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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.	Re: Dkt. Nos. 766, 767, 782, 853

LIBERTY MUTUAL INSURANCE COMPANY'S OBJECTION TO THE AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Liberty Mutual Insurance Company ("Liberty") hereby files this objection (this "Objection") to the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 766] (the "Plan") filed by the above-captioned debtor ("Hopeman" or the "Debtor").[1] In support of this Objection, Liberty respectfully states as follows:

JURISDICTION AND VENUE

1. This 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 Virgini*a, dated August 15, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

2. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

PRELIMINARY STATEMENT

3. Approximately one year ago, Hopeman sought bankruptcy relief to achieve two principal objectives: (1) establish a mechanism for resolving Asbestos Claims, including through the consummation of two settlements with its insurers, and (2) provide for an orderly liquidation and dissolution of Hopeman.[2] Those plans changed once Hopeman ceded control of its chapter 11 case to the Committee. At the Committee's behest, Hopeman pivoted to a new strategy when it filed a Plan seeking a discharge under section 524(g) of the Bankruptcy Code. Hopeman is not entitled to receive a discharge under section 524(g) of the Bankruptcy Code. For this reason alone, the Plan cannot be confirmed. In addition to the Debtor's failure to satisfy the strict requirements

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan. Capitalized terms used in the Preliminary Statement shall have the meanings ascribed to such terms elsewhere in this Objection.

[2] *Declaration of Christopher Lascell in Support of Chapter 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.* [Dkt. No. 8] ("First Day Declaration") at ¶ 7.

of section 524(g), the Plan fails to comply with section 1129 in at least three distinct ways, each of which renders the Plan unconfirmable.[3]

4. First, the Plan cannot be confirmed because it purports to transfer property that is not property of Hopeman's estate in contravention of section 541(a)(1) of the Bankruptcy Code. Specifically, the Insurance Assignment in the Plan seeks to assign Hopeman's rights related to the Liberty Policies to the Asbestos Trust. However, Hopeman has admitted that it has already released and sold all of its rights and interests related to the Liberty Policies back to Liberty pursuant to the 2003 Agreements. The Bankruptcy Code does not permit Hopeman to transfer its rights related to the Liberty Policies to the Asbestos Trust or to any other party because those rights are not property of Hopeman's estate. Hopeman cannot assign what it does not own.

5. Second, because the Plan (i) is intended to check the boxes of section 524(g) without truly complying with the letter and spirit of that section of the Bankruptcy Code,[4] (ii) impermissibly purports to transfer property that is not property of Hopeman's estate, (iii) proposes a post-confirmation governance structure of "Reorganized" Hopeman and the Asbestos Trust that is rife with irreconcilable conflicts of interest, and (iv) improperly names Liberty as a Non-Settling Asbestos Insurer in order to buy the acceptance of certain Asbestos Claimants — an action which is in direct violation of Hopeman's obligation to minimize claims against Liberty pursuant to the 2003 Agreements — the Plan was not developed or proposed in good faith, as required by section 1129(a)(3) of the Bankruptcy Code.

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[3] *See In re Quigley Co.*, 437 B.R. 102, 124 (Bankr. S.D.N.Y. 2010) ("A debtor seeking to confirm a plan under 11 U.S.C. § 524(g) must satisfy the requirements of both § 524(g) and § 1129 of the Bankruptcy Code. . . . The proponent of confirmation bears the burden of proof by a preponderance of the evidence").

[4] Mr. Lascell, the president of Hopeman, testified that counsel to the Committee "came up with" the proposed passive investment described in the Plan and the Plan Supplement in an attempt to satisfy the ongoing business requirement of section 524(g), notwithstanding the fact that Hopeman has no ongoing business. July 1, 2025 Dep. of Christopher Lascell at 59:10-15, 76:3-13 (cited pages of the Lascell Dep. are attached hereto as **Exhibit A**).

6. Third, the proposed governance structure of the Asbestos Trust and the TAC creates inherent conflicts of interest that prevent the individuals appointed to serve in these roles from fulfilling their fiduciary duties to the body of Asbestos Claimants. The proposed appointment of these individuals is not consistent with public policy and thus violates section 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code.

7. Therefore, for the reasons set forth herein, Liberty respectfully requests that this Court deny confirmation of the Plan.

FACTUAL BACKGROUND

8. On June 30, 2024 (the "Petition Date"), Hopeman Brothers, Inc. ("Hopeman" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor is a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. However, the Debtor is, at best, a zombie entity, as it has not operated its business for a period of more than 30 years. It has no business to reorganize.

I. The 2003 Agreements.

9. Decades before this chapter 11 filing, Liberty issued certain prepetition primary layer and excess insurance policies (collectively, the "Liberty Policies") under which Hopeman and/or certain Hopeman affiliates, predecessors and successors are named insureds or seek coverage, including under certain policies issued to Wayne Manufacturing Corporation (a wholly owned subsidiary of Hopeman that dissolved in 1985) ("Wayne").

10. On March 21, 2003, Hopeman[5] and Liberty entered into the Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Settlement Agreement") and the Indemnification and Hold Harmless Agreement Between

[5] The definition of "Hopeman" in the 2003 Agreements includes Wayne.

Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Indemnification Agreement", together with the Settlement Agreement, the "2003 Agreements").[6]

11. The Indemnification Agreement requires Hopeman to defend Liberty, at no cost to Liberty, against direct action claims.[7] Additionally, it requires Hopeman to take "all reasonable actions necessary to minimize" the assertion of Asbestos Claims against Liberty.[8]

II. The Plan and Disclosure Statement.

12. Following a hearing on an earlier version of the Plan, on May 21, 2025, the Debtor filed the Plan and the *Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 767] (the "Disclosure Statement"). On the same day, this Court entered an order conditionally approving the Disclosure Statement over Liberty's objection [Dkt. No. 782].

13. The Plan proposes to (i) channel Asbestos Claims to an Asbestos Trust created pursuant to section 524(g) of the Bankruptcy Code, (ii) fund the Asbestos Trust primarily with proceeds of insurance settlements, (iii) make distributions from the Asbestos Trust to Asbestos Claimants whose Asbestos Claims are not covered by insurance, and (iv) resolve Asbestos Claims allegedly covered by insurance through the tort system by allowing the Trustee and the Asbestos Claimants to prosecute lawsuits against Reorganized Hopeman, Wayne, and the Non-Settling Asbestos Insurers to monetize Hopeman's insurance coverage.[9] Additionally, in order to attempt

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[6] The 2003 Agreements have been filed under seal as Exhibits 1-2 to the *Reply of Hopeman Brothers, Inc. in Support of Objection to Claim No. 10 of Liberty Mutual Insurance Company* [Dkt. No. 877].

[7] *See* Indemnification Agreement at § III.B.5 (the "Defense Obligation").

[8] *Id.* at § III.C; *see also* Settlement Agreement at § XVI.D. This Court ruled from the bench on June 18, 2025 that Liberty has no claims arising from Hopeman's ongoing and continuous breach of its obligations under the 2003 Agreements. On June 23, 2025, this Court entered the *Order Disallowing and Expunging Claim of Liberty Mutual Insurance Company* [Dkt. No. 907]. Liberty has appealed this order, which appeal is currently pending before the U.S. District Court for the Eastern District of Virginia. *See* Liberty Mutual Ins. Co. v. Hopeman Brothers, Inc., No. 3:25-cv-00486-RCY (E.D. Va. Jun. 26, 2025).

[9] *See* Plan at §§ 8.12, 8.13, 8.16, 10.3.

to comply with the requirements of section 524(g) of the Bankruptcy Code, "Reorganized" Hopeman has indicated that it intends to enter into — but has not yet entered into — a post-confirmation "Restructuring Transaction," which will consist of (i) a $350,000 investment to gain a 1.7 % ownership interest in an apartment complex in Houston, and (ii) a $150,000 investment in "high quality fixed income securities."[10]

RELIEF REQUESTED

14. Liberty respectfully requests that this Court (i) deny confirmation of the Plan, (ii) dismiss the Debtor's case, require the Debtor to submit a liquidating Plan that is not predicated upon section 524(g) of the Bankruptcy Code, or convert this case to a case under Chapter 7 of the Bankruptcy Code, and (iii) grant any other relief that this Court deems to be just and proper.

BASIS FOR RELIEF REQUESTED

I. Liberty Has Standing to Object to the Plan.

15. If the Debtor or any other party in interest asserts that Liberty lacks standing to object to the Plan, that argument should be rejected. Section 1109(b) of the Bankruptcy Code provides that under chapter 11 a "party in interest . . . may raise and may appear and be heard on any issue in a case."[11] Liberty has standing to object to the Plan as a party in interest.

16. The Plan's main objective is to encourage and facilitate lawsuits by the Trustees and Asbestos Claimants against Non-Settling Asbestos Insurers in an attempt to monetize the Debtor's rights under the Asbestos Insurance Policies.[12] In fact, due to pressure from the Asbestos

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[10] *See Notice of Filing of Plan Supplement Related to Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Cod*e [Dkt. No. 853] (the "Plan Supplement") at Exhibit I-1.

[11] 11 U.S.C. § 1109(b).

[12] *See generally* Disclosure Statement at 10. Liberty understands from documents provided in discovery that Liberty was included as a Non-Settling Asbestos Insurer under the Plan because the law firms representing certain Asbestos Claimants "insist[ed] on language in the Plan and related agreements" ensuring that Liberty was not included as a Protected Party in the Plan. *See* E-mail from Mark Mintz, Partner at Jones Walker LLP, to Henry Long, III, Counsel at Hunton Andrews Kurth LLP, *et al.* (Oct. 11, 2024 at 10:41 a.m.) (attached hereto as **Exhibit**

Claimants, Liberty is the ***only*** Asbestos Insurer called out by name as a Non-Settling Asbestos Insurer, removing all doubt that Liberty is the intended target of the Plan.[13] Hopeman's counsel has stated that Hopeman's singling out of Liberty by the Plan and other pleadings was "innocuous."[14] It is far from it. Besides being in direct contravention of Hopeman's contractual obligation to take "all reasonable actions necessary to minimize" the assertion of Asbestos Claims against Liberty[15] (thereby impairing Liberty's contractual rights), the Plan has a real, tangible effect on Liberty's economic interests by forcing it to defend against illegitimate claims (while simultaneously eliminating the Asbestos Trust's incentive to cooperate in any defense).[16]

B). These law firms were focused exclusively on Liberty, not any other Asbestos Insurers. This fact alone indicates that the law firms representing Asbestos Claimants – which now comprise the TAC that will advise the Trust – intend to use the provisions of the Plan and the findings and conclusions in the Confirmation Order as a weapon to target Liberty in post-confirmation lawsuits.

