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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.	

LIBERTY MUTUAL'S NOTICE OF FILING OF TARGETED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

PLEASE TAKE NOTICE that, pursuant to the Court's directive stated on the record on August 26, 2025 and entered on the Bankruptcy Court's docket at Docket No. 1168, Liberty Mutual Insurance Company ("Liberty Mutual") hereby files the *Targeted Proposed Findings of Fact and Conclusions of Law Denying Confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* attached hereto as Exhibit A (the "Proposed Findings and Conclusions") with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division.

Liberty Mutual's Proposed Findings and Conclusions are tailored toward discrete issues that are dispositive of the question whether the Proposed Plan should be confirmed in its current form. Accordingly, Liberty's Proposed Findings and Conclusions are not intended to

represent the complete findings of fact and conclusions of law to be recommended for adoption by the Court. Instead, Liberty Mutual has included a set of Proposed Findings and Conclusions that the Court should recommend for adoption, regardless of whether it recommends additional, unrelated findings of fact and conclusions of law for adoption.

Dated: September 5, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 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

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EXHIBIT A

Proposed Findings and Conclusions

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In re:	**Chapter 11**
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Debtor.	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING CONFIRMATION OF THE AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

FINDINGS OF FACT[1]

A. Findings of Fact Regarding The Liberty Mutual Policies, the 2003 Agreements, and the Plan's Proposed Transfer of Rights to the Asbestos Trust.

1. Prepetition, Liberty Mutual allegedly issued certain primary layer and excess insurance policies to Hopeman and Wayne Manufacturing Corporation (a now-defunct wholly owned subsidiary of Hopeman), under which Hopeman and/or certain Hopeman affiliates, predecessors and successors sought coverage (collectively, the "Liberty Mutual Policies"). Docket No. 1116 (the "Van Epps Decl.") ¶¶ 10-11, 19.

2. On March 21, 2003, Hopeman and Liberty Mutual entered into (i) the Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Settlement Agreement"), and (ii) the Indemnification and Hold Harmless Agreement Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company (the "Indemnification Agreement" and, together with the Settlement Agreement, the "2003 Agreements"). *See* Certain Insurer Exs. 27-28.

3. In exchange for the significant consideration paid by Liberty Mutual under the Settlement Agreement, Hopeman[2] released Liberty Mutual from any actual or potential obligations relating in any way to Asbestos Claims, along with all claims relating in any way to any Liberty Mutual Policy issued prior to 1989 (the "Release"). Certain Insurer Ex. 27. In addition to the comprehensive Release concerning, among other things, any Asbestos Claim, Liberty and

[1] These Findings and Conclusions constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52 made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

[2] The definition of "Hopeman" in the 2003 Agreements includes Wayne Manufacturing Corporation.

Hopeman agreed on a policy "buy-back" of the pre-1989 Liberty Mutual Policies, which rendered them void and entirely extinguished any rights that Hopeman had or allegedly had thereunder. *Id.*

4. Christopher Lascell, the Debtor's current President, testified to his understanding that: (i) the 2003 Settlement Agreement released all rights that Hopeman has or may have related to the Liberty Mutual Policies; (ii) Liberty Mutual owes no duties to Hopeman under the Liberty Mutual Policies; and (iii) Hopeman has no rights remaining under the Liberty Mutual Policies. Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 74:1-10.

5. Hopeman's confirmation brief concedes that, as a result of the 2003 Agreements, Hopeman released its rights under all of the primary and excess insurance it purchased from Liberty Mutual. *See* Docket No. 1076 (the "Confirmation Brief") at ¶ 59. Mr. Lascell expressly agreed with this concession during his testimony at the hearing regarding confirmation of the Plan (the "Confirmation Hearing"). *See* Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 74:1-4.

6. At the Confirmation Hearing, Mr. Lascell also testified that the intent of the Plan is to transfer Hopeman's rights under the Liberty Mutual Policies, if any, to the Asbestos Trust. Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 77:1-14.

