

**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,

Civil Action No. 3:24-cv-00717 (DJN)

v.

HOPEMAN BROTHERS, INC.,
Appellee.

**JOINT MOTION TO STAY BANKRUPTCY APPEAL
PENDING MEDIATION AND NEGOTIATION**

Appellant, the Official Committee of Unsecured Creditors (“**Committee**”), and Appellee, Hopeman Brothers, Inc. (“**Debtor**”), by and through their undersigned counsel, jointly move this Court for entry of an order, in accordance with Rules 6 and 7 of the Federal Rules of Civil Procedure (“**Civil Rules**”), Rules 8001 and 9006(b) of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”), and Local Civil Rule 7(G) of the Local Rules for the United States District Court for the Eastern District of Virginia, staying further proceedings and any upcoming deadlines in the above-captioned bankruptcy appeal (“**Appeal**”) until February 28, 2025, pending mediation between, *inter alia*, the Committee and the Debtor in the above-captioned bankruptcy case (“**Chapter 11 Case**”) pending before the Honorable Keith L. Phillips (“**Bankruptcy Court**”), and respectfully represent as follows:



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BACKGROUND

1. On September 25, 2024, after a contested hearing, the Bankruptcy Court entered the Second Interim Order Extending the Automatic Stay to Asbestos-Related Actions Against Non-Debtor Defendants, No. 24-32428 (KLP) (Bankr. E.D. Va.), ECF No. 245 (“**Stay Order**”).

2. On October 9, 2024, the Committee filed a notice of appeal from the Stay Order, commencing the Appeal, and a motion for leave to appeal. ECF Nos. 1-2.

3. On October 11, 2024, the Clerk of this Court sent a letter to counsel of record, notifying the parties of the briefing deadlines set forth in Bankruptcy Rule 8018. ECF No. 3.

4. On October 23, 2024, the Debtor objected to the Committee’s motion for leave to appeal. ECF No. 4.

5. On October 29, 2024, the Committee filed a reply in support of its motion for leave to appeal. ECF No. 5.

6. On November 12, 2024, the Court docketed notice of receipt of the record from the Bankruptcy Court. ECF Nos. 6-9.

7. The Committee and the Debtor have entered into a Settlement Term Sheet for Hopeman Brothers, Inc. (“**Term Sheet**”), attached hereto as **Exhibit A**, that “sets forth certain essential terms for addressing the Insurer Settlement Motions scheduled to be heard on December 16, 2024, and of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims.” Term Sheet § A.2. The Committee and the Debtor have agreed, *inter alia*, to “jointly request that the Court order mediation for the purpose of attempting to reach a consensual resolution of the Chubb Motion.” *Id.* § C.1. The Committee and the Debtor have further agreed, *inter alia*, to “suspend[] indefinitely pending the mediation” all upcoming pretrial dates and deadlines in the contested matters related to the “Insurance Settlement Motions.” *Id.* § B.5.

8. On December 11, 2024, the Debtor and the Committee filed the Joint Motion of the Debtor and Committee for Entry of an Order Authorizing Mediation of the Chubb Insurers Settlement Motion in the Bankruptcy Court. No. 24-32428 (KLP) (Bankr. E.D. Va.), ECF No. 419 (“**Joint Mediation Motion**”), attached hereto as **Exhibit B**. The Joint Mediation Motion provides, *inter alia*, that “[t]he Debtor and Committee have agreed to participate in mediation concerning the Chubb Insurers Settlement Motion, provided that such mediation is completed on or prior to January 31, 2025, unless extended by written consent of the Debtor and Committee.” Joint Mediation Motion ¶ 15. The Debtor and the Committee further requested that the Bankruptcy Court order “the insurers that are party to the proposed settlement subject to the Chubb Insurers Settlement Motion . . . to participate in the mediation” and “appoint a judicial mediator who is able to assist on a timetable that will allow the mediation process to conclude by January 31, 2025.” *Id.* ¶¶ 16, 18.

9. Also on December 11, 2024, the Debtor filed the Motion for Expedited Hearing on Joint Motion of the Debtor and Committee for Entry of an Order Authorizing Mediation of the Chubb Insurers Settlement Motion in the Bankruptcy Court, seeking, *inter alia*, to have the Joint Mediation Motion heard by the Bankruptcy Court at a hearing on December 16, 2024. No. 24-32428 (KLP) (Bankr. E.D. Va.), ECF No. 420 (“**Motion for Expedited Hearing**”). On December 12, 2024, the Bankruptcy Court granted the Motion for Expedited Hearing. *See* Order Setting an Expedited Hearing on Joint Motion of the Debtor and Committee for Entry of an Order Authorizing Mediation of the Chubb Insurers Settlement Motion, No. 24-32428 (KLP) (Bankr. E.D. Va.), ECF No. 424.

DISCUSSION

10. The Committee and the Debtor believe that continuing to litigate the Appeal at this time would divert the Committee's and the Debtor's focus away from the negotiations that are contemplated in the Term Sheet. To proceed efficiently and avoid a potentially unnecessary expenditure of the Committee's, the Debtor's, and this Court's resources and time, the Committee and the Debtor request that this Court enter an order staying further proceedings and any and all deadlines in this Appeal, which would include holding in abeyance any rulings on the Committee's motion for leave to appeal, up to and through February 28, 2025.