[13] *See* Plan at § 1.80; E-mail from Mark Mintz, Partner at Jones Walker LLP, to Henry Long, III, Counsel at Hunton Andrews Kurth LLP, *et al.* (March 8, 2025 at 5:11 p.m.) (attached hereto as **Exhibit C**) (stating that "my clients do not believe that [Liberty] should be a protected party under the trust and that we will insist on language in the Plan and related agreements ensuring that is not the case"); E-Mail from Joseph Rovira, Partner at Hunton Andrews Kurth LLP, to Patricia Santelle, Chair Emeritus at White and Williams LLP (Oct. 24, 2024 at 4:09 p.m.) (attached hereto as **Exhibit D**) (stating that "[W]hile we agree [language targeting Liberty is] unnecessary, it's also innocuous and if adding gets one group of plaintiffs on board, it's well worth it").

[14] **Exhibit D**.

[15] 2003 Indemnification Agreement at § III.C.

[16] The Third Circuit refused to confirm the proposed plan of another debtor facing asbestos liability whose plan contained similar conflicts:

> Skinner is a defunct business without so much as a single employee remaining. It has no assets to distribute to creditors or attorneys, and Skinner admits that the only way that creditors and attorneys can possibly be paid is if asbestos litigants win settlements against it (and pay the Surcharge). Although settlements will be controlled by a Plan Trustee with no financial interest in the outcome of the proceedings, it is not as if Skinner can entirely remove itself from the process. Rather, these settlements will likely require Skinner's involvement in both defense and discovery because the question of asbestos claimants' exposure to Skinner products is still at issue. Thus, the Fifth Plan creates an inherent conflict of interest: Skinner is required to cooperate in its defense, but will be incentivized to do otherwise. . . . we are troubled by the fact that the [plan] creates this inherent conflict, while at the same time severely limiting or eliminating Insurers' ability to take discovery, submit evidence, contest causation, or appeal a decision.
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> *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 158-59 (3d. Cir. 2012); *see also In re Steward*, No. 22-B-14986, 2025 Bankr. LEXIS 477, at *12-13 (Bankr. N.D. Ill. Feb. 28, 2025) ("To hold that [insurer] does not have standing under these circumstances would create an absurd paradox, where insurers shouldering the entire cost and burden of a defense are at the mercy of insureds

Representatives of Hopeman have admitted that they have never attempted to cooperate with the minimization obligation during the bankruptcy or otherwise.[17] In order to remedy this defect and comply with its contractual obligations, Hopeman must designate Liberty as a Settled Asbestos Insurer.[18]

17. The Plan expressly allows a Channeled Asbestos Claimant to prosecute an action against Reorganized Hopeman "to obtain the benefit of Asbestos Insurance Coverage," without regard to whether such a claimant has that right under applicable nonbankruptcy law.[19] Similarly, a Channeled Asbestos Claimant who has obtained a judgment against Reorganized Hopeman or Wayne is expressly authorized to bring a direct action against Non-Settling Insurers (including Liberty), again regardless of whether they have any such right under applicable nonbankruptcy law.[20] These provisions of the Plan are intended to bestow upon Asbestos Claimants every possible advantage in post-confirmation coverage litigation, including by creating claims against Liberty that would not exist absent the Plan's interference. Asbestos Claimants should not be

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whose incentives to cooperate with the defense are drastically reduced by the reality of discharge. So I reject Walker's lack-of-standing argument").

[17] Mr. Lascell admitted that he has never personally taken any action to minimize claims against Liberty, nor can he think of any actions that Hopeman has taken during the bankruptcy proceedings to minimize claims against Liberty (aside from the motion extending the automatic stay to Liberty). *See* Lascell Dep. at 28:16-21, 30:7-31:1. During a recent management meeting with the co-owners of Hopeman, Mr. Lascell advised that claimants (particularly the Louisiana claimants) "wanted to be sure to include Liberty as a non-settling insurer" in the Plan – but Mr. Lascell failed to explain to Hopeman's co-owners that the Company owes an obligation to take actions to minimize suits against Liberty. *See id.* at 70:1-11, 73:15-74:3. Prior to the commencement of the bankruptcy proceedings, Mr. Lascell had never read the Indemnification Agreement and, even after he reviewed the Indemnification Agreement, he was not specifically aware of the minimization provision. *See id.* at 23:19-24:22, 27:5-7. It is crystal clear that the Plan was formulated, negotiated, and proposed with complete disregard for Hopeman's obligations under the 2003 Agreements.

[18] *See* Plan at § 1.104. Liberty understands that, in order to designate Liberty as a Settled Asbestos Insurer, Hopeman would need to adjust the definition of Asbestos Insurance Settlement to include prepetition settlements. Liberty submits that this change is reasonable and appropriate.

[19] *See* Plan at § 8.12(a). Under Section 8.12(a), a Channeled Asbestos Claimant can only pursue a Non-Settling Insurer of Wayne if "permitted by applicable nonbankruptcy law." However, there is no such limitation with regard to claims seeking Reorganized Hopeman's Asbestos Insurance Coverage.

[20] *See id.* at § 8.13(c).

permitted to use the Plan to tilt the litigation playing field outside of the bankruptcy, as it is axiomatic that bankruptcy courts cannot create rights that do not exist under applicable state law.[21]

18. To provide yet another example, the Administrative Trustee can give an Uninsured Asbestos Claimant permission to pursue an Extracontractual Claim.[22] However, under the 2003 Agreements, Hopeman released Liberty from all liability for purported extracontractual claims.[23] The Plan does not require the Administrative Trustee to first confirm that an Extracontractual Claim exists and is valid before the Administrative Trustee agrees to permit an Uninsured Asbestos Claimant to pursue such claims. The Plan therefore creates a system that will require Liberty to defend against Extracontractual Claims notwithstanding the fact that such Extracontractual Claims are not legally cognizable.[24]

19. Hopeman asks this Court to accept that the Supreme Court's seminal decision in *Truck Insurance Exchange v. Kaiser Gypsum Company* does not apply to Liberty because Liberty is not an "insurer with financial responsibility for a bankruptcy claim".[25] Certainly, *Truck* held that such financial responsibility for claims against the debtor's estate is sufficient to confer standing upon an insurer.[26] However, to allege that *Truck* stands for the proposition that financial responsibility is the ***only*** way that an insurer has standing to object to a plan misinterprets the Supreme Court's holding. In fact, the Supreme Court explained that the context and history of section 1109(b) mandates an "expansive definition" of the phrase "party in interest" in order to

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21 *See, e.g.*, *Mission Prod. Holdings v. Tempnology, LLC*, 587 U.S. 370, 381 (2019).

22 *See* Plan at § 8.13(e).

23 *See* 2003 Settlement Agreement at §§ I.B; VII.A.

24 *See Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 281 (2024) ("A plan can . . . impair the insurer's financial interests by inviting fraudulent claims").

25 *Id.* at 272.

26 *See id.*

facilitate "broad participation" in furtherance of a "fair and equitable reorganization process".[27] And, "undue restrictions on who may be a party in interest might enable dominant interests to control the restructuring process".[28]

20. As evidenced by the aforementioned examples (as well as the multiple other ways that the Plan prejudices Liberty's rights), it could not be clearer that Liberty is "potentially concerned with or affected by" the Plan and is therefore a party in interest.[29] Hopeman asks this Court to bar Liberty from participating in these proceedings for the ***exact reason*** that the Supreme Court warned about — to "enable dominant interests" (here, the Asbestos Claimants) to "control the restructuring process".[30] The Asbestos Claimants drafted the Trust Documents and the section 524(g) term sheet that became the Plan.[31] They, of course, have "little incentive to propose barriers to their ability to recover" from Hopeman or Liberty; thus, they seek to silence Liberty in order to prevent Liberty from highlighting the legal and factual infirmities in their carefully-planned strategy.[32] As was the case in *Truck*, Liberty and similarly situated Non-Settling Asbestos Insurers are the only parties incentivized to "identify problems with the Plan."[33]

21. To promote the Bankruptcy Code's goal of allowing parties to identify problems with plans, the Supreme Court noted that bankruptcy proceedings can "affect an insurer's interests in myriad ways," including, but not limited to, being "collusive, in violation of the debtor's duty

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27 *Id.* at 277, 280.

28 *Id.* at 280 (internal citations omitted).

29 *Id.* at 278.

30 *Id.* at 280.

31 Upon information and belief, based upon documents received in the discovery process, the Committee drafted the Term Sheet, as the Committee's counsel sent the draft term sheet to the Debtor's counsel, who commented on the Term Sheet. *See* Nov. 25, 2024 Draft of Settlement Term Sheet for §524(g) Plan of Hopeman Brothers, Inc. (attached as **Exhibit E** hereto).

32 *Truck*, 602 U.S. at 282.

33 *Id.*

to cooperate and assist," or "impair[ing] the insurer's financial interests by inviting fraudulent claims".[34] The harms that Liberty alleges in this Objection were ***named by the Supreme Court*** as examples of impairment of contractual rights that would confer standing on an insurer. Even if they had not been, the Supreme Court stated that insurers can be "directly and adversely affected by the reorganization proceedings in these and many other ways".[35] To argue that Liberty does not have standing as a party in interest notwithstanding the Plan's purposeful targeting of Liberty and impairment of Liberty's contractual rights flies in the face of *Truck* and the cases interpreting it that have held that insurers have standing to object to various aspects of chapter 11 and chapter 7 proceedings alike.[36]

22. To the extent that Hopeman or the Committee argues that Liberty lacks "Article III" or "prudential" standing to raise the objections detailed herein, that argument is unavailing. Courts have held that the concepts of Article III and prudential standing are no longer applicable

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[34] *Id*. at 281.

