of our remaining cash to fight all these side issues when no one has said they really need to address that

right today. And you can control your docket, this case, and allow us to proceed with protection.

That's why we're here. We think you have plenty of authority as laid out to do that. And whether you craft it on a, again, a six month basis or during the -- during the case, you know, happy to consider, you know, whatever the Court thinks is the best way to handle this, but we shouldn't be back in here in two months and doing this again. Today was the day.

Thank you.

THE COURT: All right. The argument that the Liberty policy is no longer property of the estate. What -- how does that affect (a)(3)?

MR. BROWN: Right. So Your Honor, if in fact, they're going to try to blow up that settlement, they blow it up. Guess what? We're back. Party to policies. They're the debtor's policies.

THE COURT: Well, how could they blow it up, though?

MR. BROWN: I don't know how they're going to blow it up. I don't know how they're going to succeed on their claims to start with, but I know that they're going to have fights about whether they can. And I know Liberty is going to make fights with everyone they can about whether they can access that coverage.

But if that coverage exists, it's the debtor's coverage. It always was the debtor's coverage. They don't

have their own coverage. We have cited and mention was made about the fact that the buyback can be done under Louisiana law. That's without -- free and clear of claims that were not known. That's a Eastern District of Louisiana district court opinion that we cited in our brief that says those policies can be sold free and clear.

Now again, that's Liberty's fight. But that's the way it is currently. And if they are set aside somehow, then I'm saying that the debtor has rights in those policies too. But what we're here to talk about today is not that because you don't have to decide that. You can decide today that the collateral harm that comes from those lawsuits that Mr. Van Epps testified about will harm this estate, whether it's a loss of coverage, that's just one of the four pieces I talked about. Maybe we don't lose coverage because maybe it's not subject to an aggregate limit, but we are going to then face indemnity claims. We are going to then incur costs to deal with discovery. Discovery is not stayed by the automatic stay. I don't know why they think it is. If it is, great, but we are going to face discovery about those fights. I am confident. And more importantly, Mr. Van Epps is confident about it, and that we are going to spend money that we don't have to deal with this.

And so we're seeking protection to keep the money we have to be able to get through this process without

interference. And that's why we seek the relief --

THE COURT: Well, I understand the reason, the rationale and the -- certainly (a)(3) could apply to the other insurance policies.

MR. BROWN: That's right. (a)(1) can apply to the first because the interest of this estate are harmed by the prosecution against Liberty. And if it's not in (a)(1), if you conclude it's not in (a)(1), you can extend the stay under 105 to carry out the purposes of 362(a) and that's where the four-part preliminary injunction standard comes in.

And even with respect to Liberty, I think we satisfied that test today. Restructuring does not have to be a reorganization, it can be a liquidation. The Court can provide protection for that process to play out. Why? Because it's the interest -- in the interest of creditors as a whole to have a process approved by this Court which lays out the rules and allows the fair game. That's step one.

THE COURT: Well, we're likely to end up being successful. And the argument is, is that it would be -- only have to apply to a reorganization, which this is not.

MR. BROWN: Successful cases aren't always reorganizations, Your Honor. Successful cases are cases that successfully move the assets of the estate for the benefit of creditors. It can be through a trust. I would view this case if we confirm a liquidating plan as a success. It looks like

we've got some obstacles.

THE COURT: I think in the context of this case, you certainly could argue that would be a success. What about the other three tests?

MR. BROWN: Yes, sir.

The other three tests are harm to the estate, the harm we've talked about, the evidence that come in. There is harm to the estate about the loss in -- not in Liberty, necessarily, the loss of coverage, but the effects on our excess carrier coverage. There are effects. Mr. Van Epps talked about the effects. There are discovery expenses. There are indemnity fights with Liberty that will happen. There are subrogation and cross claims that may come from excess carriers under state law. That's covered in our brief as well, Your Honor.

There are side impacts. But the debtor is the only one here who's come in with any harm. You didn't hear anything about harm to the other parties. Why? Because we're not seeking to change their rights. We're not seeking to take away the substantive rights.

The plan, contrary to what Mr. Mintz says, does not contain any nonconsensual releases at all. It's proposed to be a consensual release with certain insurers. You heard Mr. Van Epps testify. There's no nonconsensual release being sought. We're not seeking to get a nonconsensual release like Purdue Pharma. That's not in our plan.

So what's the downside to them? They have to sit tight for a little while and nobody explained to you why that's a problem.

And then finally, the fourth prong is the public interest. Public interest is supportive of having a successful case that then allows the assets to be used for the benefit of legitimate creditors. We meet the test.

THE COURT: All right. So with respect to all of non-Liberty defendants, apparently there's been some concessions with respect to the officers and directors. So I'm really --

MR. BROWN: Well, Mr. Mintz. Yes, sir. Well, his client.

THE COURT: Well, and the committee doesn't object to the officers and directors.

MR. BROWN: Well, the committee doesn't have a dog in that fight. So they haven't sued anybody. But the other ones --

THE COURT: Well, they're focusing on Liberty as well.

MR. BROWN: Understood, Your Honor, but I -- the only testimony that's come in today is that the Liberty fights, the Liberty lawsuits will harm this estate. It will cause a mess. That's what the testimony was. That's the only testimony today.

And so based on that testimony, Your Honor, I think there's only one conclusion you can draw, which is that it will

be a mess. And from Exhibit 9, what you heard was it'll be an expensive mess, which is that the -- at least the facts suggest that the cost of dealing with Louisiana litigation is disproportionately high. It will cost the estate a lot of money. And we start with Mr. Van Epps saying early on, less than 4 dollars million. I don't know where we are after today's hearing, but we're draining the bucket very quickly and we can't afford the sideshow. And there's no reason for the sideshow that you heard today that can't wait. The sideshow can wait. And they can be dealt with by the --

THE COURT: Well, if an administrative claim were made against the debtor, the debtor doesn't have to pay it and it can hold off or oppose it.

MR. BROWN: It didn't say -- you're right, Your Honor. But what we're talking about is it harms other creditors of the estate, whose distribution then might be diluted by another claim in the estate. There's no reason an indemnity claim wouldn't be at a minimum pro rata with all the other claimants.

So what you're doing is bringing more claims to the estate, diluting recoveries. At the same time, you're draining the cash that's available that would be available to go to the trust or would be available to prosecute our Chapter 11 plan. So those are the circumstances in which this Court has the power to say, I need to get control of this and not have these sideshows while we decide whether we're going to have a plan or

not. Let's march down that path. And if you decide at some point it doesn't look like we're on the path anymore, then you can lift it.

But right now, all the focus should be on this bankruptcy court talking about the settlements, talking about the plan, and see whether we can get out the other side. And if you decide along the way it's not going to happen, then you can lift the stay.

THE COURT: So currently you're seeking the stay through November. Is that what -- November?

MR. BROWN: No, Your Honor, we were seeking the stay --

THE COURT: Through the pendency of the case.

MR. BROWN: -- through the pendency of the case. And I was just throwing out an idea for you, you know, if you instead want -- because we don't know how long the case is going to last. Instead, say, let's take a gut check in six months, you know, we could do that, you know?

But let's -- because I hope we're going to get to the plan by then. I hope we're going to get to the settlements within three, four months of filing our case. I hope we'll get to the plan within six months of the case. So you could do that and then we could see where we are. But I'm confident if we are allowed to proceed, we'll have a lot to talk about in terms of a confirmable plan.

