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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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

HUNTINGTON INGALLS INDUSTRIES, INC.'S
<u>OBJECTION TO THE INSURANCE 9019 MOTIONS</u>

Huntington Ingalls Industries, Inc. ("**HII**"), by and through undersigned counsel, hereby files its objection (the "**Objection**") to the *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] (the "**Chubb Motion**") and the *Motion of the Debtor for Entry of an Order (I)*

Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (IV[sic]*) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief* [ECF No. 53] (the "**Certain Insurers Motion**" and together with the Chubb Motion the "**9019 Motions**") filed by Hopeman Brothers, Inc. (the "**Debtor**"). In support of the Objection, HII respectfully states as follows:

INTRODUCTION

1. With the 9019 Motions, the Debtor attempts to secure a broad release and injunction in favor of certain non-debtor insurers (the "**Putative Settling Insurers**"), extinguishing the direct-action rights held by thousands of claimants (including HII) in exchange for a small fraction of the total policy limits available from the Putative Settling Insurers. Even if this patently unfair arrangement could be rationalized, the relief sought violates binding Supreme Court precedent. In *Harrington v. Purdue Pharma L.P.*, which was issued three days after the 9019 Motions were filed, the United States Supreme Court conclusively and unequivocally held that "**the bankruptcy code does not authorize a release and injunction that . . . effectively seeks to discharge claims against a nondebtor without the consent of affected claimants**." 144 S.Ct. 2071 (2024).[1] The relief sought in the 9019 Motions is expressly precluded by *Purdue* and should be denied for this reason alone.

2. Even apart from the *Purdue* problem, the 9019 Motions should be denied on the grounds that the Debtor has not satisfied its burden of establishing that the underlying proposed

[1] The only exception to the rule in *Purdue* is for asbestos trusts under 524(g), which the Debtor is not pursuing in this case. *See id.* at 2085 (noting that "the code *does* authorize courts to enjoin claims against third parties without their consent, but does so in only one context"—524(g)).

settlement agreements (the "**Proposed Settlements**") are fair and equitable, or that the relief sought under section 363(f) satisfies the requirements of that statute.

3. The 9019 Motions hinge on the contention that "[a]bsent approval of the Chubb Insurer Settlement Agreement, the Debtor will not have sufficient liquidity to manage the litigation and existing, prepetition process for resolving the Asbestos-Related Claims" and therefore asbestos tort claimants "will be left to seek recovery solely from the Debtor's Insurers through direct litigation against such Insurers, setting up the classic 'race to the courthouse.'" Chubb Motion, p. 12.

4. But the Debtor has provided zero evidence to support these assertions. Nothing in the 9019 Motions supports the Debtor's assumption that claimants' direct-action claims against the Putative Settling Insurers are subject to an aggregate limit of liability capping claimants' right to recover under the policies at issue. Further, even if there are limited insurance proceeds available to satisfy some of these claims, the Debtor does not explain (let alone support) why claimants are better off taking pennies on the dollar to forgo direct-action claims under these circumstances, where the Debtor is already out of money and liquidating. The only thing that will be accomplished through the Proposed Settlements is artificially limiting the funds available to satisfy claims for the sole benefit of the non-debtor Putative Settling Insurers. The Proposed Settlements are a windfall for the Putative Settling Insurers and a bad deal for everyone else.

5. For these reasons, and as more fully set forth below, HII respectfully submits that the relief sought in the 9019 Motions is impermissible under *Purdue*, and the Debtor has

otherwise failed to meet its burden of proof under Rule 9019.[2] The 9019 Motions should be denied in their entirety.

BACKGROUND

a. Asbestos Liability

6. Beginning in the late 1970s, the Debtor has been named as a defendant in over 126,000 personal injury claims arising from alleged exposure to asbestos in marine interior materials provided by the Debtor. Chubb Motion, p. 4. Since 2003, the Debtor has maintained its corporate existence solely to resolve claims of this nature. *Id* at 1. From 2020 through the end of 2023, the Debtor contends that it has paid out $30 million to tort victims. *Id* at 6. The Debtor contends that there are currently 2,700 unresolved asbestos-related claims outstanding. *Id.* at 4.

