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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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

NOTICE OF FILING OF TRAVELERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING DENIAL OF CONFIRMATION OF THE MODIFIED AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

Please take notice that, pursuant to the Court's directive stated on the record at the August 26, 2025 hearing and entered on the Bankruptcy Court's docket at Docket No. 1168, The Travelers Indemnity Company, Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company (collectively, "Travelers") hereby files its Proposed Findings of Fact and Conclusions of Law Regarding Denial of Confirmation of the Modified Amended Plan of Reorganization of Hopeman Brothers, Inc.

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under Chapter 11 of the Bankruptcy Code, attached hereto as Exhibit A (the "Proposed Findings and Conclusions").

Travelers' Proposed Findings and Conclusions are limited to findings and conclusions that are dispositive of the unresolved objections raised by Travelers, including the objections raised in Travelers' Objection [Dkt. No. 944 (redacted) and Dkt No. 949 (filed under seal)] and at the Confirmation Hearing, and the question of whether the Proposed Plan should be confirmed in its current form. Accordingly, Travelers' 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, Travelers has proposed the Proposed Findings and Conclusions that the Court should adopt, regardless of whether additional, unrelated findings of fact and conclusions of law are adopted.[1]

Dated: September 5, 2025

Respectfully submitted,

/s/ Joshua R. Taylor

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[1] Travelers reserves all of its rights and does not waive any objections to other findings of fact and conclusions of law.

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/ Joshua R. Taylor
Joshua R. Taylor

EXHIBIT A

Proposed Findings and Conclusions

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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.	

TRAVELERS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING DENIAL OF CONFIRMATION OF THE MODIFIED AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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I. INTRODUCTION

1. On May 21, 2025, Hopeman Brothers, Inc. ("Hopeman" or the "Debtor"), the debtor and debtor-in-possession in the above-captioned Chapter 11 Case, and the Official Committee of Unsecured Creditors (the "Committee," and collectively with Hopeman, the "Plan Proponents") proposed the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, dated May 21, 2025 (the "May Plan"). Dkt. 766.[1]

2. On May 21, 2025, this Court entered an order, *see* Dkt. 782, that, *inter alia*, (a) approved, on a conditional basis only, the *Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* (Dkt. 767) (the "Disclosure Statement") for solicitation purpose, (b) established objection deadlines, and (c) scheduled a hearing for July 1, 2025, at 10:00 a.m., which was subsequently adjourned to August 25, 2025, at 10:00 a.m. (the "Confirmation Hearing") to consider Confirmation of the Plan and approval of the adequacy of the Disclosure Statement.

3. On June 6, 2025, the Debtor filed the *Notice of Filing of Plan Supplement Related to Amended Plan of Reorganization of Hopeman Brothers, Inc.* (the "Plan Supplement"), *see* Dkt. 853, which included copies of: (i) the Revised Asbestos Trust Agreement, Plan Supplement, Ex. A, and a redline reflecting the changes thereto, *id.* at Ex. A-1; (ii) the Revised Trust Distribution Procedures, *id.* at Ex. B, and a redline reflecting the changes thereto, *id.* at Ex. B-1; (iii) the Amended By-Laws of Reorganized Hopeman, *id.* at Ex. C; (iv) the Amended Certificate of

[1] Unless otherwise defined herein, capitalized terms used herein have the meanings given to them in the Plan and the Disclosure Statement. In addition, any term used in the Plan or these Findings of Facts and Conclusions of Law ("Findings and Conclusions") that is not defined in the Plan, the Disclosure Statement, or these Findings and Conclusions, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

Incorporation, *id.* at Ex. D; (v) the Asbestos Personal Injury Claimant Release, *id.* at Ex. E; (vi) the Restructuring Transaction, *id.* at Ex. F; (vii) the List of the Vendor Released Parties, *id.* at Ex. G; (viii) the Asbestos Insurance Policies, *id.* at Ex. H, and (ix) the Revised Reorganized Hopeman Projections, *id.* at Ex. I, and a redline reflecting the changes thereto, *id.* at Ex. I-1.

4. On July 7, 2025, The Travelers Indemnity Company ("Travelers Indemnity"), Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company ("Travelers Casualty"), and St. Paul Fire and Marine Insurance Company ("St. Paul" and together with Travelers Indemnity and Travelers Casualty, collectively, "Travelers") filed the *Objections of the Travelers Indemnity Company, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company to (I) Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code and (II) the Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc.* (the "Travelers Objection"), as filed under seal at Dkt. 949 and with redactions, at Dkt. 944.

5. On July 7, 2025, objections were also filed by certain of the Debtor's other historical insurers, including Century Indemnity Company and Westchester First Insurance Company (together, "Chubb") and Liberty Mutual Insurance Company. Dkts. 959-960 and 953-954 ("Other Insurer Objections").

6. On July 25, 2025, the Debtor filed the *Plan Proponents': (I) Memorandum of Law in Support of: (A) Final Approval of the Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, and (B) Confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, and (II) Omnibus Reply to Plan Objections* ("Confirmation Brief"). Dkt. 1076.

7. On August 18, 2025, the Debtor filed the *Plan Proponents' Supplemental Memorandum of Law Regarding the Liquidation Analysis, the Best Interests Test Under Section 1129(A)(&) of the Bankruptcy Code, and the Scarcella Report* (the "Supplemental Confirmation Brief"). Dkt. 1119.

8. On August 21, 2025, the Debtor filed the *Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* (the "Plan"). Dkt. 1141.

9. On August 21, 2025, the Debtor filed the *Notice of Filing of Second Plan Supplement Related to Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* (the "Second Plan Supplement"), *see* Dkt. 1143, which included copies of: (i) the Second Revised Asbestos Trust Agreement ("Trust Agreement"), Second Plan Supplement, Ex. A, and a redline reflecting the changes thereto, *id.* at Ex. A-1; (ii) the Second Revised Trust Distribution Procedures ("TDPs"), *id.* at Ex. B, and a redline reflecting the changes thereto, *id.* at Ex. B-1; and (iii) Schedule of Non-Exclusive Causes of Action Transferred to the Asbestos Trust, *id.* at Ex. J.

10. The Confirmation Hearing was held on August 25, 2025, and August 26, 2025, at which the Court received evidence and heard argument concerning the Disclosure Statement and Plan. The Court also directed the submission of proposed Findings of Fact and Conclusions of Law on or before September 5, 2025. Dkt. 1168.

11. **WHEREFORE**, the Bankruptcy Court having (i) reviewed the Plan, the Disclosure Statement, the Plan Supplement, the Second Plan Supplement, the Travelers Objection and Other Insurer Objections, the Confirmation Brief, the Supplemental Confirmation Brief, and other pleadings before the Court in connection with the Confirmation of the Plan and approval of the

adequacy of the Disclosure Statement; (ii) held the Confirmation Hearing; (iii) considered the arguments of counsel made on the record at the Confirmation Hearing; (iv) considered all evidence presented and admitted into the record at the Confirmation Hearing; and (iv) taken judicial notice of the papers and pleadings on file in the Chapter 11 Case, including any adversary proceedings.

12. **NOW, THEREFORE**, the Court enters the following Findings of Fact and Conclusions of Law and denies confirmation of the Plan for the reasons set forth herein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW[2]

A. The Wellington Agreement and Travelers 2005 Agreement

13. In the Travelers Objection, Travelers raised objections to the definition of "Asbestos CIP Agreement" in the May Plan, asserting that the definition was vague and ambiguous as to whether the Wellington Agreement or Travelers 2005 Agreement are included within the definition of "Asbestos CIP Agreement." Dkt. 944 ¶¶ 12-23. Whether the Wellington Agreement or Travelers 2005 Agreements are included as Asbestos CIP Agreements is important, including because it impacts the treatment of such agreements under the Plan.

14. To resolve part of the Travelers Objection, the Plan reflects modifications that clarify that the Wellington Agreement is an Asbestos CIP Agreement. Dkt. 1141, Plan § 1.7.

15. The Plan Proponents also added modifications to add new definitions to the Plan, including for "Designated Insurance Agreement."[3] The definition of "Designated Insurance

[2] These Findings of Fact and Conclusions of Law constitute the Court's findings of facts and conclusions of law under Fed. R. Civ. P. 52 made applicable to this proceeding by Fed. R. Bankr. P. 7052 and 9014. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

[3] "1.51. Designated Insurance Agreement means any prepetition settlement agreement or any prepetition coverage-in-place agreement (including any related indemnity obligations thereunder) between Hopeman and one or more Asbestos Insurers (a) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds or (b) as to, or on account of, which the Debtor did not receive any payment of insurance proceeds

Agreement" states, *inter alia*, that the term "(i) includes the Travelers 2005 Agreement, but (ii) does not include an Asbestos CIP Agreement." Dkt. 1141, Plan § 1.51; *see also id.* § 1.110 (definition of "Travelers 2005 Agreement").

16. Section 6.2 of the Plan states that "**solely to the extent the Travelers 2005 Agreement constitutes an Executory Contract**, the Plan shall constitute a motion to reject the Travelers 2005 Agreement…." *Id.* § 6.2 (emphasis added). Section 6.2 also states that the Plan Proponents do not believe that any Designated Insurance Agreements constitute Executory Contracts. *Id.* ("for the purposes of clarity … while the Plan Proponents also do not believe that any such agreements constitute Executory Contracts, Hopeman is not assuming any Designated Insurance Agreement).

17. As set forth on the record by Debtor's counsel at the Confirmation Hearing, "the [P]lan [P]roponents and Travelers agree that the Travelers 2005 [A]greement, as that term is defined in the modified plan, is not an executory contract. [Plan Proponents and Travelers] also agree, however, to the extent it is an executory contract, the modified plan provides for the rejection of that agreement." Aug. 25, 2025 Confirmation Hrg. Tr. at 6:13-17. The Court also agrees that the Travelers 2005 Agreement is not an Executory Contract.

18. The Plan Proponents assert that, if the Travelers 2005 Agreement were executory, it is in their best interests to reject the Travelers 2005 Agreement.[4] However, since the Travelers

within the period of one year immediately preceding the Petition Date. For the avoidance of doubt, the term "Designated Insurance Agreement" (i) includes the Travelers 2005 Agreement, but (ii) does not include an Asbestos CIP Agreement." Dkt. 1141, Plan § 1.51.

[4] Specifically, Mr. Van Epps testified that Hopeman does not want to assume the Travelers 2005 Agreement if the agreement is deemed to be executory due to an indemnification provision in the agreement. Aug. 25, 2025 Confirmation Hrg. Tr. at 142:13-24. As noted above, the Court agrees that the Travelers 2005 Agreement is not an Executory Contract and needs not address the

2005 Agreement is not an Executory Contract, the Court need not address whether it is in the Debtor's best interest to reject the Travelers 2005 Agreement. As a non-Executory Contract, the Travelers 2005 Agreement cannot be rejected. *In re Stewart Foods, Inc.*, 64 F.3d 141, 144 (4th Cir. 1995).

19. Under the Plan, the Travelers 2005 Agreement is not rejected and will revest in Reorganized Hopeman. Dkt. 1141, Plan §§ 9.2, 11.1(f)(viii).

