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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	*	
	*	

OBJECTION TO MOTION OF THE DEBTOR FOR ENTRY OF A THIRD INTERIM ORDER EXTENDING THE AUTOMATIC STAY TO STAY ASBESTOS-RELATED ACTIONS AGAINST NON-DEBTOR DEFENDANTS

NOW INTO COURT, through undersigned counsel, come the Boling Law Firm and Law Office of Philip C. Hoffman (collectively the "**Law Firms**"), who file this *Objection* (this "**Objection**") to the *Motion of the Debtor for Entry of a Third Interim Order Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 579] (the "**Motion**") filed by Hopeman Brothers, Inc. ("**Hopeman**" or the "**Debtor**").

1. The Law Firms adopt, as if copied herein *in extenso*, their *Opposition and Objection* [Docket No. 138] to the Debtor's *Motion for Entry of Interim and Final Orders Extending the Automatic Stay to Stay Asbestos-Related Actions Against Non-Debtor Defendants* [Docket No. 7]

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(the "**Extension Motion**"), including all arguments and rationale stated therein. Additionally, the Law Firms state as follows:

2. The Direct Action Lawsuits[1] are not automatically stayed against the Protected Parties pursuant to §§ 362(a)(1) or (a)(3). By its express terms, the stay under § 362(a)(1) applies only to "proceeding[s] *against the debtor." See* 11 U.S.C. § 362(a)(1) (emphasis added). The Fourth Circuit has maintained that the "plain wording" of § 362(a) does not shield non-debtor codefendants from asbestos lawsuits. *See Williford v. Armstrong World Indus., Inc.,* 715 F.2d 124, 126 (4th Cir. 1983) ("[Section 362(a)(1)] provides only for an automatic stay of any judicial proceeding 'against the debtor.'"). The Debtor nevertheless suggests that "unusual circumstances" favoring an expansion of the stay exist based on the alleged "identity of interest" between the Debtor and Liberty Mutual Insurance Company ("**Liberty**"). As detailed below, the Debtor, which has the burden on its Motion, fails to set forth evidence as to why this alleged "identity" is material. *See Leal v. Pinkerton*, Case No. 22-cv-1172-RJD, 2025 U.S. Dist. LEXIS 6526, at *9 (S.D. Ill. Jan. 13, 2025) (holding the "identity of interest" exception should be reserved for unusual circumstances, and given the failure to establish a duty to indemnify, section 362(a)(1) did not automatically extend to non-debtor). Further, the Debtor has disclaimed any interest in the Liberty insurance coverage, contending that the Liberty coverage "is exhausted and released" based on a compromise the Debtor entered into with Liberty in 2003. As such, the Debtor has no basis to assert that the Direct Action Lawsuits against Liberty exercise control over property of the estate under 11 U.S.C. § 362(a)(3).

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

3. Alternatively, the Debtors asks this Court to exercise its inherent authority under 11 U.S.C. § 105 to extend the stay to the Protected Parties on equitable grounds. It is well-established that injunctive relief under § 105(a) is an extraordinary remedy and should not be granted unless the party seeking the relief establishes, with the requisite degree of proof, the following: (1) likelihood of success on the merits, (2) imminent, irreparable harm to the estate absent an injunction, (3) the balance of harms tips in favor of the moving party, and (4) the public interest weighs in favor of an injunction. *In re Diocese of Buffalo, N.Y.*, 652 B.R. 574 576 (Bankr. W.D.N.Y. 2023); *Newberry Atrium Professional Ctr., LLC v. TD Bank, NA (In re Newberry Atrium Professional Ctr., LLC)*, No. 13-01377-JW, Adv. Pro. No. 13-80028-JW, 2013 Bankr. LEXIS 2553, at *2 (Bankr. D.S.C. Apr. 3, 2013); *In re Third Eighty-Ninth Assoc.*, 138 B.R. 144, 146 (S.D.N.Y. 1992) ("The debtor bears the burden of proof in obtaining the 'extraordinary and drastic remedy' of an injunction."). Importantly, when time has passed and the confirmation prospects become clearer, "the bankruptcy court should examine the record actually before it in making a decision to grant injunctive relief and not rely on generalities from the initial days of the case." *In re Mariner Health Cent., Inc.*, No. 22-41079, 2023 Bankr. LEXIS 114, at *29 (Bankr. N.D. Cal. Jan. 23, 2023).