[35] *Id.*

[36] *See, e.g.*, *In re Steward*, 2025 Bankr. LEXIS 477, at *12-13 (insurer had standing to seek stay relief in a chapter 7 case); *In re AIO US, Inc.*, No. 24-11836, 2025 Bankr. LEXIS 1369, at *27 (Bankr. D. Del. Jun. 6, 2025) (insurer had standing to object to the proposed plan confirmation schedule and temporary allowance of talc claims for voting purposes in chapter 11 case). Moreover, courts recognized that a "tangible disadvantage" to an affected party, including an insurer, could lead to standing even before *Truck* was decided:

> Here, the plan's creation of the APG Silica Trust led to a manifold increase in silica-related claims. That constitutes a tangible disadvantage to Hartford and Century, which, despite having their coverage defenses available, will be faced with coverage obligations to the APG Silica Trust in a world that recognizes the existence of over 4,600 silica-related claims, as opposed to a pre-Plan world that recognized only 169. Indeed, the Plan-triggered explosion of new claims creates an entirely new set of administrative costs, including the investigative burden of finding any meritorious suits in the haystack of potentially fraudulent ones. Those costs will be enormous, even if Hartford and Century never pay a single dollar of indemnity. Accordingly, even if Hartford's and Century's ultimate liability is contingent, the harm to Hartford and Century from the Plan is hardly too speculative for them to be parties in interest.
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> *In re Global Indus. Techs.*, 645 F.3d 201, 213-214 (3d. Cir. 2011).

in the bankruptcy context in light of *Truck* and other recent Supreme Court decisions.[37] Even if these standards were applicable — which they are not — Liberty would easily meet them, because the issues that it raises in this Objection bear directly on Liberty's individual economic interest in this case, as described above.

23. Finally, the so-called "insurance neutrality" language in the Plan cannot deprive Liberty of standing. Even if the "insurance neutrality" language in the Plan achieved the goal that the Debtor claims is intended (which it does not), the Supreme Court explicitly stated in *Truck* that the concept of "insurance neutrality" is not a justification for depriving an insurer of standing in a bankruptcy case.[38] Moreover, the Plan is decidedly ***not*** insurance neutral. Prior to the bankruptcy, Liberty had no exposure or liability for Asbestos Claims. That, of course, was the entire purpose of the 2003 Agreements. If the Plan is confirmed, the Asbestos Trust and Asbestos Claimants will be allowed to file actions against Liberty seeking to extract payments under the Liberty Policies notwithstanding that Hopeman released Liberty of any and all coverage obligations. Hopeman will not provide Liberty with a defense against such claims as it did pre-Plan per the requirements of the 2003 Agreements.

24. A single paragraph containing "insurance neutrality" language embedded within a Plan that is designed to prejudice the rights of Liberty and other Non-Settling Asbestos Insurers does nothing to mitigate the prejudicial impact of the Plan and TDP. Moreover, the only part of section 8.18 that actually speaks to the ***rights*** of insurers is the partial sentence: "[n]othing . . . shall limit the right of any insurer to assert any coverage defense". The remainder of section 8.18

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[37] *See In re AIO US, Inc.*, 2025 Bankr. LEXIS 1369, at *27 ("Once an objector is found to be a party in interest, there is no authority for courts to construct further obstacles to the party's participation"); *see also Kiviti v. Bhatt*, 80 F.4th 520, 532 (4th Cir. 2023) ("[B]ankruptcy courts are not Article III courts.").

[38] *See Truck*, 602 U.S. at 283.

is intended to restate and preserve insurers' ***liabilities***. And, the one sentence does not even preserve all of Liberty's defenses, including the applicability of the 2003 Agreements and potential exhaustion; it is limited to undefined "coverage defenses."

25. In sum, Liberty has standing to object to the Plan because not only is it a party in interest to these proceedings, it is a principal focus of the Plan.

II. The Plan Cannot be Confirmed Because It Violates Section 524(g) of the Bankruptcy Code.

26. Hopeman did not file this chapter 11 case intending to file a plan of reorganization. Rather, Hopeman sought "an orderly liquidation" after "ceasing business operations in 2003."[39] Because it would be liquidating and not reorganizing, Hopeman would not be entitled to a discharge under section 1141(d)(3) of the Bankruptcy Code. After the Committee wrested control of this case from Hopeman, it pressured Hopeman to create a legal fiction that it is "reorganizing" so that the estate can receive the benefit of a discharge under section 1141 and a "supplemental" discharge injunction under section 524(g), as well as to establish a process for compensating future claimants.[40] The Committee's pressure on Hopeman to pivot from a liquidating plan to a 524(g) plan itself represents a reversal in position from the Committee, whose counsel previously argued that the Debtor did not need to hire special insurance counsel because "the central issue in this case

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[39] First Day Declaration at ¶¶ 1, 7.

[40] Hopeman's counsel admitted that its about-face was the result of pressure from the Committee:

> Well, Judge, the term sheet represents really a pivot, certainly for the debtor. It's a pivot from the liquidating plan we previously filed with the Court . . . why is the debtor pivoting to this term sheet? Well, there's several reasons, and I think the first one is pretty clear. This is what the creditors have told us they want.
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> Tr. of Mar. 10, 2025 Hr'g, at 5:17-20, 11:24-12:2 (attached hereto as **Exhibit F**).

Mr. Lascell testified the same thing. *See* Lascell Dep. at 125:7-20.

. . . is monetizing the insurance and getting the debtor underway with a liquidation. Since the Debtor doesn't have an operating business, it's not returning to the tort system."[41]

27. The Plan proposes that Reorganized Hopeman will "acquire a minority ownership interest in" a 330-unit multifamily community (the "Property").[42] Reorganized Hopeman will pay $350,000 in exchange for a 1.7% membership interest in the Property.[43] That passive investment has yet to occur, and it bears no resemblance whatsoever to Hopeman's pre-petition business.[44] Instead, Hopeman proposes to make this passive investment solely to fit the square peg of the Committee's desired Plan structure into the round hole of section 524(g). It simply does not fit, as the Debtor and its counsel has acknowledged.[45]

28. Nonetheless, after giving in to pressure from the Committee,[46] Hopeman now insists that its 1.7% membership interest in the Property is sufficient to make it a "going-concern cleansed of asbestos liability [that] will provide the asbestos personal injury trust with an

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41 Tr. of Sept. 10, 2024 Hr'g, at 20:7-14 (cited pages of Sept. 10, 2024 Hr'g Tr. attached hereto as **Exhibit G**).

42 *See* Plan Supplement at Exhibit F.

43 *See id*. Additionally, Reorganized Hopeman will "be capitalized with an additional $150,000 in Net Reserve Funds, which will be invested in high quality fixed income securities, anticipated to earn a market rate of interest of approximately 4.0%". *See id*. Deeming such an investment a "business" would be absurd. If this was the case, any individual could invest $150,000 in stock and state that they are currently operating an ongoing business. Conor Tully of FTI Consulting, Inc. ("FTI"), who spearhead the identification of Hopeman's proposed investment in the Property (as defined herein), admitted that there are a "lot of similarities" between Hopeman's proposed "business" and a mutual fund. *See* June 27, 2027 Dep. of Conor Tully at 224:16-17, 225:2-3 (cited pages of the Tully Dep. are attached hereto as **Exhibit H**).

44 *See* Tully Dep. at 215:19-25.

45 *See* Lascell Dep. at 59:10-15; E-Mail from Joseph Rovira, Partner at Hunton Andrews Kurth LLP, to Jeffrey Liesemer, Member at Caplin & Drysdale, Chartered (Nov. 26, 2024 at 10:57 a.m.) (attached hereto as **Exhibit I**) ("There are a number of issues that need to be discussed and vetted, including . . . if a confirmable plan can be proposed given Hopeman has no ongoing business").

46 *See* **Exhibit I** ("While we understand that Committee's desire to go forward with a 524(g) trust . . . the proposed term sheet locks the Debtor into pursuing that path now, which the Debtor is not in a position to agree to at this time"); E-mail from Joseph Rovira, Partner at Hunton Andrews Kurth LLP, to Patricia Santelle, Chair Emeritus at White and Williams LLP (Dec. 5, 2024 at 1:33 p.m.) (attached hereto as **Exhibit J**) ("There is no provision for 524. The Committee wants us to discuss that as part of negotiations over a Plan and the Debtor agreed to discuss it. That's it.").

'evergreen' source of funding to pay future claims."[47] Indeed, Hopeman cites *Combustion Engineering* as an example of a section 524(g) plan that was confirmed where the debtor's prepetition "business" consisted solely of a real estate investment.[48]

29. That argument misses a critical step. A debtor cannot be eligible for the special protections of § 524(g) without first being eligible to receive a discharge under § 1141 and, while not binding, multiple courts within this Circuit have held that a debtor is not so eligible when there is no reorganization of a pre-petition business. The Fourth Circuit has come to the same conclusion, albeit in an unpublished decision. [49]

30. But even aside from that requirement, Hopeman's argument fails because it neglects to mention that Combustion Engineering's 524(g) plan was vacated by the Third Circuit for failing to satisfy section 524(g).[50] The Third Circuit stated in dicta whether the debtor met the going concern requirement was, at best, uncertain:

> Combustion Engineering's post-confirmation business operations would be, at most, minimal. Combustion Engineering would emerge from Chapter 11 with no employees, no products or services, and in a cash neutral position. Its sole business activity would relate to the ownership of an environmentally contaminated piece of real estate in Connecticut (a so-called 'brown field') and related lease activities. Although it is debatable

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47 *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d. Cir. 2004).

48 *See Omnibus Reply in Support of Solicitation Procedures Motion* [Dkt. No. 759] (the "Omnibus Reply") at ¶ 15.