B. The Plan and Plan Documents Impair Travelers' Rights Notwithstanding Purporting to be Insurance Neutral, Making the Plan Not Confirmable

20. Travelers argues that the Plan is not insurance neutral and impermissibly impairs Travelers' rights and interests, including because the insurance neutrality provisions of the Plan do not include all relevant insurance agreements, and the Plan contains improper carve-outs and proposed findings that alter and/or impair insurer rights and interests. *See, e.g.*, Dkt. 944 ¶¶ 35-42; Aug. 26, 2025 Confirmation Hrg. Tr. 128:11-140:6. The Court agrees that as drafted, the Plan is not insurance neutral and cannot be confirmed.

21. The Plan Proponents have repeatedly represented and taken the position that the Plan is insurance neutral. *See, e.g.*, Dkt. 767, Disclosure Statement at 14 ("The Debtor contends the Plan is 'insurance neutral'"); Dkt. 759, Debtor's Omnibus Reply in Supp. of Solicitation Procedures Mot. ¶ 4 ("the proposed Plan will not alter any rights or defenses of any liability insurers of Hopeman who are 'Non-Settling Asbestos Insurers'"[5]).

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best-interest test. The Court also notes that the referenced provision is subject to other terms and conditions of the Travelers 2005 Agreement. *See, e.g.*, Travelers Ex. A. §VIII.C.

[5] Under the Plan, Travelers is a Non-Settling Asbestos Insurer. Dkt. 1141, Plan § 1.83.

22. Mr. Lascell, as Debtor's Rule 30(b)(6) corporate representative, testified that the Debtor does not intend to "alter or modify any of Hopeman's rights, duties, obligations or liabilities under the [Travelers] 2005 agreement." Travelers Ex. W, Debtor 30(b)(6) Dep. Tr. at 156:4-9.[6]

23. At the Confirmation Hearing, Mr. Van Epps testified that except "with respect to any insurance-related contracts that are being rejected under the [P]lan," the Debtor intends for the Plan "to be insurance neutral." Aug. 25, 2025 Confirmation Hearing Tr. at 141:2-6; *see also id.* at 161:4-6 ("Q. You testified that the plan is intended to be insurance neutral, right? A. Right."); *see also* Dkt. 1116, Van Epps Decl. ¶ 31.

24. In their Confirmation Brief, the Plan Proponents assert that even though the viability of the insurance-neutrality doctrine was purportedly called into question by the Supreme Court's decision in *Truck Insurance Exchange v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024), it is "crystal clear" that the Plan is insurance neutral. Dkt. 1076 ¶¶ 256, 268.

25. As an initial matter, although the Supreme Court found that insurance neutrality is not the proper test to determine whether an insurer has ***standing*** to object to confirmation of a plan, the Court did not address insurance neutrality as a requirement for confirmation. *Id.* at 283-84 (notwithstanding any insurance neutrality provisions, insurers are parties in interest under Section 1109(b) of the Bankruptcy Code with broad standing to object to plan confirmation).

26. Moreover, as recently observed by Judge Goldblatt, it is "settled that bankruptcy law intends for the bankruptcy filing of the insured to be as 'neutral' as possible to the rights and obligations of the insurer," observing that the "Third Circuit's recent *Boy Scouts* opinion makes

[6] References to "Travelers Ex.," "Chubb Ex.," and "Certain Insurers Ex." refer to the exhibits admitted into evidence at the Confirmation Hearing.

this point clearly." *In re AIO US, Inc.*, No. 24-11836 (CTG), 2025 WL 2426380, at *15 (Bankr. D. Del. Aug. 21, 2025) (citing *In re Boy Scouts of Am.*, 137 F.4th 126, 164 (3d Cir. 2025)).

27. In the *Boy Scouts* decision, the Third Circuit observed,

> Insurance policies are property of the estate, and bankruptcy law—save for exceptions not relevant here—does not alter rights under those contracts. So, under § 363(b), a debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts' rights.

Boy Scouts, 137 F.4th at 164-65 (internal citations omitted).

28. Accordingly, here, subject to the one exception noted by Judge Goldblatt,[7] the Plan must ensure that insurers' rights are "essentially the same as they would be outside of bankruptcy." *AIO US*, 2025 WL 2426380 at *2. That is, the Plan should not impair insurer rights or increase their burdens. *Id*. at *16; *Boy Scouts*, 137 F.4th at 165 ("a plan cannot be confirmed when it incorporates provisions that impermissibly impair [contractual] counterparts' rights"); *AIO US*, 2025 WL 2426380 at *17 (any plan or order confirming a plan "should not put a thumb on the scale one way or the other" and the parties' rights should be "the same as they would be had such a transaction occurred outside of bankruptcy").

29. In other words, a plan is insurance neutral if "all contractual rights and coverage defenses [are] fully preserved." *In re Flintkote Co.*, 486 B.R. 99, 117 (Bankr. D. Del. 2012), *aff'd*, 526 B.R. 515 (D. Del. 2014); *In re Pittsburgh Corning Corp.*, 453 B.R. 570, 605 (Bankr. W.D. Pa. 2011) (finding a proposed Section 524(g) plan "unconfirmable" due to "the lack of clarity regarding insurance neutrality"); *In re Crippin*, 877 F.2d 594, 598 (7th Cir. 1989) ("[B]ankruptcy

[7] The lone exception relates to the "insurers' rights to challenge the assignment of the policies to the trust," which Judge Goldblatt concluded are preempted by § 1123(a)(5)(B) of the Bankruptcy Code. *Id.* at *2.

courts do not have the power to rewrite contracts to allow debtors to continue to perform on more favorable terms."). If a plan increases insurance exposure and the likelihood of liability of carriers, it is not insurance neutral. *See In re Thorpe Insulation Co.*, 677 F.3d 869, 885 (9th Cir. 2012); *accord In re Glob. Indus. Techs. Inc.*, 645 F.3d 201, 212 (3d Cir. 2011) (en banc).

30. With this in mind, the Court turns to the first paragraph of Section 6.2 and Section 8.18 of the Plan, which are the purported insurance neutrality provisions of the Plan. After modifications made by the Plan Proponents, these provisions read as follows:

> **6.2. Asbestos Insurance Agreements.** The Plan Proponents do not believe that any of the Asbestos Insurance Policies or the Asbestos CIP Agreements constitute an Executory Contract. Nevertheless, ***for the avoidance of doubt, except as expressly provided in Section 8.18 and Section 11.1(g) herein, none of the Asbestos Insurance Policies or the Asbestos CIP Agreements*** is being rejected, altered, or otherwise modified pursuant to this Plan, the other Plan Documents, or the Confirmation Order, or any findings of fact or conclusions of law with respect to confirmation of the Plan and all parties' respective rights, duties, defenses, obligations, and liabilities thereunder are hereby preserved, ***except as such rights, duties, defenses, obligations, and liabilities may be affected by Section 8.18 or Section 11.1(g)*** or to the extent of an Asbestos Insurance Policy or Asbestos CIP Agreement that is the subject of and only to the extent contemplated by and provided for in an Asbestos Insurance Settlement and only to the extent approved by an order of the Bankruptcy Court or the District Court.
>
> …
>
> **8.18. Insurance Neutrality**. Nothing in the Plan, the other Plan Documents, the Confirmation Order, any finding of fact or conclusion of law with respect to confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order (i) shall preclude any Non-Settling Asbestos Insurer from asserting in any proceeding any and all claims, defenses, rights, or causes of action that it has or may have ***under or in connection with any of its Asbestos Insurance Policies or any of its Asbestos CIP Agreements;*** or (ii) shall be deemed to waive any claims, defenses, rights, or causes of action that any Non-Settling Asbestos Insurer has or may have under the provisions terms, conditions, defenses, or exclusions ***contained in its Asbestos Insurance Policies and its Asbestos CIP Agreements***, including any and all such claims, defenses, rights, or causes of action based upon or arising out of the Channeled Asbestos Claims that are liquidated, resolved, discharged, channeled, or paid in connection with the Plan; ***provided, however***, that (a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the

> Asbestos Insurance Rights as Hopeman or Reorganized Hopeman may have, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected Parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent that any such insurer is a Settled Asbestos Insurer. Notwithstanding anything in this Section 8.18 to the contrary, nothing in this Section 8.18 shall affect or limit, or be construed as affecting or limiting, (1) the binding effect of the Plan and the Confirmation Order on Hopeman, Reorganized Hopeman, the Asbestos Trust, or the beneficiaries of the Asbestos Trust or (2) the protection afforded to any Settled Asbestos Insurer by the Asbestos Permanent Channeling Injunction. Further, nothing in this Section 8.18 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. Except as otherwise provided in this Section 8.18, including, without limitation, the foregoing (a) regarding the transfer of the Asbestos Insurance Rights to the Asbestos Trust and the foregoing (b) regarding the discharge of Hopeman and Reorganized Hopeman, the Asbestos Insurance Rights held by the Asbestos Trust and any claims made against the Asbestos Insurance Policies on account of such rights will be subject to any coverage defenses a Non-Settling Asbestos Insurer may raise as a result of Reorganized Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations. For the avoidance of doubt, notwithstanding that the Asbestos Insurance Cooperation Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust, the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies shall be subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to perform the Asbestos Insurance Cooperation Obligations.

Dkt. 1141, Plan §§ 6.2 & 8.18 (emphasis added).

31. As discussed further herein, the Court finds these provisions are too narrow, and also that they, as well as other provisions in the Plan, contain improper "carveouts" and/or otherwise impair the rights of Non-Settling Insurers, including Travelers.

32. First, while the language in subparts (i) and (ii) at the beginning of Section 8.18 (*i.e.*, preceding the "provided, however" clause in Section 8.18) purports to preserve Non-Settling Asbestos Insurer's claims, defenses, rights, and causes of action with respect to "Asbestos Insurance Policies and Asbestos CIP Agreements," this language fails to cover all relevant

insurance-related agreements. As explained above, the Plan Proponents modified the Plan to include "Designated Insurance Agreements" as a new defined term that includes certain other agreements with insurers, including the Travelers 2005 Agreement. As the Court has found (and as agreed by the Plan Proponents), the Travelers 2005 Agreement is not an Executory Contract and will remain in place. Thus, the Plan cannot impermissibly impair Travelers' rights under the Travelers 2005 Agreement. Because Section 8.18 fails to include "Designated Insurance Agreements that are not rejected, including the Travelers 2005 Agreement," Section 8.18 is too narrow. Therefore, the Court finds that Section 8.18 is not confirmable as it does not maintain the rights of Travelers as they would exist outside of bankruptcy.

33. Similarly, Section 6.2 fails to include Designated Insurance Agreements that are not rejected within its "preservation" provisions. Rather than preserving Travelers' claims, defenses, rights, and causes of action with respect to the Travelers 2005 Agreement, such language is limited to Asbestos Insurance Agreements and Asbestos CIP Agreement. For the same reasons as discussed above, this makes Section 6.2 too narrow and the Plan unconfirmable as drafted.

34. Additionally, as discussed immediately below in Section C, certain "carveout" language that follows "provided, however" in Section 8.18 of the Plan, as well as other Plan provisions, improperly impairs insurer rights, rendering the Plan unconfirmable without changes.