7. In Hopeman's responses to Liberty Mutual's interrogatories, Hopeman admitted that "as a result of the 2003 Settlement Agreement, the Debtor released any and all claims it had or may have had against [Liberty Mutual] and sold back to [Liberty Mutual] its remaining insurance coverage issued by [Liberty Mutual]. As a result, the Debtor does not currently believe it possesses any rights in any insurance policies issued by [Liberty Mutual] to the Debtor." LM Ex. 12 at 5.

8. Hopeman's Interrogatory Responses also admit that Hopeman "is not aware of any Extracontractual Claim(s) it possess against [Liberty Mutual]." *Id.* at 9.

9. And, during an August 21 argument in the Adversary Proceeding initiated by Liberty Mutual, Hopeman's counsel "declare[d]" that "the debtor has no interest in the Policies". Aug. 21, 2025 Hr'g Tr. **[**Docket No. 1160**]** at 81:8-10. During the same argument, Debtor's counsel asserted that Hopeman would "stipulate" that it does not "have any rights to convey". *Id.* at 82:22-25.

B. Findings of Fact Regarding Liberty Mutual's Proof of Claim.

10. On November 10, 2024, Liberty Mutual filed proof of claim No. 10 (as amended on May 30, 2025 by proof of claim No. 19, "Liberty Mutual's Claim"), which asserted a "partially contingent and unliquidated" unsecured claim in the amount of $317,254.89.

11. Liberty Mutual's Claim was predicated on Hopeman's failure to minimize Asbestos Claims against Liberty Mutual (as it is contractually obligated to do under the 2003 Agreements), as well as its breach of other obligations arising under the 2003 Agreements, including defense and indemnification.

12. On June 23, 2025, after notice and a hearing, this Court sustained Hopeman's Objection to Liberty Mutual's Claim and entered the *Order Disallowing and Expunging Claim of Liberty Mutual Insurance Company* (the "Liberty Mutual Claim Expungement Order"). Docket No. 907.

13. Liberty Mutual has appealed the Liberty Mutual Claim Expungement Order, and the appeal remains pending. Docket No. 918.

C. Findings of Fact Regarding the Mediation.

14. On December 20, 2024, this Court entered an Order approving a joint motion by Hopeman and the Official Committee of Unsecured Creditors (the "Committee and, together with Hopeman, collectively, the "Plan Proponents") to authorize judicial mediation (the "Mediation"

and, such order, the "Mediation Order"), with the Honorable Kevin R. Huennekens serving as the mediator (the "Mediator"). Docket No. 443.

15. The Plan Proponents consented to a request from Huntington Ingalls Industries, Inc. ("HII") to participate in the Mediation. Docket No. 1115 (the "Lascell Decl.") ¶ 18.

16. The Mediation resulted in a settlement between the Plan Proponents and HII. *Id.* ¶ 19. This settlement became the foundation of the Plan. *Id.* The Chubb Insurers were not a party to the settlement. *Id.*

17. Liberty Mutual requested to participate in the Mediation, and its request was denied by Hopeman at the direction of the Mediator. Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 262:7-21; *see also* LM Ex. 8 (Letter from Douglas Gooding to Tyler Brown et al. re: Mediation).

18. The Court's Mediation Order prohibited any party from using or disclosing communications made in connection with the Mediation for any purpose during this Chapter 11 proceeding. Docket No. 443. Accordingly, Liberty Mutual was not permitted to access or rely upon any materials related to the Mediation. *Id.*

19. Although Hopeman initially produced documents related to the Mediation, Hopeman later clawed back those documents, thereby precluding Liberty Mutual, or any other insurer, from relying on any Mediation documents during the Confirmation Hearing. *Id.* at 279:5-19; *see also* Chubb Ex. 8 (Letter from J. Long to Counsel re: Production and Use of Confidential Documents Under the Mediation Order).

20. The Plan Proponents did not place into evidence any information related to the Mediation aside from facts concerning the "mechanics" of the Mediation – *i.e.*¸ that the parties to the Mediation "had conversations with the mediator and other . . . parties to find common ground." Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 33:21-34:2.