And again, as I talked about earlier, even if you don't like some of these settlements, we do, but we can still have a plan discussion about contributing, you know, policy rights. But -- or a combination, you know, some settlement and policy rights. But we've got to continue down the path and not waste our time on these extraneous fights. And that's what the evidence suggests is going to happen.

THE COURT: All right. Thank you.

MS. SIEG: For the record, Judge, Beth Sieg again for Huntington Ingalls.

This is why I love bankruptcy, because things change on the record. I had not heard before a proposal for a six month check in. We had proposed that it be extended at a maximum only to the November date. But if we're -- I think we would be willing to work with the debtors on a six month. We'd probably prefer it to be five months so that the check in would occur before the end of the year, but I think that's -- from our perspective, that's progress. And that would accommodate the concerns that we've had. So that by the time that check in period comes, we'll know whether we still have any problem with what they're proposing on a more lengthy basis.

Thank you, Judge.

THE COURT: Thank you.

MR. BROWN: Thank you. But just to be clear, Judge, I was talking about six months from today. I wasn't talking

about six months from way back at the filing time. I just want to be clear.

THE COURT: Yeah. I understood that.

All right. Well, thank you. Has everybody said everything they wish?

Well, what concerns the Court is what would logically concern the Court at this point and that is a race to the courthouse to certain claimants recovering something that other claimants have to wait their turn and potentially diminish the pot that's available for all claimants. And I would think that the goal of the debtor here to establish a fund as quickly as it can, with the maximum amount of resources, is a noble goal. And I would like to think all the parties can work towards that goal, particularly the creditors committee.

But the -- there are attorneys who certainly want to protect their clients that are seeking to protect their particular clients. And it appears that a number of them believe that they have direct causes of action against Liberty Mutual that are viable, that could be asserted without harm to the debtor, or if the harm to the debtor occurs, it is not significant enough that it should justify extending the stay to Liberty Mutual.

I believe at this point what I'm hearing is that the most parties are not objecting to the extension of the stay to the parties other than Liberty, with the possible exception of

Huntington. Although Huntington is willing to acquiesce to a temporary extension of the stay, something that the debtor appears to be willing to accept.

Now I look at the Fourth Circuit case and Robbins as being very on point in this case. And that case also involved a torts -- massive tort claims against the debtor and numerous insurance policies that were available to pay and causes of action being asserted against officers and directors. And the Court in that case determined that a stay should apply and that the parties should be protected, that the officers and directors and the insurance company should all be protected during the pendency of the case so that funds that could be made available for the trust would be -- it would find their way to that trust. And the trust administered all of the claims. And my recollection is it was a successful case. It worked out well under those circumstances.

Here, the debtor is seeking to extend the stay as to the insurance companies and to the officers and directors that they've listed in the exhibit, I believe, to -- that was included in the list of exhibits. But -- and I believe that Section 362(a)(1) and (a)(3), in conjunction with the Robbins decision, enable the Court to extend or to find that the stay extends to the insurance companies and to the officers and directors, with the possible exception of Liberty Mutual.

The argument there being that the debtor had

previously settled with Liberty Mutual and that its rights to the policy are no longer property of the estate by virtue of that settlement. However, the evidence and the only evidence that I've heard today is the testimony of the debtor's representative in the exhibits submitted by the debtor.

Other parties were given adequate notice of this hearing. The hearing was continued so that they had additional time to prepare, yet nobody offered any evidence aside from the debtor.

And the debtor's testimony from Mr. Van Epps was pretty much on point that were parties allowed to proceed against Liberty Mutual, that that would result in a claim by Liberty Mutual for indemnification. It would be a post-petition claim, potentially an administrative claim. It would affect the -- not only the potential distribution that might be available to all the creditors of the estate if a plan is confirmed, but it would also cause the debtor to incur potential expenses during the pendency of the case and while it is attempting to pursue confirmation of a plan.

I believe that with respect to Liberty Mutual, if Sections 362(a)(1) and (a)(3) were not to apply, and I'm not saying that they don't, I believe that the debtor has, through the testimony and exhibits offered today, satisfied the four-part test that would be applicable in the event that the debtor is seeking a preliminary injunction, and the first being that

the likelihood of success.

In my mind, a success in this case would be confirmation of a plan that creates the trust -- the liquidating trust that will enable all of the claimants to have recourse against the debtor in one location and in one manageable trust, that is -- that includes all of the insurance proceeds that are available to the debtor. I think that would be good for the debtor. It's what's contemplated by the Bankruptcy Code. And to me, that would be successful even if the debtor is no longer in business.

The harm to the estate, I think, has been established by the evidence that in the event that the stay is not applicable to the officers, directors, and insurance companies, and in this case, Liberty Mutual, that the harm to the estate would involve what I've already described and that is indemnity actions. There's no evidence that there is no indemnity on the part of Liberty Mutual.

And I think that the debtor has demonstrated second and third parts of the test. The -- it does appear to me that it is a very complicated situation with the insurance companies and who has what excess coverage. If one company pays, what are the rights for contribution? To have that sorted out in Louisiana District Court at the same time that the debtor is trying to sort it out here doesn't seem to make sense. The debtor is way ahead of reaching those types of decisions. When

they bring the motions to approve settlements with the insurance companies, all of that should be sorted out. And I expect that will happen fairly quickly.

So I see the harm to the debtor by enabling the Liberty Mutual litigation to continue to outweigh the harm that the parties, who at this point I don't believe have even included -- or at least the some of the plaintiffs have not even brought Liberty Mutual into their causes of action. And a delay, I don't think, will be very harmful to those parties.

But in light of the suggestion that the Court can revisit whether a stay should remain applicable, I do believe that it would be appropriate to only extend the stay for a period of time, or to recognize that the stay extends for a period of time, rather than to invite parties to file motions for relief from the stay so that the Court can reassess where this case is.

And so I do intend to impose a six month period of time from today, where the stay will be applicable for the reasons that I've stated. And at the conclusion of that six month period, the stays will no longer be in place unless the debtor has filed a motion to extend the ruling further, at which point all of the parties who wish to oppose that will be -- will have the rights to oppose that. So all of the current arguments are preserved at that time.

Have I missed anything in connection with this? Any

parties need any clarification?

MR. BROWN: No, Your Honor.

THE COURT: Great.

MR. LIESEMER: No, Your Honor.

THE COURT: All right. Well, very good. I will look for an order to that effect, Mr. Brown, and if anyone who has filed opposition wishes to review and endorse the order, as proposed, I certainly give -- please give those parties an opportunity to do that.

MR. BROWN: Certainly will, Your Honor. And I think to level set, the interim order continues in place until the new order is in place.

THE COURT: Correct.

MR. BROWN: Thank you, Your Honor. With that, that is all the agenda we have for today.

THE COURT: All right. Did anyone else have anything they wish to bring up at this time?

All right. Well, I will look for the orders that have not yet been submitted, and I appreciate everyone's good effort. I heard some good arguments today. It was very well lawyered, and I appreciate that. It makes my job easier. So we will adjourn.

THE COURT: All rise. Court is now adjourned.