4. The Debtor no longer has the benefit of being in the early stages of this case where uncertainty is an inherent and accepted part of the case. Consequently, this Court must examine the record without giving the Debtor the benefit of the doubt as it may have done for the Extension Motion in the immediate months after the case was filed. *Id.* Given the posture of this case and the lack of particularized evidence that a third interim extension is warranted, the Debtor cannot satisfy the requisite elements for a preliminary injunction.

5. Despite bearing the burden of demonstrating a likelihood of success in reorganizing or liquidating, the Debtor has failed to set forth *any* evidence that a plan will be confirmed within

four months or a reasonable period of time. *See In re Roman Cath. Diocese of Rockville Ctr.,N. Y.*, 651 B.R. 622, 651 (Bankr. S.D.N.Y. 2023) (holding a § 105 injunction was unwarranted where likelihood of success was uncertain because the record suggested settlement discussions had failed and Debtor proposed a plan with coercive third-party releases that would not survive committee support). In fact, it appears that the likelihood of the Debtor proposing a confirmable plan of liquidation is slim.

6. Initially, the Debtor assured the Court, creditors, and parties in interest that this case will not "linger," and a plan will be confirmed within six months. *See* Transcript of Hearing Held on September 10, 2024, 124:2–4 (Sept. 10, 2024) ("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."); *Id.* at 163:21–22 ("I hope we'll get to the plan within six months of the case."). However, the Debtor now admits that it is only "cautiously optimistic" an agreement will be reached regarding a Plan. *See* Motion at ¶ 14. The Law Firms acknowledge that mediation is necessary to facilitate the development of a confirmable plan. However, to exercise the "drastic" remedy of extending the stay to non-debtors on a third interim basis, the Debtor must demonstrate that mediation is resulting in meaningful progress towards the Debtor's goal of "confirmation of a plan that creates [a] trust." *Id.* at ¶ 36. Otherwise, the Debtor has not met its burden in seeking preliminary injunctive relief. *See, e.g.*, *Mariner Health*, 2023 Bankr. LEXIS 114, at *34 ("Overall, the likelihood of the Debtors proposing a confirmable plan of reorganization is at present highly uncertain. The Court simply cannot say, at this stage of these cases, that the Debtors have in any meaningful way carried their burden on this factor."); *Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1097 (9th Cir. 2007) (injunction vacated because bankruptcy court did not find

particularized evidence of the likelihood of plan confirmation or successful reorganization before ordering injunctive relief).

7. Moreover, in alleging irreparable harm, the Debtor continues to recite generalized harms—depletion in insurance coverage, increased administrative expenses, and indemnity obligations. These proposed harms, each of which is conclusory and unsupported by any admissible evidence, lack both legal and factual merit to justify the extraordinary relief of extending the stay to the non-debtors, particularly Liberty. *See Rodriguez v. AMGP Rest. Corp.,* No. 17-4870, 2018 U.S. Dist. LEXIS 225400, at *2 (E.D.N.Y. June 5, 2018) (holding that the non-bankrupt defendants' "conclusory and generic allegations" about the potential impact on the bankruptcy proceeding did not warrant an extension of the automatic stay); *In re Excel Innovations, Inc*, 502 F.3d at 1099 ("Perhaps because the bankruptcy court initially granted the injunction under the mistaken view that any proceeding with any conceivable effect on the debtor should be enjoined, the court placed a much lower burden on Excel than what is ordinarily required to show irreparable harm.").

8. It is unclear what, if any, irreparable harm the Debtor will suffer absent an extension of the stay to Liberty. Importantly, (i) the Debtor has no reported interest in any liability insurance coverage from Liberty that could be property of the estate; (ii) Liberty is not a party to or contributing proceeds under the Certain Settling Insurer Settlement Agreement or the Chubb Insurer Settlement Agreement; and (iii) the Debtor purports that it is not seeking a nonconsensual release of Liberty under its proposed plan. *See* Transcript of Hearing Held on September 10, 2024, 72:14–17 (Sept. 10, 2024) ("We're not seeking, as was recited by someone, a nonconsensual release. That's not provided in our motion or plan.").