35. Moreover, despite contending in their Confirmation Brief that Section 6.2 does not impact insurers' "rights under their Policies" (Dkt 1076 ¶ 268) (and arguing the "Plan is crystal-clear on this point"), the Plan Proponents subsequently modified Section 6.2 to make the provision subject to the provisions of Sections 8.18 and 11.1(g). *See* Dkt. 1141, Plan § 6.2 ("except as expressly provided in Sections 8.18 and Section 11.1(g) herein…"). Thus, rather than being clear that the Plan does not impact insurer rights, Section 6.2 now expressly provides that it does impact

insurer rights in Sections 8.18 and 11.1(g). As discussed below, those provisions contain a number of provisions that impermissibly impair and limit insurer rights. Thus, the Court cannot confirm the Plan as written.

C. The Plan is Not Confirmable Because It Contains Impermissible Findings of Fact

36. Travelers objects to a number of provisions of the Plan because they seek declaratory judgments that would impair Travelers rights in future coverage litigation. *See, e.g.*, Dkt. 944 ¶¶ 42, 60-65.

37. This Court agrees that the Plan, as currently drafted, requires the Court to make unnecessary and impermissible findings that would impair the Non-Settling Asbestos Insurers' rights. The proposed findings—which appear in Section 8.18, Section 10.6, and Section 11(g)(xxvii) of the Plan—are tantamount to declarations concerning the rights and obligations of the parties regarding insurance coverage. But bankruptcy courts have consistently recognized that a state court coverage action, or at least an adversary proceeding, is the appropriate forum for resolution of declaratory claims. *See, e.g.*, Order Concerning Mot. For Decl. That Section 362(a) Of The Bankruptcy Code Is Not Applicable Or, In The Alternative, For Relief From The Automatic Stay, *In re Congoleum*, No. 03-51524-MBK (Bankr. D.N.J. Mar. 23, 2004), ECF No. 497; *In re Conxus Commc'ns, Inc.*, 262 B.R. 893, 900 (D. Del. 2001) (bankruptcy court lacks authority to enjoin contract counterparty from exercising rights after post-confirmation breach); *In re Sunflower Racing*, 226 B.R. 673, 694 (D. Kan. 1998) (bankruptcy courts lack equitable power to determine contract rights in context of confirmation hearing). Indeed, Rule 7001(i) requires that requests for declaratory relief be made in an adversary proceeding. Fed. R. Bankr. P. 7001; *Feld v. Zale Corp.* (*In re Zale Corp.*), 62 F.3d 746, 762 (5th Cir. 1995) (holding that, when a Fed. R.

Bankr. P. 7001 category was at issue, the movant "may obtain the authority he seeks only through an adversary proceeding") (citation omitted).

38. Moreover, the determination of coverage issues is not a core matter, even if it might be "important" to Hopeman. *See In re U.S. Brass Corp.*, 110 F.3d 1261, 1268 (7th Cir. 1997) ("Eljer's claimed right to insurance coverage is a creation of state contract law and one that could be vindicated in an ordinary breach of contract suit if Eljer were not a bankrupt. The fact that it is an important right to the bankrupt—Eljer claims to be seeking $500 million in insurance coverage—is irrelevant."); *In re Longview Power, LLC*, 515 B.R. 107, 114 (Bankr. D. Del. 2014) (claim seeking declaratory judgment regarding availability of coverage under policy was non-core); *see also In re PRS Ins. Grp., Inc.* 445 B.R. 402, 404 (Bankr. D. Del. 2011) (citing cases). Confirmation does not require determination of coverage issues, especially with respect to future alleged claims. *In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. 87, 146-147 (D. Del. 2023) ("[t]he requirements for confirmation do not include any right to coverage dispute resolution, much less with respect to future alleged claims"), *aff'd in part, rev'd in part and dismissed in part on other grounds sub nom., In re Boy Scouts of Am.*, 137 F.4th 126 (3d Cir. 2025).

39. The Plan's unnecessary and improper findings are separately addressed below.

40. Section 8.18: In an apparent attempt to limit the future rights of the Non-Settling Asbestos Insurers to raise coverage defenses, Section 8.18 contains proposed findings that address the: (i) impact of the transfer of the Asbestos Insurance Rights and (ii) the discharge, release, and injunction in these proceedings. Dkt. 1141, Plan § 8.18. In particular, Section 8.18 states that, notwithstanding other representations in that Section that are intended to preserve insurance neutrality, "*provided, however*, that (a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the Asbestos

Insurance Rights as Hopeman or Reorganized Hopeman may have, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected Parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent that any such insurer is a Settled Asbestos Insurer." Dkt. 1141, Plan § 8.18. Such language is in direct conflict with the insurance neutrality language in Section 8.18,[8] and no authority requires or permits the inclusion of such "carveout" provisions in the Plan. Such provisions unnecessarily and impermissibly seek to have this Court make coverage determinations and predetermine whether Hopeman's conduct and actions violate the terms and conditions of insurance policies and contracts.

41. In response, the Plan Proponents—while not asserting that the Court *must* do so—contend that the Court *has the authority* to decide coverage issues here. Dkt. 1120, ¶ 193. But the decision that they cite for this proposition—*Boy Scouts*, 137 F.4th at 164-66—provides no support. As an initial matter, Third Circuit in *Boy Scouts* did not reverse or criticize the finding by the lower court that "requirements for confirmation do not include any right to coverage dispute resolution." *Compare id., with Boy Scouts*, 650 B.R. at 146-47. Moreover, the Third Circuit stated with respect to insurance coverage that, under Section 363(b), "a debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts' rights." *Boy Scouts*, 137 F.4th at 164-65. The Third Circuit went on to approve the plan at issue in that case after determining that it contained no terms that

[8] The Plan Proponents have never denied that the carveouts limit the insurance neutrality provisions in Section 8.18. Indeed, if they did not limit those provisions, there would have been no reason to include the carveouts.

violated the foregoing principles of insurance neutrality. *Id.* By contrast, in the present case, the carveouts in Section 8.18 constitute *exceptions* to Plan language intended to ensure neutrality.

42. While this Court can determine whether the transfer of the Asbestos Insurance Rights is appropriate under the Bankruptcy Code, this Court need not determine the effect of such transfer. Such issues can be resolved in any future coverage disputes. *Boy Scouts*, 650 B.R. at 147. The Plan Proponents assert that because Travelers and Chubb have objected to the transfer as a violation of the *cum onere* principle, this puts the issue before the Court and therefore the Court can decide. However, as discussed below, the *cum onere* objection does not challenge the transfer itself, but instead points out the any transfer of rights must also include the obligations, terms and conditions. Thus, the only finding that might be appropriate is that the transfer is authorized. The Court need not go further and determine the impact of that transfer on the rights of insurers.

43. In their Confirmation Brief, Plan Proponents also argued that, because various Non-Settling Asbestos Insurers objected to the carveouts in Section 8.18, the Court can now make a finding as to the carveouts; *i.e.*, find that the transfers of Asbestos Insurance Rights and the discharges, releases, and injunctions in the Plan do not "affect the liability of any insurer." Dkt. 1076, ¶ 283. But this argument is circular. If a debtor could obtain declaratory relief simply by asking for it, and requiring its opponent to either not object (and thus have the relief granted) or object and by doing so put the matter at issue, bypassing the requirement for an adversary proceeding, the requirement of an adversary proceeding would be meaningless.

44. Plan Proponents also make the unpersuasive argument that it is "black-letter law" that a discharge and release do not impact the liability of any insurer. Dkt. 1076, Confirmation Br. ¶ 284. But while it is generally true that a debtor's discharge and release do not impact another party's responsibilities respecting the same debts, Section 8.18 improperly goes further by

impairing Non-Settling Asbestos Insurers' rights to assert defenses based on a failure to perform as a result of the discharge and release or any injunction. Regardless of the discharge and release of Hopeman, if Reorganized Hopeman or the Asbestos Trust fail to perform obligations required under the policies, the Non-Settling Asbestos Insurers will have defenses to coverage claims. There is no basis for this Court to find now that those defenses do not exist. Moreover, Section 8.18's statement that the injunctions in the Plan do not "affect the liability of any insurer" is overbroad, since those injunctions go further than the discharge and release provisions.

45. Apart from the carveouts described above, Section 8.18 is also improper because it contains the following proposed finding regarding the res judicata and collateral estoppel effect of the Plan and confirmation of the Plan:

> Further, nothing in this Section 8.18 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.

Dkt. 1141, Plan § 8.18. Such language is improper because, as Judge Silverstein recently explained, "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." *In re Boy Scouts of America*, 642 B.R. 504, 631-32 (Bankr. D. Del. 2022). Similarly, Judge Goldblatt held last month in *AIO US*, that "[i]t is generally settled law, … that the preclusive effect of a court's judgment is properly decided by the subsequent court, not the rendering court. A court usually does not get to dictate the preclusion consequences of its own judgment." 2025 WL 242638, at *26; *see also, e.g.*, Dkt. 944, Travelers Objection (citing additional authorities).[9] The Court concludes that it is barred from approving the proposed res judicata and collateral estoppel language in Section 8.18 of the Plan.

[9] The Plan Proponents have not responded to, much less challenged, this particular objection.

46. Section 10.6: In the Travelers Objection, Travelers objected to Section 10.6 of the Plan as containing unnecessary and improper findings. Dkt. 944, ¶ 63. The Plan Proponents did not address these objections in their Confirmation Brief or otherwise. This Court agrees with Travelers.

47. Section 10.6 of the Plan contains a proposed finding/advisory ruling that "no release of the Released Parties shall diminish, reduce, or eliminate the duties of any Asbestos Insurer under any Asbestos Insurance Policy or any Asbestos CIP Agreement." Dkt. 1141, Plan § 10.6. As explained above, such a finding must be sought in state court or in an adversary proceeding and is not required for Plan confirmation. In other words, it is neither necessary nor proper in this case.

48. Section 11.1(g)(xxvii): Under Section 11.1(g)(xxvii) of the Plan, confirmation of the Plan is contingent upon an improper declaratory judgment, disguised as a finding of fact by this Court, that Hopeman's conduct in this bankruptcy case does not affect coverage under Non-Settling Insurers' insurance policies and agreements as a matter of state law. Specifically, Section 11.1(g)(xxvii) requires the Court to find, as a condition precedent to confirmation, that:

> Hopeman's conduct in connection with and throughout the Chapter 11 Case, including its negotiations with the Committee and the Future Claimants' Representative, Hopeman's commencement of this Chapter 11 Case, and the drafting, negotiation, proposing, confirmation, and consummation of the Plan, does not and has not violated any Asbestos Insurance Cooperation Obligations, nor were such events or conduct a breach of any express or implied covenant of good faith and fair dealing.

Id. § 11.1(g)(xxvii).

49. The Court rejects this language and concludes that the Plan cannot be confirmed with it. The question before this Court is whether the Plan comports with the requirements of the Bankruptcy Code, which the proposed finding does not implicate. Also, as explained above, the proper forum for Plan Proponents to seek their proposed declaratory judgment is in a state court

or in an adversary proceeding. The requested finding of fact is not required for confirmation of the Plan, and this Court declines to make it.