(Whereupon these proceedings were concluded at 2:17 PM)

I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
FOR THE DEBTOR:					
Ron Van Epps	76	107,110,114			

EXHIBITS:	DESCRIPTION	MARK	ADMIT
FOR THE DEBTOR:			
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C E R T I F I C A T I O N

I, River Wolfe, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

September 18, 2024

RIVER WOLFE DATE

TTA-Certified Digital Legal Transcriber CDLT-265

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: HOPEMAN BROTHERS, INC., Debtor.	Chapter 11 Case No. 24-32428 (KLP)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Appellant, v. HOPEMAN BROTHERS, INC., Appellee.	Civil Action No. _____

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR LEAVE TO APPEAL FROM SECOND INTERIM ORDER EXTENDING THE AUTOMATIC STAY

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Special Insurance Counsel for the Official Committee of Unsecured Creditors

Dated: October 9, 2024

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Appellant, the Official Committee of Unsecured Creditors ("**Committee**") of Hopeman Brothers, Inc., by and through its undersigned counsel, hereby moves this Court for leave to appeal from the *Second Interim Order Extending the Automatic Stay to Asbestos- Related Actions Against Non-Debtor Defendants* (ECF No. 245)[1] ("**Stay Order**"), entered by the United States Bankruptcy Court for the Eastern District of Virginia (Phillips, J.) ("**Bankruptcy Court**") on September 25, 2024.

The Committee brings this Motion in an abundance of caution. For the reasons explained below, the Committee believes that the Stay Order is a final order that gives the Committee an appeal of right under 28 U.S.C. § 158(a)(1) or alternatively, is an immediately appealable order under the collateral order doctrine. In either case, the Committee can present for appellate review all factual and legal issues connected with the Stay Order. Nevertheless, if this Court concludes that the Stay Order is neither final nor an appealable collateral order, the Committee requests leave to pursue an interlocutory appeal under 28 U.S.C. § 158(a)(3) and Federal Rule of Bankruptcy Procedure 8004 on the questions of law described below.

For the reasons set forth below, this Court should determine that the Stay Order is immediately appealable without leave because it is a final or collateral order or, alternatively, grant the Committee leave to pursue the interlocutory appeal requested herein.

PRELIMINARY STATEMENT

1. This appeal arises from the chapter 11 case of Hopeman Brothers, Inc. ("**Debtor**"), which is pending before the Bankruptcy Court. Before selling its operating business in 2003, the Debtor was a joiner subcontractor that, *inter alia*, installed ceiling and wall panels inside ocean-going vessels. These panels contained asbestos fibers that were released during installation, which

[1] All ECF numbers referenced herein are in the above-captioned bankruptcy case.

caused exposures to those fibers and resulting illnesses or death to tens of thousands of individuals. The Debtor thus filed for chapter 11 relief facing claims for personal injury or wrongful death arising from these asbestos exposures.

2. The filing of the Debtor's chapter 11 petition automatically stayed the commencement and continuation of asbestos lawsuits against the Debtor. *See* 11 U.S.C. § 362(a). Nevertheless, in certain States—most notably here, Louisiana—individuals holding asbestos claims against the Debtor may pursue "direct actions" against the Debtor's liability insurers without having to name the Debtor as a co-defendant.[2] One of those insurers is Liberty Mutual Insurance Company ("**Liberty**"), which for decades provided to the Debtor primary and umbrella-level liability insurance coverage that was—and remains—responsive to asbestos-related claims against the Debtor.

3. In conjunction with its chapter 11 filing, the Debtor filed a motion with the Bankruptcy Court to "extend" the § 362(a) stay to enjoin the direct actions of asbestos claimants against the Debtor's asbestos insurers, including Liberty. The Committee filed a limited objection to the stay motion, opposing only the stay of direct actions against Liberty for two reasons. First, direct actions against Liberty would not implicate or affect property of the Debtor's bankruptcy estate because the Debtor had disclaimed any interest in the Liberty insurance coverage, contending that the Liberty coverage "is exhausted and released" based on an agreement the Debtor

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[2] *See Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 51 (1954) (finding the Louisiana direct action statute creates "a separate and distinct cause of action against the insurer which an injured party may elect in lieu of his action against the tortfeasor"); *Gateway Residences at Exch., LLC v. Ill. Union Ins. Co.*, 917 F.3d 269, 272 (4th Cir. 2019) (finding that under the direct action statute, "a plaintiff may sue a tortfeasor's liability insurer without joining the tortfeasor as a defendant and establish both the insured's liability and the insurer's obligation in a single suit" (citing LA. STAT. ANN. § 22:1269(B))); *West v. Monroe Bakery, Inc.*, 46 So. 2d 122, 123 (La. 1950) (finding the direct action statute thus confers "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").

entered into with Liberty in 2003.[3] But even though the Debtor believes that it has released *its* interest in the Liberty coverage, asbestos claimants across the country, who possess enforceable rights under the applicable policies, have not released *their* interests, which cannot be extinguished or altered by a subsequent bilateral agreement between the Debtor and Liberty.[4]

4. Second, direct actions against Liberty are not stayed under 11 U.S.C. § 362(a)(1) because, by its express terms, the statute stays proceedings against only debtors, not nondebtor codefendants. The Debtor nevertheless argued that there were "unusual circumstances" favoring an expansion of the stay beyond its statutory terms based on an alleged "identity of interest" between the Debtor and Liberty. In particular, the Debtor asserted that Liberty had threatened to seek indemnification from the Debtor and its bankruptcy estate if direct actions against Liberty

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[3] Hr'g Tr. 54:4-7, Sept. 10, 2024 (K. Finnerty) ("There's three agreements . . . entered into between the debtor and Liberty, one executed in 1990, two executed in 2003 . . . ."). A copy of the partially redacted September 10, 2024 hearing transcript is annexed to the Motion of the Official Committee of Unsecured Creditors for Leave to Appeal From Second Interim Order Extending the Automatic Stay, filed contemporaneously herewith, at **Exhibit B**.

[4] *See Storm v. Nationwide Mut. Ins. Co.*, 97 S.E.2d 759, 764 (Va. 1957) (noting that "rights and interests" of an injured person under a liability insurance policy cannot be "defeated" between the actions of the insured and the insurer under "what the statutes make a tri-party contract"); *see also, e.g.*, *Smith & Wesson v. Birmingham Fire Ins. Co.*, 510 N.Y.S.2d 606, 608 (N.Y. App. Div 1987) ("[I]f a settlement is recognized as binding upon the non-participating injured third party, the insurer and insureds would have a strong incentive to settle, merely to limit the amount the injured third party could collect against the insurer. This would defeat the beneficial purposes of [New York] Insurance Law § 3420."); *Sales v. U.S. Underwriters Ins. Co.*, No. 93 CIV. 7580 (CSH), 1995 WL 144783, at *9 (S.D.N.Y. Apr. 3, 1995) ("[P]laintiffs' right of action under [New York Insurance Law] Section 3420(a)(2) accrued at the time of the injury, and . . . any subsequent settlement or release effectuated by . . . [the tortfeasor] and . . . [insurance company] is not determinative of plaintiffs' rights."); *Shapiro v. Republic Indem. Co. of Am.*, 341 P.2d 289, 291 (Cal. 1959) (noting that persons injured by a tortfeasor are "third-party beneficiaries of the [tortfeasor's] policy" and "had an interest that could not be altered or conditioned by independent action of the insurer and the insured. Nor can these rights be conclusively determined against the injured persons in an action to which they were not made parties.").

were not stayed.[5] But Liberty's supposed indemnification rights against the Debtor are allegedly based on an agreement that was never offered into evidence at the hearing on the stay motion.[6] And the Debtor did not list Liberty as a creditor on its bankruptcy schedules, which undercuts the Debtor's own assertions that it faces the risk of indemnification claims from Liberty as a result of continuing direct actions.

