

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re: HOPEMAN BROTHERS, INC.,
Debtor.

Case No. 24-32428-KLP
Chapter 11

**ORDER GRANTING MOTION IN LIMINE OF THE DEBTOR TO
EXCLUDE THE EXPERT TESTIMONY OF MARC C. SCARCELLA**

Century Indemnity Company, in its capacity as the successor to CCI Insurance Company, as the successor to Insurance Company of North America, and Westchester Fire Insurance Company (collectively, the “Chubb Insurers”) have disclosed that they intend to call Marc C. Scarcella as an expert witness at the hearing scheduled for August 25, 2025 (the “Combined Hearing”), at which the Court will consider approval of the *Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 767], on a final basis, and confirmation of the *Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, dated August 21, 2025 [ECF No. 1141] (as may be amended, modified, or supplemented from time to time, the “Plan”).

Hopeman Brothers, Inc. (the “Debtor”), the debtor-in-possession in the above-captioned Chapter 11 case (this “Bankruptcy Case”) has moved [ECF No. 1089] (the “Motion”) to exclude Mr. Scarcella’s proposed expert witness testimony on the grounds that his disclosed opinions are completely irrelevant to a proper analysis of the “Best Interests Test” of section 1129(a)(7) of Title 11 of the United States Code (the “Bankruptcy Code”). The Motion is fully briefed and was argued before the Court on August 21, 2025. Based on the pleadings before the Court and the arguments of counsel, the Court finds as follows.



243242825082200000000001

Expert witness testimony is admissible only if it “will help the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a).¹ In ruling upon a motion in *limine* concerning expert testimony, the Court must make a “‘preliminary assessment’ of whether the proffered testimony is both reliable (i.e. based on ‘scientific knowledge’) and helpful (i.e. of assistance to the trier of fact in understanding or determining a fact in issue).” *Md. Cas. Co. v. Therm-O-Disc*, 137 F.3d 780, 783 (4th Cir. 1998). In this case, Mr. Scarcella’s proposed expert testimony is not “helpful” and, therefore, inadmissible.

In order to be confirmable, the Plan must satisfy the Best Interests Test.² The Best Interests Test requires that

With respect to each impaired class of claims or interests

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1129(a)(7). In other words, for any creditor that has not voted to accept the plan, the Plan must pay as much or more than such creditor would receive in a Chapter 7 liquidation. Such

¹ The Court has concerns about Mr. Scarcella’s qualifications as an expert witness. Mr. Scarcella acknowledged that he has never testified as an expert on the Best Interests Test or otherwise prepared a liquidation analysis. Scarcella Dep. Tr. 54:2-56:12, ECF No. 1089 at 38. Although lack of prior testimony alone would not serve to disqualify Mr. Scarcella, the Court finds that Mr. Scarcella exhibits minimal understanding of Chapter 7 liquidation as necessary to opine on either the Best Interests Test or a liquidation analysis. *See, e.g., id.* 110:2-112:20, ECF No. 1089 at 52. Having determined that Mr. Scarcella’s testimony should be excluded as irrelevant, the Court need not determine if Mr. Scarcella is qualified to testify as an expert.

² In ruling upon the Motion, the Court makes no determination as to whether the Plan satisfies the Best Interests Test. The Debtors bear the burden of proving such at the Combined Hearing.

a determination turns on (1) the pool of available assets to be distributed in a Chapter 7 liquidation; and (2) the estimated amount of claims³ to be paid under the Plan.

The Chubb Insurers seek to offer Mr. Scarcella's expert opinion that the Plan fails to satisfy the Best Interests Test. However, Mr. Scarcella's opinion is fundamentally flawed because it is premised upon a faulty assumption. At the instruction of the Chubb Insurers, Mr. Scarcella applied a claims bar date of June 30, 2027, to determine both the total estimated amount of claims asserted against the Debtor as well as the pool of insurance coverage and other assets available to pay such claims.⁴ Mr. Scarcella utilized such a bar date based on the assumptions he was given; he did not provide an independent basis as to why such a limitation may be appropriate. Scarcella Dep. Tr. 26:12-28:11, ECF No. 1089 at 31. In fact, Mr. Scarcella readily admitted that claims would continue to be asserted against Hopeman in the absence of such a bar date. *Id.* 27:12-28:7, ECF No. 1089 at 31. Mr. Scarcella also acknowledged that the use of a June 30, 2027, bar date not only artificially capped the total estimated amount of claims to be asserted against the Debtor, but also

³ The Debtor and the Chubb Insurers devote significant portions of their pleadings as to whether the term "claims" as used within section 1129(a)(7) includes liability for asbestos-related personal injury that has not yet been asserted against the Debtor. The Court need not make such a determination in connection with this Motion. Mr. Scarcella's expert report analyzed the projected recovery for creditors holding both "Pending Claims" (defined as asbestos personal injury claims filed against the Debtor but unresolved as of the bankruptcy filing) and "Bankruptcy Claims" (defined as asbestos personal injury claims projected to be filed against the Debtor within three years of the petition date). Scarcella Report, ¶ 1. Mr. Scarcella then analyzed whether the Pending Claims *and* the Bankruptcy Claims would fare better in a Chapter 7 liquidation than under the Plan. *Id.* Assuming the Chubb Insurers' interpretation of the term "claims" is correct, the conclusions of its own proposed expert would appear to be at odds with its own interpretation.

⁴ The prior plan proposed by the Debtor included a bar date. Tr. Distrib. Procs. of the Hopeman Bros., Inc. Asbestos Pers. Inj. Liquidation Tr. § 3.2, ECF No. 56 at 71. However, at the Combined Hearing, the Court is tasked with determining whether this Plan satisfies the requirements of section 1129 of the Bankruptcy Code – not whether prior discarded versions of the Plan or other proposals may also be confirmable.

The Bankruptcy Code does contemplate circumstances in which parties in interest may offer competing plans for the Court's consideration. However, those provisions are currently inapplicable in this bankruptcy case as the Debtor has requested and received, without objection, an extension of their exclusive period to file and solicit acceptances on a proposed plan. Third Order Extending Exclusivity Periods, ECF No. 1129; *see also* 11 U.S.C. § 1121.

did not accurately reflect the amount of insurance proceeds that may be available to pay such claims. *Id.* 124:13-128:5, ECF No. 1089 at 56.

At the Combined Hearing, the Court must consider whether the Plan satisfies the Best Interests Test. The Plan does not include a bar date and proposes to address holders of claims, regardless of whether such claims were asserted against the Debtor prior to the bankruptcy filing, are asserted against the Debtor in the three-year period after the bankruptcy filing, or are asserted at some future date more than three years beyond the bankruptcy filing. Mr. Scarcella's analysis, predicated upon a non-existent bar date, is fundamentally flawed and, as such, is irrelevant to the Court's determination as to whether the Plan satisfies the Best Interests Test. Accordingly, it is

ORDERED that the Motion is **GRANTED** as provided herein; and it is further

ORDERED that Mr. Scarcella shall not be permitted to testify on, or otherwise offer expert opinions regarding, the Best Interests Test or the Liquidation Analysis at the Combined Hearing.

Dated: August 22, 2025

/s/ Keith L. Phillips
UNITED STATES BANKRUPTCY JUDGE

Entered on Docket: August 22, 2025

Notice Recipients

District/Off: 0422-3

User: ElizabethDouglass

Date Created: 8/22/2025

Case: 24-32428-KLP

Form ID: pdford9

Total: 1

Recipients of Notice of Electronic Filing:

aty Henry Pollard Long, III hlong@huntonAK.com

TOTAL: 1