49 *See Grausz v. Sampson* (*In re Grausz*), 63 F. App'x 647, 650 (4th Cir. 2003) (finding it "clear" that § 1141(d)(3) requires "the ***continuation*** of a ***pre-petition*** business) (emphasis in original); *see also In re Lloyd E. Mitchell, Inc.*, No. 06-13250-NVA, 2012 Bankr. LEXIS 5531, at *11-12 n. 6 (Bankr. D. Md. Nov. 29, 2012) ("LEM cannot satisfy what has been described as the 'ongoing business requirement' which is a predicate to the establishment of such a trust because LEM has no ongoing business."). While *Grausz* is unpublished, it is worth noting that at least one court has cited it as "particularly compelling." *See Spokane Rock I, LLC v. Um* (*In re Um*), Nos. 10-46731, 10-46732, Adv. No. 14-04311, 2015 Bankr. LEXIS 3316, at *21 (Bankr. W.D. Wash. Sept. 30, 2015) (emphasis in original), *aff'd*, No. C15-5787-BHS, 2016 U.S. Dist. LEXIS 182336, at *10 (W.D. Wash. Aug. 18, 2016) ("[T]he Court concludes that, in the context of the bankruptcy code, the term 'business' in § 1141(d)(3)(B) means pre-petition business"); *aff'd on other grounds*, *Um v. Spokane Rock I, LLC*, 904 F.3d 815, 820 (9th Cir. 2018).

50 *See Combustion Eng'g*, 391 F.3d at 248.

> whether Combustion Engineering could satisfy § 524(g)(2)(B)(i)(II), it does not appear that the Certain Cancer Claimants raised this issue.[51]

31. The Third Circuit's decision strongly suggests that the court would have found that Combustion Engineering did not satisfy the "going concern" requirement but for the prudential standing requirement that is no longer viable after *Truck*. In addition to stating that it was "debatable" whether Combustion Engineering's real estate holdings were sufficient to comprise a postpetition business, the Third Circuit remanded for further consideration of good faith.[52]

32. The Third Circuit is not the only appeals court that has struck down a debtor's attempt to make an end run around the strict requirements of section 524(g). Among other things, the Bankruptcy Code requires a section 524(g) trust to:

- assume the liabilities of a debtor that has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products (11 U.S.C. § 524(g)(2)(B)(i)(I));
- be funded in whole or in part by the securities of at least one debtor involved in the plan of reorganization and by the obligation of the debtor or debtors to make future payments, including dividends (*Id*. at § 524(g)(2)(B)(i)(II));
- own or, if specified contingencies occur, would be entitled to own a majority of the voting shares of (1) each debtor, (2) the parent corporation of each debtor, or (3) a subsidiary of each debtor that is also a debtor (*Id.* at § 524(g)(2)(B)(i)(III)); and
- use its assets or income to pay claims and demands (*Id.* at § 524(g)(2)(B)(i)(IV)).

33. In *Fireman's Fund Insulation Company v. Plant Insulation Company (In re Plant Insulation Company)*, the Ninth Circuit vacated the order confirming Plant Insulation's section 524(g) plan because it did not comply with section 524(g).[53] Plant Insulation's asbestos trust would only gain ownership of the reorganized debtor (another section 524(g) requirement) if

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[51] *Id*.

[52] *Id.* at 247.

[53] *See* 734 F.3d 900, 917 (9th Cir. 2013).

certain unlikely contingencies occurred, but the debtor argued that "any contingency suffice[d]."[54] The Ninth Circuit disagreed, reasoning, "[i]f 'specified contingencies' could include any contingency — such as a meteor hitting the Empire State Building — then the subsection has no content because the plan drafters could write it out of existence at will."[55] Rather, the Ninth Circuit read the requirement in light of section 524(g)'s "purpose and context," which is to ensure that "after the bankruptcy, the trust stands in for the debtor with regard to asbestos claims and the debtor continues to operate its business for the benefit of the trust."[56]

34. No court in this Circuit has directly addressed whether Hopeman's proposed passive investment qualifies as a "reorganization" for purposes of section 524(g). However, Hopeman's situation is directly analogous to *Plant Insulation*. Hopeman essentially argues that "any postpetition business suffices," even if it consists of a less than 2% passive ownership interest in an apartment building. This lends as much meaning to the "ongoing business" requirement as a meteor striking the Empire State Building lends to the "specified contingencies" requirement.[57] The Ninth Circuit recognized that Plant Insulation's plan had been "proposed in an attempt to fit within the statute" — as has Hopeman's — and rejected that attempt.[58] So, too, should this Court.

35. If a debtor can satisfy the "ongoing business" component of section 524(g) by literally conducting ***any*** post-petition activity, no matter how small or unrelated to its pre-petition operations — a paper route, a lemonade stand, selling lost golf balls — the "ongoing business" condition is rendered not only meaningless, but a mockery. The fact that section 524(g) is

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54 *Id.* at 915.

55 *Id.*

56 *Id.* at 916.

57 *See id.* at 915.

58 *Id.* at 906.

premised upon the *Johns-Manville* case, in which the debtor continued its prepetition operations post-confirmation for the benefit of the asbestos trust, provides further proof that "ongoing business" cannot mean what the Plan proponents need it to mean to justify the Plan — effectively, nothing.[59]

36. Hopeman relies heavily on *Imperial Tobacco Canada. Ltd. v. Flintkote Company (In re Flintkote Company)*.[60] However, *Flintkote* undercuts Hopeman's argument by implying that "passive investing" most likely does ***not*** qualify as an ongoing business. In characterizing Flintkote's business, the bankruptcy court noted that:

> ***Although [objector] characterizes Flintkote's real estate activity as merely 'passive investing,' the evidence at trial established that Flintkote's real estate activities are fairly considered a 'business.'*** Flintkote searches for properties to acquire through its officer, David Gordon, who has twenty years of experience in the quick-service food industry. Post-acquisition, Flintkote engages in other activity, including: (1) evaluating tenant risk; (2) periodically inspecting the restaurants and monitoring the tenant's financial performance; (3) collecting and distributing the rents; (4) ongoing market review, to ensure that the brands operated by Flintkote's tenants are performing profitably in their respective areas; and (5) building Flintkote's credibility and reputation in the quick service food industry, so that it can develop relationships with brokers who have access to profitable properties.[61]

37. In addition to all of those affirmative operations, the *Flinkote* court noted that the debtor had plans to acquire additional restaurants post-confirmation and also cited a second, independent line of operations (business and executive consulting) basing its conclusion that the

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[59] *See id.* at 905-06 (citing *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d. Cir. 1988)). Indeed, the history of section 524(g) confirms this point. In the *Manville* bankruptcy, Judge Lifland stated that the "imperative" purpose of the injunction was to protect and preserve "the *continuing* viability" of the operating entity so as to provide an "evergreen" funding source to pay future claims. *In re Johns-Manville Corp*., 68 B.R. 618, 622 (Bankr. S.D.N.Y. 1986). Congress reiterated this purpose when it enacted section 524(g), stating that the supplemental injunction is intended to allow "an otherwise viable business to quantify, consolidate, and manage its debt so that it can satisfy its creditors to the maximum extent feasible, but without threatening its continued existence and the thousands of jobs that it provides." 140 Cong. Rec. 28,358 (1994) (statement of Sen. Brown).

[60] 486 B.R. 99, 133-34 (Bankr. D. Del. 2012); Omnibus Reply at ¶¶ 16-19.

[61] *Id.*

going concern requirement was met was based on both lines of business together.[62] This case could not be more different.

38. Hopeman's sole officer and director, Christopher Lascell, testified that he had no involvement in identifying the Property, cannot name the Property, does not know where it is located, does not know how many apartment units it has, and does not know who ultimately recommended the proposed investment in the Property — which investment he characterizes as "passive".[63] Mr. Lascell wants to leave everything that has to do with Hopeman behind and "be done with it."[64] When identifying Hopeman's proposed investment in the Property, FTI's representatives did not speak to Mr. Lascell or consider his past business experience (which does not include real estate investment), nor did they consider looking for a business opportunity that was in any way related to Hopeman's historic business.[65] When deposed, the representative of the other Plan Proponent (the Committee), Mr. Trey Branham, was similarly unaware of any salient facts about the investment.[66]

39. This Court may draw two conclusions from these facts. First, the Committee professes to know nothing about the proposed investment that it insists is sufficient to satisfy the stringent requirements of section 524(g). Second, despite the fact that Hopeman had no involvement in formulating its own proposed investment — and the only director and officer of Hopeman cannot name the most basic facts about the Property and has no intention of participating

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62 *See id.* at 134.

63 *See* Lascell Dep. at 76:3-13, 117:9-118:2, 118:22-25.

64 *See id.* at 85:2-7.

65 *See* Tully Dep. at 215:19-25, 217:5-10; Lascell Dep. at 119:12-17.

66 *See* July 3, 2025 Dep. of Trey Branham, at 25:9-26:1, 27:1-7, 28:10-25 (cited pages of the Branham Dep. are attached hereto as **Exhibit K**).

in its management — Hopeman asks this Court to confirm its proposed investment in the Property as a legitimate "business" sufficient to serve as the cornerstone of the entire Plan.

40. The Plan Supplement names Matthew T. Richardson as Reorganized Hopeman's sole director and officer. Mr. Richardson is a complex civil litigator whose biography page does not reference any experience managing passive real estate investments.[67] Mr. Lascell testified that he has never met Mr. Richardson, is not aware of his background, does not know "anything about him," and, in fact, could not even remember his name.[68] Nor did Mr. Tully — who facilitated FTI's identification of the proposed investment in the Property — consider whether Mr. Richardson had expertise in passive real estate investments when identifying the proposed investment in the Property.[69] Indeed, Mr. Tully had not heard of Mr. Richardson at that time, and has no knowledge whatsoever as to his background.[70] One thing that Mr. Tully did know is that, even if Mr. Richardson somehow intended to participate in managing the Property (which is located in Houston, Texas) from his office in South Carolina,[71] Hopeman, as a limited partner in a DST (Delaware Statutory Trust), will have no ability to impact or influence the actual business operations at the Property.[72] FTI proposed the DST structure through which Hopeman will invest in the Property.[73] Mr. Tully specifically testified that FTI's "mandate" was to locate a "passive"

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67 *See* Plan Supplement at Exhibit D; Wyche, P.A., *Matthew T. Richardson*, https://wyche.com/what/attorneys/matthew-t-richardson/ (last visited Jun. 23, 2025).

68 *See* Lascell Dep. at 77:21-78:3, 85:16-86:5.

69 *See* Tully Dep. at 219:1-7.

70 *See id.* at 219:24-25; 220:1-4.

71 *See* Plan Supplement at Exhibits D, F.