D. Findings of Fact Regarding Section 524(g) of the Bankruptcy Code.

21. Hopeman originally sought a liquidating plan but pivoted to a Plan under section 524(g) of the Bankruptcy Code as a result of pressure from the Committee. Aug. 26, 2025 Hr'g Tr. [Docket No. 1175] at 21:8-18; LM Ex. 5 (Email from Joseph Rovira to Jeffrey Liesemer et al. re: 524(g) Term Sheet).

22. Mr. Lascell was Hopeman's corporate designee during a deposition conducted under Fed. R. Civ. P. 30(b)(6) in July 2025. During that deposition, in his capacity as Hopeman's corporate representative, Mr. Lascell stated that his "understanding is that some ongoing business is required under the 524(g) structure." Docket No. 961-A at 59:10-12.

23. During a meeting with the board members of Hopeman in June 2025, Mr. Lascell, in his capacity as a Director and President of Hopeman, informed the board members that some ongoing business is required under section 524(g). Aug. 25, 2025 Hr'g Tr. [Docket No. 1174] at 55:3-6.

24. Mr. Lascell admitted that Hopeman had no ongoing business as of June 2024, November 2024, or July 2025. *Id.* at 55:7-57:5.

25. Hopeman ceased operations in 2003. Lascell Decl. ¶ 4.

26. Hopeman has had no employees since at least the year 2016, if not earlier. Aug. 25, 2025 Hr'g Tr. [Docket No. 1174] at 57:6-8.

27. Additionally, Hopeman has had no passive real estate investments since at least the year 2016, if not earlier. *Id.* at 58:2-7.

28. As of the filing of the Plan in May 2025, Mr. Lascell had no knowledge of the Plan's proposed restructuring transactions (the "Restructuring Transactions"). *Id.* at 59:3-13.

29. Mr. Lascell played no role in identifying the potential investment for the Restructuring Transactions. *Id.* at 58:20-59:10.

30. Mr. Lascell does not know who ultimately recommended the investment under the proposed Restructuring Transactions. *Id.* at 59:11-13.

31. The passive real estate investment contemplated by the Restructuring Transactions does not resemble Hopeman's prior business or work, including during the period immediately preceding Hopeman's bankruptcy filing. *Id.* at 58:5-12.

32. Mr. Lascell has no experience with passive real estate investments and no knowledge regarding passive real estate investing. *Id.* at 57:19-24.

33. Mr. Lascell has never communicated with, and knows nothing about, the proposed director of reorganized Hopeman. *Id.* at 59:23-60:12.

34. The designee of the Committee under Fed. R. Civ. P. 30(b)(6), Trey Branham, does not know basic facts about the proposed Restructuring Transactions, such as the state where the investment property will be located. LM Ex. 13 at 28:10-29:2. Nor does Mr. Branham know whether the proposed director of Reorganized Hopeman has any experience with passive real estate investments. *Id.* at 30:19-31:4.

E. Findings of Fact Regarding Section 1129(a)(3) of the Bankruptcy Code.

35. The Plan Proponents presented no evidence of good faith during the Confirmation Hearing. Rather, they proffered limited testimony from Mr. Lascell, which was conclusory and non-factual:

> Q: Do you believe the Plan was proposed in good faith?
> A: Yes.
> Q: Was the Plan and the underlying settlement negotiated at arm's length?
> A: It was, yes.
> Q: Okay. Was the Plan a product of any collusion?
> A: No.
> Q: Did the Committee exert any undue influence in the settlement negotiations regarding the plan?
> A: No.
>
> Aug. 25, 2025 Hr'g Tr. [Docket No. 1174] at 29:23-30:2, 22-25; 31:1.

F. Findings of Fact Regarding Section 1129(a)(7) of the Bankruptcy Code.

36. No evidence was promulgated by the Plan Proponents to explain why the Litigation Trustee or the members of the Trust Advisory Committee (the "TAC") were selected for their roles.

37. At the time that Hopeman filed the Plan Supplement, Mr. Lascell knew nothing about Matthew Richardson, the person that Hopeman proposes to serve as the director of reorganized Hopeman and the Litigation Trustee. Aug. 25, 2025 Hr'g Tr. **[**Docket No. 1174**]** at 59:17-61:19.

