

James W. Burke (VSB No. 76551)
Joshua D. Weinberg (*pro hac vice* forthcoming)
RUGGERI PARKS WEINBERG LLP
1875 K Street NW, Suite 800
Washington, D.C. 20006
Telephone: (202) 984-1400
jburke@ruggirilaw.com
jweinberg@ruggirilaw.com

*Counsel for Hartford Accident and Indemnity
Company and First State Insurance Company*

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

In re:

HOPEMAN BROTHERS, INC.,

Debtor.

Chapter 11

Case No. 24-32428 (KLP)

**HARTFORD'S LIMITED OBJECTION TO
AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC.
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Hartford Accident and Indemnity Company and First State Insurance Company
(together, "Hartford") respectfully submit this limited objection to confirmation of the
*Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the
Bankruptcy Code* (Dkt. No. 766) (the "Plan").¹

¹ Capitalized terms not defined herein have the definitions given to them in the Plan.



OVERVIEW

1. Although the Plan seeks to resolve the Debtor’s asbestos liabilities, it does not expressly address the “Wellington Agreement”—a 40-year-old agreement between the Debtor and subscribing insurers, including Hartford, that governs their rights regarding asbestos claims.

2. The Plan cannot be confirmed unless it fully preserves the Wellington Agreement. To accomplish this, the Asbestos Trust to which the Debtor’s Asbestos Insurance Rights would be transferred under the Plan must remain equally bound by the Wellington Agreement.

3. From discussions with the Debtor’s counsel, Hartford understands that is the Debtor’s intent. But the text of the Plan should be clearer. The Wellington Agreement appears to fit the Plan’s definition of “Asbestos CIP Agreement,” but neither that definition, nor anything else in the Plan, specifically references the Wellington Agreement. Further, while the Plan states that “all parties’ respective rights, duties, defenses, obligations, and liabilities” under Asbestos CIP Agreements are “preserved,” other Plan language stating that the Asbestos Insurance Rights (including the Debtor’s rights under Asbestos CIP Agreements) would be transferred to the Asbestos Trust “free and clear” of all interests introduces an avoidable ambiguity.

4. Unless the Debtor amends the Plan to expressly confirm that the Wellington Agreement would be fully preserved, the Plan should not be confirmed.²

² The Debtor agreed that Hartford may file a joinder to other parties’ objections on or before July 8, 2025 at 4:00 p.m. (ET). By filing this limited objection, Hartford is not waiving, and expressly reserves, all rights to file a separate joinder to such objections by that deadline.

BACKGROUND

A. The Debtor and Hartford are subscribers to the Wellington Agreement, which establishes a framework for payments of liability and defense costs for asbestos claims.

5. The Debtor is a former “ship joiner” subcontractor that ceased operations in the 1980s. *Declaration of Christopher Lascell In Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.* (Dkt. No. 8) (“Lascell Declaration”) ¶ 2; *see also In re Hopeman Bros.*, 667 B.R. 101, 103-04 (Bankr. E.D. Va. 2025). Since that time, the Debtor has “maintained its corporate existence solely to address the over 126,000 personal injury claims asserted against it allegedly arising out of the asbestos-containing products used in its legacy ship joining business.” Lascell Declaration ¶ 2; *see also Hopeman Bros.*, 667 B.R. at 104.

6. From 1937 to 1984, the Debtor maintained an asbestos-related liability insurance program that included primary-layer policies and, from 1965 on, multilayer excess general liability insurance policies. Lascell Declaration ¶ 30. According to the Debtor, Hartford issued excess liability policies to the Debtor with policy years from 1977 through 1984 (collectively, the “Hartford Policies”). Plan Supplement (Dkt. No. 853) Ex. H (Asbestos Insurance Policies).

7. Shortly after the final policy year for the Hartford Policies, in June 1985, several asbestos defendants and their insurers—including the Debtor and Hartford—entered into an agreement commonly referred to as the “Wellington Agreement.”³ Lascell Declaration ¶ 32; *see also Hopeman Bros.*, 667 B.R. at 104; *Continental Cas. Co. v. Pfizer, Inc. (In re Quigley Co.)*, 361 B.R. 723, 733 n.10 (Bankr. S.D.N.Y. 2007) (noting that Hartford Accident and Indemnity Company and First State Insurance Company are both subscribing insurers under the agreement). The Wellington Agreement reflects a broad compromise of a variety of insurance

³ The formal title is “Agreement Concerning Asbestos-Related Claims.”

issues relating to asbestos claims, including the applicable “trigger” of coverage, allocation of losses across triggered periods, application of deductibles and limits, and application of exclusions and other limitations on coverage. *See generally Declaration of Min Kyoung Kim* (“Kim Declaration”) Ex. 1 (Wellington Agreement).