5. After a contested evidentiary hearing on September 10, 2024, the Bankruptcy Court granted the Debtor's stay motion and ruled that direct actions against Liberty would be stayed. The Bankruptcy Court subsequently entered the Stay Order. By this appeal, the Committee seeks reversal of the Stay Order only with respect to direct actions against Liberty.

6. The Stay Order is the product of factual and legal errors that warrant immediate appellate review. If this Court determines that the Stay Order is appealable, either as a final order or under the collateral order doctrine, the Committee intends to present for appellate review all factual and legal issues pertaining to the Stay Order. If, however, the Court determines that the Stay Order is interlocutory, it should grant leave to appeal because the Stay Order raises controlling questions of law (described below) as to which there is substantial ground for difference of opinion. Additionally, an immediate appeal from the Stay Order may materially advance the ultimate termination of the litigation because it could definitively determine that the automatic stay does not extend to direct actions against Liberty or narrow significant legal issues in the bankruptcy case. Accordingly, this Court should grant the relief requested herein.

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[5] *E.g.*, Omnibus Reply in Support of Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants ¶ 25, ECF No. 157; Hr'g Tr. 122:22-24 (T. Brown) ("You're substituting Liberty on the same claim against the debtor. Liberty has threatened to make an indemnity claim.").

[6] Hr'g Tr. 75:3-6 (T. Brown).

BACKGROUND

7. On June 30, 2024, the Debtor commenced the above-captioned bankruptcy case by filing its petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to act as a debtor-in-possession in accordance with 11 U.S.C. §§ 1107(a) and 1108. The Debtor 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."[7] The Debtor has filed motions seeking the Bankruptcy Court's approval of insurance settlement agreements that the Debtor entered into with certain of its insurers to monetize its asbestos-related insurance coverage.[8] The Debtor has also proposed a chapter 11 plan of liquidation that, if confirmed by the Bankruptcy Court, would establish a liquidation trust to receive the insurance settlement proceeds and to liquidate and pay from those proceeds eligible asbestos claims.[9]

8. Also on June 30, 2024, the Debtor filed the Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against

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[7] Motion of the Debtor for Entry of an Order (I) Establishing Bar Dates for Submitting Proofs of Non-Asbestos Claim; (II) Approving Procedures for Submitting Proofs of Non-Asbestos Claim; (III) Approving Notice Thereof; (IV) Approving a Tailored Proof of Non-Asbestos Claim Form; and (V) Granting Related Relief ¶ 9, at 3, ECF No. 74.

[8] *See* 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 Relief, ECF No. 9; 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) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief, ECF No. 53.

[9] *See* Plan of Liquidation of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, ECF No. 56.

Non-Debtor Defendants (ECF No. 7) ("**Stay Motion**"). The Stay Motion sought to prevent asbestos victims from, *inter alia*, bringing direct actions against Liberty during the pendency of the chapter 11 case and identified only thirty-five (35) pending actions against Liberty. Stay Mot. ¶¶ 15-17; *id.* at Ex. 1.

9. On July 3, 2024, at a hearing before the Bankruptcy Court on "first-day" motions and prior to the Committee's appointment, the Bankruptcy Court granted the Stay Motion on an interim basis and issued the first Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 35) ("**First Stay Order**"). The First Stay Order set a final hearing on the Stay Motion "[i]f a timely objection is received . . . to consider such timely objection to the Motion." First Stay Order ¶ 7.

10. On July 15, 2024, the Debtor filed its Schedules of Assets and Liabilities (ECF No. 59) and Statements of Financial Affairs (ECF No. 60). Neither filing disclosed Liberty as a creditor of the Debtor or indicated that Liberty had potential claims for indemnification against the Debtor.

11. On July 22, 2024, the Office of the United States Trustee formed the Committee and appointed its members.[10] The Committee is a statutory committee of creditors appointed under 11 U.S.C. § 1102(a) that represents the shared interests of the Debtor's unsecured creditors, including, notably, those holding asbestos-related claims against the Debtor.

12. On August 30, 2024, the Committee filed the Limited Objection of the Official Committee of Unsecured Creditors to the Debtor's Motion for Extension of the Automatic Stay to Enjoin Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 141) ("**Objection**"), whereby the Committee objected to the Stay Motion to the extent it sought to enjoin direct actions by asbestos claimants against Liberty. The Committee asserted in its Objection that direct actions

[10] Appointment of Unsecured Creditors Committee (ECF No. 69).

against Liberty could not be stayed under § 362(a)(3) of the Bankruptcy Code because, according to the Debtor itself, those actions do not implicate and would not affect property of the Debtor's estate. Obj. ¶¶ 5-8. Further, direct actions against Liberty could not be stayed under § 362(a)(1) because § 362(a)(1) stays proceedings against only debtors, not nondebtor codefendants. Obj. ¶¶ 9-16.

13. On September 9, 2024, the Debtor filed the Omnibus Reply in Support of Motion of the Debtor for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants (ECF No. 157) ("**Reply**"). For the first time in its Reply, and less than twenty-four (24) hours before the hearing on the Stay Motion, the Debtor argued that, where the automatic stay could not be extended under §§ 362(a)(1) and 362(a)(3), the Bankruptcy Court could grant a preliminary injunction under § 105(a) of the Bankruptcy Code. Reply ¶¶ 32-59.

14. On September 10, 2024, the Bankruptcy Court held a contested evidentiary hearing on the Stay Motion. At that hearing, the Committee argued, *inter alia*, that the Bankruptcy Court could not grant a preliminary injunction where it failed to meet the four-factor test of the Fourth Circuit, which requires a reasonable likelihood of a successful reorganization.[11]

15. The Committee also argued, *inter alia*, that the Supreme Court's decision in *De Beers Consol. Mines v. United States* barred the Bankruptcy Court from granting preliminary injunctive relief because Liberty was ineligible for permanent injunctive relief in the Debtor's bankruptcy case. 325 U.S. 212, 220 (1945) (holding a preliminary injunction may not be granted when such an injunction is not "of the same character as that which may be granted finally").[12]

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[11] Hr'g Tr. 132:1-18 (J. Liesemer).

[12] Hr'g Tr. 133:2-22 (J. Liesemer).

16. In response to the Committee's arguments, the Bankruptcy Court determined that the "likelihood of success" prong was not limited to only reorganizations but could be applied to liquidations as well.[13] The Bankruptcy Court also disagreed that *De Beers* should be applied to a temporary stay during the pendency of the case.[14] Ultimately, the Bankruptcy Court ruled that it would grant the Stay Motion and, among other things, stay direct actions against Liberty. The Bankruptcy Court determined that the stay should be extended to Liberty principally based on Liberty's threat that it would seek indemnification from the Debtor if direct actions against Liberty were allowed to proceed. But the agreement that allegedly vested Liberty with indemnification rights was never offered into evidence.