11. As set forth above, the Joint Mediation Motion requests that the Bankruptcy Court appoint a judicial mediator to conduct a mediation on the Chubb Insurers Settlement Motion through January 31, 2025, subject to extension by written consent of the Committee and the Debtor. The Committee and the Debtor are not aware at this time of whom the Bankruptcy Court intends to appoint as the judicial mediator if it grants the Joint Mediation Motion. The Debtor and the Committee expect that the parties to the mediation will be (a) the Debtor, (b) the Committee, (c) the insurers subject to the Chubb Insurers Settlement Motion (*i.e.*, Century Indemnity Company and Westchester Fire Insurance Company), and (d) any other entity wishing to participate and as to whom the Debtor and the Committee both consent in writing to their participation; if the Committee and the Debtor cannot agree on an entity's participation, the mediator may authorize participation. *See* Joint Mediation Motion ¶¶ 15-17.

12. The Committee and the Debtor believe that staying this Appeal until February 28, 2025, will allow them (and other mediation parties) to focus on mediation, including any potential modest extensions thereof, and to continue the negotiations contemplated by the Term Sheet.

13. If the Debtor and the Committee reach an agreement resolving this Appeal while the requested stay is in effect, the Committee seasonably will file with this Court a motion to dismiss the Appeal. Otherwise, upon termination of the Term Sheet in accordance with section H thereof, the Debtor and the Committee will file a joint notice of such termination with this Court. In addition, unless the Committee moves to dismiss this Appeal and regardless of whether the Term Sheet is terminated, the Debtor and the Committee will file a joint status report and a joint request for a status conference before this Court no later than February 28, 2025. Should the Court grant the Committee's and the Debtor's joint request for a status conference, the parties anticipate addressing, *inter alia*, a potential extension of the stay of this Appeal, the Committee's motion for leave to appeal, and a potential schedule for briefing the merits of this Appeal, to the extent the Court believes that such a schedule should be implemented.

14. In accordance with Bankruptcy Rule 9006(b), the Court may, for cause shown, at any time in its discretion "with or without motion or notice order [a] period enlarged if the request therefor is made before the expiration of the period originally prescribed." Similarly, Civil Rule 6(b)(1) provides that "the court may, for good cause, extend the time . . . if a request is made, before the original time or its extension expires." Moreover, "district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases." *E.g., Dietz v. Bouldin*, 579 U.S. 40, 47 (2016) (citing, *inter alia*, *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (district court has inherent power to stay proceedings pending resolution of parallel actions in other courts)); *United States v. Janati*, 374 F.3d 263, 273 (4th Cir. 2004) ("[D]istrict courts have wide-ranging control over management of their dockets . . ."). The Committee and the Debtor submit that good cause supports the suspension of further proceedings

and the deferral of any applicable deadlines in this Appeal pending mediation in the Chapter 11 Case below.

CONCLUSION

For the reasons explained above, the Committee and the Debtor request that the Court (1) enter an order substantially in the form attached hereto as **Exhibit C**, granting the relief requested herein; and (2) grant such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

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EXHIBIT A

SETTLEMENT TERM SHEET FOR HOPEMAN BROTHERS, INC.

A. Preamble

1. This settlement term sheet (“**Term Sheet**”) is executed by and between the debtor and debtor-in-possession Hopeman Brothers, Inc. (“**Debtor**”) and the Official Committee of Unsecured Creditors appointed in the Debtor’s bankruptcy case (“**Committee**”). The Debtor and the Committee are hereinafter collectively referred to as the “**Parties**” and individually referred to as a “**Party**.”

2. This Term Sheet sets forth certain essential terms for addressing the Insurer Settlement Motions scheduled to be heard on December 16, 2024, and of a potential Plan that would settle the liability of the Debtor for Channeled Asbestos Claims. Neither Party is bound to move forward with a Plan containing the terms outlined herein if after good faith negotiations, such party does not deem pursuit of the Plan as in the best interest of the Debtor or its estate. . **This Term Sheet does not constitute an offer or solicitation for any chapter 11 plan of reorganization within the meaning of § 1125 of the Bankruptcy Code and is being presented for discussion and settlement purposes only.** This Term Sheet is delivered and may be used only in connection with settlement discussions between the Parties and is entitled to protection from any use or disclosure to any party or person under Federal Rule of Evidence 408 and any other rule of similar effect.

3. The full implementation of the settlement set forth in this Term Sheet is subject to (a) the negotiation and execution of definitive documentation in the form of a chapter 11 plan of reorganization and related documents for the Debtor acceptable to all the Parties (“**Plan**”); (b) the entry by the Bankruptcy Court for the Eastern District of Virginia, Richmond Division (“**Bankruptcy Court**”), the United States District Court for the Eastern District of Virginia (“**District Court**”), or the Bankruptcy Court and District Court acting jointly, of an order confirming the Plan (“**Confirmation Order**”); and (c) if the Confirmation Order is entered by the Bankruptcy Court, the entry of a separate order by the District Court affirming the Confirmation Order.