7. HII is the largest military shipbuilding company in the United States and is regularly named as a co-defendant alongside the Debtor and non-debtor Wayne Manufacturing Corporation ("**Wayne**") in asbestos-related actions in Louisiana. HII has asserted and may assert contribution claims premised on virile share liability against Wayne and the Debtor under Louisiana law, which accrued at the time of the underlying injury and are subrogated to the rights of the victims. *See Cole v. Celotex Corp.*, 588 So. 2d 376, 385 (La. Ct. App. 1991), *writ granted*, 592 So. 2d 401 (La. 1992), *and writ granted*, 592 So. 2d 401 (La. 1992), *and aff'd*, 599 So. 2d 1058 (La. 1992).

b. The Debtor's Insurance Policies

8. The Debtor asserts[3] that it held insurance policies during the period of 1937 through 1984, consisting of primary policies issued by Liberty Mutual Insurance Company

[2] Unless otherwise indicated, all statutory citations shall refer to Title 11 of the United States Code (the "**Bankruptcy Code**"). All references to rules shall refer to the Federal Rules of Bankruptcy Procedure.

("Liberty") and various excess policies. *Id.* at 5. Chubb and the Other Insurers issued excess policies to the Debtor for various years from 1965 through 1984 (the "**Excess Policies**"). *Id.* Wayne is an additional insured under certain of the Debtor's insurance policies.

9. Although there is no discussion of policy limits in the 9019 Motions, the Debtor alleged in response to discovery requests that Chubb and Other Insurers' Policies are subject to aggregate policy limits of $210,000,000 and $111,000,000, respectively, of which $233,964,592 remains unexhausted.[4] However, the Debtor has not provided evidence showing that the limits referenced in its discovery responses apply to the direct-action claims asserted by third party claimants, such as HII, under the Excess Policies. To the contrary, it is likely that there is *unlimited* or *uncapped* coverage, in the aggregate, for asbestos liabilities asserted by the some of the direct-action claimants, including HII.[5]

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[3] Without admission and for purposes of this Objection only, HII assumes and accepts the accuracy of the Debtor's representations regarding the terms and conditions of the Debtor's insurance policies. HII reserves and may exercise the right at any time to contest these issues in any forum.

[4] *See* **Ex. 1** (Responses and Objections of the Debtor to Official Committee of Unsecured Creditors' First Set of Interrogatories and Second Set of Requests for Production of Documents to Debtor Related to the Debtor's Insurance Settlement Motions), at Exhibit A: Schedule of Policies Subject to Proposed Insurance Settlements (Debtor alleges that remaining policy limits as of June 2024 are $148,068,355 and $85,896,237, under Chubb's and Other Insurers' policies respectively).

[5] The lack of applicable aggregate limits would not be unique to the present case. During the relevant time period, it was commonplace for insurers to issue primary and excess liability policies without applicable aggregate limits, and courts have repeatedly recognized that certain types of asbestos claims could have (and did) result in essentially unlimited liability for the issuing insurers under those policies. *See, e.g., U.S. Fid. & Guar. Co. v. Am. Re-Ins. Co*., 20 N.Y.3d 407, 416 (2013) ("the policies contained no aggregate limit; [insurer] could be liable under the policies for any number of separate claims"); *Hartford Acc. & Indem. Co. v. Argonaut Ins. Co*., No. 06-1813, 2008 WL 9749148, at *1 (D. Conn. Apr. 25, 2008) ("However, during the time period that these policies were issued to Foster Wheeler, there ordinarily were no aggregate limits for general liability exposures, such as non-products asbestos claims. . . . Thus, while an insurer's liability for products claims is capped at an aggregate limit, there would be an unlimited number of per occurrence limits available to an insured for non-products claims.").