72 *See* Tully Dep. at 228:7-17.

73 E-mail from Nathaniel Miller, Of Counsel at Caplin & Drysdale, Chartered, to Henry Long, III, Counsel at Hunton Andrews Kurth LLP, *et al.* (Apr. 23, 2025 at 10:36 p.m.) (attached hereto as **Exhibit L**).

investment with respect to which Reorganized Hopeman would not need to be actively involved in any day-to-day operations.[74]

41. To summarize, Hopeman relies on *Flintkote* as a prior court decision justifying a proposed "business" that consists of a passive real estate investment such as Hopeman's.[75] However, Hopeman and Flintkote's situations are completely different, as summarized below:

Hopeman	Flintkote
Current director/officer will not continue on post-confirmation	Current director/officer continued on to manage the reorganized debtor
Postpetition "business" has nothing to do with the business experience of either the current or post-confirmation director/officer	Current director/officer had twenty years' experience in the debtor's industry
Reorganized debtor will have no active participation in the reorganized "business"	Reorganized debtor took an active role in managing the postpetition business, including by evaluating tenant risk, periodically inspecting the restaurants and monitoring the tenant's financial performance, collecting and distributing rents, conducting ongoing market review, and building brand reputation

In sum, Hopeman's proposed "passive" investment is exactly the type of investment that the court in *Flintkote* did ***not*** sanction.[76]

42. The only other published decision that Hopeman relies upon is *RWG Construction, Inc. v. Lucido (In re Lucido)*, a non-524(g) opinion from the Bankruptcy Court for the Northern District of California that held that a debtor does not need to maintain a prepetition business in

[74] *See* Tully Dep. at 104:10-20; 105:15-24; 213:9-23.

[75] *See* Omnibus Reply at ¶ 13.

[76] *See* 486 B.R. at 133 ("Although [objector] characterizes Flintkote's real estate activity as merely 'passive investing,' the evidence at trial established that Flintkote's real estate activities are fairly considered a 'business'").

order to qualify for a discharge under section 1141(d) of the Bankruptcy Code.[77] However, another bankruptcy court in the Northern District of California came to the opposite conclusion in the section 524(g) bankruptcy of a defunct company called Western Asbestos. There, the court found that the debtor was "not entitled to a discharge or the protection of a discharge injunction . . . [because] there would be no substance left to 11 U.S.C. 1141(d)(3) if the level of assets and business activity retained by Western Asbestos entitled it to a discharge".[78] *Lucido* teaches nothing except that sections 1141 and 524(g) have been subject to different interpretations, even by judges within the same district.

43. Hopeman emphasized that the Fourth Circuit's opinion in *In re Grausz* is non-precedential.[79] The other bankruptcy cases that Hopeman cites are not only non-precedential, but they are not even opinions — just cherry-picked confirmation orders[80] that should have no persuasive value to this Court.[81] On the other hand, in a recent case involving a debtor facing

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[77] 655 B.R. 355, 365 (Bankr. N.D. Cal. 2023).

[78] *In re W. Asbestos Co.*, 313 B.R. 832, 853 (Bankr. N.D. Cal. 2003).

[79] 63 F. App'x 647, 650 (4th Cir. 2003); Tr. of May 21, 2025 Hr'g, at 59:12-17 (attached hereto as **Exhibit M**).

[80] *See* Debtors' Memorandum of Law In Support of Confirmation of the First Amended Plan of Reorganization of the Fairbanks Company Under Chapter 11 of the Bankruptcy Code, *In re Fairbanks Co.*, No. 18-41768-PWB (Bankr. N.D. Ga. July 1, 2021) [Dkt. No. 783] at 10 ("The Plan enjoys unanimous support . . . No objections to confirmation have been filed"); *Plan Proponents' Memorandum of Law in Support of Confirmation of the Plan of Reorganization for Yarway Corporation Under Chapter 11 of the Bankruptcy Code Proposed by Yarway Corporation and Tyco International PLC*, No. 13-11025 (BLS) (Bankr. D. Del. Apr. 2, 2015) [Dkt. No. 845] at 9 ("No objections to confirmation have been filed"); Plan Proponents' Memorandum of Law In Support of Confirmation of the Second Amended Plan of Reorganization, As Modified, for Sepco Corporation Under Chapter 11 of the Bankruptcy Code, *In re Sepco Corp*., No. 16-50058 (AMK) (Bankr. N.D. Ohio Mar. 20, 2020) [Dkt. No. 721] at 1 "The Plan enjoys unanimous support. . . . No objections to confirmation have been filed").

[81] *See* Omnibus Reply at ¶ 14. Courts have held that "it is inappropriate to rely on orders entered in uncontested matters as support for requested relief in a contested matter." *Motors Liquidation Co. Avoidance Action Trust v. JPMorgan Chase Bank, N.A. (In re Motors Liquidation Co.)*, 561 B.R. 36, 44 (Bankr. S.D.N.Y. 2016); *see also In re Big Lots, Inc*., No. 24-11967 (JKS), Tr. of Sept. 10, 2024 Hr'g at 147:3-14 (Bankr. D. Del. 2024) [Dkt. No. 138] (noting that a bankruptcy court need not adopt positions stated in previous bankruptcy court orders when "no one raised" the issue the court is considering in the present case); *TitleMax of Ala., Inc. v. Hambright (In re Hambright)*, Nos. 20-70608-JHH13, 20-70016-JHH, 2021 Bankr. LEXIS 3210, at *94-95 (Bankr. N.D. Ala. Nov. 19, 2021) (quoting Bryan A. Garner, *et al.*, THE LAW OF JUDICIAL PRECEDENT § 6, at 84 (2016) ("A decision's authority as precedent is limited to the points of law raised by the record, considered by the court, and determined by the outcome")).

possible asbestos liability that actually had an operating makeup business, the debtor did not even attempt to utilize section 524(g) because it "lacked the insurance or assets necessary to utilize that statute".[82] The bankruptcy court found that there was "no possibility" of the debtor creating a practicable 524(g) trust even though it was projected to have $233,504 in net disposable income over the next three years — which amount is almost double the projected cumulative cash flow of Reorganized Hopeman of $121,125 at the end of FY 2028.[83]

44. At bottom, there is no precedent binding this Court regarding this issue. Liberty respectfully submits that this Court should follow the holdings of the Third and Ninth Circuits and decline to allow Hopeman to confirm a Plan that is blatantly inconsistent with the requirements and purpose of section 524(g).

III. The Plan Cannot be Confirmed Because It Seeks to Transfer Property That Is Not Property of Hopeman's Estate.

45. The Plan cannot be confirmed because the Insurance Assignment seeks to assign Hopeman's rights related to the Liberty Policies to the Asbestos Trust. However, Hopeman has already released and sold all of its rights related to the Liberty Policies, as it has admitted: "as a result of the 2003 Settlement Agreement, the Debtor released any and all claims it had or may have had against LMIC and sold back to LMIC its remaining insurance coverage issued by LMIC. As a result, the

Debtor does not currently believe it possesses any rights in any insurance policies issued by LMIC to the Debtor[.]"[84] Therefore, these rights do not constitute property of Hopeman's estate and

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[82] *Gori Law Firm v. Ben Nye Co., Inc. (In re Ben Nye Co., Inc.)*, BAP Nos. CC-24-1161-SGF, CC-24-1162-SGF, Bk. No. 2:24-bk-11857-DS, 2025 Bankr. LEXIS 1451, at *10 (B.A.P. 9th Cir. Jun. 17, 2025).

[83] *See id.* at *15, 18; Plan Supplement at Exhibit I.

[84] Hopeman's Resp. to Liberty's Interrog. No. 1 (attached hereto as **Exhibit N**).

cannot be sold, transferred, assigned, or otherwise conveyed to the Trust or to any other party, on a "quitclaim" basis or otherwise.

46. Section 8.3(b) of the Plan provides that "[o]n the Effective Date . . . the Asbestos Insurance Rights shall be automatically transferred to, and indefeasibly vested in, the Asbestos Trust[.]"[85] The definition of "Asbestos Insurance Rights" includes:

> [A]ny and all of Hopeman's rights, title, privileges, interests, claims, demands, or entitlements in or to any insurance coverage, defense, indemnity, proceeds, payments . . . causes of action, and choses in action under, for, or related to . . . the Asbestos Insurance Policies . . . including: (a) any and all rights of Hopeman to pursue or receive payment reimbursement, or proceeds under any Asbestos Insurance Policy . . . (f) any and all Extracontractual Claims, and any and all rights of Hopeman to pursue or receive payments or recoveries on account thereof.[86]

47. The term "Asbestos Insurance Policies" means "the insurance policies identified on Exhibit H of the Plan and any other insurance policy of Hopeman, whether known or unknown, that provides or potentially provides coverage for any Channeled Asbestos Claim."[87] The Liberty Policies are not identified on Exhibit H of the Plan, and Hopeman has admitted that all coverage under the Liberty Policies has been released.[88] Therefore, the Liberty Policies should not be included within the definition of Asbestos Insurance Policies, and Hopeman's rights therein should not constitute part of the Insurance Assignment. Nevertheless, they are and do.[89] Additionally,

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85 Plan at § 8.3(b) (the "Insurance Assignment").

86 *Id.* at § 1.13.

87 *Id.* at § 1.12.

88 *See, e.g.*, Hopeman's Resp. to Liberty's Interrog. No. 1 (attached hereto as **Exhibit N**) ("[A]s a result of the 2003 Settlement Agreement, the Debtor released any and all claims it had or may have had against LMIC and sold back to LMIC its remaining coverage issued by LMIC").

89 The term "Asbestos Insurer" means "any Entity, including any insurance company, broker, or guaranty association, that has issued, or that has any actual or potential liabilities, duties or obligations under with respect to any Asbestos Insurance Policy." Plan at § 1.15. The term "Non-Settling Asbestos Insurer" means "an Asbestos Insurer that is not a Settled Asbestos Insurer" and, as aforementioned, explicitly names Liberty as a Non-Settling Asbestos Insurer. *Id.* at § 1.80. Because Liberty is a Non-Settling Asbestos Insurer, it is an Asbestos Insurer, which necessarily requires it to have issued an Asbestos Insurance Policy as that term is utilized by the Plan.