17. On September 25, 2024, the Bankruptcy Court entered the Stay Order. By its express terms, the Stay Order is to remain in effect until March 10, 2025, unless the Bankruptcy Court extends its duration or enters a third interim stay order or a final stay order. Stay Order ¶¶ 1,6.

QUESTIONS OF LAW PRESENTED FOR INTERLOCUTORY REVIEW

18. If this Court determines that the Stay Order is immediately appealable as a final order or based on the collateral order doctrine, the Committee will seek appellate review of all factual and legal issues connected with the Stay Order. If, however, this Court determines that the Stay Order is interlocutory, the Committee requests leave to pursue interlocutory review of the following questions of law:

[13] Hr'g Tr. 167:20-168:10 (Phillips, J.).

[14] Hr'g Tr. 133:6-24 (Phillips, J.).

1. Whether a court is barred from granting preliminary injunctive relief (in the form of "extending" the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief.

2. Whether the proponent of a preliminary injunction or stay extension can meet the "likelihood of success" element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize.

ARGUMENT

I. THE BANKRUPTCY COURT'S STAY ORDER IS FINAL AND APPEALABLE OF RIGHT UNDER 28 U.S.C. § 158(a)(1)

19. District courts "have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . of bankruptcy judges." 28 U.S.C. § 158(a)(1). In ordinary civil litigation, a case culminates in a "final decisio[n]" when a court "disassociates itself from a case." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015) (first alteration in original) (citation omitted). But the Fourth Circuit has "recognized on many occasions, the concept of finality in bankruptcy traditionally has been applied in a 'more pragmatic and less technical way' than in other situations." *Mort Ranta v. Gorman*, 721 F.3d 241, 246 (4th Cir. 2013) (quoting *McDow v. Dudley*, 662 F.3d 284, 287 (4th Cir. 2011)). Therefore, in bankruptcy cases, the Fourth Circuit "allow[s] immediate appellate review of orders that 'finally dispose of discrete disputes within the larger case.'" *Mort Ranta*, 721 F.3d at 246 (quoting *McDow*, 662 F.3d at 287); *see also In re Computer Learning Ctrs., Inc.*, 407 F.3d 656, 660 (4th Cir. 2005) (same).

20. The Supreme Court agrees: "The rules are different in bankruptcy" because a "bankruptcy case involves 'an aggregation of individual controversies,' many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Bullard*, 575 U.S. at 501.

(citation omitted). Thus, "orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Id.* (citation omitted).

21. Courts have found that orders extending the automatic stay are final orders. *E.g.*, *In re Bestwall LLC*, No. 3:20-CV-103-RJC, 2022 WL 67469, at *4 (W.D.N.C. Jan. 6, 2022) (finding that the bankruptcy court's orders that extended the automatic stay were final and appealable), *aff'd*, 71 F.4th 168 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519, *and cert. denied*, 144 S. Ct. 2520 (2024); *In re Marine Power & Equip. Co.*, 71 B.R. 925, 926 (W.D. Wash. 1987) (finding that a bankruptcy indefinitely extending the automatic stay was a "final, appealable order"); *cf. Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 37-38 (2020) (finding that a court's adjudication of a creditor's motion for relief from the automatic stay is a final, appealable order); *In re Lee*, 461 F. App'x 227, 231 (4th Cir. 2012) ("An order granting or denying relief from the automatic stay is final and appealable." (citation omitted)).

22. Likewise, bankruptcy court orders granting preliminary injunctions concerning the automatic stay have been found to be final orders. *E.g.*, *Bestwall*, 2022 WL 67469, at *4 (finding that the bankruptcy court's preliminary injunction orders that extended the automatic stay were final and appealable); *Fung Retailing Ltd. v. Toys "R" Us, Inc.*, 593 B.R. 724, 731 (E.D. Va. 2018) (Gibney, J.) (concluding injunction order preventing party from prosecuting an action in Hong Kong was a final, appealable order); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1092 (9th Cir. 2007) (concluding injunction order which was in effect an extension of the automatic stay was a final, appealable order). Further, "[w]here a bankruptcy court issues a preliminary injunction but contemplates no further hearings apart from the outcome of the . . . [chapter 11 case at confirmation] then the injunction order is a final, appealable order." *See Bestwall*, 2022 WL 67469, at *4.

23. Here, the Stay Order "finally dispose[d] of the discrete dispute" over the scope of the automatic stay—*i.e.*, whether the automatic stay can and should be "extended" to enjoin direct actions against Liberty. *See Bullard*, 575 U.S. at 501; *Mort Ranta*, 721 F.3d at 246; *McDow*, 662 F.3d at 285; *Computer Learning Ctrs.*, 407 F.3d at 660. While the Stay Order provides that the automatic stay is extended and the preliminary injunction is to remain in effect until March 10, 2025, the Debtor contemplates that its bankruptcy case will be completed or near completion by the time the Stay Order expires.[15] By granting the Stay Order with the understanding of the timeline the Debtor contemplates for its chapter 11 case, the Bankruptcy Court has effectively contemplated no further proceedings on this matter apart from liquidation of the Debtor's estate. *See Bestwall*, 2022 WL 67469, at *4.[16] For the reasons stated above, this Court should hold that the Stay Order is final and appealable as of right.

II. THE BANKRUPTCY COURT'S STAY ORDER IS IMMEDIATELY APPEALABLE BASED ON THE COLLATERAL ORDER DOCTRINE

24. The Supreme Court has recognized that a party may appeal an order under the collateral order doctrine if the order "finally determine[s] claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). "To come within

[15] *See* Hr'g Tr. 163:9-25 (T. Brown) ("[W]e were seeking the stay . . . through the pendency of the case. . . [L]et's take a gut check in six months, you know, we could do that, you know? But let's -- because I hope we're going to get to the plan by then. I hope we're going to get to the settlements within three, four months of filing our case. I hope we'll get to the plan within six months of the case.").

[16] Moreover, this Court has found that relief from the automatic stay—an order procedurally similar to the Stay Order—constituted an appealable final decision even though the bankruptcy court stated that the order would be subject to re-evaluation less than four months later. *See Fung Retailing Ltd.*, 593 B.R. at 731.

the parameters of the collateral order doctrine, the order from which the appeal is taken must '[1] conclusively determine the disputed question, [2] resolve an important issue completely separate from the merits of the action, and [3] be effectively unreviewable on appeal from final judgment.'" *United States v. Moussaoui*, 483 F.3d 220, 228 (4th Cir. 2007) (quoting *Will v. Hallock*, 546 U.S. 345 (2006)). In other words, the doctrine applies when the issues at play are such that "in the interest of achieving a healthy legal system, [they must] be treated as final." *Id.* (citation omitted).

A. The Order Conclusively Determines the Disputed Question

25. An order is deemed to have conclusively determined a disputed question when it is not "tentative, informal or incomplete," and the lower court does not intend to revisit the ruling. *In re Boxall*, 188 B.R. 198, 201-02 (E.D. Va. 1995) (citing *Cohen*, 337 U.S. at 546). Even when an order is styled as "preliminary," the order is not rendered inconclusive. *See id.* at 202 ("Indeed, even though the injunction was styled 'preliminary,' it is quite clear that the bankruptcy court did not intend to enter a permanent injunction at a later date . . . .").