38. At the time that Hopeman filed the Plan Supplement, Mr. Lascell had conducted no research on the members of the TAC and had taken no steps to ensure that each member of the TAC can represent all Asbestos Claimants fairly. *Id.* at 62:16-63:20.

39. Mr. Lascell received an email from Stephen Austin (a proposed member of the TAC) characterizing "thousands" of Asbestos Claims filed in Baltimore as "placeholders" and advocating for the interests of Louisiana Asbestos Claimants over Baltimore Asbestos Claimants. *Id.* at 66:1-67:25; LM Ex. 9 (Email from Stephen J. Austin to Kaye Courington re: Louisiana Asbestos Claimants).

40. Mr. Lascell did not consider this email when he saw that Mr. Austin had been proposed as a member of the TAC. *Id.* at 67:23-25.

41. Mr. Branham, the Committee's 30(b)(6) designee, refused to disclose any facts concerning why the TAC members were selected, including himself. LM Ex. 13 at 72:23-74:16.

42. Mr. Branham also refused to disclose any facts concerning why Matthew Richardson was selected as Litigation Trustee and Director of Reorganized Hopeman. *Id.* at 84:10-86:12. Mr. Branham also refused to disclose who the Committee interviewed to serve as Director of Reorganized Hopeman, other than Mr. Richardson. *Id.* at 86:13-87:4. And, Mr. Branham likewise refused to disclose who the Committee interviewed to be the Litigation Trustee, or how many people the Committee interviewed. *Id.* at 88:16-89:15.

43. At least one member of the TAC, Mr. Branham, has entered into a fee-sharing arrangement with the Litigation Trustee and proposed director of Reorganized Hopeman, Matthew Richardson, in a different matter. *Id.* at 84:10-25. Mr. Branham, as the Committee's 30(b)(6) designee, testified that he is unaware of anything preventing the Litigation Trustee (Mr. Richardson) from hiring TAC members as co-counsel to prosecute litigation, even though Mr. Richardson, in his capacity as proposed director of Reorganized Hopeman, and the TAC members owe fiduciary duties to different constituencies. *Id.* at 100:4-101:19.

CONCLUSIONS OF LAW[3]

A. Conclusions of Law Regarding Plan's Proposed Transfer of Rights Under the Liberty Mutual Policies to the Asbestos Trust.

44. Since the outset of this bankruptcy, Hopeman has disclaimed any rights in or related to the Liberty Mutual Policies. *E.g.*, Van Epps Decl. at ¶ 18; LM Ex. 12 at 5, 9; Aug. 21, 2025 Hr'g Tr. **[**Docket No. 1160**]** at 81:8-10, 82:22-25.

45. Nonetheless, Section 8.3(b) of the Plan transfers any rights that the Debtor may have related to the Liberty Mutual Policies to the Asbestos Trust, whether or not such rights exist or are property of the Debtor's estate. Docket No. 1142, § 8.3(b); *see also* Aug. 26, 2025 Hr'g Tr. **[**Docket No. 1175**]** at 169:6-15; LM Ex. 12 at 5, 9.

46. This purported transfer is legally unenforceable, because: (i) the rights that Hopeman purports to transfer do not exist; and (ii) even if any such rights hypothetically could exist (which they do not), they would not be property of Hopeman's estate. *See* 11 U.S.C. § 1123(a)(5)(B) (providing that a plan may transfer property ***of the estate*** to one or more entities) (emphasis supplied); *see also Mission Prod. Holdings v. Tempnology, LLC*, 587 U.S. 370, 381 (2019) (holding that, because 11 U.S.C. § 541(a)(1) defines the bankruptcy estate to include the "interests of the debtor in property", the estate cannot possess anything more than the debtor itself did outside bankruptcy).

47. Even Hopeman's counsel has admitted that, with respect to Liberty, Section 8.3(b) is "a meaningless provision". August 21 Hr'g Tr. at 82:21-22.

[3] These Findings and Conclusions constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52 made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

48. Hopeman asserts that, according to Judge Goldblatt's recent decision *in In re AIO US, Inc.*: "it's okay to transfer a debtor's insurance rights as long as you're transferring whatever they are". Aug. 26, 2025 Hr'g Tr. **[**Docket No. 1175**]** at 169:9-12 (citing No. 24-11836, 2025 Bankr. LEXIS 2012, at *68-70 (Bankr. D. Del. Aug. 21, 2025) ("AIO II").