4. Unless defined elsewhere in this Term Sheet, all capitalized terms have the meanings ascribed to them in Section F herein.

B. Insurer Settlement Motions

1. Upon execution of this Term Sheet by each of the Parties, and subject to the terms of this Section B, the Committee will not oppose entry of an order granting the 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) [*sic*] Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (V) Granting Related Relief, ECF No. 53 (“**Resolute Motion**”).

2. To the extent changes are made to the proposed form of order filed with the Resolute Motion, the Debtor shall consult with the Committee in good faith over such proposed

changes. So long as such changes do not either (i) alter the “Settlement Amount” as defined in the Certain Settling Insurer Settlement Agreement (Ex. A to the Resolute Motion), as such agreement may be amended or modified (“**Resolute Agreement**”); (ii) modify the nature or scope of the relief currently sought in the Resolute Motion in a manner that the Committee reasonably believes would be materially adverse to its constituency; or (iii) expand the scope of the releases and injunctions currently proposed by the Resolute Motion (including, without limitation, by adding any other entity as one of the “Certain Settling Insurer Persons” (as such term is defined in the Resolute Agreement) or as an equivalent protected or released person under the Resolute Agreement), the Committee agrees that it will not object to approval of the Resolute Motion. If, however, any change identified or described in any of the preceding clauses (i), (ii), and (iii) is made, the Committee shall have the right to prepare and file an objection to such change with the Bankruptcy Court in advance of the hearing on the Resolute Motion.

3. The “Settlement Amount,” as defined in the Resolute Agreement, will be paid in accordance with the terms of the Resolute Agreement and, in accordance with section 2.2 of the Resolute Agreement, will be used and disbursed for the resolution of Asbestos Claims against the Debtor, for allowed administrative expenses of the Debtor’s bankruptcy case, or as otherwise authorized by the Bankruptcy Code and Bankruptcy Rules or by order of the Bankruptcy Court.

4. The Debtor will request that the Court continue or adjourn the hearing, currently set for December 16, 2024, on 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 (“**Chubb Motion**”) to an omnibus hearing date in March 2025.

5. In addition, the Debtor and the Committee will jointly request that all upcoming dates and deadlines set forth in Exhibit 1 to the Second Agreed Order Continuing Hearing on Insurer Settlement Motions and Modifying Discovery/Briefing Schedule[ECF No. 376], be, solely with respect to the Chubb Motion, suspended indefinitely pending the mediation set forth in Section C. If the mediation is unsuccessful, the Parties will meet and confer to resolve open scheduling issues and any new pre-hearing dates and deadlines that need to be calendared for the Chubb Motion.

6. The Committee’s agreement, subject to the terms and conditions set forth herein, not to object to the Resolute Motion shall not be construed as a waiver of any ground on which the Committee may object to the Chubb Motion or any subsequent insurer settlement motion. Nothing in the terms or agreements set forth in this Term Sheet, or in the Resolute Motion or Resolute Agreement, shall be construed to bar or estop the Committee from objecting to the Chubb Motion on any ground, and the Committee reserves all rights to oppose or object to the Chubb Motion on any ground, notwithstanding any granting or approval by the Bankruptcy Court of the Resolute Motion or Resolute Agreement.

C. Mediation

1. The Debtor and the Committee will jointly request that the Court order mediation for the purpose of attempting to reach a consensual resolution of the Chubb Motion. The parties to the mediation will be (1) the Debtor, (2) the Committee, (3) Century Indemnity Company and Westchester Fire Insurance Company, and (4) any other entity wishing to participate and as to whom the Debtor and the Committee both consent in writing to their participation.

2. In connection with their joint request for mediation, the Debtor and Committee will request that the Bankruptcy Court, in its discretion, select as mediator a United States bankruptcy judge for the Eastern District of Virginia who (a) has no connection to the Debtor's bankruptcy case and (b) is willing to serve as mediator at no cost to the Debtor's bankruptcy estate.

3. The duration of the mediation will run from entry of the mediation order up to and through January 31, 2025, unless extended by written consent of the Debtor and Committee. If the mediation is extended, the Debtor and Committee shall jointly file a notice with the Bankruptcy Court stating that the mediation has been continued and the date through which the mediation has been continued. The Debtor shall prepare and present the proposed form of mediation order to be tendered to the Court, the form and substance of which shall be acceptable to the Committee.

D. Future Claims Representative and 524(g) Trust

The Parties agree to negotiate in good faith over the terms of a Plan that would propose to create a Trust pursuant to section 524(g) of the Bankruptcy Code, including the proposed individual to serve as the legal representative ("FCR") for purposes of protecting the rights of persons that might subsequently assert Demands, in accordance with 11 U.S.C. § 524(g)(4)(B)(i). If the Parties reach agreement that a Plan pursuant to section 524(g) is the preferred path for the Debtor, the Debtor and the Committee will jointly move for entry of an order appointing an individual mutually acceptable to the Committee and Debtor as the FCR. For the avoidance of doubt, nothing in this Term Sheet binds the Debtor or the Committee to agree to establishment of a trust pursuant to section 524(g) of the Bankruptcy Code as part of any Plan that may ultimately be agreed to by the Parties.