8. Among other things, the Wellington Agreement allowed the Debtor to define the “coverage block” of insurance policies that would be applied to its asbestos liabilities by selecting certain policy years. Kim Declaration Ex. 1 § IX. To the extent that any policies within that coverage block cover the “exposure period” for an asbestos claim, the subscribing insurers within the coverage block agree to make “liability payments” and pay “allocated expenses” attributable to such claim according to a pro rata formula (subject to applicable policy limits). *Id.* §§ X-XII. Along with this general allocation formula, the agreement includes various other rules which, among other things, establish caps on the amount of deductibles or self-inured retentions that the insured must pay and establish aggregate limits of liability for certain policies that otherwise do not contain such limits. *Id.* §§ XV-XVI, XVII.

9. With limited exceptions, insurers that subscribed to the Wellington Agreement waived “any conditions or defenses based upon, or exclusionary provisions contained in, insurance policies[] which . . . have the effect of reducing or denying insurance coverage available under any of the insurance policies.” Kim Declaration Ex. 1 § VIII.5. In exchange, the Debtor agreed to “forgo all claims . . . relating to the application of insurance to the investigation, settlement, defense or indemnification of asbestos-related claims within the scope of the Agreement” and to “waive claims for bad faith or punitive damages . . . with respect to all matters within the scope of the Agreement.” *Id.* §§ VIII.1, VIII.3.

10. The Wellington Agreement has a “perpetual” term, and thus, remains in effect. Kim Declaration Ex. 1 § XXII.3. As between the Debtor and Hartford, the Wellington Agreement applies “to all liability payments and expenses incurred subsequent to the date on which both [the Debtor] and [Hartford] became signatories to the Agreement and . . . nullif[ies], repudiate[s], replac[es] and supplant[s] . . . any prior agreements.” *See id.* § XIX.1.

B. The Plan does not specify how it affects the Wellington Agreement.

11. Although the Disclosure Statement acknowledges the Wellington Agreement, the Plan does not expressly state how it affects the agreement. *Cf.* Disclosure Statement at 9.

12. Under the Plan, the Debtor would transfer to the Asbestos Trust all the Debtor’s Asbestos Insurance Rights, including the Debtor’s rights “to pursue or receive payment, reimbursement, or proceeds under any Asbestos Insurance Policy or any Asbestos CIP Agreement, whether for indemnity, liability, defense costs, or otherwise.” Plan §§ 1.13, 8.3(b). Hartford Policies are among the Asbestos Insurance Policies affected by this rights transfer. Plan § 1.12; Plan Supplement Ex. H. Upon the transfer, “[t]he Asbestos Insurance Rights shall be indefeasibly vested in the Asbestos Trust free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity.” Plan § 8.3(b).

13. “[N]one of the Asbestos Insurance Policies or Asbestos CIP Agreements are being rejected, altered, or otherwise modified pursuant to th[e] Plan, and all parties’ respective rights, duties, defenses, and obligations, and liabilities thereunder are [being] preserved[.]” Plan § 6.2.

ARGUMENT

14. A chapter 11 plan cannot be confirmed if it includes provisions that are inconsistent with the Bankruptcy Code. 11 U.S.C. § 1129(a)(1).

15. When a plan provides for the transfer of the debtor's rights under prepetition insurance agreements, as the Plan does here, it must comply with § 365 of the Bankruptcy Code if the agreements are executory and with § 363 if they are not. 11 U.S.C. §§ 1123(b)(2), 1123(b)(6).

16. Regardless of which Code section governs, the only insurance rights the debtor can transfer are those which it had under applicable non-bankruptcy law on the petition date. *See Kremen v. Harford Mut. Ins. Co. (In re J.T.R. Corp.)*, 958 F.2d 602, 605 (4th Cir. 1992) (“Under the terms of its policy, Harford was not obligated to pay [the debtor] anything until after Fidelity’s interest had been satisfied. The [bankruptcy] [t]rustee has no greater rights than [the debtor], in whose shoes he stands.”). Further, the “*cum onere*” principle requires the debtor to transfer prepetition insurance agreements in their entireties. *See Anytime Fitness, L.L.C. v. Thornhill Bros. Fitness, L.L.C. (In re Thornhill Bros. Fitness, L.L.C.)*, 85 F.4th 321, 326 (5th Cir. 2023) (“[W]hen a trustee relies on § 365(f) to assign an executory contract in bankruptcy, it must assign the contract in whole, not in part.”); *In re Boy Scouts of Am.*, 137 F.4th 126, 164-65 (3d Cir. 2025) (a debtor cannot transfer insurance rights under § 363(b) with “fewer . . . obligations than it possessed outside of bankruptcy”). This *cum onere* principle applies equally when parties enter into two formally separate but interrelated agreements that operate as a unitary contract. *See Huron Consulting Servs., LLC v. Physiotherapy Holdings, Inc. (In re Physiotherapy Holdings, Inc.)*, 538 B.R. 225, 233 (D. Del. 2015) (where parties intended “one complete contract,” debtor could not assume the benefits of one contract without the burdens of the other).