49. This Court disagrees with Hopeman's interpretation of *AIO II*. In *AIO II*, Judge Goldblatt correctly held that, if a debtor is transferring rights under its insurance policies to a liquidating trust, it must transfer the corresponding obligations *cum onere* with the rights. *See id.* The opinion did not address whether a debtor may transfer rights that have been released under insurance policies, which rights also were extinguished as a consequence of an insurance policy buyback, as is the situation here.

50. A bankruptcy court may not authorize the sale of property as "property of the estate" without first determining whether the debtor, in fact, owns the property. The situation at bar is directly analogous to the situation in *In re Worcester Country Club Acres, LLC*, 655 B.R. 41 (Bankr. D. Mass. 2023). There, the debtor's chapter 11 plan proposed to sell land and development rights free and clear of any asserted ownership interest or argument that the development rights were nonexistent, prior to a resolution of the disputes regarding whether the debtor actually owned those property interests. *Id.* at 46. The Bankruptcy Court held that the disputed land and rights could not be sold without their ownership first being adjudicated in order to determine if they were property of the debtor's bankruptcy estate. *Id.* This holding is correct. This Court cannot authorize a transfer of the Debtor's rights related to the Liberty Mutual Policies, "whatever they are," without first finding that the Debtor ***has*** such rights related to the Liberty Mutual Policies such that they are property of the Debtor's estate under section 541(a) of the Bankruptcy Code. To the contrary,

this Court has found that the Debtor has repeatedly disclaimed any and all such rights related to the Liberty Mutual Policies.

51. Moreover, Liberty Mutual has filed an adversary proceeding against the Debtor seeking a declaratory judgment that Liberty Mutual has no further obligation to pay Asbestos Claims arising out of the acts or omissions of Hopeman in the conduct of its business. *See Liberty Mutual Ins. Co. v. Hopeman Brothers, Inc., et al.*, No. 25-3020 (E.D. Va. May 23, 2025) (adversary complaint filed under seal) the ("Adversary Proceeding"). On August 29, 2025, this Court entered a Report and Recommendation recommending, *inter alia*, that the reference in the Adversary Proceeding be withdrawn to the U.S. District Court for the Eastern District of Virginia (the "District Court") to decide the non-core claims at issue in the Adversary Proceeding. *See* Adversary Proceeding Docket No. 79. It would be premature for this Court to authorize a transfer of Hopeman's rights related to the Liberty Mutual Policies to the Asbestos Trust before the District Court has completed its adjudication of the issues in the Adversary Proceeding.

52. For the foregoing reasons, this Court cannot approve the Plan's transfer of rights related to the Liberty Mutual Policies from Hopeman to the Asbestos Trust. At a minimum, Section 8.3, or a different part of the Plan, must be revised to state expressly that: (i) Hopeman has no rights under the Liberty Mutual Policies that are or could be transferred to the Asbestos Trust; (ii) Hopeman does not possess any rights or claims under the Liberty Mutual Policies that do or could constitute Asbestos Insurance Rights or Asbestos Trust Assets; and (iii) the Trustee cannot intervene in any Insurance Policy Action relating to Liberty Mutual because Hopeman's rights in the Liberty Mutual Policies are not, and cannot be, transferred under the Plan. Otherwise, the Plan is unconfirmable in its current form.

B. Conclusions of Law Regarding Section 8.13(c)(v) of the Plan.

53. Section 8.13(c)(v) of the Plan allows the Asbestos Trust to intervene in any underlying Insurance Policy Action against a Non-Settling Asbestos Insurer and forbids Asbestos Claimants from objecting to such intervention. Docket No. 1142, § 8.13(c)(v).