E. Certain Matters Relating to the Plan

1. The Parties agree to negotiate in good faith and work cooperatively to consider proposing a Plan that would include terms, provisions, and conditions that (a) satisfy the requirements of 11 U.S.C. § 524(g), and (b) are acceptable to the Parties and the FCR, if an FCR is ultimately appointed.

2. The Parties agree that if the Debtor and Committee reach an agreement on a proposed Plan, the Debtor, the Committee, and the FCR (if one is appointed) will be co-proponents of such agreed Plan ("**Plan Proponents**") and that the Debtor will assume primary responsibility for drafting the Plan, the disclosure statement, and any other documents related to the Plan other than any documents associated with the Trust. The Parties further agree that the

Committee and the FCR (if one is ultimately appointed) will assume primary responsibility for drafting all documents associated with the Trust, including the trust agreement and the trust distribution procedures. The final forms of the Plan, the disclosure statement, and all other documents related to the Plan must be acceptable to the Parties if an agreement is ultimately reached. The final forms of the trust agreement, the trust distribution procedures, and all other documents related to them must be acceptable to the Parties if an agreement is ultimately reached.

3. To the fullest extent permitted by applicable law and to the extent the Parties ultimately agree to the terms of a proposed Plan and Confirmation Order, the Plan and the Confirmation Order shall, for any act taken or omitted to be taken in connection with the Plan, the disclosure statement, the Debtor's bankruptcy case, or any document created or entered into in connection with the Plan, (a) provide for the full release by claimants and creditors (solely in their capacities as such) of all claims arising on or before the Effective Date that such claimants and creditors may have against the Plan Proponents, their professionals (acting in such capacity), and the Protected Parties, and (b) exculpate the Plan Proponents and their professionals (acting in such capacity) from any liability to any entity. Notwithstanding the foregoing, no release of the Parties or their professionals shall diminish, reduce, or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Insurance Policy or asbestos-related settlement agreement or coverage-in-place agreement.

4. To the extent the Parties reach an agreement on a proposed Plan and Confirmation Order and, in addition to the Asbestos Channeling Injunction, the Plan will include releases of claims and exculpations, for the Protected Parties, the terms of which shall be subject to the consent of each of the Plan Proponents, which consent shall not be unreasonably withheld.

5. To the extent the Parties reach an agreement on a proposed Plan and Confirmation Order, the Committee will, in its sole discretion, select and identify the persons to be appointed as members of the Trust's trust advisory committee ("TAC").

F. Defined Terms

As used in this Term Sheet, capitalized terms have the meanings set forth below:

1. "**Asbestos Claim**" means an Asbestos Personal Injury Claim or an Asbestos Indirect Claim.

2. "**Asbestos Indirect Claim**" means any "claim" (as defined in 11 U.S.C. § 101(5)) asserted by an entity that is not an Asbestos Insurer for contribution, reimbursement, indemnification, or subrogation, or any other indirect or derivative recovery, on account of or with respect to any Asbestos Personal Injury Claim.

3. "**Asbestos Insurance Coverage**" means all rights, title, privileges, interests, claims, demands, benefits, or entitlements to proceeds, payments, indemnity, or reimbursement under any Asbestos Insurance Policy relating to a Channeled Asbestos Claim.

4. “**Asbestos Insurance Policy**” means any insurance policy that provides or potentially provides for Asbestos Insurance Coverage; *provided, however*, that the term “Asbestos Insurance Policy” shall not include any rights or obligations under any insurance policy to the extent, but only to the extent, that such rights or obligations pertain solely to coverage for workers’ compensation claims.

5. “**Asbestos Insurance Settlement**” means each agreement (a) that an Asbestos Insurer and the Debtor have entered into prior to the Effective Date (b) that the Committee and the FCR have consented to and determined in writing to be sufficiently comprehensive to warrant that such Asbestos Insurer receive the protections of a Settling Insurer under § 524(g) of the Bankruptcy Code, and (c) that is approved by final order of the Bankruptcy Court.

6. “**Asbestos Personal Injury Claim**” means any “claim” (as defined in 11 U.S.C. § 101(5)) or allegation or portion thereof against, or any debt, liability, or obligation of, the Debtor, whether now existing or hereafter arising, whether in the nature of or sounding in tort, or under contract, warranty, or any other theory of law, equity, or admiralty for, arising out of, resulting from, or attributable to, directly or indirectly, death, bodily injury, sickness, disease, or any other actual or alleged personal injury, physical, emotional, or otherwise, to persons, caused or allegedly caused, directly or indirectly, by the presence of, or exposure to, asbestos, including asbestos-containing products or materials engineered, designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any other way used by the Debtor or any other entity for whose products or operations the Debtor has liability or is alleged to have liability, but only to the extent arising, directly or indirectly, from acts, omissions, business, or operations of the Debtor (including the acts, omissions, business, or operations of any other entity for whose products or operations the Debtor has liability, but only to the extent of the Debtor’s liability for such acts, omissions, business, or operations), including all related claims, debts, obligations, or liabilities (such as any claim or demand for compensatory damages; loss of consortium; medical monitoring; wrongful death; survivorship; proximate, consequential, general, special, or punitive damages).