Hopeman has confirmed that it intends to transfer its rights related to the Liberty Policies, if any, to the Trust.[90]

48. It is black-letter law that a bankruptcy court may exercise jurisdiction over — and by extension, a plan may affect — only property of a debtor's estate, which is defined by section 541 of the Bankruptcy Code.[91] A debtor's estate is comprised of, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case."[92] Those property interests neither expand nor contract by happenstance of bankruptcy.[93]

49. By operation of the 2003 Settlement Agreement, Hopeman released Liberty from:

> Any and all further Claims, liability, duty, or obligation arising under or in any way related to Asbestos Related Claims; . . . [a]ny and all past, present or future Claims, demands, causes of action, suits, or the like, whether known or unknown, arising under or pertaining in any way to the [Liberty Policies]; . . . [a]ny and all claims for compensatory, punitive, consequential, statutory, or extra-contractual damages based upon any allegations of bad faith, unfair claims practices, unfair trade practices, or other act or failure to act in connection with the investigation, handling, adjustment, litigation, or settlement of any Asbestos Related Claims, any past Claims under the [Liberty Policies], and/or any past, present and future Claims under the [Liberty Policies][.][94]

50. Therefore, as of the Petition Date, Hopeman had ***no rights related to the Liberty Policies***. Hopeman's bankruptcy filing did not magically create rights out of thin air.[95] "[I]t is well settled that property transferred by the debtor is not 'property of the estate' until the debtor

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Thus, the Plan contemplates that Hopeman will transfer its alleged Asbestos Insurance Rights related to the Liberty Policies to the Asbestos Trust.

90 *See* Hopeman's Resp. to Liberty's Interrog. No. 1 ("In the proposed Plan, the Debtor proposes to assign whatever such rights, if any, it has that are related to the LMIC insurance policies to the Asbestos Trust"); Hopeman's Resp. to Liberty's Interrog. No. 9 (attached hereto as **Exhibit O**) ("The Debtor states that it is not aware of any Extracontractual Claim(s) it possesses against LMIC. In the proposed Plan, the Debtor agrees to assign whatever such rights, if any, it has to the Trust.").

91 *See* 11 U.S.C. § 541(a)(1).

92 *Id.*

93 *See Tempnology*, 587 U.S. at 381.

94 2003 Settlement Agreement at § VII.A.

95 *See Tempnology*, 587 U.S. at 381.

succeeds in compelling the property's return."[96] Furthermore, the statutory authority under which Hopeman purports to assign the Asbestos Insurance Rights to the Asbestos Trust is section 1123(a)(5)(B) of the Bankruptcy Code.[97] That section of the Bankruptcy Code authorizes provisions of a plan that "provide adequate means for the plan's implementation, such as . . . transfer of all or any part of the ***property of the estate*** to one or more entities, whether organized before or after the confirmation of such plan."[98] Hopeman sold all rights and interests in the Liberty Policies to Liberty over two decades ago. There are no rights remaining that could constitute property of the estate, meaning the Court lacks jurisdiction to approve the Insurance Assignment to the extent it purports to transfer rights that Liberty purchased from Hopeman.

51. Nor does the Bankruptcy Code permit Hopeman to sell its alleged rights, if any, related to the Liberty Policies to the Asbestos Trust in the same manner as a quitclaim deed. Bankruptcy courts have allowed "litigation rights" to be assigned in the same manner as a quitclaim deed, which assignment does not guarantee the merits of the action or that the assignor has any actual interest in the property conveyed.[99] However, that approach is impermissible here for two reasons.

52. Hopeman's alleged rights related to the Liberty Policies are entirely different from what courts describe as "remnant" assets of the estate.[100] "Remnant" assets are assets in which the

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[96] *Lehman Bros. Holdings v. JPMorgan Chase Bank, N.A. (In re Lehman Bros. Holdings, Inc.)*, 480 B.R. 179, 192 (S.D.N.Y. 2012) (citing *FDIC v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 131 (2d Cir. 1992) ("[I]t is well settled that property transferred by the debtor is not 'property of the estate' until the debtor succeeds in compelling the property's return")); *see also Tyler v. Ownit Morg. Loan Trust*, 460 B.R. 458, 463 (E.D. Va. 2011) (estate had no interest in property that had been validly conveyed prior to the petition date).

[97] Plan at § 8.3(g)(viii).

[98] 11 U.S.C. § 1123(a)(5)(B).

[99] *See Gorka v. Joseph (In re Atl. Gulf Cmtys. Corp.)*, 326 B.R. 294, 300 (Bankr. D. Del. 2005); *In re Woldeyohannes*, 665 B.R. 543, 566 (Bankr. D. Conn. 2024) ("[S]elling remnant assets of the estate, assets that may or may not be in existence at the time of the sale, is generally allowed.").

[100] *In re Woldeyohannes*, 665 B.R. at 566.

debtor may or may not have an interest, but no party has alleged that it affirmatively does ***not*** have such an interest.[101] Courts specifically distinguish "remnant" assets from assets with respect to which there is a dispute over whether the estate owns the property to be sold.[102] In such a situation, the bankruptcy court is ***required*** to adjudicate the dispute before selling the property.[103] Hopeman's rights related to the Liberty Policies are not simply "remnant" rights that may or may not exist. They are specific, identifiable rights that were sold to Liberty pursuant to the 2003 Agreements.[104] Hopeman does not dispute this.[105] Therefore, it is not even necessary for this Court to adjudicate the issue: it is undisputed that Hopeman's estate has no ownership rights related to the Liberty Policies.[106]

53. Because Hopeman's prior rights related to the Liberty Policies are owned by Liberty, not Hopeman, they ***cannot*** be transferred pursuant to a "quitclaim" provision. However, even if such a transfer was possible, that is not what this Plan provides. To the contrary, the Plan specifies that:

- [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;

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101 *See id*.

102 *See id*.

103 *See, e.g.*, *Stokes v. Duncan (In re Stokes)*, No. MT-13-1097-TaPaJu, 2013 Bankr. LEXIS 4654, at *23 (B.A.P. 9th Cir. 2013) (citing *Darby v. Zimmerman (In re Popp)*, 323 B.R. 260 (B.A.P. 9th Cir. 2005)); *Phillips v. Williams-Johnson (In re Williams-Johnson)*, No. 00-61211-T, 2002 Bankr. LEXIS 828, at *6 (Bankr. E.D. Va. Jan. 17, 2002).

104 Whether Hopeman retained any rights related to the Liberty Policies is of critical importance, since it may impact the ability for Asbestos Claimants to prosecute direct action claims against Liberty on account of the Liberty Policies. *See, e.g.*, *Gen. Accident Fire & Life Assurance Corp. v. Aetna Cas. & Surety Co.*, 208 Va. 467, 471 (1968) ("[T]he provisions that give the injured person the right to sue the insurer do not enlarge or extend the insurer's liability but only permit the injured person to exercise or succeed to the insured's rights against the insurer. The right of the injured person to maintain the action against the insurer rises no higher than the right of the insured against the insurer") (citing *Storm v. Nationwide Mutual Ins. Co.*, 199 Va. 130, 97 (Va. 1957)).

105 *See* Hopeman's Resp. to Liberty's Interrog. No. 1.

106 For this reason, section 363(f) of the Bankruptcy Code does not apply.

- all transfers of assets of Hopeman contemplated under the Plan shall be free and clear of all Claims and Encumbrances against or on such assets; and
- the assignment of the Asbestos Insurance Rights is valid and enforceable under sections 524(g), 541(e), 1123(a)(5)(B), and 1129(a)(1) of the Bankruptcy Code, and the Bankruptcy Code preempts any anti-assignment contractual provisions and applicable state law.[107]

54. These provisions — which ask this Court to make specific findings under the Bankruptcy Code that, among other things, the Asbestos Insurance Rights were transferred "free and clear" of all claims and interests — are the opposite of a quitclaim deed, which purports to sell assets "as-is" with no representations or warranties.[108]

55. Hopeman's attempt to assign rights related to the Liberty Policies that it no longer possesses further highlights the problems inherent in the Plan's so-called "insurance neutrality" language. On its face, the language provides that "[n]othing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order, shall limit the right of any insurer to assert any coverage defense[.]"[109] What follows, however, are a number of exceptions to this general prohibition on the Plan impacting insurers' rights. Among other things, section 8.18 of the Plan expressly provides that the Insurance Assignment "is valid and enforceable[.]"[110] The Plan clarifies that nothing related to the Plan's purported neutrality language "is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any insurer with respect to any issue that is actually litigated by such insurer as part of its objections to confirmation of the Plan."[111]

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[107] Plan at §§ 8.3(b); 11.1(f)(vii), (g)(viii).

[108] *See In re Stokes*, 2013 Bankr. LEXIS 4654, at *23.

[109] Plan at § 8.18.

[110] *Id.*

[111] *Id.*

56. A "principle that anchors bankruptcy law" is that "[a] confirmation order is *res judicata* as to all issues decided or which could have been decided at the hearing on confirmation."[112] This principle applies "[e]ven if the plan contains legal errors and confirmation was improper[.]"[113] It is not appropriate for this Court (which is not currently faced with a collateral attack on the Plan or Confirmation Order) to examine the res judicata or collateral estoppel effects of either document.[114] However, these cases prove that Liberty's concern regarding the effects of a Plan that (i) improperly assigns rights owned by Liberty to the Asbestos Trust and subsequently (ii) facilitates lawsuits against Liberty by the Asbestos Trustee and Asbestos Claimants based on those non-existent rights will be used improperly by the Asbestos Trustee and Asbestos Claimants to attempt to persuade a post-confirmation coverage court that Liberty has liability to Asbestos Claimants under the Liberty Policies.

57. Liberty respectfully submits that adding the phrase "if any" as a means for mitigating the risk that Hopeman is transferring to the Asbestos Trust rights that Hopeman may not have will not cure the fundamental infirmity with the Insurance Assignment as it relates to Liberty. There is no reason to believe that the plaintiff-selected and plaintiff-run Asbestos Trust will adopt Hopeman's position that Hopeman lacks any rights related to the Liberty Policies. On the contrary, the Plan provides that the Insurance Assignment "is valid and enforceable" and that

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[112] *Donaldson v. Bernstein*, 104 F.3d 547, 554 (3d Cir. 1997) (quoting *In re Szostek*, 886 F.2d 1405, 1408 (3d Cir. 1989)).