54. Specifically, Section 8.13(c)(v) provides: "[t]he Asbestos Trust shall have, and is deemed to have, an interest relating to the Asbestos Insurance Coverage that is the subject of any Insurance Policy Action, and shall be, and is deemed to be, so situated that disposing of the Insurance Policy Action may, as a practical matter, impair or impede the Asbestos Trust's ability to protect its interest, and no party to the Insurance Policy Action can adequately represent that interest." *Id.*

55. Because no rights under the Liberty Mutual Policies are being transferred to the Asbestos Trust under Section 8.3 of the Plan (as described in Conclusion of Law A, *supra*), the Asbestos Trust cannot have "an interest relating to the Asbestos Insurance Coverage", to the extent that such Asbestos Insurance Coverage consists of Liberty Mutual Policies, or any rights or claims related to the Liberty Mutual Policies. Restated, the Trustee cannot intervene in any Insurance Policy Action that relates to Liberty Mutual because no rights related to the Liberty Mutual Policies can be transferred to the Asbestos Trust under the Plan.

56. Accordingly, Section 8.13(c)(v) is unenforceable as to Liberty Mutual. The Plan should be revised to provide expressly that the Asbestos Trust cannot intervene in any Insurance Policy Action pursuant to Section 8.13(c)(v) of the Plan involving Liberty Mutual, nor can the Asbestos Trust take a position adverse to Liberty Mutual in any such Insurance Policy Action.

C. Conclusions of Law Regarding Hopeman's Breach of the Minimization Obligation.

57. The 2003 Agreements impose affirmative obligations on Hopeman, which require Hopeman to take "all reasonable actions necessary to minimize" the assertion of Asbestos Claims against Liberty Mutual (the "Minimization Obligation").

58. Through its conduct in negotiating, drafting, and prosecuting the Plan, Hopeman breached the Minimization Obligation, including by (among other things) purporting to transfer admittedly non-existent rights under the Liberty Mutual Policies to the Asbestos Trust. Section 1.83 of the Plan also gratuitously describes Liberty Mutual as a "Non-Settling Asbestos Insurer", which is contrary to Hopeman's obligation to take actions necessary to minimize claims against Liberty Mutual. *See* Docket No. 1142, § 1.83.

59. Moreover, Section 8.13(c)(v) of the Plan breaches the Minimization Obligation by allowing the Asbestos Trust to intervene in any Insurance Policy Action that otherwise would involve only a Channeled Asbestos Claimant and Liberty Mutual. *See id.* § 8.13(c)(v).

D. Conclusions of Law Regarding Liberty Mutual's Standing to Object to the Plan.

60. Liberty Mutual has standing to object to the Plan.

61. The Supreme Court's decision in *Truck Insurance Exchange v. Kaiser Gypsum Co.,* is dispositive. *See* 602 U.S. 268 (2024). According to the analysis in *Truck*, Liberty Mutual is a "party in interest" under section 1109(b) of the Bankruptcy Code because the Plan impairs Liberty Mutual's interests by, *inter alia*, purporting to transfer non-existent rights related to the Liberty Mutual Policies to the Asbestos Trust, breaching the 2003 Agreements, and allowing the Asbestos Trust to intervene in any Insurance Policy Action that otherwise would involve only a Channeled Asbestos Claimant and Liberty Mutual. *See id.* at 281.

62. The *Truck* decision did not address two doctrines relevant to standing, which are often deemed "Article III" or "constitutional" standing, and "prudential" standing.

63. Some bankruptcy courts have held that prudential and Article III standing are no longer applicable in the wake of *Truck* and other Supreme Court decisions. *See In re AIO US, Inc.*, 2025 Bankr. LEXIS 1369, at *10 (Bankr. D. Del. June 6, 2025) ("AIO I").

64. Other bankruptcy courts have concluded that such standing doctrines continue to apply. *See In re Roman Catholic Diocese of Syracuse*, 665 B.R. 866, 875 (Bankr. N.D.N.Y. 2024) (insurers qualified as parties in interest under section 1109(b) but must meet constitutional and prudential standing requirements).

65. This Court is persuaded by the analysis set forth in *AIO I*, which is consistent with the Supreme Court's ruling that standing in bankruptcy cases should be as "expansive" as possible in order to facilitate "broad participation" in furtherance of a "fair and equitable reorganization process". *Truck*, 602 U.S. at 277, 280; *AIO I*, 2025 Bankr. LEXIS 1369 at *35 (When confronted with questions that implicate the integrity of the bankruptcy process, the Court is inclined to be particularly open to hearing from anyone and everyone who might assist the Court in conducting a fair and appropriate process").