7. “**Channeled Asbestos Claims**” means, collectively, the Asbestos Claims and Demands. For the avoidance of doubt, Channeled Asbestos Claims includes, but is not limited to, prepetition claims.

8. “**Demand**” means a “demand,” as defined in 11 U.S.C. § 524(g)(5), against the Debtor.

9. “**Settling Insurer**” means any Asbestos Insurer that has entered into an Asbestos Insurance Settlement.

G. Cooperation, Confidentiality, and Settlement

1. The Parties shall use their commercially reasonable best efforts to negotiate over the terms of the Plan and Confirmation Order contemplated by this Term Sheet but are under no obligation to pursue such Plan at this time. If agreement on the terms of the Plan and

Confirmation Order is reached by the Parties, the Parties agree to use commercially reasonable best efforts to obtain confirmation and consummation of the Plan consistent with the terms described above, and to not directly or indirectly support efforts by other parties to hinder, delay, or oppose prompt confirmation of the Plan to extent a Plan and Confirmation Order is ultimately agreed to by the Parties.

2. The Parties shall treat all negotiations regarding this Term Sheet as confidential. Without the prior written consent of all the Parties and until such time as the Term Sheet is publicly disclosed as provided herein or below, neither the contents nor the existence of this Term Sheet shall be disclosed by any Party, either orally or in writing, except to each Party's members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients on a confidential basis, or except (a) when and if necessary to apprise and engage in discussions with the FCR, if appointed in the Debtor's bankruptcy case, and any professionals that might be employed by any such FCR with the Bankruptcy Court's approval; (b) when necessary to comply with court orders; (c) in an action to enforce the terms and provisions of the Term Sheet itself, and (d) to the extent necessary to inform Chubb of the continuance of the hearing on the Chubb Motion and the proposed mediation described above.

3. Further, without the prior written consent of all the Parties, the contents of any documents contemplated hereby shall not be disclosed by any Party, either orally or in writing, except to each Party's members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients on a confidential basis, or except (a) when and if necessary to apprise and engage in discussions with the FCR appointed in the Debtor's bankruptcy case and the professionals employed by the FCR with the Bankruptcy Court's approval; (b) when necessary to comply with court orders; or (c) when required to commence or proceed with approval and consummation of the settlement in the Bankruptcy Court or the District Court. The contents of these documents shall be used solely for the purpose of consummating the settlement contemplated hereunder. Any members, directors, officers, employees, legal counsel, financial advisors, accountants, and clients receiving the information shall similarly maintain the confidentiality of the contents of any documents contemplated hereby upon the same terms and use these contents solely for the purpose of consummating the settlement contemplated hereunder.

4. Neither this Term Sheet nor the settlement set forth herein constitutes, and shall not be construed, interpreted, or otherwise read to constitute any admission by the Parties.

5. The rules of construction set forth in 11 U.S.C. § 102 shall govern the interpretation or construction of this Term Sheet, and the laws of the Commonwealth of Virginia shall govern such interpretation or construction in all other respects.

6. This Term Sheet may be amended only by written agreement executed by each of the Parties.

7. This Term Sheet may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

H. Termination of the Term Sheet

1. This Term Sheet may be terminated at any time by the written agreement of all the Parties.

2. Unless all the Parties consent in writing to extend such date (and such consent shall not be unreasonably withheld), this Term Sheet shall terminate within thirty (30) days following the conclusion of the proposed mediation.

3. Upon termination under Section H.1 or Section H.2 above, the Term Sheet shall be of no further force and effect.

I. Execution Date

This Term Sheet is executed as of November 29, 2024.

AGREED AND ACCEPTED BY:

HOPEMAN BROTHERS, INC.

By: /s/ Tyler Brown

Name: Tyler Brown

Title: Counsel to the Debtor

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: /s/ Jeffrey A. Liesemer

Name: Jeffrey A. Liesemer

Title: Counsel to the Committee

EXHIBIT B

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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.	:	
	:	
	:	

**JOINT MOTION OF THE DEBTOR AND COMMITTEE
FOR ENTRY OF AN ORDER AUTHORIZING MEDIATION OF
THE CHUBB INSURERS SETTLEMENT MOTION**

Hopeman Brothers, Inc., the debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), and the Official Committee of Unsecured Creditors (the “Committee”) respectfully represent as follows in support of this joint motion (the “Joint Motion”):

RELIEF REQUESTED

1. By this motion, the Debtor and Committee hereby jointly seek entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), for authority to mediate the relief sought in the Chubb Insurers Settlement Motion (as defined below) and for the appointment of a judicial mediator.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Eastern District of Virginia (the “Court”) has jurisdiction over this matter pursuant to 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. This is a core proceeding pursuant to 28 U.S.C. § 157, and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are section 105 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rule 9019-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Rules”).

BACKGROUND

4. On June 30, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court commencing this chapter 11 case. The Debtor continues to manage its business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code and additional information regarding the Debtor’s business and the circumstances leading to the commencement of this chapter 11 case is set forth in detail in the *Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.* [Docket No. 8], which is fully incorporated herein by reference.

5. Also on the Petition Date, the Debtor filed 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 [Docket No. 9] (the “Chubb Insurers Settlement Motion”).