10. Under applicable law, HII holds and may assert its contribution claims directly against the Debtor's insurers, including but not limited to the Putative Settling Insurers. *See, e.g.,* N.Y. Ins. Law § 3420(b)(2); La. R.S. § 22:1269; *Cole v. Celotex Corp.*, 599 So. 2d 1058, 1072, 1076-77 (La. 1992). This direct action right against the insurers applies regardless of bankruptcy or insolvency of the insured. *See* N.Y. Ins. Law § 3420(a)(1) (providing that "insolvency of the insured's estate, shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract"); La. R.S. § 22:1269 B.(1)(a)-(b) (providing that claimant may bring direct action solely against insurer where insured is insolvent or has been adjudged bankrupt by a court of competent jurisdiction).

11. In June 1985, the Debtor and certain of its Insurers entered into an agreement (the "**Wellington Agreement**") which, *inter alia*, spread insurers' obligations for asbestos-related claims pro rata across all insurance policies through 1984. Because their claims accrued before the execution of that agreement, HII and other asbestos-related claimants are not subject to the Wellington Agreement or any similar agreement affecting insurers' liability for direct action claims. *See, e.g.*, *Sales v. U.S. Underwriters Ins. Co*., No. 93-7580, 1995 WL 144783, *9 (S.D.N.Y. April 3, 1995) ("plaintiffs' right of action under [New York Insurance Law] Section 3420(a)(2) accrued at the time of the injury, and that any subsequent settlement or release effectuated by [the tortfeasor] and [insurance company] is not determinative of plaintiffs' rights.").

c. <u>The 9019 Motions and Proposed Settlements</u>

12. The terms of the Debtor's proposed settlements with the Putative Settling Insurers, as set forth in the 9019 Motions are substantially identical. Each proposes:

a. The [Putative Settling Insurers] agree to pay a total of [$31,500,000 (Chubb) and $18,395,011 (Other Insurers)].
b. The Debtor shall use the proceeds . . . to make distributions to or for the benefit of holders of Asbestos-Related Claims, [and] for administrative costs in this chapter 11 case. . . .
c. Immediately upon the Payment Date, all Policies shall be deemed to have been sold back to the [Putative Settling Insurers] pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, and the sale shall operate as if the [Putative Settling Insurers] had never issued the Policies.
d. Upon the occurrence of the Payment Date, the [Putative Settling Insurers] shall be completely remised, released, acquitted, and forever discharged from any and all claims relating to, or in any way arising out of the Policies.
e. . . . [The Settlement Agreement] is conditioned upon the Court entering an order pursuant to section 105(a) of the Bankruptcy Code permanently staying, restraining, and enjoining all persons who hold or assert, or may in the future hold or assert, any claim against the Debtor or the [Putative Settling Insurers], and the assertion of any Claim or right to entitlement or taking any other action against the [Putative Settling Insurers] for the purpose of obtaining any recovery or other relief from the [Putative Settling Insurers] or under or in connection with the Policies, arising out of or in connection with the activities covered by the Policies, or in connection with the Debtor's activities giving rise to claims made or to be made under the Policies, or any other person who may claim to be an insured, additional insured, or otherwise entitled to any benefit under the Policies (the "<u>Policy Injunction</u>").

Chubb Motion at 8-9; *see also* Certain Insurers Settlement Motion at 8-9.

<u>ARGUMENT</u>

13. The Debtor asserts three grounds for the relief sought in the Motion: (1) the Motion meets the standards for the approval of a compromise under Rule 9019; (2) the sale of the Released Policies free and clear of third-party interests meets the requirements of 11 U.S.C. § 363(b) and (f); and (3) the issuance of the requested injunction is consistent with the applicable case law and the statutory constraints of the Bankruptcy Code. None of these premises withstands scrutiny, as discussed below. Not only has the Debtor failed to meet its burden of

proof under Rule 9019, the relief sought in the 9019 Motions violates Supreme Court precedent set forth in *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071 (2024).