26. Here, the Court conclusively determined the disputed question regarding the scope of the automatic stay and the preliminary injunction in the Stay Order. The Stay Order is not "tentative, informal or incomplete" as the Court contemplated the Stay Order being in effect for the vast majority (if not the entirety) of the Debtor's contemplated timeline for its chapter 11 case. *See Boxall*, 188 B.R. at 201-02. Here, unlike in *Boxall*, where the bankruptcy court in the adversary proceeding needed to "revisit the issue of the extent to which the transfer . . . was a fraudulent conveyance at the trial," *id.* at 201, the Bankruptcy Court did not leave unresolved any aspect of the Stay Order. It simply contemplated parties requesting extensions of the stay or relief from the stay in six months' time. *See* Stay Order ¶¶ 1, 6-7.

B. The Stay Order Resolves an Important Issue Separate from the Merits of the Debtor's Chapter 11 Case

27. To satisfy the second prong, the issue in question must be sufficiently important to warrant immediate review and unrelated to the merits of the underlying action. *See Moussaoui*, 483 F.3d at 229-30; *see also P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 (1993) (resolution of question of immunity has no impact on merits of the action); *Boxall*, 188 B.R. at 202 ("Resolution of this issue on appeal [*i.e.*, the bankruptcy court's estimate of the debtor's assets and liabilities] would in no way impinge upon the bankruptcy court's adjudication of the merits of the fraudulent conveyance claim . . . .").

28. Whether the automatic stay can and should be "extended" to Liberty to preliminarily enjoin direct actions against it is sufficiently important to warrant immediate review. The automatic stay is "a core feature of the bankruptcy system." *In re Colonial Penniman, LLC*, 575 B.R. 664, 688 (Bankr. E.D. Va. 2017) (Santoro, J.), *aff'd in part*, *remanded in part sub nom. Williams v. Colonial Penniman, LLC*, 582 B.R. 391 (E.D. Va. 2018). Indeed, the automatic stay is designed to shield the debtor "from the financial pressures which prompted the filing for relief." *In re Al's Transmission Serv., Inc.*, No. 95-1-1579-PM, 1995 WL 781697, at *2 (Bankr. D. Md. Dec. 28, 1995). Determining the scope of the automatic stay is essential for claimants to understand whether direct actions can proceed against Liberty while the Debtor's bankruptcy case is pending and whether they can receive prompt payment from Liberty for their asbestos-related injuries. *See Moussaoui*, 483 F.3d at 229-30; *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145; *Boxall*, 188 B.R. at 202. The automatic stay is also sufficiently separate from the "merits" of this chapter 11 case, which ultimately hinges on whether a proposed chapter 11 plan is confirmable. *See Moussaoui*, 483 F.3d at 229-30; *P.R. Aqueduct & Sewer Auth.*, 506 U.S. at 145; *Boxall*, 188 B.R. at 202.

C. The Stay Order Would Be Effectively Unreviewable on Appeal from Final Judgment

29. An interlocutory order should be appealable where a denial of review by the court "would render impossible any review whatsoever." *In re Looney*, 823 F.2d 788, 791 (4th Cir. 1987). This is because the finality requirement should "be construed so as not to cause crucial collateral claims to be lost and potentially irreparable injuries to be suffered." *Mathews v. Eldridge*, 424 U.S. 319, 331 n.11 (1976); *Warfle ex rel. Guffey v. Sec'y of Health & Hum. Servs.*, 92 Fed. Cl. 361, 366 (2010) ("[C]ases that have held such orders to be immediately reviewable [under the collateral order doctrine] generally have involved practical exigencies or irreparable harm.").

30. If the Stay Order were not reviewed now, asbestos claimants would be potentially unable to challenge the injunction of their direct claims against Liberty until the conclusion of the chapter 11 case, whether that conclusion came in the form of confirmation of a chapter 11 plan, or the dismissal or closing of the chapter 11 case. That would inflict undue delay and irreparable harm on them because they could never recover the lost time that they otherwise could have used to seek recompense from Liberty. And this would have real—and tragic—consequences. Asbestos claimants who are sick, and many of whom are dying, may not receive funds for needed medical care or to support their families. *See, e.g.*, *Kadel v. Folwell*, 446 F. Supp. 3d 1, 11 (M.D.N.C. 2020) (identifying harm from continued denial of healthcare coverage for medically necessary procedures), *aff'd sub nom. Kadel v. N.C. State Health Plan for Tchrs. & State Emps.*, 12 F.4th 422 (4th Cir. 2021). In addition, the death of a claimant can and will result in lost legal rights and compensation. *See, e.g.*, *Bailey ex rel. Brown v. Exxon Mobil Corp.*, 76 So. 3d 53, 54-55 (La. Ct. App. 2011) (holding that punitive damages could not be recovered in a wrongful death

action).[17] Thus, delay in bringing direct actions against Liberty will irreparably harm asbestos victims in the form of lost claims, lost remedies, and the loss of immediate financial support that an award of damages could provide. Here, justice delayed would be justice denied.

31. For the reasons set forth above, the Court should determine that the Stay Order is immediately appealable under the collateral order doctrine.

III. ALTERNATIVELY, IF THE STAY ORDER IS INTERLOCUTORY, THIS COURT SHOULD GRANT LEAVE TO APPEAL UNDER 28 U.S.C. § 158(a)(3)

32. If the Stay Order is interlocutory, the Committee should be granted leave to pursue an interlocutory appeal in accordance with 28 U.S.C. § 158(a)(3). This Court, "in determining whether to grant leave for an interlocutory appeal, . . . ha[s] routinely looked by analogy to the standard set forth in 28 U.S.C. § 1292(b), which governs interlocutory appeals in non-bankruptcy cases." *First Owners' Ass'n of Forty Six Hundred v. Gordon Props., LLC*, 470 B.R. 364, 371-72 (E.D. Va. 2012) (citing *Atl. Textile Grp., Inc. v. Neal*, 191 B.R. 652, 653 (E.D. Va. 1996)); *see also In re Bestwall LLC*, No. 3:21-CV-151-RJC, 2021 WL 1857295, at *3 (W.D.N.C. May 10, 2021) ("[C]ourts employ an analysis similar to that employed by the Court of Appeals in certifying interlocutory review when deciding whether to grant leave to appeal an interlocutory order of the Bankruptcy Court." (quoting *In re Biltmore Invs., Ltd.*, 538 B.R. 706, 710-11 (W.D.N.C. 2015))); *Craddock Washabaugh v. Miller*, No. 1:16CV694, 2016 WL 4574690, at *1 (M.D.N.C. Sept. 1, 2016) ("Given . . . the lack of direct guidance concerning a standard for the grant or denial of leave to appeal interlocutory orders in § 158 itself, courts apply an analysis similar to that employed when certifying interlocutory review by the circuit court of appeals under 28 U.S.C. § 1292(b).").

[17] *See also, e.g.*, FLA. STAT. ANN. § 768.21 (specifying damages available to decedent's estate or personal representative); ARIZ. REV. STAT. ANN. § 14-3110 (providing that damages for pain and suffering do not survive death of tort victim); IDAHO CODE § 5-327(2) (specifying limited damages available in survival actions).

Section 1292(b) provides that an order is appropriate for interlocutory appeal when it "[1] involves a controlling question of law [2] as to which there is a substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the litigation." *Thomas v. Maximus, Inc.*, No. 3:21CV498 (DJN), 2022 WL 1482008, at *3 (E.D. Va. May 10, 2022) (quoting 28 U.S.C. § 1292(b)).