6. On July 10, 2024, the Debtor filed both the *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* [Docket No. 53] (the “Certain Settling Insurer Settlement Motion” and, together with the Chubb Insurers Settlement Motion, the “Insurer Settlement Motions”) and the *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].

7. On July 22, 2024, the Office of the United States Trustee for the Eastern District of Virginia appointed the Committee [Docket No. 69].

8. On September 12, 2024, the Court entered the *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. 204] (the “Settlement Procedures Order”), which set the hearing for approval of the Insurer Settlement Motions (the “Insurer Settlement Motions Approval Hearing”) for November 12, 2024, at 10:00 a.m. (prevailing Eastern Time).

9. On September 25, 2024, the Court entered the *Agreed Order Continuing Hearing on Insurer Settlement Motions and Establishing Discovery/Briefing Schedule* [Docket No. 247] (the “Agreed Order”), which pushed the date of the Insurer Settlement Motions Approval Hearing

back to December 10, 2024, at 10:00 a.m. (prevailing Eastern Time), and established a discovery/briefing schedule concerning the Insurer Settlement Motions.

10. On November 20, 2024, the Court entered the *Second Agreed Order Continuing Hearing on Insurer Settlement Motions and Establishing Discovery/Briefing Schedule* [Docket No. 376] (the “Second Agreed Order”), continuing the Insurer Settlement Motions Approval Hearing to December 16, 2024, at 9:30 a.m. (prevailing Eastern Time), and extending certain discovery/briefing deadlines that had not yet expired under the Agreed Order. The parties agreed to the Second Agreed Order so they could have additional time to engage in discussions concerning the Insurer Settlement Motions.

11. The Debtor and the Committee have executed, as of November 29, 2024, the Settlement Term Sheet for Hopeman Brothers, Inc. (the “Term Sheet”). Among other things, the Term Sheet supplies the basis for the relief requested in this Joint Motion and for the relief provided in the Chubb Insurers Settlement Continuance Order (defined below).¹

12. On December 11, 2024, the Debtor submitted the *Agreed Order Continuing Hearing and Deadlines Solely as to Chubb Insurers Settlement Motion* (the “Chubb Insurers Settlement Continuance Order”), which is endorsed by both the Debtor and Committee, for entry by this Court, continuing the Insurers Settlement Motions Approval Hearing solely as to the Chubb Insurers Settlement Motion to the omnibus hearing scheduled on March 20, 2025, and also adjourning indefinitely certain of the discovery/briefing deadlines that, as of November 29, 2024, had not yet expired solely as to the Chubb Insurers Settlement Motion pending mediation on the Chubb Insurers Settlement Motion as requested herein. The Debtor also has confirmed for the Committee that it will adjourn the Chubb Insurers Settlement Motion to the March 20 omnibus

¹ A copy of the Term Sheet is annexed as Exhibit 1 to the Chubb Insurers Settlement Continuance Order.

hearing consistent with Local Rule 1075-1 and Article III.C.8 of the procedures set forth in the “Procedures for Complex Cases in the Eastern District of Virginia.”

BASIS FOR RELIEF

13. The Court has power to order mediation under section 105 of the Bankruptcy Code and Local Rule 9019-1. *See In re Atl. Pipe Corp.*, 304 F.3d 135, 140 (1st Cir. 2002) (“There are four potential sources of judicial authority for ordering mandatory non-binding mediation of pending cases, namely, (a) the court’s local rules, (b) an applicable statute, (c) the Federal Rules of Civil Procedures, and (d) the court’s inherent powers.”); *In re A.T. Reynolds & Sons, Inc.*, 424 B.R. 76, 85 (Bankr. S.D.N.Y. 2010) (“While it goes without saying that a court may not order parties to settle, this Court has authority to order the parties to participate in the process of mediation, which entails discussion and risk analysis.”), *rev’d on other grounds*, 452 B.R. 374 (S.D.N.Y. 2011); *Bruno v. Mona Lisa at Celebration, LLC (In re Mona Lisa at Celebration, LLC)*, 410 B.R. 710, 716-17 (Bankr. M.D. Fla. 2009) (ordering mediation under section 105(a) where “both judicial economy and common sense dictate[d] that the parties, or if needed, the Court resolve [the matter] in an organized and unified manner”). In fact, under Local Rule 9019-1(A), the Court “encourages the parties to meet and consult with each other to achieve settlement” and authorizes mediation of all adversary proceedings and contested matters. That rule permits the Court to mandate mediation and authorizes all sitting bankruptcy judges in this district to serve as mediators. *See* Local Rule 9019-1(B) and (D).

14. The Debtor and Committee have engaged in settlement discussions concerning the Chubb Insurers Settlement Motion and determined that participation in mediation concerning the Chubb Insurers Settlement Motion may aid in their attempts to reach a consensual resolution of the Chubb Insurers Settlement Motion.

15. The Debtor and Committee have agreed to participate in mediation concerning the Chubb Insurers Settlement Motion, provided that such mediation is completed on or prior to January 31, 2025, unless extended by written consent of the Debtor and Committee.

16. The Debtor and the Committee also believe that it is necessary that the insurers that are party to the proposed settlement subject to the Chubb Insurers Settlement Motion – *i.e.*, Century Indemnity Company and Westchester Fire Insurance Company – should be ordered to participate in the mediation.