66. Constitutional and prudential standing do not impose any further obligations upon Liberty Mutual other than the obligation to prove that it is a "party in interest" to this proceeding. *See AIO I*, 2025 Bankr. LEXIS 1369 at *10.

67. Moreover, even if constitutional and prudential standing doctrines were applicable, Liberty Mutual would satisfy their requirements.

68. If the Plan is confirmed, Liberty Mutual will be forced to incur defense costs defending against Insurance Policy Actions brought by the Asbestos Claimants and, potentially, the Asbestos Trust. The Asbestos Claimants and Asbestos Trust could leverage this Court's confirmation in alleging that (i) the Asbestos Trust has the right to sue Liberty Mutual for claims

related to the Liberty Mutual Policies, and (ii) neither the reorganized Debtor nor the Asbestos Trust have any obligation to defend Liberty Mutual against Asbestos Claims. Both of these allegations are inconsistent with the 2003 Agreements. This breach of contract and impairment of Liberty Mutual's bargained-for release is a concrete injury that is particularized to Liberty Mutual; therefore, Liberty Mutual satisfies the constitutional standing component. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014) (internal citations omitted).

69. Additionally, Liberty Mutual is asserting its own legal rights. Its grievance is particular to Hopeman's conduct and could not be addressed by the representative branches. Therefore, Liberty Mutual also satisfies the prudential standing component. *See id.* at 126.

E. Conclusions of Law Regarding the Plan's Failure to Satisfy Section 524(g) of the Bankruptcy Code.

70. In order for a debtor to take advantage of section 524(g)(2)(B)(i)(II) of the Bankruptcy Code, it must have an ongoing business that will continue post-confirmation. *See, e.g.*, *In re Combustion Engineering, Inc.*, 391 F.3d 190, 248 (3d. Cir. 2004).

71. Hopeman's President conceded the existence of an "ongoing business' requirement under Section 524(g).

72. Hopeman has failed to present evidence of an "ongoing business" sufficient to comply with section 524(g) of the Bankruptcy Code, because it is a defunct entity with no operations or employees. Hopeman's President admitted that Hopeman has no ongoing business, and had no ongoing business when Hopeman filed its Petition.

73. Neither the passive real estate investment contemplated by the Restructuring Transaction, nor the operations of Reorganized Hopeman, would constitute an ongoing business as contemplated by section 524(g), because they share no connection to Hopeman in its current form and because they are "passive," not "active". *See, e.g.*, *Imperial Tobacco Canada. Ltd. v.*

Flintkote Company (In re Flintkote Company), 486 B.R. 99, 133-34 (Bankr. D. Del. 2012) (the debtor satisfied the ongoing business requirement because its business operations were not "passive"); *Fireman's Fund Insulation Company v. Plant Insulation Company (In re Plant Insulation Company)*, 734 F.3d 900, 917 (9th Cir. 2013) (the debtor did not satisfy section 524(g) because it proposed an unconfirmable plan in an "attempt to fit within the statute"); *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) (debtor facing possible asbestos liability that had an operating makeup business did not attempt to utilize section 524(g) because it "lacked the insurance or assets necessary to utilize that statute").

74. Because the Plan does not comply with section 524(g), it is unconfirmable.

F. Conclusions of Law Regarding the Plan's Failure to Satisfy Section 1129(a)(3) of the Bankruptcy Code.

75. The Plan Proponents failed to offer evidence sufficient to satisfy their burden of proving that the Plan was negotiated and proposed in good faith.

76. Mediation privilege cannot be used as a "sword and a shield" to prevent discovery into, and use of, communications that have been offered to support a legal claim. *See, e.g.*, *Bradfield v. Mid-Continent Cas. Co.*, 15 F. Supp. 3d. 1253, 1256-57 (M.D. Fla. 2014).