17. Here, the Plan cannot satisfy either § 363 or § 365 unless the Asbestos Trust would be fully bound by the Wellington Agreement. The Wellington Agreement imposed permanent limitations on the Debtor’s Asbestos Insurance Rights (as well as Hartford’s potential

coverage defenses), with the Debtor agreeing to forgo and waive claims that would be inconsistent with the Wellington Agreement. Kim Declaration Ex. 1 §§ VIII.1, VIII.3. As the insurance rights that the Debtor possessed on its petition date were subject to the limits imposed by the Wellington Agreement, the Plan cannot transfer any greater rights to the Asbestos Trust. The Hartford Policies and the Wellington Agreement also operate as unitary contracts—both the Hartford Policies and the Wellington Agreement address the parties’ rights and obligations concerning indemnity and defense payments for asbestos claims (among other subjects), subscribing insurers’ policies are expressly referenced throughout the Wellington Agreement, and the Wellington Agreement “nullif[ies], repudiate[s], replac[es] and supplant[s]” those policies, and the parties’ rights and obligations thereunder, to the extent they are inconsistent. *See* Kim Declaration Ex. 1 § XIX.1. The Plan therefore cannot transfer the Debtor’s rights under the Hartford Policies to the Asbestos Trust without also transferring the Debtor’s corresponding duties, obligations, and liabilities under the Hartford Policies and the Wellington Agreement.

18. Hartford understands that the Debtor intends for the Plan to fully preserve the Wellington Agreement, and the Wellington Agreement does appear to fit the definition of an Asbestos CIP Agreement, such that “all parties’ respective rights, duties, defenses, obligations, and liabilities” would be “preserved.” Plan § 6.2.

19. The Plan defines an Asbestos CIP Agreement as “an agreement between Hopeman and an Asbestos Insurer” that meets two criteria. Plan § 1.7. *First*, it “is based on, arises from, or is attributable to an Asbestos Insurance Policy.” *Id.* *Second*, it “among other things, establishes a framework or formula for the Asbestos Insurer’s payment of indemnity, liability, or defense costs to Hopeman with respect to Asbestos Personal Injury Claims.” *Id.*

20. The Wellington Agreement meets both these criteria. *See* Disclosure Statement at 9 (acknowledging other “bilateral” “coverage-in-place” agreements have “terms identical to or substantially similar to those of the Wellington Agreement”); *In re Dana Corp.*, 2007 WL 4589331, at *14 (Bankr. S.D.N.Y. Dec. 26, 2007) (referring to Wellington Agreement as a “coverage-in-place” agreement). *First*, the Wellington Agreement is based on or arises from the Asbestos Insurance Policies of the Subscribing Insurers, including the Hartford Policies. In fact, the agreement requires the parties to create a schedule of the policies that the agreement covers, which Hartford and the Debtor both completed. *See* Kim Declaration Ex. 1 at Appendix D. *Second*, as described above, the Wellington Agreement establishes a comprehensive framework for defining the parties’ rights and obligations with respect to indemnity and defense payments for asbestos claims under the subscribing insurers’ policies, including through the establishment of a “coverage block,” pro rata allocation rules, agreed caps on deductibles and self-insured retentions, and new aggregate limits of liability for certain policies. *See supra* ¶¶ 8-9.⁴

21. If, however, the Wellington Agreement were *not* an Asbestos CIP Agreement, it appears that the Plan would not be confirmable. Although the Plan still would preserve “the right of any insurer to assert any coverage defense,” nothing in the Plan broadly preserves “all parties’ respective rights, duties, defenses, obligations, and liabilities” under an agreement that is *not* an Asbestos CIP Agreement (or an Asbestos Insurance Policy). *See* Plan § 8.18.

⁴ The Asbestos CIP Agreement definition contains an exclusion for “any prepetition settlement agreement (or any related indemnity obligations thereunder) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds,” but the Wellington Agreement continues to “provide rights in favor of [the Debtor] to continuing coverage or to payment of insurance proceeds” and therefore would not fit within that exclusion even if it were deemed to be a “prepetition settlement agreement.” *See* Plan § 1.7.

22. Rather than leave the Plan open to future interpretation and expose the parties to the risk of a latent ambiguity, the Plan should be amended to explicitly incorporate the Wellington Agreement into the Plan's Asbestos CIP Agreement definition. Similarly, while the Plan's preservation of all "rights, duties, defenses, obligations, and liabilities" under Asbestos CIP Agreements (and Asbestos Insurance Policies) implies that the Asbestos Trust would assume and be subject to the same, the Plan should be amended to state this expressly as well. Hartford's proposed Plan amendments are set forth in the **Annex** hereto.