A. The 9019 Motions Violate Supreme Court Precedent as Set Forth in *Purdue*

14. The fundamental premise of the 9019 Motions is the Putative Settling Insurers' attempt to pay the estate in return for favorable releases and injunctions against an undefined number of present and future asbestos claimants, including direct action contribution claimants like HII. The Debtor relies on the Court's general equitable power under section 105 to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code. Citing a string of unpublished court orders, the Debtor contends that releases of the kind extended to the Setting Insurers are "routinely" issued to facilitate "free and clear" orders under section 363(f). Chubb Motion at 19 (string cite of unpublished orders, the most recent of which is *In re ON Marine Servs. Co.*, LLC, No. 20-20007 (CMB), Docket No. 1399 (Bankr. W.D. Pa. Feb. 7, 2023)). However routine that practice may have been, it was conclusively abrogated by the Supreme Court's June 27, 2024, decision in *Purdue*.

a. <u>The pre-*Purdue* Circuit split</u>

15. Before *Purdue*, this issue was subject to a Circuit split addressing, *inter alia*, the interpretation of section 524(e). That provision states that "discharge 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." Some courts, exemplified by the Ninth Circuit in *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), reasoned that because section 105 does not authorize relief inconsistent with more specific law, the specific provisions of section 524(e) "displace the court's equitable powers under section 105" to permanently release a non-debtor from the claims of unwilling third parties. *Id.* at 1402. In contrast, under the line of caselaw on which the Debtor relies, including

In re Dow Corning Corp., 280 F.3d 648, 657 (6th Cir. 2002), section 524(e) was construed narrowly to "explain[] the effect of a debtor's discharge. It does not prohibit the release of a non-debtor." On that basis, in *Dow Corning Corp*, which concerned the Chapter 11 bankruptcy of a mass-tort defendant, the Sixth Circuit permitted the issuance of a broad injunction in favor of the debtor's liability insurer in exchange for a lump sum contribution to fund the bankruptcy. The court ordered this injunction under section 105 after finding that the exercise of this authority was neither prohibited nor authorized under the Bankruptcy Code.

16. In *In re Purdue Pharma,* 69 F.4th 45, 73 (2d Cir. 2023)—the opinion ultimately reversed by the Supreme Court in *Purdue*—the Second Circuit adopted *Dow Corning Corp's* reasoning when it approved a broad release of opioid-related claims against individual members of the Sackler family in exchange for their $5.5 billion contribution to Purdue's bankruptcy estate. Along the lines articulated in *Dow Corning Corp*, the court opined that third-party releases were not the same as a "discharge" and so were permissible under section 524(e) of the Bankruptcy Code.

b. <u>The Supreme Court resolved the split and outlawed the relief that the Debtor seeks.</u>

17. In *Purdue*, the Supreme Court reversed the Second Circuit and expressly rejected the purported distinction between a "release" and a "discharge" for purposes of section 524(e) as mere "word games [that] cannot obscure the underlying reality." The Court concluded "a judicial order releasing pending claims against them brought by opioid victims [and] an injunction 'permanently and forever' foreclosing similar suits in the future" amounted to a discharge that the Bankruptcy Court lacked authority to award to non-debtors. *Purdue*, 144 S. Ct at 2081 (holding that "a bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors . . . against other nondebtors"). On

that basis, the Court expressly abrogated *Dow Corning Corp* and its progeny, and indicated its approval of *Lowenschuss*. *Id.* at 2080, n. 1.

18. Here, the unpublished orders that the Debtor cites for the proposition that courts "routinely" issue this type of insurance policy injunction all predate *Purdue* and no longer reflect the law of the land. Notwithstanding the Debtor's citation to section 105, the relief it seeks constitutes an impermissible non-debtor discharge in violation of binding precedent in *Purdue* and of section 524(e). *See Lowenschuss* at 1402. Accordingly, because the 9019 Motions are predicated on the issuance of unlawful releases, injunctions, and/or discharges, these motions must be denied in their entirety.

B. The Debtor Has Not Met Its Burden to Satisfy the *Austin* Factors

19. Even if the relief the Debtor seeks could be squared with *Purdue*—which it cannot—the 9019 Motions fail for the independent reason that the Debtor has failed to demonstrate that the Proposed Settlements are fair and equitable.