77. Although the Plan Proponents have stated that the Mediation proves the Plan was proposed in good faith (thus using the Mediation as a "sword"), the Plan Proponents have provided no evidence that the parties participated in the Mediation in good faith other than the conclusory and non-factual testimony of Mr. Lascell (thereby "shielding" all evidence of communications that occurred during the Mediation). This is a textbook violation of the "sword and shield" principle.

78. Although this Court places great weight on the supervision and guidance of Judge Huennekens — as well as the value of judicial mediation in reaching consensual agreements —

the Plan Proponents have cited no caselaw concluding that the existence of a mediation, standing alone, is sufficient to prove that each party participated in the mediation in good faith.

79. In fact, well-reasoned authority cuts the other way. For example, in *In re Diocese of Camden*, the Bankruptcy Court for the District of New Jersey denied a proposed settlement between the debtor and its insurers because the settlement proponents had put forth no evidence regarding the value of the insurance policies to be settled. 653 B.R. 722, 740-741 (Bankr. D.N.J. 2023). The Bankruptcy Court noted:

> Indeed, the Insurers and the Debtor blocked any discovery of their discussions during mediation that led to the agreement for sale of the Policies. As a result, there was no evidence presented as to the discussions between the parties, how they reached their agreement, or how they reached the settlement figure of $30 million. Additionally, the Insurers appear to argue that the mere fact that the sale was the result of mediation establishes that the purchase was made in good faith and for value. However, they cite no caselaw to support the argument that engaging in mediation by itself, without any other evidence, establishes good faith under section 363 of the Bankruptcy Code, and the Court declines to adopt such a *per se* rule.
>
> *Id.* (internal citations omitted).

80. The same reasoning applies here. This Court does not have sufficient evidence to find that the Mediation was conducted in good faith. In consequence, the Plan does not satisfy section 1129(a)(3) of the Bankruptcy Code and is therefore unconfirmable.

G. <u>Conclusions of Law Regarding the Plan's Failure to Satisfy Section 1129(a)(7) of the Bankruptcy Code.</u>

81. The Plan Proponents failed to offer evidence sufficient to satisfy their burden of proving that the proposed governance structure of Reorganized Hopeman is (i) consistent with public policy and (ii) devoid of actual and potential conflicts of interest.

82. The Plan's proposed governance structure creates the possibility of self-dealing and conflicts of interest in light of, among other things, the TAC members' incentive to maximize

recoveries for their own clients to the detriment of other Asbestos Claimants. Liberty Mutual's Objection ¶¶ 67, 70, 72.

83. Mr. Austin is a prime example of an actual and potential conflict of interest with respect to a proposed member of the TAC. Liberty Mutual's Objection ¶ 67. Although Hopeman admits that Mr. Austin has a vested interest in maximizing his clients' recoveries, Hopeman contends that this situation is no different than the appointment of Official Committees of Unsecured Creditors in every chapter 11 case. Confirmation Brief ¶ 324. But this situation ***is*** different, because Mr. Austin and the other members of the TAC will have consultation and consent rights over actions of the Litigation and the Administrative Trustee, meaning that Mr. Austin may have the ability[4] to veto "mission-critical" actions the Litigation Trustee wishes to take because it would be detrimental to the interests of his clients. *Id.* ¶¶ 322.

84. Hopeman alleges that existence of the TAC itself will prevent conflicts, as will the existence of the Future Claimants' Representative (the "FCR"). *Id.* ¶¶ 318-320. This Court disagrees. The mere existence of the TAC and FCR does not prevent conflicts of interest from arising.

85. This Court does not presume that the Litigation Trustee, the members of the TAC, or the FCR will neglect their fiduciary duties. However, this Court has insufficient evidence to review how and why these individuals were chosen for their roles. This Court cannot conclude that no conflicts of interest are present because the Plan Proponents have failed to – and, in fact, refused to – adduce evidence on that point.

[4] The Plan is, at best, ambiguous regarding the mechanics of how the TAC and FCR's consent rights will function, which poses another obstacle with respect to the Plan's proposed governance structure.

86. For the foregoing reasons, the Plan does not satisfy section 1129(a)(7) of the Bankruptcy Code and is therefore unconfirmable.