17. The Debtor and Committee further submit that any other entity wishing to participate in the mediation may participate, provided that both the Debtor and the Committee consent in writing to their participation or, if the Debtor and Committee cannot agree, the Mediator may authorize such participation.

18. The Debtor and Committee respectfully request that the Court appoint a judicial mediator who is able to assist on a timetable that will allow the mediation process to conclude by January 31, 2025.

19. If the Court grants this Joint Motion, the Debtor and Committee shall participate in the mediation pursuant to and in accordance with Local Rule 9019-1.

NOTICE

20. Notice of this Joint Motion will be given pursuant to Local Rule 1075-1 and the procedures set forth in Article II of the “Procedures for Complex Cases in the Eastern District of Virginia.” The Debtor and Committee submit that, in light of the nature of the relief requested, no other or further noticed need be given.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Debtor and Committee respectfully request that the Court enter the Proposed Order authorizing the Debtor and Committee to mediate the relief sought in the Chubb Insurers Settlement Motion and appointing a judicial mediator.

Dated: December 11, 2024
Richmond, Virginia

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

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Exhibit A

Proposed Order

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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. :
:
:
:

**ORDER AUTHORIZING MEDIATION OF
THE CHUBB INSURERS SETTLEMENT MOTION**

Upon the joint motion (the “Joint Motion”)² of the above-captioned debtor in the above-captioned chapter 11 case (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”) for entry of an order (this “Order”) authorizing mediation of the relief sought in 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* [Docket No. 9] (the “Chubb Insurers Settlement Motion”) and for the appointment of a judicial mediator, all as more fully set forth in the Joint

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Joint Motion.

Motion; and the Court having jurisdiction to consider the Joint 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 final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Joint Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Joint Motion is in the best interests of the Debtor and its estate, creditors, and other parties in interest; and it appearing that proper and adequate notice of the Joint Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and the Court having determined that there is good and sufficient cause for the relief granted in this order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Joint Motion hereby is GRANTED.
2. The Hon. _____ is hereby appointed as a judicial mediator in this case (the “Mediator”) to conduct a mediation (the “Mediation”) concerning the Chubb Insurers Settlement Motion. The Mediator shall have full authority to conduct a mediation of any and all issues necessary to settle the Chubb Insurers Settlement Motion, and to enter any orders necessary in furtherance of his settlement efforts.
3. The Debtor, the Committee, Century Indemnity Company and Westchester Fire Insurance Company (collectively, the “Mediation Parties”) shall participate in the Mediation. Any other entity wishing to participate in the Mediation may participate provided that both the Debtor and the Committee consent in writing to their participation or, if the Debtor and Committee cannot agree, the Mediator may authorize such participation. The Mediation Parties are responsible for

determining which of their representatives will attend any particular mediation session (either in person or remotely in the sole discretion of each Mediation Party). The Mediator, after consultation with the Mediation Parties, may request that each Mediation Party participating in a Mediation session appear or participate with at least one principal with decision-making authority.

4. Except as provided herein or unless otherwise ordered by the Court, the Mediator shall determine the process and procedures to be employed in the mediation and the duties of the parties with respect to the Mediation. The parties shall comply with the Mediator's directions regarding the exchange of information and/or the submission of memoranda or settlement statements, should the Mediator so request.

5. The parties shall participate in the Mediation pursuant to and in accordance with Local Rule 9019-1.

6. The parties shall provide a report to the Court of the results of the Mediation upon the conclusion of the Mediation without disclosing Mediation communications and writings in accordance with Local Rule 9019-1(J).

7. Participation in the Mediation shall be without prejudice to any and all of the rights, claims, and/or defenses any party may have.

8. No agreement to settle or resolve any Mediation issue shall be binding on any Mediation Party unless and until such agreement is in writing and signed by such Mediation Party, and to the extent that any resolution that is reached at the Mediation involves the Debtor or its estate, it shall not be effective until Court approval after notice and opportunity for hearing.

9. Each party may share with the Mediator any information it has received pursuant to a protective order without regard to the provisions thereof; *provided, however*, the sharing with the Mediator of any information designated as Confidential or Highly Confidential shall not waive

the confidentiality designation of such information, and the Mediator shall not disclose such information to anyone else.

10. The disclosure by a party of documents and/or information to the Mediator that is subject to the attorney-client privilege, work-product protection, or other privilege or protection (“Protected Information”) does not waive or otherwise adversely affect the privileged nature of the information, and any such disclosure shall have the protections of Rule 502(d) of the Federal Rules of Evidence. The Mediator shall not provide or disclose any Protected Information to the Court, any person, entity, or Mediation Party. Protected Information shall not be discoverable from the Mediator, and the Mediator shall not testify as to any Protected Information in any Proceeding (as such term is defined below).

11. Notwithstanding the otherwise operative provisions of this Order, the Mediator may testify in any Proceeding (as such term is defined below) to enforce the terms of any written agreement reached by any of the Mediation Parties resulting from the Mediation wherein the meaning or content of such agreement is put at issue.

