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

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

MOTION TO QUASH DEPOSITION NOTICE

The Official Committee of Unsecured Creditors ("**Committee**") of Hopeman Brothers, Inc. ("**Debtor**"), by and through its undersigned counsel, hereby moves (by this "**Motion**"), (1) for entry of an order quashing the Rule 30(b)(6) *Notice of Deposition* ("**Deposition Notice**")[1] that Liberty Mutual Insurance Company ("**Liberty**") has propounded on the Committee, or (2) in the alternative, for entry of a protective order forbidding the Rule 30(b)(6) deposition sought in the Deposition Notice. The grounds supporting this Motion are as follows.

[1] A copy of the Deposition Notice is annexed hereto as **Exhibit 1**. Capitalized terms not defined herein have the meanings ascribed to them in the Amended Plan of Hopeman Brothers, Inc. (Docket No. 766) ("**Plan**").

PRELIMINARY STATEMENT

1. Liberty has propounded a Deposition Notice on the Committee that seeks to examine a Committee-designated witness on topics that are impermissibly overbroad and vague—e.g., "All facts and circumstances concerning the Plan"—but also would invade the Committee's privilege and work product protections by delving into such topics as "[t]he drafting and negotiation of the Plan" and the "assertion that Section 524(g) of the Bankruptcy Code applies under the current circumstances." As explained more fully below, all the topics set forth in the Deposition Notice are improper and inappropriate. Committee counsel, in conjunction with Debtor's counsel, drafted and negotiated the Plan, so any witness examined by Liberty on the "drafting and negotiation of the Plan" would necessarily be called upon to disclose what Committee counsel told the Committee. In addition, by seeking to examine the Committee on how "Section 524(g) of the Bankruptcy Code applies under the current circumstances," Liberty is trying to use a Rule 30(b)(6) deposition to obtain Committee counsel's mental impressions, opinions, legal conclusions, and other work product, in addition to seeking an early legal brief on confirmation. None of this appropriate. None of this is proper. The Committee should not be forced to shoulder the burden and incur the costs of sitting through a deposition and making repeated objections based on privilege and work product.[2] Rather, this Court should quash the Deposition Notice or grant a protective order forbidding the deposition sought by Liberty.

2. Liberty's Deposition Notice is even more objectionable given how Liberty lacks a legitimate interest in this chapter 11 case. The Debtor released its rights under the Liberty insurance policies more than two decades ago, so there are no Liberty-related "Asbestos Insurance

[2] The Committee is not seeking to shut down all deposition discovery. At the Chubb insurers' request, the Committee is making Conor Tully of FTI Consulting, Inc., financial advisor to the Committee, available for deposition on Thursday, June 26, 2025, on the issues of the Liquidation Analysis, the Restructuring Transaction, and the Reorganized Hopeman Projections.

Rights" that will be transferred to the Asbestos Trust under the Plan. In addition, this Court disallowed Liberty's asserted claims against the Debtor, so Liberty can no longer be considered a creditor in this case. Liberty therefore has no bona fide interest to protect by ostensibly seeking confirmation-related discovery from the Committee about the Plan. Liberty thus appears to be seeking a Rule 30(b)(6) deposition from the Committee to run up the estate's administrative expenses and thereby force the Debtor into a liquidation, and eventual dissolution, which would prevent asbestos creditors outside of Louisiana who cannot include insurers in their tort cases from seeking to obtain the benefits of the Liberty insurance coverage. This is improper. The Court should grant the Motion.

FACTUAL BACKGROUND

3. On Thursday, June 19, 2025, at 6:23 p.m. EDT, Liberty emailed the Deposition Notice to Committee counsel, calling on the Committee to produce one or more designated representatives under Rule 30(b)(6) for a deposition that Liberty unilaterally set for Friday, June 27, 2025, at 10:00 a.m. EDT. Liberty sent the Deposition Notice without advising the Committee in advance that it would be seeking a Rule 30(b)(6) deposition and without seeking the available dates and times of Committee counsel and any witness for that deposition.