CONCLUSION

Unless the Plan is revised in accordance with the amendments proposed herein, Hartford respectfully requests that the Court deny confirmation of the Plan.

Dated: July 7, 2025

/s/ James W. Burke

James W. Burke (VSB No. 76551)
Joshua D. Weinberg (*pro hac vice* forthcoming)
RUGGERI PARKS WEINBERG LLP
1875 K Street NW, Suite 800
Washington, D.C. 20006
Telephone: (202) 984-1400
jburke@ruggerylaw.com
jweinberg@ruggerylaw.com

*Counsel for Hartford Accident and Indemnity
Company and First State Insurance Company*

**ANNEX
(Plan Amendments)**

* * *

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

- A. Definitions.** The following terms provided in this Article I apply to the Plan and shall have the respective meanings specified below:

...

1.7. Asbestos CIP Agreement means an agreement between Hopeman and an Asbestos Insurer that (a) is based on, arises from, or is attributable to an Asbestos Insurance Policy and (b), among other things, establishes a framework or formula for the Asbestos Insurer's payment of indemnity, liability, or defense costs to Hopeman with respect to Asbestos Personal Injury Claims. The term "Asbestos CIP Agreement" includes that certain Settlement Agreement, dated December 18, 2009, between Hopeman and Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America. Notwithstanding any of the foregoing, "Asbestos CIP Agreement" does not include any prepetition settlement agreement (or any related indemnity obligations thereunder) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds. **For the avoidance of doubt, the term "Asbestos CIP Agreement" includes the Wellington Agreement.**

...

1.113. Wellington Agreement means that certain Agreement Concerning Asbestos-Related Claims, dated June 19, 1985, including any schedules, exhibits, and appendices thereto, as the same may be amended, modified, or supplemented from time to time.

1.1143. Worker Compensation Claim means any Claim (a) for the benefits under a government-mandated workers' compensation system, which a past, present, or future employee of Hopeman or any predecessor of Hopeman is receiving, or may in the future have a right to receive, or (b) for reimbursement, contribution, subrogation, or indemnity brought by any insurer or Governmental Unit as a result of payments made to or for the benefit of such employees under such a system and the fees and expenses incurred under any insurance policies or laws or regulations covering such employee claims.

* * *

ARTICLE VI

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

...

6.2. Asbestos Insurance Agreements. Notwithstanding anything herein to the contrary, the Asbestos Trust shall assume and be required to perform all Hopeman's duties, obligations, and liabilities, and shall be subject to each other party's rights and defenses, under the Asbestos Insurance Settlements, the Asbestos Insurance Policies, and the Asbestos CIP Agreements. For the avoidance of doubt, none of the Asbestos Insurance Policies or Asbestos CIP Agreements are being rejected, altered, or otherwise modified pursuant to this Plan, and all parties' respective rights, duties, defenses, obligations, and liabilities thereunder are hereby preserved, except to the extent of an Asbestos Insurance Policy or Asbestos CIP Agreement that is the subject of and only to the extent contemplated by and provided for in an Asbestos Insurance Settlement and only to the extent approved pursuant to the entry of an order by the Bankruptcy Court or the District Court.

...

* * *

ARTICLE VIII

MEANS FOR IMPLEMENTATION OF THE PLAN

...

8.3. The Asbestos Trust

...

(b) Transfer of the Asbestos Insurance Rights. On the Effective Date, by virtue of Confirmation, without further notice, action, or deed, the Asbestos Insurance Rights shall be automatically transferred to, and indefeasibly vested in, the Asbestos Trust, and the Asbestos Trust shall thereby become the estate representative pursuant to sections 1123(a)(5) and 1123(b)(3)(B) of the Bankruptcy Code, with the exclusive right to enforce any and all of the Asbestos Insurance Rights against any Entity, subject to the provisions of Section 8.13 and Section 8.15 hereof, and the Proceeds of the recoveries of any such Asbestos Insurance Rights shall be the property of, and shall be deposited in, the Asbestos Trust. **Subject to 6.2, the Asbestos Insurance Rights shall be indefeasibly vested in the Asbestos Trust free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity. For the avoidance, the Asbestos Insurance Rights shall remain subject to the terms of the Wellington Agreement**

...

* * *

CERTIFICATE OF SERVICE

I hereby certify that on this date, I submitted the foregoing through the Court's CM/ECF system, causing a true and correct copy to be electronically delivered and served on all parties registered to receive electronic notices in this case via that system.

Dated: July 7, 2025

/s/ James W. Burke

James W. Burke (VSB No. 76551)

RUGGERI PARKS WEINBERG LLP

1875 K Street NW, Suite 800

Washington, D.C. 20006

Telephone: (202) 984-1400

jburke@ruggedlaw.com

*Counsel for Hartford Accident and Indemnity
Company and First State Insurance Company*