20. Under Rule 9019, "[t]he proponent of [a] settlement has the burden of proving that the settlement is fair and equitable." *In re Alpha Nat. Res. Inc.*, 544 B.R. 848, 857 (Bankr. E.D. Va. 2016). In making this determination, bankruptcy courts must apply "exacting" scrutiny of any proposed settlement using the so-called *Austin* factors, which "include (1) the probability of success in any ensuing litigation; (2) any collection difficulties; (3) the complexity, likely duration and expense of the litigation; and (4) whether the proposed compromise qualifies as fair and equitable to a debtor, the creditors and other interested parties." *MarkWest Liberty Midstream & Res., LLC v. Meridien Energy, LLC*, No. 23-593, 2024 WL 3345342, at *17 (E.D. Va. July 9, 2024). "[T]he Bankruptcy Court must look under the hood of the settlement vehicle, for '[t]here can be no informed and independent judgment as to whether a proposed compromise

is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.'" *Id.* at *22. The Debtor failed to address, let alone satisfy any of these elements.

a. Concerns about a "race to the courthouse" are illusory, misleading, and fail to establish the proposed compromise is fair and equitable to the creditors.

21. By eliminating the Putative Settling Insurers' obligations and foreclosing direct actions against them, the 9019 Motions grant them extraordinary benefits at the direct expense of the Debtor and its already-victimized creditors, weighing conclusively against the notion that the Proposed Settlements are in the best interest of the creditors. The Debtor nonetheless portrays this as a fair arrangement for creditors because they will otherwise "be left to seek recovery solely from the Debtor's Insurers through direct litigation . . . setting up the classic 'race to the courthouse' in which the first actors stand to receive the majority of the benefits." Chubb Motion at 12. This rationale is misleading.

22. First, the Debtor's conclusion is predicated on the unsupported assumption that there is a finite amount of insurance available under the Excess Policies to cover the Debtor's and Putative Settling Insurers' combined asbestos liabilities. Without this foundational (but entirely unsupported) assumption, there is no reason that each and every asbestos-related claimant cannot recover in full under the Excess Policies via direct action against the Putative Settling Insurers. Crucially, if the insurance proceeds available to third-party claimants under the Excess Policies are in fact unlimited or uncapped in this regard, **claimants' recovery for any given claim would not reduce the insurance proceeds otherwise available to the Debtor in any way**. The Debtor has not shown that claimants' direct-action asbestos claims against the Putative Settling Insurers are subject to any such aggregate limits capping Putative Settling Insurers' total liability under the Excess Policies, let alone that the consideration paid by Putative

Settling Insurers into the estate enhances claimants' recovery prospects. The 9019 Motions fail for this reason alone.[6]

23. Second, even assuming that available policy limits are finite, the Debtor's reliance on the "race to the courthouse" analogy is fundamentally inapt. The traditional "race to the courthouse" that the bankruptcy system seeks to avoid is one in which the insolvent debtor is the defendant, and where litigation costs may drain limited resources otherwise available for distribution to creditors. Thomas H. Jackson, Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain, 91 Yale L.J. 857, 862 (1982). Here, however, the defendants in the proverbial courthouse are the Putative Settling Insurers, against whom claimants can directly recover regardless of the Debtor's insolvency. *See, e.g.*, N.Y. Ins. Law § 3420 (requiring that "the insolvency or bankruptcy of the person insured . . . shall not release the insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of such policy or contract").[7]

24. Accordingly, the notion that the 9019 Motions are necessary to save the "Debtor millions of dollars in expenses commensurate with litigating in multiple jurisdictions across the country" is inaccurate. Chubb Motion at 2. On the contrary, the 9019 Motions *impose* the costs of litigating personal injury claims on the estate because they foreclose claimants from litigating directly against the Putative Settling Insurers. The Debtor is *already* out of money and is liquidating – it will not be spending *anything* to litigate direct action claims, even if the Court

[6] To the extent the Debtor presents new arguments or evidence in its Reply brief in support of the position that aggregate limits apply to HII's and other asbestos claimants' direct-action claims against the Putative Settling Insurers, any such arguments are waived and HII respectfully requests leave to submit a sur-reply for the limited purpose of responding to any such new arguments or evidence.