4. The Deposition Notice identifies the following topics that Liberty intends to examine the Committee's witness on:

All facts and circumstances concerning the Plan, including, but not limited to:

a. The drafting and negotiation of the Plan;

b. The assertion that Section 524(g) of the Bankruptcy Code applies under the current circumstances;

c. The purported assignment of rights set forth in § 8.3(b) of the Plan;

d. Implementation and governance of the Asbestos Trust;

e. The creation, membership, and duties of the Asbestos Trust Advisory Committee; and

f. The anticipated effect(s) of the Plan on Liberty Mutual.[3]

5. At the Committee's request, Committee counsel and Liberty's counsel conducted a telephonic meet-and-confer on June 20, 2025, in which the Committee raised its concerns about, and objections to, the deposition sought in the Deposition Notice. Specifically, Committee counsel pointed out that the topics on which Liberty seeks to examine the Committee call for information protected from disclosure by the mediation privilege, the attorney-client privilege, the common interest privilege, and the work product doctrine. Committee counsel also informed Liberty that the Committee intended to seek this Court's intervention if the parties were unable to able to resolve the concerns and objections raised by the Committee. Despite the meet-and-confer, the parties were unable to resolve the Committee's concerns and objections, thus necessitating this Motion.

ARGUMENT

I. LIBERTY'S DEPOSITION TOPICS SHOW THAT IT IMPERMISSIBLY SEEKS PRIVILEGED INFORMATION AND WORK PRODUCT

6. Liberty's broad deposition topics show that Liberty would be seeking to invade the attorney-client privilege, the common-interest privilege, the mediation privilege, and the work product doctrine if its deposition of the Committee were permitted to go forward. Consideration of subtopics (a) through (f) in its Deposition Notice shows why this would be the case:

"a. The drafting and negotiation of the Plan"

7. "The drafting and negotiation of the Plan" were done by Committee counsel and the Debtor's counsel, with some participation by counsel for Huntington Ingalls, Inc. ("**HII**").

[3] Deposition Notice, Attachment A.

This means that, if the Committee were to designate witnesses who are not themselves Committee counsel, those witnesses would not be able to testify about the "drafting and negotiation of the Plan" without disclosing what Committee counsel told them—i.e., without revealing privilege protected information and attorney work product. This is impermissible.

8. Moreover, what the Committee, the Debtor, and HII said to each other—through their respective counsel—during the mediation is protected by this Court's order appointing Judge Huennekens as the judicial mediator ("**Mediation Order**").[4] In relevant part, the Mediation Order provides as follows:

> A communication of any type, whether oral or written, made or provided in connection with the Mediation . . . 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 Bankruptcy Rule 9019-1(J), and any equivalent or comparable state law.[5]

Liberty was not a "Party" to the mediation. And any examination by Liberty to obtain information about the "negotiations" and "drafting" that occurred during the mediation would be violative of the Mediation Order because such information "shall not be subject to discovery."

9. Additionally, information about the "drafting and negotiation of the Plan" that occurred after the Committee, the Debtor, and HII signed the 524(g) Term Sheet is protected from disclosure by the common interest privilege.[6] This privilege, which is "an extension of the attorney-client privilege,"[7] shields "parties whose legal interests coincide to share privileged materials with one another in order to more effectively prosecute or defend their claims." *In re*

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4 *See* Mediation Order, Docket No. 443.

5 *Id.* ¶ 8 (emphasis added).

6 The term "**524(g) Term Sheet**" refers to the Settlement Term Sheet for § 524(g) Plan of Hopeman Brothers, Inc. (Docket No. 609, Ex. B).

7 *United States v. Elbaz*, 396 F. Supp. 3d 583, 598 (D. Md. 2019) (citation omitted).

Infinity Bus. Grp., Inc., 530 B.R. 316, 322 (Bankr. D.S.C. 2015) (quoting *Am. Mgmt. Servs., LLC v. Dep't of the Army*, 703 F.3d 724, 732 (4th Cir. 2013)). "Information protected by this doctrine cannot be waived without the consent of all parties who share the privilege." *Id.* (citing *Am. Mgmt. Servs.*, 703 F.3d at 732). The Committee has not waived the common interest privilege. As signatories of the 524(g) Term Sheet, the Committee, the Debtor, and HII have a common interest in putting forward and obtaining confirmation of a plan of reorganization contemplated and specified by the 524(g) Term Sheet. In addition, the Committee and the Debtor have a common interest in maximizing the value of the estate's insurance assets, which they believe the Plan would accomplish if it were confirmed. Thus, the common interest privilege bars any Committee witness from testifying about the "drafting and negotiation of the Plan."[8] Subtopic (a) is therefore impermissible and objectionable.