50. Further, the Court finds that even if such relief can be granted in the context of plan confirmation (and it cannot), there is no factual or legal basis of the proposed finding contained in Plan § 11.1(g)(xxvii). No evidence was presented establishing that, from commencement of this action to the present, Hopeman has not violated any Asbestos Insurance Cooperation Obligations or breached the express or implied covenant of good faith and fair dealing.[10] The Plan Proponents have not even identified or introduced into evidence the cooperation provisions in the insurance policies as to which they seek their improper declaratory judgment or addressed state law regarding the implied covenant of good faith and fair dealing.[11]

51. Nevertheless, Plan Proponents assert that the finding is "important" to prevent insurers from arguing that the Debtors breached their insurance cooperation obligations. Dkt. 1076, Confirmation Br. ¶ 285. But that finding is not appropriate now, as a dispute (if any) can be adjudicated in a future coverage action. Additionally, whether any "Asbestos Insurance Cooperation Obligation" or duty of good faith/fair dealing (contract-related issues, under state laws) was breached is different from, and does not implicate, the good faith bankruptcy standard for the propounding of a plan. The subject findings are not necessary for confirmation of the Plan.

52. The Plan Proponents further contend that the findings in Section 11.1(g)(xxvii) are consistent with language in *Kaiser Gypsum*. *Id.* But in *Kaiser Gypsum*, the *insurer* initiated an

[10] The only evidence offered was a conclusory statement by Mr. Van Epps that he was not aware of any conduct by the Debtor, but he also acknowledged he was not involved in all activity undertaken by the Debtor. Aug. 25, 2025 Confirmation Hrg. Tr. at 144:23-25; 162:16-23.

[11] Moreover, much of the case and the negotiation of the Plan is shrouded by the mediation privilege. *See* Dt. 443; Aug. 25, 2025 Confirmation Hrg. Tr. 279:5-19; Chubb Ex. 8 (Letter from T. Long to Counsel). Therefore, the requested finding is not possible for this additional reason.

adversary proceeding and also asserted a confirmation objection that the plan altered rights under its policies, alleging: (i) the debtor had failed to include some of its desired bankruptcy plan language in the plan, and (ii) this failure allegedly breached the cooperation provision in the insurer's policies and breached the duty of good faith and fair dealing under applicable state law. As a result, the court was compelled to examine the at-issue policy language and relevant state law (there, California law) to resolve the confirmation objection. *See In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 85-86 (4th Cir. 2023), *rev'd and remanded on other grounds sub nom. Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024). Here, nothing of the sort has occurred, and such a finding is unnecessary and improper.

53. Finally, Plan Proponents' Confirmation Brief argued that the provision is needed to maintain the "status quo" by making clear that the Chapter 11 and Debtor's actions do not alter coverage. Dkt. 1070 ¶ 286. This argument lacks merit. Contrary to the Plan Proponents, and as explained above, the proposed findings in Section 11.1(g)(xxvii) do not maintain the status quo, but rather assume and seek this Court's blessing for a position preferred by the Plan Proponents.

54. For the reasons set forth above, the Court concludes that the Plan cannot be confirmed because it includes the improper provisions discussed above.

D. The Plan Cannot Be Confirmed Because It Improperly Purports to Transfer to the Asbestos Trust Only Hopeman's Rights With Respect to the Asbestos Insurance Policies and Asbestos CIP Agreements Without Transferring the Corresponding Terms, Conditions, and Obligations

55. Travelers objected to the transfer of Asbestos Insurance Rights, which include all of Hopeman's rights with respect to Asbestos Insurance Policies and Asbestos CIP Agreements, to the Asbestos Trust without a transfer for the corresponding obligations, terms, and conditions to the Asbestos Trust. Dkt. 944, Travelers Objection ¶¶ 24-31.

56. Under the Plan, "the Asbestos Trust Assets, and any proceeds thereof, will be transferred to, and indefeasibly vested in, the Asbestos Trust, free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity." Dkt. 1141, Plan § 8.3(b). Although "Asbestos Trust Assets"[12] includes "Asbestos Insurance Rights"[13] and certain other assets, it does not include the Asbestos Insurance Policies or Asbestos CIP Agreements themselves, or the corresponding terms and conditions, or obligations, related to those rights. *Id.* § 1.22.

57. "Asbestos Insurance Rights" include only Hopeman's rights with respect to Asbestos Insurance Policies and Asbestos CIP Agreements. *Id.* § 1.13. All of Hopeman's rights will be vested in and transferred to the Asbestos Trust. Dkt. 1141, Plan §§ 1.13 & 8.3(b).[14] However, all of the corresponding terms and conditions under such policies and agreements and any of Hopeman's obligations thereunder will be retained by Reorganized Hopeman. Dkt. 1141, Plan §§ 6.2, 9.2; *see also, e.g. id.* § 8.18 ("the Asbestos Insurance Cooperation Obligations will "remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to

[12] "1.22. Asbestos Trust Assets means, collectively: (a) the Asbestos Trust Contribution; (b) the Asbestos Insurance Rights; (c) all other assets, rights (including Causes of Action), and benefits assigned, transferred or conveyed to the Asbestos Trust in connection with the Plan or any Plan Documents; and (d) all proceeds of the foregoing." Dkt. 1141, Plan § 1.22.

[13] "1.13. Asbestos Insurance Rights means any and all of Hopeman's rights, title, privileges, interests, claims, demands, or entitlements in or to any insurance coverage, defense, indemnity, proceeds, payments, escrowed funds, initial or supplemental dividends, scheme payments, supplemental scheme payments, state guaranty fund payments, causes of action, and choses in action under, for, or related to (i) the Asbestos Insurance Settlements, (ii) the Asbestos Insurance Policies, or (iii) the Asbestos CIP Agreements, whether now existing or hereafter arising, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, disputed or undisputed, fixed or contingent, . . ." Dkt. 1141, Plan § 1.13.

[14] *See also, e.g.*, Travelers Ex. Z, at Committee Interrog. Response No. 6 ("Under the Plan, all of Hopeman's rights under the Asbestos CIP Agreements will be transferred to, and vested in, the Asbestos Trust.").

the Asbestos Trust").[15] Thus, for example, as an Asbestos CIP Agreement, Hopeman's rights under the Wellington Agreement will be transferred to the Asbestos Trust, while the Wellington Agreement will revest in Reorganized Hopeman. Dkt. 1141, Plan §§ 1.13, 8.3(b), 9.2, & 11.1(g)(viii).

58. Travelers asserts that splitting the rights from the terms, conditions and obligations is not permissible under the *cum onere* principle. This Court agrees with Travelers.

59. Debtor's rights and obligations are defined under state law: non-bankruptcy law generally defines parties' property rights. *See Butner v. United States,* 440 U.S. 48, 55 (1979). The estate is comprised of "all legal or equitable interests of the debtor in property" "wherever located." 11 U.S.C. § 541(a)(1). It is a bedrock principle of bankruptcy law that a debtor's rights neither expand nor contract by "happenstance" of bankruptcy. *See Mission Prod. Holdings v. Tempnology, LLC*, 587 U.S. 370, 381 (2019). The Debtor "cannot possess anything more than the debtor itself did outside bankruptcy." *Id*.

60. Contracts, including insurance policies and insurance-related agreements, are property of the estate, and bankruptcy law does not generally alter rights under those contracts. *See, e.g., NLRB v. Bildisco & Bildisco,* 465 U.S. 513, 531–532 (1984); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989). It is axiomatic that a debtor has the same "rights and defenses" under an insurance policy or coverage-in-place agreement as those held prior to bankruptcy. *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 245 n.66 (3d Cir. 2004), *as amended* (Feb. 23, 2005). "The filing of a bankruptcy petition does not alter the scope or terms of a debtor's insurance policy." *In re MF Glob. Holdings Ltd.,* 469 B.R. 177, 194 (Bankr. S.D.N.Y. 2012). Nor

[15] *See also, e.g.,* Travelers Ex. Z, at Committee Interrog. Response No. 6 ("Any of Hopeman's duties or obligations under Asbestos CIP Agreements will be retained by Reorganized Hopeman.").

does it permit an insured to "obtain greater rights to the proceeds of [an insurance] policy." *In re Denario,* 267 B.R. 496, 499 (Bankr. N.D.N.Y. 2001).

61. "Bankruptcy law generally does not permit a debtor or an estate to assume the benefits of a contract and reject the unfavorable aspects of the same contract." *Folger Adam Sec., Inc. v. DeMatteis/MacGregor JV*, 209 F.3d 252, 264 (3d Cir. 2000). For this reason, the Bankruptcy Code requires that the assignment of any contract be made "cum onere"—with both its rights and obligations thereunder. *See Century Indem. Co. v. NGC Settlement Tr.* (*In re Nat'l Gypsum Co.*), 208 F.3d 498, 506-507 (5th Cir. 2000).[16] The *cum onere* principle dictates that a debtor can only assign and/or transfer a contract if it transfers both its rights and obligations thereunder that were present prior to the bankruptcy. *In re Tex. Rangers Baseball Partners,* 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) ("A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party").

62. Although the *cum onere* principle appears most frequently in the context of assumption and assignment under Section 365, the *cum onere* principle applies equally to assignments made under Section 365 (for executory contracts) as it does to assignments made under Section 363 (for non-executory contracts). *See Boy Scouts*, 137 F.4th at 164-165 (A plan cannot be confirmed if "it incorporates provisions that impermissibly impair counterparts' rights," but where the plan transferred all rights and obligations, it did not violate that requirement); *In re Pin Oaks Apartments,* 7 B.R. 364, 372 (Bankr. S.D.Tex. 1980) ("Sections 365 and 363(b) of the Code do not give the trustee the power to assume [a contract] and then change its provisions");

[16] Under this well-recognized principle, a debtor cannot rewrite the contract to create a different deal. *See, e.g., In re Thornhill Bros. Fitness, L.L.C.,* 85 F.4th 321, 326 (5th Cir. 2023) ("[A] debtor assuming an executory contract cannot separate the wheat from the chaff . . . [and] must assign the contract in whole, not in part").

Folger Adam Sec., Inc., 209 F.3d at 252; *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 (4th Cir. 1995) (holding that a debtor "remains bound by the debtor's obligations under [non-executory] contracts after the bankruptcy filing.").[17]

63. The Plan Proponents assert that the *cum onere* principle is inapplicable because "section 1123(a)(5) of the Bankruptcy Code controls here." Dkt. 1076, Confirmation Br. ¶ 273.[18] Specifically, the Plan Proponent emphasize that the transfer of rights under a debtor's insurance policies to a trust is permitted under Section 1123(a)(5), "notwithstanding any anti-assignment provisions contained in the policies themselves." *Id.* ¶ 274. But the Plan Proponents' argument misses the point. Travelers does not contend that assignment of insurance rights is prohibited under the Code, but rather, that any assignment of the insurance "rights" must be transferred with the corresponding terms and conditions and any obligations.