[113] *In re Temsco NC Inc*., 537 B.R. 108, 127 (Bankr. D.P.R. 2015) (citing *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 273 (2010)); *see Stoll v. Gottlieb*, 305 U.S. 165, 171–72 (1938) (absent fraud in obtaining the judgment, res judicata applies to matters addressed in a plan confirmed by final order of a bankruptcy court).

[114] *See In re BSA*, 642 B.R. 504, 631 (Bankr. D. Del. 2022) ("The res judicata or collateral estoppel effect of any Order I issue confirming the Plan is for a future court to decide in the context of specific litigation"); *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d 1126, 1134 (9th Cir. 2000) (noting that courts have "inherent authority to defend [their] own judgments" once those judgments have become final and conclusive).

such finding (which Liberty disputes) will be afforded *res judicata* and collateral estoppel effect.[115] Liberty respectfully submits that the Bankruptcy Code does not permit confirmation of a Plan that purports to transfer alleged rights that are not property of the estate to the Asbestos Trust.

IV. The Plan Cannot be Confirmed Because It Was Not Proposed In Good Faith.

58. Hopeman was required to propose a plan "in good faith and not by any means forbidden by law."[116] Good faith is an equitable concept, rooted in the promise of treatment that is "fair to rights and interests of the parties affected" by a bankruptcy reorganization.[117] Courts examine the totality of the circumstances to determine whether a plan was proposed in good faith and is consistent with the objectives and purposes of the Bankruptcy Code, which include "preserving going concerns and maximizing property available to satisfy creditors."[118] Here, the totality of the circumstances indicate that the Debtor has not met its burden under section 1129(a)(3) of the Bankruptcy Code to prove that the Plan was proposed in good faith.[119]

59. Courts in this Circuit have approved plans that were filed either with the "legitimate and honest purpose of reorganizing"[120] or with the "legitimate and honest purpose of maximizing the value of the Debtors' Estates and effectuating a successful liquidation of the Debtors."[121] Hopeman seeks to monetize its only remaining assets (the Asbestos Insurance Policies) for the

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115 *See* Plan at § 8.18.

116 11 U.S.C. §§ 1129(a)(3).

117 *Official Comm. of Unsecured Cred. v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, 161 (3d. Cir. 1999) (internal quotations omitted); *see In re LTL Mgmt., LLC*, 64 F.4th 84, 100 (3d. Cir. 2023) (good faith requirement is "grounded . . . in the equitable nature of bankruptcy").

118 *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co. (In re Kaiser Gypsum Co.)*, 135 F.4th 185, 194 (4th Cir. 2025) (citing *Bank of AM. Nat'l Trust & Sav. Ass'n v. 203 N. Lasalle Pt'ship*, 526 U.S. 434, 453 (1999)).

119 *See, e.g.*, *In re Manchester Oaks Homeowners Ass'n*, No. 11-10179-BFK, 2014 Bankr. LEXIS 951, at *11 (Bankr. E.D. Va. Mar. 12, 2014) ("The Debtor, as plan proponent, bears the burden of proof with respect to all elements of confirmation of its Plan").

120 *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704, 709 (4th Cir. 2011).

121 *In re Health Diagnostic Lab, Inc.*, No. 15-32919, 2016 Bankr. LEXIS 4624, at *24 (Bankr. E.D. Va. May 12, 2015).

benefit of the Asbestos Claimants. Had Hopeman proposed a liquidating plan, this may well have been a perfectly acceptable goal. However, Hopeman, a victim of interest capture by the Asbestos Claimants, is attempting to convince this Court that it is "reorganizing," notwithstanding its repeated admissions that it has no ongoing business, operations, assets, or employees.[122] As such, the Plan that Hopeman has proposed is far from "legitimate and honest."[123] An analysis of good faith examines "whether the debtor has sought to step outside the equitable limitations of Chapter 11."[124] This Debtor has done so.

60. Once again, the dispute between Truck and Kaiser Gypsum proves instructive. On remand from the Supreme Court, the Fourth Circuit considered Truck's arguments on the merits before dismissing Truck's argument that Kaiser Gypsum's chapter 11 plan was proposed in bad faith.[125] The fact that the plan allowed insured asbestos claimants to litigate their claims in the tort system did not constitute bad faith because the debtor was "clearly entitled to the full scope of coverage Truck had agreed to decades ago," and Truck simply did not want to pay the claims that it was obligated to pay.[126] The facts here could not be more different.

61. As set forth in detail above, Hopeman is not entitled to any coverage under the Liberty Policies, nor is Liberty contractually obligated to pay any Asbestos Claim related to the Liberty Policies (as all such claims were irrevocably released in 2003). Unlike Kaiser Gypsum — which used its plan to monetize the benefit of insurance coverage to which it was contractually

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[122] *See* Nov. 14, 2024 Dep. of Ronald Van Epps, Managing Director at Stout Risius Ross, at 110:19-21 ("that would be advice we received from counsel, that we could not pursue the 524(g), because we didn't have the operations") and 111:6-7 ("there's no operating business, so 524(g) is not a possibility") (cited pages of the Van Epps Dep. attached hereto as **Exhibit P**).

[123] *Nat'l Heritage Found.*, 663 F.3d at 709.

[124] *LTL Mgmt*., 64 F.4th at 100.

[125] *In re Kaiser Gypsum Co.*, 135 F. 4th at 195.

[126] *Id.* at 195-96.

entitled under applicable nonbankruptcy law — Hopeman seeks to use the Plan to facilitate the prosecution of claims against Liberty that do not exist under applicable nonbankruptcy law by, *inter alia*, transferring rights related to the Liberty Policies that are not Hopeman's to transfer.[127] In *Truck*, the Fourth Circuit held that the debtor's "refusal to add anti-fraud measures for the insured claims in the tort system, ***without more***, [did] not signify bad faith."[128] Simply put, "more" is present here. The Plan seeks to obtain confirmation of provisions that do not comport with, and are therefore forbidden by, "applicable law."[129] Not only that, but the Plan is the product of negotiations that involved improper collusion.[130]

62. Unlike Kaiser Gypsum's plan, which was "the product of extensive arms'-length negotiations among interested parties,"[131] this Plan is the result of negotiations among only two parties: the Debtor and the Asbestos Claimants (inclusive of the Committee). Liberty requested to participate in the mediation that led to formulation of the Plan, but its request was denied.[132] This is unsurprising, as discovery yielded significant evidence demonstrating that the Debtor and the Asbestos Claimants colluded to specifically target Liberty and impair its interests in furtherance of their own goals.[133] The Asbestos Claimant-controlled governance structure provides even further evidence of the Debtor's collusion with the Asbestos Claimants.

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127 *See id.* at 196; Plan at §§ 8.12(a); 8.13(c), (e).

128 *Id.* at 195 (emphasis added).

129 *See, e.g.*, *Irving Tanning Co v. Me. Superintendent of Ins*., 496 B.R. 644, 661, 667 (B.A.P. 1st Cir. 2013) (finding that a plan that would "appropriate for distribution to creditors certain interests in property that are not the Debtors'" was proposed by a means "forbidden by law").

130 *See id.* at 661.

131 *In re Kaiser Gypsum Co.*, 135 F. 4th at 195.

132 *See* Letter from Douglas R. Gooding, Partner at Choate, Hall & Stewart LLP, to Tyler Brown, Partner at Hunton Andrews Kurth LLP (Feb. 24, 2025) (attached hereto as **Exhibit Q**).

133 *See* **Exhibits B-D** hereto.

63. The Asbestos Trust will be administered by two individuals: the Administrative Trustee, who "shall be responsible for all duties and responsibilities of the Trustees hereunder other than those relating to litigation," and the Litigation Trustee, who "shall be responsible for all matters relating to Trust litigation."[134] The Trustees will have unilateral authority over all operations of the Asbestos Trust, with input only from interested representatives of certain beneficiaries of the Asbestos Trust who devised the TDP and the Asbestos Trust Agreement: the TAC and FCR. The Trustees are required to consult with the TAC and FCR on the general implementation and administration of the Asbestos Trust and TDP.[135] Additionally, the Trustees must obtain the consent of the TAC and the FCR to take the following actions (which list is non-exhaustive):

- to determine, establish, or change the Payment Percentage described in section 2.3 of the TDP;
- to establish and/or change the Claims Materials to be provided to holders of Channeled Asbestos Claims under section 6.1 of the TDP;
- to settle (a) the liability of any insurer under any insurance policy or legal action related thereto or (b) any other litigation matter to which the Asbestos Trust is a party;
- if and to the extent required by section 6.5 of the TDP, to disclose any information, documents, or other materials to preserve, litigate, resolve, or settle coverage, or to comply with an applicable obligation under an insurance policy or settlement agreement pursuant to section 6.5 of the TDP; and
- to amend the TDP.[136]

64. As the successor in interest to Hopeman with respect to Asbestos Claims, the Asbestos Trust and its administration must be consistent with public policy.[137] However, the

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134 Asbestos Trust Agreement at § 4.1.

135 *See* Asbestos Trust Agreement at § 2.2(e).

136 *See id.* at § 2.2(f).

137 *See, e.g.*, *In re Roman Catholic Bishop of Stockton*, No. 14-20371, 2017 Bankr. LEXIS 102, at *12-13 (Bankr. E.D. Cal. Jan. 10, 2017) (appointment of trustee "consistent . . . with public policy" due to lack of interests adverse to the trust). Section 1129(a)(5)(A) of the Bankruptcy Code requires that the Debtors disclose "the identity and

individuals vested with authority to act as neutral fiduciaries to all Asbestos Claimants are inherently conflicted. The Asbestos Trust Agreement states that "[a] Trustee shall not act as an attorney for any person who holds a Channeled Asbestos Claim."[138] However, the Trustees must obtain the consent of the TAC and FCR before taking ***virtually any action*** within their job descriptions. And the members of the TAC are ***exactly what the Trustees are not allowed to be***: attorneys for Asbestos Claimants.