A. The Committee's Appeal Presents Controlling Questions of Law

33. The Fourth Circuit has defined a controlling question of law to be one that presents a "narrow question of pure law whose resolution will be completely dispositive of the litigation, either as a legal or practical matter, whichever way it goes." *Fannin v. CSX Transp., Inc.*, 873 F.2d 1438 (4th Cir. 1989) (per curiam) (unpublished table decision). More specifically, a question is one of law where it involves "an abstract legal issue that the . . . [higher court] can decide quickly and cleanly." *Thomas*, 2022 WL 1482008, at *4 (quoting *United States ex rel. Michaels v. Agape Senior Cmty.*, 848 F.3d 330, 340 (4th Cir. 2017)). Often, "[a] question of law refers to 'a question of the meaning of a statutory or constitutional provision, regulation, or common law doctrine' as opposed to an issue of fact." *Gaston v. Lexisnexis Risk Sols.*, No. 5:16-CV-9, 2017 WL 5340384, at *1 (W.D.N.C. Nov. 13, 2017) (quoting *Lynn v. Monarch Recovery Mgmt.*, 953 F. Supp. 2d 612, 623 (D. Md. 2013)).

34. In addition, "[a]n order involves a controlling question of law when . . . reversal of the bankruptcy court's order would terminate the action[] or . . . materially affect the outcome of the litigation." *Biltmore Invs., Ltd.*, 538 B.R. at 711 (citation omitted); *see also First Owners'*, 470 B.R. at 373 (citing *Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2d Cir. 1990)) (same); *Barcelona Cap., LLC v. Neno Cab Corp.*, 648 B.R. 578, 586 (E.D.N.Y. 2023) (quoting *2178 Atl. Realty LLC v. 2178 Atl. Ave. Hous. Dev. Fund Corp.*, No. 20-CV-1278 (RRM), 2021 WL 1209355, at *4 (E.D.N.Y. Mar. 30, 2021)) (same); *In re Wijewickrama*, No. 1:16-CV-00347-MR, 2018 WL

2212983, at *3 (W.D.N.C. Mar. 15, 2018) (applying the same analysis in finding that the first factor weighed in favor of leave to appeal, even though the case would not terminate).[18]

35. The Committee is presenting the two following issues for interlocutory review: (a) whether a court is barred from granting preliminary injunctive relief (in the form of "extending" the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief; and (b) whether the proponent of a preliminary injunction or stay extension can meet the "likelihood of success" element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize. Both issues are questions of law because each of them is "stated at a high enough level of abstraction to lift the question out of the details of the evidence or facts of a particular case and give it general relevance to other cases in the same area of law." *McFarlin v. Conseco Servs., LLC*, 381 F.3d 1251, 1259 (11th Cir. 2004). This Court could resolve these questions "quickly and cleanly without having to study the record." *Barcelona Cap., LLC*, 648 B.R. at 586 (citation omitted). And both questions are "controlling" because a ruling in the Committee's favor on either issue would necessitate reversal of the Stay Order as to Liberty, which would leave asbestos claimants free to pursue direct actions against it.

B. The Committee Is Presenting Legal Questions as to Which There Are Substantial Grounds for Differences of Opinion

36. A "substantial ground [for difference of opinion] must arise out of a genuine doubt as to whether the . . . [bankruptcy] court applied the correct legal standard." *Thomas*, 2022 WL 1482008, at *5. "[A] controlling question of law involves a 'substantial ground for difference of

[18] "Conversely, a question of law is not controlling if litigation will 'necessarily continue regardless of how that question [is] decided.'" *David v. Alphin*, No. 3:07-CV-11-RJC-DLH, 2009 WL 3633889, at *3 (W.D.N.C. Oct. 30, 2009) (alteration in original) (citation omitted). The court in *Alphin* held that the issue of standing was a controlling question of law because its "resolution will be dispositive" of claims. *Id.*

opinion' only when the law remains unclear in the controlling jurisdiction and other courts have issued conflicting decisions." *COMM 2013 CCRE12 Crossing Mall Rd., LLC v. Tara Retail Grp., LLC*, No. 1:17CV67, 2017 WL 2837015, at *4 (N.D. W. Va. June 30, 2017) (citing *In re Health Diagnostic Lab'y., Inc.*, No. 15-32919-KRH, 2017 WL 2129849, at *4 (E.D. Va. May 16, 2017)). This prong is satisfied when "(1) there is conflicting authority on the issue, or (2) the issue is particularly difficult and of first impression for the . . . Circuit." *Barcelona Cap., LLC*, 648 B.R. at 586 (quoting *Osuji v. U.S. Bank, N.A.*, 285 F. Supp. 3d 554, 558 (E.D.N.Y. 2018)). For the reasons explained below, there is substantial ground for differences of opinion as to both questions presented by the Committee.

1. Whether a court is barred from granting preliminary injunctive relief (in the form of "extending" the automatic stay or otherwise) when it cannot grant equivalent permanent injunctive relief

37. Except in cases where an asbestos-related channeling injunction is authorized under 11 U.S.C. § 524(g), no provision of the Bankruptcy Code authorizes courts to permanently stay or enjoin litigation against a nondebtor such as Liberty. *See Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2088 (2024); *see also* 11 U.S.C. § 524(e) (providing that a "discharge [in bankruptcy] of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt"). The one exception already noted—§ 524(g)—does not apply here because the Debtor has proposed a chapter 11 plan in which it would liquidate and not reorganize. Section 524(g) authorizes a court, when certain requirements are met, to issue a permanent channeling injunction that can protect nondebtors from asbestos lawsuits only in connection with confirmation of "a plan of reorganization" and only to "supplement the injunctive effect of a [bankruptcy] discharge." 11 U.S.C. § 524(g)(1)(A). Here, the Debtor has proposed a plan *of liquidation*, not one of reorganization. Moreover, in a liquidation, the Debtor is ineligible for a chapter 11 discharge. *See* 11 U.S.C. § 1141(d)(3). There will thus be no discharge of claims

against the Debtor that a 524(g) channeling injunction could "supplement." Accordingly, as a nondebtor, Liberty is not—and could never be—entitled to a permanent stay of direct actions against it through the Debtor's bankruptcy case. *See In re New Towne Dev., LLC*, 410 B.R. 225, 232 (Bankr. M.D. La. 2009) ("It would indeed be anomalous if the Bankruptcy Code prohibited a plan from discharging a liquidating . . . [corporate] debtor that will not remain in business postconfirmation, but allowed that plan effectively to discharge non-debtor third parties by means of releases and permanent injunctions.").[19]

38. Because Liberty is ineligible for a permanent stay of asbestos direct actions, it follows that it is not entitled to a preliminary or temporary stay of such actions (whether in the form of an "extension" of the automatic stay or otherwise). *See De Beers*, 325 U.S. at 220 (holding a preliminary injunction may not be granted when such an injunction is not "of the same character as that which may be granted finally"). In *De Beers*, the Supreme Court found that a preliminary injunction that prevented a defendant from using his funds or property was overbroad and not authorized either by statute or equity. *Id.* at 222-23. Finding that such an injunction was not permitted on a permanent basis, the Supreme Court lifted the preliminary injunction. *Id.* at 216; *see also Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 326 (1999) (stating that a "preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally" (quoting *De Beers*, 325 U.S. at 220)). In addition, at least one bankruptcy court has denied a preliminary injunction where the injunctive relief would

[19] *See also In re Optical Techs., Inc.*, 216 B.R. 989, 994 (Bankr. M.D. Fla. 1997) (holding that "the issuance of a third-party injunction is inappropriate in the instant cases" where a chapter 11 plan "provides for the total liquidation of the debtor" because "[i]n a liquidation case, substantial assets cannot be contributed to the reorganization because the debtor is not reorganizing" and "a third-party injunction is not essential to the continued operation of the debtor because the purpose of such an injunction is to aid in the rehabilitation of an ongoing business").

not have been allowed as a permanent injunction, relying on *DeBeers* and *Grupo Mexicano*. *See In re Teknek, LLC*, 343 B.R. 850, 868, 870-71 (Bankr. N.D. Ill. 2006) (citing *DeBeers*, 325 U.S. at 220; *Grupo Mexicano*, 527 U.S. at 326).