[7] The Excess Policies were largely issued by New York insurers to Hopeman at its New York address. Thus, New York statutes governing insurance policies issued in the state will apply to those policies.

denies the 9019 Motions. A race to the courthouse with respect to claims against non-debtors is simply not the kind of collective action problem that the bankruptcy system endeavors to fix, particularly when it *increases* the burdens placed on the estate.

25. Finally, even assuming that policy proceeds are subject to aggregate limits and would be exhausted through direct action before all claimants can recover, the Debtor offers no support for its dubious contention that claimants are better off recovering collectively against a pool that is only 20% of what the Debtor alleges would be available to satisfy direct action claims. The Debtor's failure to quantify or provide *any* cost-benefit analysis on this point is fatal to the 9019 Motions. In all, the Debtor fails to satisfy its burden on prong four of the *Austin* factors.

b. The Debtor's conclusory statements do not address the "litigation" being compromised.

26. Even assuming *arguendo* that the Putative Settling Insurers' policies are subject to aggregate limits, the Debtor still cannot meet its burden to show that an 80% write-down in the purported aggregate policy limits constitutes fair and reasonable compensation for avoiding litigation. The Debtor contends only that the "Settlement Agreement was reached in an attempt to avoid the significant costs and risks inherent in litigating any coverage dispute." Chubb Motion at 12. This is not good enough. Proper evaluation of a settlement requires thorough review of the specific claims and defenses to be raised, burdens of litigating them, and the potential outcomes. *Meridien*, 2024 WL 3345342 at *17. The Debtor has failed to identify *any* coverage issue that would require costly coverage litigation to resolve. This is independently fatal to the 9019 Motions.

C. The Debtor is Not Entitled to Sell the Policies Free and Clear of HII's Interests

27. HII's claims are not the Debtor's to sell. However, even if the Debtor could sell such claims, the Debtor has satisfied neither section 363(f)(4) nor 363(f)(5).

a. HII's claims are not property of the estate.

28. It is axiomatic that a debtor may not sell property in which it has no interest. Broadly, claims that are asserted by one third party against another, independent of a debtor, simply fall outside the scope of the bankruptcy system. *See Purdue*, 603 U.S. at 2084 n. 3 ("But that does not alter the fact that the Sackler discharge would extinguish the *victims*' claims against the *Sacklers*. Those claims neither belong to Purdue nor are they asserted against Purdue or its estate." (emphasis original)). In the insurance context, this means that the rights of non-debtors in insurance policies are not property of the estate, even where a debtor has an interest in such policies. *In re Forty-Eight Insulations, Inc.*, 149 B.R. 860, 863 (N.D. Ill. 1992). This means that when a claim against an insurer exists independently of a debtor, such claim is not property of the estate and may not be enjoined by a sale free and clear.

29. The direct action claims at issue here are precisely such claims. Claims under Louisiana's direct action statute are "separate and distinct cause[s] of action against the insurer[s] which an injured party may elect in lieu of his action against the tortfeasor." *Lumbermen's Mut. Cas. Co. v. Elbert*, 348 U.S. 48, 51 (1954). HII's claims against the Putative Settling Insurers are therefore separate and distinct from the estate. Nonetheless, the 9019 Motions seek an injunction of such claims to effectuate the proposed sale. *See, e.g.,* Chubb Motion at 17-19. Because the Debtor may not sell what it does not possess, HII's claims may not be extinguished under 363. Even if it could, however, the Debtor has not satisfied the requirements of section 363 as set forth below.

b. The Debtor has not satisfied section 363(f)(4).