65. The five members of the TAC (Stephen J. Austin,[139] Lisa Nathanson Busch, Charles W. Branham, III, Matthew C. Clark, and Marcus E. Raichle, Jr.) are not independent because they have a vested interest in funding payments to their own clients. Their clients likely stand to receive large distributions from the Asbestos Trust, and their retention agreements provide them undisclosed contingency fees payable from their clients' recoveries. This fact directly conflicts with their duty to serve "in a fiduciary capacity representing ***all*** holders of present Channeled Asbestos Claims."[140] The beneficiaries of the Asbestos Trust should not have the right to influence the timing, procedures, and conditions under which they may receive a distribution from the Asbestos Trust, nor should they be permitted to represent Asbestos Claimants as a whole when they have vested interests in maximizing the recoveries of certain Asbestos Claimants to the detriment of others. This structure conflicts with the public policy underpinning section 524(g) of

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affiliations of any individual proposed to serve, after confirmation of the plan, as director, officer, or voting trustee of . . . a successor to the debtor under the plan" and that such appointments be "consistent . . . with public policy." Given that the language of section 1129(a)(5) tracks closely with the language of section 1123(a)(7) — which allows a plan to contain only "provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee" (11 U.S.C. § 1123(a)(7)) — it follows that because the Plan fails to comply with section 1129(a)(5), it likewise fails to comply with section 1123(a)(7). *See In re Digerati Techs., Inc.*, No. 13-33264, 2014 Bankr. LEXIS 2352, at *13-14 n.2 (Bankr. S.D. Tex. May 27, 2014).

[138] Asbestos Trust Agreement at § 4.9.

[139] Upon information and belief, the Plan Supplement's reference to Stephen T. Austin is intended to refer to Stephen J. Austin of Stephen J. Austin LLC.

[140] Asbestos Trust Agreement at § 5.2 (emphasis added).

the Bankruptcy Code, which is to "use the broad equitable power of the bankruptcy court to resolve [asbestos liability] in a way that is fair for both present and future asbestos claimants" — in other words, ***all*** asbestos claimants.[141]

66. An email[142] from Mr. Stephen J. Austin to Ms. Kaye Courington (who has represented both Hopeman and Liberty in defense of Asbestos Claims prior to this bankruptcy case) exemplifies both the inherent conflict of the proposed governance structure as well as the improper collusion between Hopeman and the Asbestos Claimants to target Liberty. Mr. Austin opens the email by stating, "I write on behalf of my Louisiana clients." Mr. Austin then urges Ms. Courington and Hopeman to refuse to consent to "any arrangement of any kind that prevents Louisiana Direct Action Claims against Liberty Mutual, regardless of how much Liberty Mutual offers," because such an arrangement would benefit other Asbestos Claimants — such as Asbestos Claimants in Baltimore, whom Mr. Austin suspects are "placeholders" with "some very mild condition" — to the detriment of Mr. Austin's claimants.

67. This email proves two things: (i) Mr. Austin is interested in advocating for the rights of his clients no matter the effect on other Asbestos Claimants, making him an inappropriate choice to sit on the TAC and represent Asbestos Claimants as a whole, and (ii) Mr. Austin's belief that "no price" would be good enough to settle with Liberty exhibits a strong bias that renders him too conflicted to properly exercise a consent right.[143] The fact that Hopeman acquiesced to the demands of Mr. Austin, Mr. Mintz and other plaintiffs' lawyers to include Liberty-specific

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141 *In re Plant Insulation Co*., 734 F.3d at 906.

142 *See* E-mail from Stephen J. Austin, Partner at Stephen J. Austin, LLC, to Kaye Courington, CEO and Founding Member, Courington, Kiefer, Sommers, Marullo & Matherne (Jan. 14, 2025 at 9:53 p.m.) (attached hereto as **Exhibit R**).

143 *Id.*

language in the Chubb Insurers Settlement Motion[144] and Certain Insurers' Settlement Motion[145] even though it viewed it as "unnecessary"[146] — and even though it contradicted the Committee's own prior position[147] — begs the question: what other "unnecessary" language did Hopeman include in the Plan to buy the agreement of Asbestos Claimants? The obvious answer is naming Liberty as a Non-Settling Asbestos Insurer.[148]

68. Not only Mr. Austin, but ***each*** member of the TAC selected themselves. Mr. Lascell testified that Hopeman played ***no role*** in the selection of the TAC and that Mr. Lascell has never researched any of the individual members or taken any steps to ensure that they can represent all claimants fairly, despite the fact that Hopeman seeks to confirm a Plan that includes these TAC members.[149] Upon information and belief, the Committee was primarily responsible for drafting all documents associated with the Trust, and prepared the initial draft of the § 524(g) term sheet that laid the groundwork for the Plan.[150] Four out of the five members of the TAC are members of law firms that represent Committee members; however, the Asbestos Trust Agreement provides

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144 *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* [Dkt. No. 9].

145 *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 Assumption Of The Settlement Agreement And Release Between the Debtor and Certain Settling 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* [Dkt. No. 53].

146 *See* **Exhibit D** hereto.

147 Previously, counsel to the Committee had asserted that, because the debtor was "not an operating business" and "was going to be liquidating," it "really should be indifferent about what happens down in Louisiana at this stage". Tr. of Sept. 10, 2024 Hr'g, at 130:4-9 (attached hereto as **Exhibit G**).

148 *See* Plan at § 1.80. Mr. Lascell testified that the "Non-Settling Insurer" definition in the November term sheet was drafted by the Committee (and left unchanged by Hopeman in its comments), and that the parties asserting claims against Liberty (including the Louisiana direct action plaintiffs) "wanted to be sure to include Liberty as a non-settling insurer". *See* Lascell Dep. at 62:21-63:2, 64:9-18, 70:1-11.

149 *See id.* at 96:13-25, 97:1-16, 99:10-100:4.

150 *See* **Exhibit E** hereto.

no information regarding how the TAC will determine whether it consents to a proposed action by the Trustees.[151] The TAC members have no apparent restriction from consenting to actions that benefit their clients and withholding consent for actions that do not.

69. Moreover, the Committee has refused to explain why the Litigation Trustee or the TAC members were selected for their roles, nor did the representative of the Committee indicate that any consideration was given to preventing actual or potential conflicts of interest when making these determinations.[152] Trey Branham would not disclose the names of individuals that the Committee interviewed to be the Litigation Trustee other than Mr. Richardson, incorrectly asserting that such facts are privileged communications.[153]

70. The Committee's silence is particularly instructive in light of the substantial financial incentive for Mr. Richardson as Litigation Trustee and director and officer of Reorganized Hopeman, on the one hand, and the members of the TAC, on the other hand, to collaborate with the goal of maximizing litigation and corresponding fees — whether or not their actions are in the best interest of their respective constituencies. The Asbestos Trust Agreement provides that the Litigation Trustee will earn 33% of any amount collected in litigation concerning Channeled Asbestos Claims.[154] However, the Plan and Asbestos Trust Agreement do not prevent the members of the TAC from serving as co-counsel with the Litigation Trustee, and Mr. Branham testified that such an occurrence was possible.[155] The conflicting fiduciary duties of these individuals' roles are obvious: (1) Mr. Richardson, as director and officer of Reorganized

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[151] *See* Asbestos Trust Agreement at § 5.7.

[152] *See* Branham Dep. at 72:23-74:16.

[153] *See id.* at 83:4-84:1.

[154] *See* Asbestos Trust Agreement at § 4.5(b).

[155] *See* Branham Dep. at 100:15-20.

Hopeman, owes a fiduciary duty to the reorganized Debtor; (2) Mr. Richardson, as Litigation Trustee, also owes a fiduciary duty to the Trust; and (3) the members of the TAC owe a fiduciary duty to current Asbestos Claimants (not just their clients). This structure is not in the best interest of the TAC's constituents but, rather, the best interests of Mr. Richardson and the TAC, who stand to earn potentially enormous fees through ongoing litigation against the Asbestos Insurers.

71. Finally, the Asbestos Trust Agreement contemplates that the "the Litigation Trustee may serve as a director and officer of the Reorganized Debtor."[156] Stated differently, the Litigation Trustee has authority over the management and direction of both the Asbestos Trust and Reorganized Hopeman — the only entities that are required to cooperate with the Asbestos Insurers to satisfy the Asbestos Insurance Cooperation Obligations — while simultaneously being vested with the authority to prosecute lawsuits against those very Asbestos Insurers.[157] The governance structure creates an irreconcilable conflict which renders it impossible for the Trustees to cooperate with the Asbestos Insurers as required by the applicable Asbestos Insurance Policies.

72. Ultimately, this governance structure not only invites potential self-dealing and constitutes evidence of collusion in violation of section 1129(a)(3) of the Bankruptcy Code, but it also violates sections 1129(a)(5) and 1123(a)(7) of the Bankruptcy Code by being inconsistent with the policy purpose underpinning section 524(g). Thus, the Plan cannot be confirmed.

RESERVATION OF RIGHTS

73. Liberty reserves the right to amend, supplement, alter, or modify the objections and points raised herein, including, without limitation, the right to join in, and adopt, any objections to the Plan filed by any other person or entity. Without limiting the generality of the foregoing,

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[156] *Id.* at § 4.9.

[157] *See* Plan at §§ 8.12, 8.13; Asbestos Trust Agreement at § 2.1(c)(xviii); TDP at § 5.2(a)(ii).

Liberty expressly reserves the right to further supplement its objections to the Plan regarding any amendments or modifications that may be made to the Plan or Plan Supplement following the filing of this Objection and expressly reserves the right to contest the jurisdiction of this Court to hear and determine any coverage dispute initiated by or involving the Debtor and/or the Asbestos Trust.

WHEREFORE, Liberty respectfully requests that this Court (i) deny confirmation of the Plan, (ii) dismiss the Debtor's case, require the Debtor to submit a liquidating Plan that is not predicated upon section 524(g) of the Bankruptcy Code, or convert this case to a case under Chapter 7 of the Bankruptcy Code, and (iii) grant any other relief that this Court deems to be just and proper.

Dated: July 7, 2025

Respectfully submitted,

/s/ Douglas M. Foley

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2025, a true copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system, which will send a notification of electronic filing (NEF) to all creditors and parties in interest.

/s/ Douglas M. Foley