"b. The assertion that Section 524(g) of the Bankruptcy Code applies under the current circumstances"

10. Whether "Section 524(g) of the Bankruptcy Code applies" to the Plan or the Debtor's chapter 11 case is pure question of bankruptcy law that no Committee fact witness should be required to testify about. Liberty has capable bankruptcy counsel who can determine and advise Liberty on whether the Plan can satisfy the requirements of § 524(g). Beyond that, Liberty should await the Committee and the Debtor's confirmation brief. As with subtopic (a) discussed above, no Committee witness could competently testify about this "assertion" without disclosing

[8] Even if, for the sake of argument, the drafting and development of the Plan were not privileged, they would be irrelevant to the proposed confirmation of the Plan. *See, e,g.*, Transcript of Hearing at 64-66, *In re Pittsburgh Corning Corp.*, No. 00-22876 (JKF) (Bankr. W.D. Pa. Feb. 19, 2004) ("The plan is what it is. Prior drafts of the plan are not discoverable, they're not admissible, they're wholly irrelevant, I ruled that ways in Combustion Engineering, I'm going to stick with those same rulings, they're not admissible, they're not discoverable."); Transcript of Hearing at 301, *In re Combustion Eng'g, Inc.*, No. 03-10495 (JKF) (Bankr. D. Del. May 2, 2003) (observing that "drafts generally are not relevant to anything"); Transcript of Hearing at 84. *In re Babcock & Wilcox Co.*, No. 00-10992 (JAB) (Bankr. E.D. La. Aug. 20, 2003) (denying insurers' motion to compel discovery into plan drafting and negotiations on the grounds that the material requested was neither material nor relevant). What is relevant to confirmation is the Plan on file, not the facts and circumstances about its formulation.

privilege-protected communications and attorney work product. For these reasons, subtopic (b) is impermissible and objectionable.

"c. The purported assignment of rights set forth in § 8.3(b) of the Plan"

11. Section 8.3(b) of the Plan, which provides for the transfer and assignment of the Debtor's Asbestos Insurance Rights to the Asbestos Trust on the Effective Date, speaks for itself. Liberty does not need to examine a fact witness from the Committee to understand how this *legal* provision would work; Liberty already has capable bankruptcy counsel advising it. If Liberty is seeking to understand whether any of the Debtor's rights under the Liberty insurance policies would be part of the Asbestos Insurance Rights transferred to the Asbestos Trust, the Committee has already addressed that issue in its interrogatory answers to Liberty. In its response to Liberty's first interrogatory, the Committee unequivocally stated: "Hopeman released its rights under the Liberty policies in 2003, so there are no such rights to 'be assigned or transferred in connection with the plan.'"[9] Liberty requires no information about the "purported assignment of rights" beyond the four corners of the Plan itself and the Committee's unequivocal interrogatory response on that topic. If the Committee were to designate a witness who was not an attorney for the Committee, that witness would not be able to competently testify about the "purported assignment of rights" without disclosing privilege protected information and attorney work product. For these reasons, subtopic (c) is impermissible and objectionable.

"d. Implementation and governance of the Asbestos Trust;" and "e. The creation, membership, and duties of the Asbestos Trust Advisory Committee"

12. Provisions addressing the "[i]mplementation and governance of the Asbestos Trust" and "[t]he creation, membership, and duties of the Asbestos Trust Advisory Committee"

[9] Committee's Omnibus Objs. and Resps. to Liberty Mutual Insurance Company's Interrogs. and Reqs. for Produc. at 2 (answer to Interrog. No. 1).

are set forth in the Asbestos Trust Agreement and the Asbestos Trust Distribution Procedures, which are exhibits to the Plan. These documents speak for themselves. Moreover, they are legal documents, so any information beyond their four corners will necessarily entail disclosure of privileged communications between the Committee and its counsel as well as attorney work product. Moreover, information about the drafting and negotiation of these documents is protected from disclosure under the Mediation Order and by common interest privilege. For these reasons, subtopics (d) and (e) are impermissible and objectionable.