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[17] *See also, e.g., In re Am. Home Mortg. Holdings, Inc.*, 402 B.R. 87, 98 (Bankr. D. Del. 2009) ("[T]he cum onere principle applies equally to the transfer of rights and obligations under a non-executory contract"); *In re Superior Air Parts, Inc.*, 486 B.R. 728, 738 (Bankr. N.D. Tex. 2012), *aff'd sub nom. Lycoming Engines v. Superior Air Parts, Inc.*, No. 13-CV-1162-L, 2014 WL 1976757 (N.D. Tex. May 15, 2014) ("[W]hen a contract is non-executory, the debtor remains bound to its obligations under that contract after the bankruptcy filing."); *In re Badlands Energy, Inc*., 608 B.R. 854, 875 (Bankr. D. Colo. 2019) (requiring Section 363 purchaser of contracts to comply with obligations); *Meiburger v. Endeka Enters., L.L.C. (In re Tsiaoushis)*, 383 B.R. 616, 621 (Bankr. E.D. Va. 2007), *aff'd*, No. 07cv436, 2007 WL 2156162 (E.D. Va. July 19, 2007) ("The court concludes that the Endeka operating agreement is not an executory contract. Thus, § 365(e)(1) of the Bankruptcy Code is not applicable and ¶¶ 9.1 and 9.2 of the operating agreement are valid and fully enforceable"); *In re Spyglass Media Grp. v. Bruce Cohen Prods. (In re Weinstein Co. Holdings)*, 997 F.3d 497, 505 (3d Cir. 2021) ("if the contract is not executory, it can be sold to a § 363 buyer like any other liability or asset.… Under the terms of the sale, the buyer must typically fulfill obligations under the contract it bought after the sale closes, just as it would with any other asset or liability.") (citation omitted); *In re BearingPoint, Inc*., No. 09-10691 (REG), 2009 WL 8519983, at *1 (Bankr. S.D.N.Y. Feb. 18, 2009) ("Any Purchaser of a Legacy Contract purchases same cum onere.").

[18] Section 1123(a)(5) provides, that "Notwithstanding any otherwise applicable nonbankruptcy law**,** a plan shall—… (5) provide adequate means for the plan's implementation, such as—… (B) the 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 the plan. 11 U.S.C. § 1123(a)(5)(B).

64. Plan Proponents also cite cases asserting that Section 1123(a)(5) is a preemptive provision that supersedes state law. Dkt. 1076, Confirmation Br. ¶ 273 & n.343. However, none of those cases addressed whether the Bankruptcy Code permits the transfer of the rights under an agreement without the concomitant obligations, terms, and conditions. Thus, they are not determinative of the issue before the Court.

65. Plan Proponents cite the recent bankruptcy court decision in *Boy Scouts* in support of their position that they can split the rights from the terms and obligations. Dkt. 1076, Confirmation Br. ¶ 277. However, the Third Circuit's decision rejects Plan Proponents' position. As noted by the Third Circuit:

> the Plan confirms that the Certain Insurers retain their rights and defenses under the policies: It clarifies that 'the Settlement Trust has received the assignment and transfer of . . . ***all other*** rights and obligations under or with respect to the Insurance Policies (but not the policies themselves) in accordance with the Bankruptcy Code.

Boy Scouts, 137 F.4th at 165 (emphasis added) (ellipses in original).

66. More recently, Judge Goldblatt directly addressed this issue: whether "any assignment of 'rights' must bring with it the 'obligations' under the insurance policies." *AIO US*, 2025 WL 2426380 at *24. Judge Goldblatt held that, because the policies were not executory, the debtors may not have "obligations" per se, but the policies contained "terms and conditions" that must be preserved and transferred to the Trust with the associated rights. *Id.* The Court held that, "[t]o the extent any of the plan language may be read to suggest that the insurance 'rights' may be transferred without the corresponding terms and conditions, the plan and confirmation order must be revised to reflect that the fact that the 'rights' remain subject to those terms and conditions." *Id.*

67. The cited rulings and rationales apply equally here, and the Plan cannot be confirmed as written. The transfer of the Asbestos Insurance Rights to the Asbestos Trust must be accompanied by a transfer to the Asbestos Trust of all corresponding terms, conditions, and

obligations (including *but not limited* to the Asbestos Insurance Cooperation Obligations), and the Plan must make clear that the Asbestos Insurance Rights remain subject to all terms and conditions, and any obligations under the Asbestos Insurance Policies, Asbestos CIP Agreements, and Asbestos Settlement Agreements.

E. The Plan Cannot Be Confirmed Because It Impairs Travelers' Rights to Settlement Proceeds and Eliminates Insurer Rights Without Adequate Protection

1. Travelers Has Interests in Other Insurers' Policies.

68. Prior to bankruptcy, Hopeman funded its defense of and resolution of Asbestos Claims partially through cash on hand and partially via coverage under insurance policies that require the applicable insurer to pay and/or reimburse Hopeman for defense costs and/or indemnity costs. Dkt. 8, Decl. of Christopher Lascell in Supp. of Ch. 11 Petition and First Day Pleadings of Hopeman Brothers, Inc. ¶¶ 30-36 (Certain Insurers Ex. 1); Dkt. 767, Disclosure Statement at 10-11.

69. It is undisputed that Travelers does not have any contractual obligation to provide a defense or pay defense costs under the Travelers Policies. *See, e.g.*, Travelers Ex. D, Travelers Casualty Policy No. 01 XN 542 WCA at 3; *see also id.*, Travelers Exs. C, F, H, I, K, L, N, O, Q, R, T, U; Travelers Ex. A §§ C-E. In contrast, certain insurers are obligated to defend Hopeman and/or pay defense costs under their policies, and/or agreements with Hopeman, such as the Wellington Agreement and bilateral agreements with Hopeman. Dkt. 8, Decl. of Christopher Lascell in Supp. of Ch. 11 Petition and First Day Pleadings of Hopeman Brothers, Inc. ¶¶ 31-33 (Certain Insurers Ex. 1); Dkt. 767, Disclosure Statement at 9.

70. For example, Travelers Casualty, along with Hopeman and various other Hopeman insurers, are signatories to the Wellington Agreement. *See, e.g.*, Dkt. 8, Decl. of Christopher Lascell ¶ 32 (Certain Insurers Ex. 1); Aug. 25, 2025 Confirmation Hrg. Tr. 6:18-22. Under the

agreement, signatory insurers that issued excess policies may, under some circumstances, have a duty to pay Hopeman's defense costs. Travelers Ex. B, Wellington Agreement, ¶ XI.1. But the agreement also states that those carriers—like Travelers Casualty, whose excess policies exclude a defense obligation—are not required to pay defense costs. *Id*.

71. As explained in the Travelers Objection, to the extent insurers with a defense payment obligation settle with Hopeman, other insurers might pay defense costs to avoid entry of default judgments. *See* Dkt. 944 ¶ 45. To the extent Non-Settling Asbestos Insurers without defense obligations, like Travelers, provide a defense to Hopeman to avoid entry of default judgments, they could be incurring costs that are other insurers' responsibility. *See id*.

72. Travelers previously explained—and the Plan Proponents did not rebut—that under state law, Travelers could have breach of contract claims or equitable claims, such as contribution or other claims, against the Settled Asbestos Insurers for their share of defense costs. Dkt. 944, ¶ 45. *See also, e.g., Hartford Accident & Indem. Co. v. Mich. Mut. Ins. Co.*, 61 N.Y.2d 569, 573-574 (1984) (excess carrier may bring breach of good faith claims against primary insurers for failing to mount a competent defense); *Md. Cas. Co. v. W.R. Grace & Co.*, 218 F.3d 204, 210-13 (2d Cir. 2000) (an insurer's settlement with insured does not immunize that insurer from claims by other insurers, including equitable contribution claims). Additionally, the same is true with respect to any indemnity paid by Travelers that is the legal responsibility of a settling insurer. *See, e.g., Danaher Corp. v. Travelers Indem. Co.*, 414 F. Supp. 3d 436, 452 (S.D.N.Y. 2019) (contribution action permitted when an insurer pays "more than its fair share for a loss covered by multiple insurers") (citation omitted); *DaimlerChrysler Ins. Co. v. Universal Underwriters Ins. Co.*, No. 601238/008, 2010 N.Y. Misc. Lexis 1686, at *11-12 (Sup. Ct., N.Y. Cnty. Mar. 31, 2010)

("The contract of settlement an insurer enters into with the insured, cannot affect the rights of another insurer who is not a party to it," including equitable rights).

73. However, as discussed below, the Court concludes that the Plan strips Travelers of these rights without adequate protection or compensation by not preserving Travelers' potential right to proceeds of the settlement between Debtor and Certain Settling Insurers.

2. ***The Plan Eliminates Travelers' Interest in Settlement Proceeds***

74. A plan of reorganization can be confirmed only if it "complies with the applicable provisions of" the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). Here, because the Plan does not adequately protect Travelers' interests in settlement proceeds paid by Certain Settling Insurers, the Plan does not comply with the Bankruptcy Code and cannot be confirmed.

75. This Court previously entered the Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies, and (IV) Granting Related Relief ("Settlement Order"). Dkt. 442. Pursuant to the Settlement Order, the Court entered an injunction (i) preventing certain claims against the Settling Insurer Persons (as defined in the Settlement Order) and (ii) channeling all "Asbestos Claims," which include asbestos-related claims against Hopeman, and any claims for "contribution, indemnity, reimbursement or otherwise arising from the foregoing, to the settlement proceeds." *See id.* ¶¶ 7-8, 14-15; *see also* Dkt. 53, Settlement Motion, Ex. A (Settlement Agreement) § 1.3.

76. The Plan, however, transfers the proceeds of that settlement to the Asbestos Trust "free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity." Dkt. 1141, Plan § 8.3. Thus, the channeling of claims to the settlement proceeds under the Settlement Order is undone by the Plan. This Court finds that the Plan fails to adequately protect and preserve Travelers' potential rights and interests in those proceeds because it does not permit

Travelers to assert claims, including contribution, indemnity, reimbursement and other claims, against the settlement proceeds or against the Asbestos Trust that will receive those proceeds.

77. Under the Bankruptcy Code, property of the estate may not be used or sold without providing adequate protection to entities with an interest in the property. *See* 11 U.S.C. § 363(e). The adequate protection requirement is generally satisfied if an entity's interest in estate property attaches to the proceeds from the sale or use of the property. *See MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 94 (2d Cir. 1988) ("It has long been recognized that when a debtor's assets are disposed of free and clear of third-party interests, the third party is adequately protected if his interest is assertable against the proceeds of the disposition."). Under 11. U.S.C. § 363(b), "a debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts' rights." *Boy Scouts*, 137 F.4th at 164-65.

78. Similarly, when property of the estate is transferred to an asbestos trust under Section 524(g), claims and interests against property of the estate can be enjoined only if they have recourse against the trust:

> An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust ….

11 U.S.C. §524(g)(1)(B); *see MacArthur Co.*, 837 F.2d at 94 ("Even if we assume that MacArthur could show that it has a valid claim against the insurers, MacArthur is not left without a remedy: It may proceed in the Bankruptcy Court against the $770 million settlement fund."); *In re W.R. Grace & Co.*, 729 F.3d 311 (3d Cir. 2013) (injunction of indemnity and contribution claims proper where claims were to be paid from trust).

79. Where a debtor settles with an insurer and a non-settling insurer's claims against the settling insurer are enjoined, the rights of non-settling insurers can be adequately protected if non-settling excess insurers have the right to reimbursement from the Trust for the non-settling insurers' incurrence of obligations that would otherwise have been borne by a settling insurer—*i.e.*, a lien on the proceeds paid by the settling insurer to the Trust. *See Overton's, Inc. v. Interstate Fire & Cas. Ins. (In re SportStuff, Inc.)*, 430 B.R. 170, 179 (B.A.P. 8th Cir. 2010) (holding that bankruptcy court erred in extinguishing contribution claims of additional insureds in connection with settlement under Rule 9019 but suggesting that such relief would be permissible under Section 363 if the additional insureds had the right to seek contribution from the sale proceeds).