9. The Debtor alleges it will be harmed by Liberty's threatened indemnification claims. The Debtor, however, has failed to put forth any real evidence that this threat of indemnification is legitimate and will harm the Debtor's reorganization efforts. Rather, the Debtor merely relies on hearsay and theoretical threats.[2] Indeed,

> It is not enough for the movant to show some limited risk, or that there is a theoretical threat to the reorganization, because it is always the case that a lawsuit against principals of the Debtor *could* have *some* effect on the reorganization. Rather, and in keeping with the principle that extending the stay to non-debtors is *extraordinary* relief, the party seeking extension of the stay must put forth real evidence demonstrating an actual impact upon, or threat to, the reorganization efforts if the stay is not extended.

Rodriguez v. AMGP Rest. Corp., 2018 U.S. Dist. LEXIS 225400, at *4 (quoting *Hernandez v. Immortal Rise, Inc.*, No. 11-CV-4360, 2014 U.S. Dist. LEXIS 33823, at *4 (E.D.N.Y. Mar. 13, 2014)). Regardless, Liberty's indemnification claims, if any, must be litigated in this Court through the bankruptcy claims administration process. *See In re Highland Group, Inc.*, 136 B.R. 475, 481 (Bankr. N.D. Ohio 1992) ("[W]here an indemnification agreement is entered into prior to a bankruptcy filing, such an execution gives the indemnitee a contingent pre-petition claim. This is

[2] During the hearing on the Extension Motion, Mr. Van Epps testified:

> 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 that discussion. The question posed to me was, do you expect Liberty to make an indemnity claim against Hopeman. My answer is yes.

See Transcript of Hearing Held on September 10, 2024, 107:24–108:7 (Sept. 10, 2024).

so even where the conduct giving rise to the indemnification occurs post-petition."). Of particular importance, Liberty's claims may be disallowed under 11 U.S.C. § 502(e). *See* 11 U.S.C. § 502(e) (providing standards for the allowance and disallowance of claims for reimbursement or contribution).

10. The Debtor also maintains that, "[A]sbestos claimants will not be harmed by entry of the stay relief requested." *See* Motion at ¶ 38. The Debtor ignores that many asbestos claimants are elderly, ill, or both. Plaintiffs and crucial witnesses are dying, often from the very diseases that have led to these actions. *See United States ex rel. Freedman v. BAYADA Home Health Care, Inc.*, No. 17-6267, 2024 U.S. Dist. LEXIS 235052, at *9-10 (D.N.J. Oct. 1, 2024) (quoting *Gold v. Johns-Manville Sales Corp.*, 723 F.2d 1068, 1076 (3d Cir. 1983) ("[T]he Third Circuit found that a stay was not warranted because the plaintiffs would be 'forced to wait for an indefinite and . . . lengthy time before their causes are heard' and the 'plaintiffs and crucial witnesses [were] dying, often from the very diseases that have led to these actions'"). Thus, despite the Debtor's representations, the Debtor's request for injunctive relief has serious implications that must be considered.[3]

WHEREFORE, the Law Firms submit that the Motion should be denied and that the automatic stay should not be extended on a third interim basis to the Protected Parties.

[*Signature Follows*]

[3] In light of these serious implications, the Law Firms maintain that this dispute requires an adversary proceeding. *Feld v. Zale Corp. (in Re Zale Corp.),* 62 F.3d 746, 765 (5th Cir. 1995). Courts have recognized that contested matters are "subject to less elaborate procedures specified in Bankruptcy Rule 9014" and are "generally designed for the adjudication of simple issues, often on an expedited basis." *Id.* at 761.

Dated: February 28, 2025

BOLING LAW FIRM and
LAW OFFICE OF PHILIP C. HOFFMAN

/s/ Jennifer J. West

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via CM/ECF on February 28, 2025 on the Office of the United States Trustee, Counsel for the Debtor, and all parties receiving notice in the above-captioned case, constituting all necessary parties.

/s/ Jennifer J. West
Jennifer J. West