"f. The anticipated effect(s) of the Plan on Liberty Mutual"

13. Despite having capable bankruptcy counsel to advise it on the "anticipated effect(s)" the Plan would have on it, Liberty wants the legal opinion of a Committee fact witness on such "anticipated effect(s)." This is impermissible and improper because any examination about such "anticipated effect(s)" will necessarily call for privileged communications between the Committee and its counsel as well as attorney work product. Liberty does not need the Committee's evaluation about the "anticipated effect(s)" of the Plan to frame an objection to confirmation. For these reasons, subtopic (f) is impermissible and objectionable.

14. As explained above, an examination based on subtopics (a) through (f) would necessarily call on the Committee's designated witness to disclose information protected by the attorney-client privilege, the common interest privilege, paragraph 8 of the Mediation Order, and the work product doctrine. If the deposition were to proceed, as currently framed by the Deposition Notice, Committee counsel would have no choice but to raise repeated objections based on privilege and work product immunity and to instruct the witness not to answer, which would make the deposition a burdensome and costly exercise for the Committee. *See EEOC v. McCormick & Schmick's Seafood Rests., Inc.*, No. CIV.A. WMN-08-CV-984, 2010 WL 2572809, at *4 (D. Md. June 22, 2010) (rejecting the option to move forward with deposition because the persistent

invocations of attorney-client privilege and work product that would be raised would create a large and unnecessary burden). Accordingly, this Court should quash Liberty's Deposition Notice or grant the Committee a protective order forbidding the deposition sought in the Deposition Notice.

II. LIBERTY'S OVERARCHING DEPOSITION TOPIC FAILS TO MEET THE "REASONABLE PARTICULARITY" REQUIREMENT

15. Before enumerating subtopics (a) through (f), Liberty's Deposition Notice sets forth one overarching and overbroad topic for examination: "All facts and circumstances concerning the Plan, including, but not limited to [the subtopics]." This overarching and seemingly "catch-all" topic violates the requirement that all deposition notices "describe with reasonable particularity the matters for examination." Fed. R. Civ. P. 30(b)(6). "[T]o allow [Rule 30(b)(6)] to effectively function, the requesting party must take care to designate, *with painstaking specificity*, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute." *In re Jemsek Clinic, P.A.*, No. 06-31766, 2013 WL 3994666, at *5 (Bankr. W.D.N.C. Aug. 2, 2013) (alteration in original) (quoting *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 638 (D. Minn. 2000)). When deposition topics "cover nearly every conceivable facet" of the litigation, "making the preparation of a thoroughly educated witness infeasible," that deposition may not go forward. *Alvarado-Herrera v. Acuity*, 344 F.R.D. 103, 110 (D. Nev. 2023), *aff'd sub nom. Alvarado-Herrera v. Acuity A Mut. Ins. Co.*, No. 2:22-cv-00438-CDS-NJK, 2023 WL 5035323 (D. Nev. Aug. 4, 2023). Liberty's overarching deposition topic is a far cry from identifying "particular subject areas . . . *with painstaking specificity*." *Jemsek Clinic, P.A.*, 2013 WL 3994666, at *5. It would require the Committee to identify a witness who has knowledge of, or who can be educated on, every conceivable fact and potential permutations and penumbras "concerning the Plan," which would be unduly burdensome, if not impossible, and is therefore impermissible.

16. Moreover, courts have found that Rule 30(b)(6) deposition notices are overbroad if they contain "including, but not limited to" language that the Deposition Notice contains. *Id.* ("For starters, the Jemsek Defendants' Amended Notice frequently requests testimony on topics using 'including but not limited to' language. Each such topic is overbroad on its face and must be clarified or limited."); *Richardson v. Rock City Mech. Co.*, No. CV 3-09-0092, 2010 WL 711830, at *6 (M.D. Tenn. Feb. 24, 2010) (stating that "topics in a rule 30(b)(6) notice are themselves overbroad if they include 'including but not limited to' language"); *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 125 (D.D.C. 2005) (finding topics overbroad due to "including but not limited to" language and explaining that "[l]isting several categories and stating that the inquiry may extend beyond the enumerated topics defeats the purpose of having any topics at all"). Liberty's overarching, "catch-all" topic is thus overbroad and impermissible on its face.