30. Section 363(f)(4) permits assets to be sold free and clear of interests that are in "bona fide dispute." In support of this element, the Debtor contends only that "to the extent an objector is an asbestos plaintiff asserting a right to recover directly from the [Settling] Insurers under the Policies, the Debtor has not conceded that any particular asbestos claim is valid at all or in the amounts sought by the claimant and expects that it or the Liquidation Trust will challenge or deny certain claims due to lack of proof." Chubb Motion at 16. This is inadequate. To demonstrate a bona fide dispute, "evidence must be provided to show factual grounds that there is an 'objective basis' for the dispute." *In re Collins*, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995). The Debtor has failed to identify any ground for dispute, let alone introduce any evidence, which forecloses application of this provision. Further, the notion that the Debtor has not "conceded" the validity of *any* asbestos-related claim is misleading. In the 9019 Motions themselves, the Debtor admits that it has paid injury claimants $30 million during the four-year period of 2020 through 2023. These payments bely the expectation that any significant portion of outstanding claims will be subject to bona fide dispute.

c. The Debtor has not satisfied section 363(f)(5)

31. Section 363(f)(5) permits the sale free and clear of an entity's interest if "such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." The Debtor contends that this provision is satisfied merely because "the potential right to a money satisfaction is likely the only interest such claim or interest holders could have in the Policies," but such circular reasoning does not pass muster. Chubb Motion at 16. For example, "[a]lthough it is tautological that liens securing payment obligations can be satisfied by paying the money owed, it does not necessarily follow that such liens can be satisfied by paying

any sum, however large or small." *In re PW, LLC*, 391 B.R. 25, 43 (B.A.P. 9th Cir. 2008). Rather, 365(f)(5) applies only if an independent contractual or legal mechanism exists by which "a lien could be extinguished without full satisfaction of the secured debt." *Id.* Examples of mechanisms that would qualify under 363(f)(5) include "a buy-out arrangement among partners, in which the controlling partnership agreement provides for a valuation procedure that yields something less than market value of the interest being bought out," or where "a liquidated-damages clause allows a court to satisfy the claim of a nonbreaching party in cash instead of a forced transfer of property." *Id.* at 43.

32. Here, HII possesses a direct right of action against the Putative Settling Insurers due to the their alleged tort liability. *See Cole v. Celotex Corp.*, 588 So. 2d 376, 385 (La. Ct. App. 1991). This cause of action is not an abstract right to payment from a pot of money—it is the right to proceed against those insurers in court, and this right cannot be shut off by the Debtor. Such a mechanism is expressly forbidden under applicable law, s*ee, e.g.,* N.Y. Ins. Law § 3420(a)(1), and is underscored by the Court's recent decision in *Purdue*.

D. The Debtor Failed to Adequately Protect Third-Party Interests.

33. Even if HII's interests were subject to 363(f) (which they are not), that relief is unavailable because the 9019 Motions do not provide adequate protection. Section 363(e) provides: "[n]otwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest." Adequate protection requires that affected interest-holders receive compensation or other relief "as will

result in the realization by such entity of the indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361.

34. Where, as here, the only compensation HII and other tort victims are to receive for the elimination of their direct-action claims is (at most) a pro rata claim to approximately 20% of the policy limits that the Debtor contends are otherwise available (to the extent any aggregate caps apply in the first instance, which has not been established), they are not receiving adequate protection by definition. *See In re Adelphia Commc'ns Corp.*, 364 B.R. 518, 527 (Bankr. S.D.N.Y. 2007) (noting that "if (as now is proposed) the Settlement were to limit [third parties] to recovery from a corpus less than the total remaining under the Policies, I do not believe that such a transaction would provide adequate protection to the [third parties] and others with rights under the Policies"). Thus, the 9019 Motions fail to satisfy section 363(f) of the Bankruptcy Code.

RESERVATION OF RIGHTS

35. HII reserves all right to amend or supplement this Objection on any available grounds.

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CONCLUSION

36. For the foregoing reasons, HII respectfully requests that the Court deny the 9019 Motions in their entirety and grant such other and further relief as the Court deems appropriate.

Dated: December 2, 2024
Richmond, Virginia

Respectfully submitted,

/s/ K. Elizabeth Sieg

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Counsel to Huntington Ingalls Industries, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2d day of December 2024, a true and correct copy of the foregoing was served via the Court's electronic case filing system (CM/ECF) to all parties registered to receive such notice in the above-captioned case.

/s/ K. Elizabeth Sieg
K. Elizabeth Sieg