12. Except as provided in paragraph 14 below, a communication of any type, whether oral or written, made or provided in connection with the Mediation, including, without limitation, statements, reports, admissions, or proposals given by the Mediator or any Mediation Party (the “Mediation Communications”), may not be used by any party for any purpose, including impeachment, in any arbitral, judicial or other proceeding, including this chapter 11 case (each, a “Proceeding”) and may not be disclosed to any non-party to the Mediation, including this Court. The Mediation Communications shall be confidential, shall not be subject to discovery, shall be inadmissible in any Proceeding, and also shall be subject to protection under Rule 408 of the Federal Rules of Evidence, Local Rule 9019-1(J), and any equivalent or comparable state law.

Other than as permitted in paragraph 11 above, the Mediator shall neither voluntarily testify nor be required to testify regarding the Mediation or any Mediation Communications in any Proceeding. If the Mediator receives any legal process seeking to compel such testimony, the Mediator will immediately notify the Mediation Parties and the Court, and the Mediator and/or any Mediation Party may seek appropriate relief with respect thereto.

13. No stenographic or official written record, transcript, or notes of any discussion during the Mediation shall be kept by any Mediation Party or the Mediator, absent express written agreement by all the Mediation Parties. For the avoidance of doubt, the foregoing shall not prohibit a Mediation Party from taking and maintaining notes of the Mediation for its own use or as otherwise permitted by this Order.

14. Information previously disclosed or known to a Mediation Party or otherwise developed by a Mediation Party prior to the Mediation shall not be rendered confidential, inadmissible, or not discoverable solely as a result of its use in the Mediation, and nothing herein shall prevent a Mediation Party from disclosing or otherwise (a) presenting its own arguments or positions (independent of what was shared with that Mediation Party in the Mediation) with respect to any issue; (b) using its own documents and work product developed independently by it without reliance on information shared with such Mediation Party in the Mediation; or (c) using documents that were not prepared by another Mediation Party or the Mediator for the purposes of Mediation, in any Proceeding solely because such documents were also used in whole or in part or such issues were discussed during the Mediation.

15. Any of the terms of this Order may be modified either by (a) a signed writing among all the Mediation Parties; or (b) further order of the Court after appropriate notice to the other Mediation Parties and opportunity for a hearing. Any agreement by the Mediation Parties to

modify any of the terms of this Order shall be documented by a stipulation describing the modifications, signed by representatives of all the Mediation Parties, and filed with the Court.

16. The Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

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**CERTIFICATION OF ENDORSEMENT
UNDER BANKRUPTCY LOCAL 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
Henry P. (Toby) Long, III

EXHIBIT C

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

<p>In re:</p> <p>HOPEMAN BROTHERS, INC.,</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 11</p> <p>Case No. 24-32428 (KLP)</p>
<p>OFFICIAL COMMITTEE OF UNSECURED CREDITORS,</p> <p style="text-align: center;">Appellant,</p> <p style="text-align: center;">v.</p> <p>HOPEMAN BROTHERS, INC.,</p> <p style="text-align: center;">Appellee.</p>	<p>Civil Action No. 3:24-cv-00717 (DJN)</p>

**ORDER GRANTING JOINT MOTION TO STAY
BANKRUPTCY APPEAL PENDING MEDIATION AND NEGOTIATION**

This matter coming before the Court on the *Joint Motion to Stay Bankruptcy Appeal Pending Mediation and Negotiation* (“**Motion**”),¹ jointly filed by the Committee and the Debtor; the Court having reviewed the Motion and its exhibits; the Motion having set forth the Committee’s and the Debtor’s request in the Bankruptcy Court to appoint a judicial mediator to mediate the Chubb Insurers Settlement Motion through January 31, 2025, subject to extension by written consent of the Committee and the Debtor; the Court finding that notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

¹ Capitalized terms used but not otherwise defined herein have the meanings given to those terms in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED subject to the terms set forth herein.
2. In accordance with Rules 6 and 7 of the Federal Rules of Civil Procedure, Rules 8001, 8018, and 9006(b) of the Federal Rules of Bankruptcy Procedure, and Local Civil Rule 7(G) of the Local Rules for the United States District Court Eastern District of Virginia, good cause supports a stay of further proceedings and the deferral of any applicable deadlines in this Appeal pending mediation and negotiations in the Chapter 11 Case below.
3. All further proceedings and any and all deadlines in this Appeal are stayed until February 28, 2025, subject to the terms set forth below.
4. This Court will hold in abeyance any rulings on the Committee's motion for leave to appeal during the stay.
5. In the event the Debtor and the Committee reach an agreement resolving this Appeal, the Committee seasonably shall file with this Court a motion to dismiss the Appeal. Otherwise, upon termination of the Term Sheet in accordance with section H thereof, the Debtor and the Committee will file a joint notice of such termination with this Court.
6. Unless the Committee files with this Court a motion to dismiss the Appeal and regardless of whether the Term Sheet is terminated, the Committee and the Debtor will file a joint status report and joint request for a status conference before this Court no later than February 28, 2025.

7. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024
Richmond, Virginia

HONORABLE DAVID J. NOVAK
UNITED STATES DISTRICT JUDGE

Entered on Docket: _____

WE ASK FOR THIS:

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