80. In their Confirmation Brief, the Plan Proponents argue that (1) Travelers is not entitled to adequate protection as an unsecured creditor, and (2) that the judgment reduction provision in the Plan compensates Travelers for any claim it has against the proceeds of the Certain Settling Insurers Settlement. Dkt. 1076 ¶¶ 294-97. Neither argument persuades.

81. First, Section 363(e) provides that adequate protection is required for any interest in property, not just lienholders. As the Third Circuit found in *In re Trans World Airlines*, 322 F.3d 283, 288-290 (3rd Cir. 2003), interests include claims, not just liens. But in any event, the Debtor previously took the position in advocating for the entry of the Settlement Order that, although the Debtor did not believe unsecured creditors were entitled to such protection, the proposed Settlement Order would protect any party with such an interest in the proceeds to the same validity and extent it had an interest in the Policies. Dkt. 426 ¶ 52.[19] And as explained above,

[19] "While the Debtor contends HII lacks a valid interest in the policies, the Debtor nevertheless is willing to provide adequate protection to HII to the same validity and extent HII currently has any interest in the Policies by providing HII with a similar interest in the settlement proceeds. Thus, the Court does not need to determine whether HII or any other party has such an

the Settlement Order does attach claims for "contribution, indemnity reimbursement or otherwise" arising from Asbestos Claims to the settlement proceeds. Dkt. 442 ¶¶ 7-8, 14-15; Dkt 53, Ex. A §1.3. However, the Plan now improperly strips those rights away by transferring the proceeds free and clear of all such claims held by Non-Settling Insurers, including Travelers.

3. ***The Plan's Judgment Reduction Provision is Insufficient***

82. Second, the Court concludes that the judgment reduction provision in the Plan does not sufficiently protect Travelers' potential interest in the settlement proceeds.

83. Section 8.13(c)(i) of the Plan provides:

> If any Non-Settling Asbestos Insurer against whom an Insurance Policy Action[20] is brought asserts as a defense that it would have a claim as a result of ***contribution rights*** against one or more Settled Asbestos Insurers with respect to the Channeled Asbestos Claimant's claim that it could have asserted but for any of the Injunctions ("**Contribution Claim**"), the liability, if any, of the Non-Settling Asbestos Insurer to the Channeled Asbestos Claimant shall be reduced dollar-for-dollar by the amount, if any, of ***any judgment*** establishing the Contribution Claim in accordance with this Section 8.13.

Dkt. 1141 (Modified Am. Plan) § 8.13(c)(i) (bold/italcs added); *see also* Dkt. 1143, Second Plan Suppl, Ex. B, TDPs § 5.2(a)(vi)(a).

84. As an initial matter, the Court agrees with Travelers that the provision is too narrow because it only applies to "contribution" rights and does not extend to claims by an insurer against a Non-Settling Asbestos Insurer with respect to a Channeled Asbestos Claims under other

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interest even though, as outlined above, the Debtor contends that HII does not have any such interest. That can be determined later, by the proposed Liquidation Trust." Dkt. 426 ¶ 52.

[20] Plan § 8.13(c) provides: "Any Channeled Asbestos Claimant who (1) has obtained a judgment against Reorganized Hopeman or Wayne in accordance with Section 8.12 hereof, or (2) has the right under applicable nonbankruptcy law to name, join, or substitute as a defendant an Asbestos Insurer, may, to obtain the benefits of Asbestos Insurance Coverage, commence a judgment-enforcement action or a direct action against the relevant Non-Settling Asbestos Insurer ('Insurance Policy Action')." Dkt. 1141, Plan § 8.13(c).

potentially applicable theories of recovery, such as breach of contract, subrogation, indemnification, reimbursement, offset, breach of duty of good faith, or other similar claims, whether based on contract, statute, common law, or equity.

85. In their Confirmation Brief, the Plan Proponents resist expanding the clause beyond contribution by asserting that Travelers "has not articulated how it would have any other rights."[21] Dkt. 1076 ¶ 296. However, the Plan Proponents overlook that the Travelers Objection provided examples of other claims it could have against settling insurers with respect to an Asbestos Claim that do not sound in contribution, such as breach of contract, breach of the duty of good faith, or other equitable claims. *See, e.g.,* Dkt 944 ¶ 53. Moreover, this Court agrees that the precise theory of recovery may depend on future facts and what state's law ultimately applies to an insurer's claim. *See, e.g., Reliance Nat'l Indem. Co. v. Gen. Star Indemn. Co.*, 85 Cal. Rptr. 2d 627, 636 (Ct. App. 2000) (equitable indemnity and equitable subrogation claims may be asserted against other insurers). Indeed, in the confirmed 524(g) plan in *Kaiser Gypsum*, the judgment reduction provision extended beyond contribution to *any* claim based on, arising under, or related to an insurance policy or settlement based on related to any insurance policy, "including any claim for contribution, reimbursement, indemnity or subrogation, or bad faith refusal to settle," and could be modified by the Bankruptcy Court in the future to provide additional protection, as needed.[22]

[21] The Plan Proponents' position is also puzzling, given that other Plan provisions acknowledge that similar types of claims may exist. For example, while the definition of "Asbestos Indirect Claims" carves out claims by Asbestos Insurers, it includes claims for not only "contribution," but also "reimbursement, subrogation, or indemnification, or any other indirect or derivative recovery, on account of or with respect to any Asbestos Personal Injury Claim." Dkt. 1141, Plan §1.9.

[22] Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., *In re Kaiser Gypsum Co., Inc.*, No. 16-31062 (JCW) (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481, at §§ III.P; I.A.11. As noted, the *Kaiser Gypsum* plan also provided that the Bankruptcy Court could further modify the judgment reduction provision or grant additional relief "in any order approving a settlement with any Asbestos Insurer as

Accordingly, because the judgment reduction provision is limited to contribution, it fails to adequately protect Travelers interests and the Plan cannot be confirmed.

86. Additionally, this Court concludes that Section 8.13(c)(i) does not adequately protect the interests of Travelers and other Non-Settling Asbestos Insurers for an additional reason: the provision applies only where there is a judgment; it does not apply or provide protection to Non-Settling Insurers in actions where the defense prevails or there is a settlement.[23] Under similar facts, courts have recognized that such provisions do not provide adequate protection to non-settling insurers, and in fact, provide "almost no protection" to a non-settling insurer. *See In re Fraser's Boiler Serv., Inc.*, No. 3:18-CV-05637-RBL, 2019 WL 1099713, at *9 (W.D. Wash. Mar. 8, 2019) (concluding that a judgment reduction provision did not "adequately protect the interests of the Non-Settling Insurers," where it only offset costs "if an asbestos claimant procures a judgment against one of FBS's insurers," and further explaining: "if the Non-Settling Insurers were to successfully defend against a claim, there would be no way for them to offset such costs under the judgment reduction clause. Furthermore, in the event that a plaintiff's claim were settled, the Non-Settling Insurers would have no way of fairly reducing their share); *Boy Scouts*, 137 F.4th at 168-69 (noting that a non-settling insurer will not be fully compensated for defense costs with such a provision when it prevails in defending the claim). Such limited judgment reduction

appropriate and necessary to adequately protect the Inter-Insurer Rights, if any, of any Non-Settling Asbestos Insurer." *Id.* "Inter-Insurer Rights" included "the rights of one Asbestos Insurer to recover from any other Asbestos Insurer based on theories of contribution, indemnity, subrogation or other right to reimbursement, whether those rights are based upon contract, statute, equity or case law." *Id.* § I.A.87.

[23] And even with respect to a judgment, if the defense costs exceed the amount of the judgment, the reduction is insufficient to cover all defense costs incurred.

provisions are unlawful as they operate to extinguish insurer claims without their consent. *Boy Scouts*, 137 F.4th at 169. Accordingly, the Plan cannot be confirmed as drafted.

F. The Plan Is Not Confirmable Because the Plan Documents Allow Lawyers for Tort Plaintiffs To Have Access to Privileged Information

87. The Plan provides that all of Hopeman's books and records—including privileged materials reflecting Hopeman's defense strategies against Asbestos Claims—shall be transferred to Reorganized Hopeman. Dkt. 1141, Plan § 8.3(l). Under the Plan, Reorganized Hopeman is allowed to share these books and records, including the privileged materials, with the Asbestos Trust. Dkt. 1141, Plan § 8.3(l). The Plan states that the Asbestos Trust, which is administered by Trustees that have a fiduciary duty to the Trust,[24] will be allowed to access the Hopeman documents without destroying privilege. Dkt. 1141, Plan § 8.3(l). This Court concludes that even if the Asbestos Trust may access the privileged books and records, the Plan cannot be confirmed because the Plan Documents allow the Asbestos Trust to share the privileged books and records with the TAC and FCR.

88. Specifically, the Trust Agreement contemplates the appointment of a Trust Advisory Committee ("TAC") and a Future Claims Representative ("FCR"). Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement ¶¶ 5.1, 6.1. The TAC and FCR are permitted to retain professionals to assist them (the "TAC/FCR Professionals"), including attorneys. *Id.* ¶¶ 5.5(a), 6.4(a). The TAC serves "in a fiduciary capacity representing all holders of present Channeled Asbestos Claims." *Id.* § 5.2. The FCR represents "the interests of the holders of future Channeled Asbestos Claims." *Id.* § 6.1. Such interests are directly adverse to those of Hopeman (and Reorganized Hopeman), as well as Hopeman's liability insurers.

[24] Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement ¶ 2.1.

89. Nothing in the Plan or Trust Agreement forbids the appointment of asbestos plaintiffs lawyers—or of lawyers at law firms that represent asbestos plaintiffs—to the TAC, the FCR, or to positions as TAC/FCR Professionals. Indeed, it is undisputed that the Plan Proponents' current candidates for the TAC and FCR include lawyers for plaintiffs who have brought asbestos claims against Hopeman. For instance, in the Trust Agreement, the Plan Proponents have proposed attorneys Stephen Austin and Lisa Nathanson Busch as TAC members. Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement at 55 of 181. But Mr. Austin and Ms. Busch (and the other proposed TAC members) represent asbestos tort claimants that have filed suits against Hopeman, including claimants that are part of the Committee. *See, e.g.*, Dkt. 69, Appointment of Unsecured Creditors Committee.

90. Despite allowing plaintiffs' lawyers to be appointed to the TAC, the FCR, and as TAC/FCR Professionals, the Trust Agreement gives members of those bodies full access to the privileged documents and information that the Asbestos Trust obtains from Reorganized Hopeman. In particular, the Trust Agreement provides that the TAC, the FCR, and the TAC/FCR Professionals "shall also have complete access to **all information** generated by [the Asbestos Trust's officers, employees, agents, and the Trust Professionals employed by the Asbestos Trust] **or otherwise available to the Asbestos Trust or the Trustees**…." Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement ¶¶ 5.5(a), 6.4(a) (emphasis added). Thus, the Trust Agreement would permit plaintiffs lawyers to review Hopeman's privileged documents—*i.e.*, documents that would assist them in pursuing Asbestos Claims against Reorganized Hopeman in the tort system and potentially recovering insurance proceeds from the Non-Settling Insurers.

91. The Court cannot approve a Plan that would give plaintiffs' lawyers unfettered access to Hopeman's privileged and sensitive information. Allowing plaintiffs' attorneys to access

privileged Hopeman information could prejudice the defense of Channeled Asbestos Claims against Reorganized Hopeman (thus, increasing its liability and the potential liability of Non-Settling Insurers) and also would directly violate the principle that the Plan should not prejudice the Non-Settling Asbestos Insurers' rights.