39. When the Committee cited the *De Beers* case at the hearing on the Stay Motion, the Bankruptcy Court responded that it thought *De Beers* was inapplicable or distinguishable. *See* Hr'g Tr. 133:2-24 (Phillips, J.). Another bankruptcy court in this Circuit has declined to invoke *De Beers* as a basis for denying a preliminary injunction of third-party litigation. *See In re Aldrich Pump LLC*, No. 20-30608 (JCW), 2021 WL 3729335, at *34, *38 (Bankr. W.D.N.C. Aug. 23, 2021). A substantial ground for a difference of opinion therefore exists: On the one hand, there is the *De Beers* case, which the Supreme Court decided outside the context of a chapter 11 bankruptcy, and the *Teknek* case, which applied *De Beers* in denying a preliminary injuction within bankruptcy. On the other hand, there are decisions rendered by the Bankruptcy Court below and the *Aldrich* court. Thus, as to this legal issue, the Committee has satisfied the second prong of the § 1292(b) standard.

2. Whether the proponent of a preliminary injunction or stay extension can meet the "likelihood of success" element of the traditional injunction standard when the debtor intends to liquidate in chapter 11 and not reorganize

40. Under the traditional injunction standard, a "plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). In chapter 11 cases, courts have modified the first element of the traditional standard to require a showing of "[t]he debtor's reasonable likelihood of a successful *reorganization*." *In re Bestwall LLC*, 606 B.R. 243 (Bankr. W.D.N.C. 2019) (emphasis added),

aff'd, No. 3:20-CV-103-RJC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022), *aff'd*, 71 F.4th 168 (4th Cir. 2023). Because the Debtor intends to liquidate under chapter 11, it did not—and could not—show a reasonable likelihood of a successful reorganization. The Debtor thus failed to establish an essential element of the traditional injunction standard, which necessitates reversal of the Stay Order as to Liberty.

41. The critical distinction between reorganization and liquidation also applies to the "unusual circumstances" test for enjoining third-party lawsuits that the Fourth Circuit established in *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986). "The overarching basis upon which courts have held that unusual circumstances justify expanding the automatic stay to non-debtor parties is to prevent an adverse impact on the debtor's ability to formulate a Chapter 11 plan [of reorganization]." *In re Plan 4 Coll., Inc.*, No. 09-17952DK, 2009 WL 3208285, at *2 (Bankr. D. Md. Sept. 24, 2009) (footnote omitted) (concluding that, because "there is no corporate reorganization as this is a Chapter 7 liquidation," the "Florida actions in no way can have a negative impact upon an attempt by the Debtor in this bankruptcy case to reorganize").

42. Courts have found that "unusual circumstances" are not present where the debtor seeks not a reorganization but rather a liquidation. *See, e.g.*, *Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC*, No. 13 CIV. 4650 JFK, 2014 WL 4783008, at *4 (S.D.N.Y. Sept. 25, 2014) ("[A]llowing Plaintiffs to continue their action against . . . [the nondebtor] cannot pose a serious threat to the Debtor's reorganization efforts because there is no reorganization to threaten."); *In re Pitts*, No. 808-74860-REG, 2009 WL 4807615, at *6 (Bankr. E.D.N.Y. Dec. 8, 2009) (noting that the *Piccinin* rule allowing extension of the automatic stay to a nondebtor does not apply because "there is no risk to any reorganization if the stay is not extended to the Corporate Defendants because the Debtor is liquidating"); *In re Env't Manucraft Inc.*, 118 B.R. 404, 405-06

(Bankr. D.S.C. 1989) (finding there were no unusual circumstances to justify staying nondebtor actions when the plan was to liquidate and not reorganize). Ample authority thus supports the conclusion that no "unusual circumstances" are present because the Debtor is proposing to liquidate under chapter 11 and not reorganize, and therefore the Stay Order as to Liberty should be reversed.

43. Nevertheless, the district court in *In re Johns-Manville Corp.*, one of the first asbestos mass-tort bankruptcy cases, found that that bankruptcy courts have "ample power [under § 105] to enjoin actions excepted from the automatic stay which might interfere in the rehabilitative process *whether in a liquidation or in a reorganization case*." *Piccinin*, 788 F.2d at 1003 (emphasis added) (quoting *Johns-Manville Corp.*, 26 B.R. 420, 425 (S.D.N.Y. 1983)). The Bankruptcy Court followed that precedent. Hr'g Tr. 168:2-10 (Phillips, J.).

44. Thus, a substantial ground for a difference of opinion exists as to the second question of law presented by the Committee.

C. Immediate Appeal May Materially Advance the Termination of the Litigation

45. "Generally, this requirement is met when resolution of a controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation." *Martin v. Garrett*, No. 1:17-CV-350-MOC-WCM, 2020 WL 4700717, at *3 (W.D.N.C. Aug. 13, 2020) (quoting *Clark Constr. Grp., Inc. v. Allglass Sys., Inc.*, No. CIV.A. DKC 2002-1590, 2005 WL 736606, at *4 (D. Md. Mar. 30, 2005)). "The third prong, assessing whether an appeal would materially advance termination of the litigation, is satisfied where the appeal promises to advance the time for trial or to shorten the time required for trial." *Barcelona Cap., LLC*, 648 B.R. at 587 (quoting *Osuji*, 285 F. Supp. 3d at 558). Here, the third prong of the 1292(b) standard is satisfied because rulings by this Court on the Committee's questions of law may materially advance the termination of litigation over whether direct actions against Liberty may be stayed by the Bankruptcy Court.

Indeed, if this Court were to rule in the Committee's favor on either question, the stay of direct actions against Liberty would terminate, and asbestos victims would be free to pursue, resolve, and receive compensation from Liberty through their direct actions. In addition, the Debtor would remain free to pursue its intended liquidation in chapter 11.

46. For the reasons noted above, interlocutory review of the two questions of law presented by the Committee is permissible and appropriate.

CONCLUSION

For all the reasons set forth above, this Court should (1) determine that the Stay Order is final and appealable as of right, or alternatively, (2) determine that the Order is an immediately appealable order under the collateral order doctrine, or alternatively, (3) grant the Committee leave to pursue an interlocutory appeal from the Order on the two questions of law described above, and in all events (4) grant such other and further relief as this Court deems just and appropriate.

Respectfully submitted,

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