17. Finally, Liberty cannot cure these objectionable and inappropriate topics by asserting that it is seeking only "facts" and "circumstances" that are not, in and of themselves, privileged or work product. Depositions, "including 30(b)(6) depositions, are designed to discover facts, not contentions or legal theories, which, to the extent discoverable at all prior to trial, must be discovered by other means." *JPMorgan Chase Bank v. Liberty Mut. Ins. Co.*, 209 F.R.D. 361, 362-63 (S.D.N.Y. 2002). "A rule 30(b)(6) deposition is an overbroad, inefficient, and unreasonable means of discovering an opponent's factual and legal basis for its claims." *Walker v. IHI Power Servs. Corp.*, No. CV 23-57 WES, 2025 WL 949239, at *3 (D.R.I. Mar. 28, 2025) (quoting *Cook v. Lynn & Williams, Inc.*, 344 F.R.D. 149, 154 (D. Mass. 2023)). The Plan is a legal document. Thus, under the guise of seeking "[a]ll facts and circumstances concerning the Plan," Liberty is necessarily seeking Committee counsel's "mental impressions, conclusions, opinions,

and legal theory," which is impermissible. *JPMorgan Chase Bank*, 209 F.R.D. at 362-63. The Committee's Motion should be granted.

CONCLUSION

For the reasons explained above, this Court should quash the Deposition Notice, or in the alternative, issue a protective order forbidding the deposition from going forward, and grant such other relief as it deems just and proper.

Respectfully submitted,

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Dated: June 23, 2025

EXHIBIT 1

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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	)	
	)	

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT, in accordance with Rule 30(b)(6) of the Federal Rules of Civil Procedure, as made applicable by the Federal Rules of Bankruptcy Procedure, counsel for Liberty Mutual Insurance Company ("Liberty") will take the deposition of the Unsecured Creditors' Committee (the "UCC") commencing at 10:00 a.m. on June 27, 2025 via videoconference. The deposition will be taken before a court reporter or other person authorized to administer oaths and may be recorded by stenographic and videographic means. The deposition will continue from day to day until concluded, or may be continued until completed at a future date or dates. Pursuant to Rule 30(b)(6), the UCC shall designate one or more of its directors, members, or other persons who are most qualified, knowledgeable, and competent to testify on its behalf as to all matters known or reasonably available to the UCC with respect to each of the Deposition Topics set forth in set forth in Attachment A.

Liberty reserves all rights to seek further testimony or serve additional Deposition Topics pursuant to Rule 30(b)(6) in the future.

Date: June 19, 2025

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ATTACHMENT A

DEFINITIONS

1. "Hopeman" means the Debtor Hopeman Brothers, Inc. and/or any of its parents, subsidiaries, or affiliates, and its employees, agents, representatives, attorneys, and any person acting or purporting to act on Hopeman's behalf or under Hopeman's control.

2. The "Plan" means Hopeman's Plan of Reorganization under Chapter 11 of the U.S. Bankruptcy Code (ECF No. 689) (together with all exhibits, amendments, modifications, and supplements thereto, including the Plan Supplement filed on June 6, 2025). Capitalized terms used in the Topics have the meanings set forth in the Plan.

DEPOSITION TOPICS

1. All facts and circumstances concerning the Plan, including, but not limited to:
   a. The drafting and negotiation of the Plan;
   b. The assertion that Section 524(g) of the Bankruptcy Code applies under the current circumstances;
   c. The purported assignment of rights set forth in § 8.3(b) of the Plan;
   d. Implementation and governance of the Asbestos Trust;
   e. The creation, membership, and duties of the Asbestos Trust Advisory Committee; and
   f. The anticipated effect(s) of the Plan on Liberty Mutual.