92. In their Confirmation Brief, the Plan Proponents point to a provision in the Trust Agreement that provides: "information provided by the Trust Professionals"[25] to the TAC, FCR, and TAC/FCR Professionals "shall not constitute a waiver of any applicable privilege." Dkt. 1076 ¶ 168 (citing to what is now in Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement ¶¶ 5.5(a) & 6.4(a)). But this provision does not fix the glaring problems.

93. First, the non-waiver provision merely states that the supplying of privileged information by the *Trust Professionals* to the TAC, the FCR, and TAC/FCR Professionals (which provision *does not even extend to the privileged book and records*) shall not constitute a waiver of privilege. *Id.*[26] And even if the non-waiver provision extended to the books and records (and it does not), a simple assertion that privilege is not waived is not determinative of whether a privilege is lost.[27] As the Plan Proponents themselves emphasize: "Most courts hold that to waive the protection of the work-product doctrine, the disclosure must enable an adversary to gain access to

[25] The "Trust Professionals" are experts retained by the Trustees, such as counsel, accountants, financial and investment advisors, and "other such parties deemed by the Trustee to be qualified as experts on matters submitted to them." Dkt. 1143, Ex. A § 4.8(a).

[26] Thus, under the Plan Proponents' contemplated framework, privileged Hopeman information would retain its privileged status even if accessed by (i) Reorganized Hopeman, (ii) the Asbestos Trustee, or (iii) the TAC, the FCR, or their professionals. Such information could, however, still be withheld from other parties on privilege grounds.

[27] Further, this Court cannot dictate the res judicata effect of its orders in a hypothetical future case. *See Urban Broad. Corp. v. Univision of Va. Inc.* (*In re Urb. Broad. Corp.*), 401 F.3d 236, 245 (4th Cir. 2005).

the information." Dkt. 1076, Confirmation Br. ¶¶ 167 & 200 (citing cases). Here, waiver is virtually guaranteed under the Plan Proponents' own caselaw, as they do not dispute that the TAC and FCR are ***adverse*** to Reorganized Hopeman with respect to Channeled Asbestos Claims, which arise from Hopeman's purported liability for such claims.

94. Further—and critically—the cited provision does ***nothing*** to prevent plaintiffs' attorneys who serve as TAC/FCR members, or are TAC/FCR Professionals, from using privileged Hopeman information for the benefit of their asbestos plaintiff clients. Additionally, once those attorneys access privileged Hopeman information, they will not be able to unlearn it; *i.e.*, the egg cannot be unscrambled.[28] And access to privileged Hopeman information would improperly advantage those attorneys' clients in filing claims against Reorganized Hopeman in the tort system and seeking payment from the Non-Settling Asbestos Insurers. This would obviously violate the principle that the Plan documents should be insurance neutral. Faced with similar circumstances, other courts have approved language in a bankruptcy plan limiting the transfer of privileged information. *See, e.g.*, Trust and Settlement Facility Agreement (Ex. A to Modified Joint Plan), *In re Garlock Sealing Techs., LLC*, No. 17-CV-00275 (W.D.N.C. June 9, 2017), ECF No. 13-1, §§ 5.5(a), 6.4(a) (providing that the claimant advisory committee and future claims representative shall only have access to "**non-privileged**" information from the debtor) (emphasis added).

95. Accordingly, before the Plan can be confirmed, the Plan Documents must be amended so that Reorganized Hopeman and the Asbestos Trust are precluded from sharing any of

[28] This Court also concludes that any order that merely bars the TAC, the FCR, or TAC/FCR Professionals from using privileged information against Reorganized Hopeman or the Non-Settling Asbestos Insurers would be ineffectual. Once privileged information is disclosed, it cannot be unlearned by its recipients.

Hopeman's privileged documents or information with the TAC, the FCR, or any TAC/FCR Professionals.

G. The Plan Is Not Confirmable Because It Impairs Non-Settling Insurers' Rights to Information

96. In the Travelers Objection, Travelers objected to the Plan Documents as impairing Travelers' rights to information under its policies and agreements. Dkt. 944, Travelers Objection ¶ 57. The Court concludes that Travelers' objection is meritorious, and the Plan cannot be confirmed.

97. As discussed above, a chapter 11 plan may not be confirmed if it would give the debtor's estate greater rights under its insurance contracts than it held prepetition or materially alter a counterparty's obligations under the contracts. *See supra; see also, e.g., In re Crippin*, 877 F.2d at 598 ("[B]ankruptcy courts do not have the power to rewrite contracts to allow debtors to continue to perform on more favorable terms."); *see also Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984); *In re Cajun Elec. Power Coop., Inc.*, 230 B.R. 715, 737 (Bankr. M.D. La. 1999).

98. As the Plan and Plan Documents acknowledge, Hopeman has various obligations under the Asbestos Insurance Policies, including assistance and cooperation obligations, that require the provision of document and information to Asbestos Insurers. Dkt. 1141, Plan § 1.10 (referencing the "assistance and cooperation" provisions "set forth in Asbestos Insurance Policies"); Dkt. 1143, Second Plan Suppl., Ex. B, TDPs § 6.5 (acknowledging obligations under Hopeman's insurance policies and settlement agreements "to disclose information, documents or other materials"); *see also generally* Travelers Exs. C-V.

99. Under Section 6.5 of the TDPs, however, the Asbestos Trust's ability to "disclose information, documents, or other materials reasonably necessary … to comply with an applicable

obligation under an insurance policy or settlement agreement with the Asbestos Insurance Rights" is conditioned on the Asbestos Trust first obtaining "the consent of the TAC and the FCR." Dkt. 1143, Second Plan Suppl. Ex. B, TDPs § 6.5.

100. This Court concludes that Section 6.5 of the TDPs imposes improper impediments to honoring Hopeman's obligations under insurance policies and agreements that are part of the Asbestos Insurance Rights, including the Travelers Policies. Moreover, Section 6.5 of the TDPs improperly purports to authorize the Asbestos Trust's noncompliance with obligations under Hopeman's insurance policies and settlement agreements to the extent the TAC or FCR does not consent to the Trust's compliance with those obligations. *Id.*

101. The Plan cannot be confirmed as currently drafted, as the Plan Documents impair the contract rights of Non-Settling Insurers, including Travelers. *See Boy Scouts*, 137 F.4th at 164-165 (finding a plan cannot be confirmed if "it incorporates provisions that impermissibly impair counterparts' rights"); *Stewart Foods*, 64 F.3d at 145 (holding that a debtor "remains bound by the debtor's obligations under [non-executory] contracts after the bankruptcy filing.").

H. The Plan Cannot Be Confirmed Because It Seeks to Transfer Property That Is Not Property Of Hopeman's Estate

102. In the Travelers Objection, Travelers argued that the Plan cannot be confirmed because it purports to transfer rights that the Debtor does not have. Dkt. 944, Travelers Objection ¶¶ 68-73. This Court agrees with Travelers.

103. Based on the undisputed evidence, the Court finds that the following two Travelers insurance policies were exhausted and released by Hopeman prior to the bankruptcy pursuant to the terms of the Travelers 2005 Agreement: (i) Policy No. CUP 2669174, issued by The Travelers Indemnity Company, and (ii) Policy No. 01 XN 541 WCA, issued by The Aetna Casualty and Surety Company (now known as Travelers Casualty and Surety Company) (the "Released

Travelers Policies").[29] Travelers Ex. W, Debtor Rule 30(b)(6) Dep. Tr. 179:12-180:22 (identifying these two Travelers policies as released); Aug. 25, 2025 Confirmation Hearing Tr. 141:9-142:2, 166:11-167:3 (Van Epps testifying that two Travelers policies paid their limits and were released pursuant to the Travelers 2005 Agreement); Dkt. 1116, Van Epps Decl. ¶ 33 (Hopeman "released two specifically-identified Travelers excess insurance coverage policies"); Travelers Ex. AA, Debtor's Resp. to Travelers' Interrog. No. 17.

104. Based on the undisputed evidence, the Court further finds that Hopeman has no rights under the Released Travelers Policies. Travelers Ex. W, Debtor Rule 30(b)(6) Dep. Tr. 179:12-180:22 (Debtor has no rights remaining under the Released Travelers Policies, which are released).

105. The Court further finds that under the Wellington Agreement, Hopeman waived certain Extracontractual Claims[30] against Travelers Casualty and Surety Company. Travelers Ex. B, Wellington Agreement § VIII.3; Aug, 25, 2025 Hrg. Tr. 6:18-23 (stipulating that Travelers Casualty is a signatory to the Wellington Agreement). Additionally, the Court finds that under the Travelers 2005 Agreement, Hopeman released certain Extracontractual Claims against Travelers. Travelers Ex. A, 2005 Settlement Agreement § VII.A.

106. A plan of reorganization may affect only property of a debtor's estate. A debtor's estate is comprised of, among other things, "all legal or equitable interests of the debtor as of the

[29] The Plan defines Travelers 2005 Agreement Asbestos Insurance Policies to mean "collectively, the following Asbestos Insurance Policies issued by Travelers: (i) Travelers Indemnity Company Policy No. CP2669174, and (ii) Aetna Casualty and Surety Company Policy No. 01 XN 541 WCA." Plan § 1.111. The Court notes that the first policy number contains a typo and should be Policy No. CUP 2669174.

[30] "Extracontractual Claim" means any claim against an Asbestos Insurer for "bad faith," extracontractual, or tort liability that is based on, arises from, or is attributable to an Asbestos Insurance Policy or Asbestos CIP Agreement." Dkt. 1141, Plan § 1.67.

commencement of the case." *See* 11 U.S.C. §541(a)(1). The Debtor's rights are defined under state law and are not expanded by the filing of bankruptcy proceedings. *See Mission Prod. Holdings,* 587 U.S. at 381. In other words, the Debtor "cannot possess anything more than the debtor itself did outside bankruptcy." *Id.*

107. The Court concludes that the Plan improperly seeks to transfer to the Asbestos Trust rights under the Released Travelers Policies that have been released and certain Extracontractual Claims that the Debtor has released or waived.

108. The Plan provides that the Asbestos Insurance Rights will be transferred to the Asbestos Trust on the Effective Date. Dkt. 1141, Plan § 8.3(b). The Plan further provides that the "Asbestos Trust shall have the exclusive right to pursue, monetize, settle, or otherwise obtain the benefits of the Asbestos Insurance Rights…." *Id.* § 8.13(a).[31]

109. Under the Plan, "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 . . . and
> >
> > (f) any and all Extracontractual Claims, and any and all rights of Hopeman to pursue or receive payments or recoveries on account thereof.

Dkt. 1141, Plan § 1.13.

[31] The Trust Agreement and TDPs provide for similar rights to the Trust. Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement, § 2.1(c)(xviii), Ex. B, TDPs, § 5.2(a)(iv).

110. The Plan defines the Released Travelers Policies as "Asbestos Insurance Policies," *see* Dkt. 1146, Plan § 1.111,[32] and thus, purports to include rights under the Released Travelers Policies as part of the "Asbestos Insurance Rights" that will be transferred to the Asbestos Trust. But, as set forth above, the undisputed evidence confirms that Hopeman has no remaining rights or coverage under the Released Travelers Policies.

111. Further, the definition of "Asbestos Insurance Rights" includes "any and all Extracontractual Claims," *see* Dkt. 1141, Plan § 1.13, even though the Debtor has already released or waived certain Extracontractual Claims against Travelers, as explained above.[33]

112. This Court concludes that the Plan cannot be confirmed as currently drafted. Specifically, the "Asbestos Insurance Rights" to be transferred to the Asbestos Trust cannot include rights and claims that Debtor does not have due to release or waiver, including (1) rights under the Released Travelers Policies, and (2) Extracontractual Claims against Travelers that were released or waived pursuant to the Travelers 2005 Agreement or Wellington Agreement.

I. The Plan Cannot Be Confirmed Because the Plan Documents are Impermissibly Vague and Uncertain Regarding the Determination of Uninsured Asbestos Claims and Increase Burdens on Insurers.

113. Where a plan of reorganization is ambiguous and lacks sufficient details, it cannot be confirmed. *Pittsburgh Corning*, 453 B.R. at 604-605 (ambiguous language relating to treatment

[32] "Travelers 2005 Agreement Asbestos Insurance Policies means, collectively, **the following Asbestos Insurance Policies** issued by Travelers: (i) Travelers Indemnity Company Policy No. CP [sic] 2669174, and (ii) Aetna Casualty and Surety Company Policy No. 01 XN 541 WCA." Dkt. 1141, §1.111 (emphasis added).

[33] Similarly, the Plan and TDPs purport to allow the Asbestos Trust to authorize a Channeled Asbestos Claimant to pursue Extracontractual Claims against a Non-Settling Asbestos Insurer, subject to three exceptions, even though Debtor has released or waived certain Extracontractual Claims against Travelers. Dkt. 1141, Plan § 8.13(e); Dkt 1143, Second Plan Suppl., Ex. B, TDPs § 5.2(a)(x).

of insurance provided basis for denial of plan confirmation)*; In re Claar Cellars LLC*, 623 B.R. 578, 593 (Bankr. E.D. Wash. 2021) (finding that a plan failed to satisfy 11 U.S.C. § 1123(a)(3) by "ignor[ing] details" and "promis[ing] an outcome but [leaving] in the dark" how that outcome will be achieved). For the following reasons, the Court concludes that the Plan Documents are ambiguous, and the Plan cannot be confirmed.

114. Pursuant to the Plan, all Channeled Asbestos Claims are channeled to the Asbestos Trust, and "shall be resolved, liquidated, and (if eligible for payment) paid in accordance with the Asbestos Trust Agreement, the Asbestos Trust Distribution Procedures, and any other Asbestos Trust Document." Dkt. 1141, Plan §§ 8.3(h) & 10.3 (emphasis omitted).

115. Under the Plan, there are two types of Channeled Asbestos Claim: Insured Asbestos Claims and Uninsured Asbestos Claims. Dkt. 1141, Plan §§ 1.77, 1.114. Holders of Insured Asbestos Claims can initiate claims in the tort system. *Id.* § 8.12; *see also* Dkt. 1143, Second Plan Suppl., Ex. B, TDPs § 5.2(a)(i). However, claimants holding "Uninsured Asbestos Claims" must submit their claims directly to the Asbestos Trust for processing and potential payment. Dkt. 1141, Second Plan Suppl., Ex. B, TDPs § 5.3(a).

116. Under the Plan, Insured Asbestos Claims are Channeled Asbestos Claims that are not "Uninsured Asbestos Claims." Dkt. 1141, Plan § 1.77. "Uninsured Asbestos Claims" means:

> a Channeled Asbestos Claim (a) with a date of first exposure to asbestos or asbestos-containing products or things falling after January 1, 1985, or (b) for which no coverage under any Asbestos Insurance Policy is available due to settlement (including an Asbestos Insurance Settlement), exhaustion, or a final and non-appealable ruling on a coverage issue or defense.

Id. § 1.114.

117. As an initial matter, this Court finds that none of the Plan Documents explains who determines whether a claim is an Insured Asbestos Claim or Uninsured Asbestos Claim, and on what basis. Under the Plan Documents, Insured Asbestos Claims are not required to submit claim

materials to the Trust; only Uninsured Asbestos Claims are required to do so. Dkt. 1143, Second Plan Suppl, Ex. B, TDPs §§ 5.2 & 5.3. The Court concludes, however, that this presumes a classification for the claim before it is determined.

118. Further, although the claim materials required for the submission of an Uninsured Asbestos Claim are not yet created, the TDPs state that, at a minimum, each claimant "must submit" documents evidencing "a first exposure date that falls outside the Asbestos Insurer coverage periods." Dkt. 1143, Second Plan Suppl, Ex. B, TDPs § 5.3(a). The TDPs, however, do not allow a claimant to submit information that meets the second (b) prong of the definition, nor provide any information from which a party could determine whether a claim meets the second (b) prong of the "Uninsured Asbestos Claim" definition. *Id.*

119. Because the Plan lacks clear provisions regarding how claims will be determined to be Uninsured Asbestos Claims and Insured Asbestos Claims, the Court concludes that the Plan is ambiguous and cannot be confirmed.

120. Additionally, the Court concludes that the Plan cannot be confirmed because the definition of "Uninsured Asbestos Claims" impermissibly increases burdens on insurers and Channeled Asbestos Claimants.

121. Under the Plan, a Channeled Asbestos Claim qualifies as an "Uninsured Asbestos Claim" on the basis of "no coverage under any Asbestos Policy" only if there is a "final non-appealable ruling on a coverage issue or defense," unless there is no coverage due to a "settlement" or "exhaustion." Dkt. 1141, Plan §§ 1.114; 8.16; *see also* Dkt. 1143, Second Plan Suppl. §5.2(b). In other words, to establish a lack of coverage under the definition of Uninsured Asbestos Claim based on anything other than a settlement or exhaustion, a Channeled Asbestos Claimant must secure a final-non-appealable ruling from a court. Thus, the Plan effectively forces Channeled

Asbestos Claimants to proceed against insurers in the tort system to secure a final-non-appealable ruling, even if there is no coverage for undisputed reasons other than settlement or exhaustion, such as the *lack* of underlying exhaustion.

122. For example, it is undisputed that various Travelers excess policies sit above other excess policies that have remaining limits to pay asbestos claims such that these Travelers policies are not currently 'on the risk.'" Aug 25, 2025 Confirmation Hrg. Tr. 167:4-12; Dkt. 1116, Van Epps Decl. ¶ 33; *see also, e.g.,* Travelers Ex. W, Debtor Rule 30(b)(6) Dep. Tr. 146:13-147:7. Further, Mr. Van Epps testified that before the Travelers excess policies may be called upon to pay claims, exhaustion of the underlying policies would have to occur. *See, e.g.,* Aug 25, 2025 Confirmation Hrg. Tr. 167:13-16.

123. However, as explained above, a Channeled Asbestos Claim does not constitute an Uninsured Asbestos Claim under the Plan where there is no coverage for the Claim due to such lack of underlying exhaustion (or any other valid coverage defense that is uncontested). As noted, where there is no coverage for a reason other than "settlement" or "exhaustion," the Plan effectively forces a Channeled Asbestos Claimant to continue pursuing a claim against an insurer as if the claim were insured, until it obtains a "final and non-appealable ruling." The Court concludes that this framework will result in Channeled Asbestos Claimants expending resources to pursue claims against insurers who will be required to defend at their own cost even where it is undisputed that insurance coverage does not exist.

124. The Court concludes that by requiring Channeled Asbestos Claimants to continue pursuing claims against insurers where insurance coverage does not exist—either due to the lack of underlying exhaustion or because there is a valid coverage defense that is not disputed by the Channeled Asbestos Claimants or Asbestos Trust—before a claim may qualify as an "Uninsured

Asbestos Claim," the Plan imposes improper burdens and costs on insurers and Channeled Asbestos Claimants. Accordingly, the Court concludes that the Plan cannot be confirmed.

J. The Plan Cannot Be Confirmed Because It Does Not Satisfy Section 524(g)(2)(B)(i)(II) of the Bankruptcy Code

125. In the Travelers Objection, Travelers asserted that Plan does not satisfy the requirements of Section 524(g) because the Debtor is not obligated to make future payments to the Asbestos Trust. Dkt. 944, Travelers Objection ¶¶ 87-91. The Court agrees.

126. Section 524(g) authorizes the Court to enter an injunction only if certain requirements are satisfied. One requirement is that the Asbestos Trust "is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan **and** by the obligation of such debtor or debtors to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II) (emphasis added). This provision requires that the Asbestos Trust be funded by both the securities of the Debtor and by the obligation of the Debtor to make future payments. Based on the plain language of the statute, both conditions must be satisfied.

127. The Plan satisfies the first part of this condition by transferring 100% of the Reorganized Hopeman Comon Stock to the Asbestos Trust. Plan § 8.6.

128. However, the second part is not satisfied because the Debtor is not obligated under the Plan Documents to make future payments, including dividends, to the Asbestos Trust.

129. This Court concludes that any potential dividends to the Trust are entirely optional and discretionary. The Amended By-Laws of Reorganized Hopeman provide that "[t]he Board of Directors, ***in its sole discretion, may*** declare dividends on the shares of the Corporation" but only after setting aside amounts it deems "proper as a reserve." Dkt. 853, Plan Supplement, Ex. C at §§ 6.1 & 6.2 (emphasis added). Similarly, in describing the Restructuring Transaction, the Plan Proponents explain that "[t]he balance of any dividends or distributions that remain (after the Net

Reserve Fund is funded) ***may*** be transferred by Reorganized Hopeman to the Asbestos Trust and will become part of the Asbestos Trust Assets." Dkt. 853, Plan Supplement, Ex. F (emphasis added).

130. During the Confirmation Hearing, a Plan Proponent witness, Mr. Conor Tully, confirmed what the Plan Documents make clear—that there is no obligation to fund the Asbestos Trust:

> Q. I think you testified to Mr. Brown that reorganized Hopeman could make such dividends to the trust, right?
> A. Yes.
> Q. But as is reflected here, there's no obligation for reorganized Hopeman to do that, right?
> …
> The Witness: I'm not aware of an obligation.

Aug. 25, 2025 Confirmation Hrg. Tr. 205:3-7, 205:17.

131. The Plan Proponents assert that Reorganized Hopeman's obligation to contribute Excess Net Reserve Funds, if any, to the Asbestos Trust satisfies the funding obligation. The Court disagrees.

132. First, the transfer of Excess Net Reserve Funds cannot constitute future payments. The Asbestos Trust Assets, which include the Asbestos Trust Contribution, are to be transferred to the Asbestos Trust on the Effective Date. Plan §§ 1.22 & 8.3.[34] The Asbestos Trust Contribution includes "the Excess Net Reserve Fund." Dkt. 1141, Plan § 1.23.[35] The Court concludes that, based

[34] "On the Effective Date, all right, title, and interest in and to the Asbestos Trust Assets, and any proceeds thereof, will be transferred to, and indefeasibly vested in, the Asbestos Trust, free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity, without any further action of the Bankruptcy Court or any Entity, but subject to Section 8.5 hereof and the remaining provisions of this Section 8.3." Dkt. 1141, Plan § 8.3(a).

[35] "1.23. Asbestos Trust Contribution means a contribution or contributions by or on behalf of Hopeman or Reorganized Hopeman to the Asbestos Trust of (a) ***all Cash held by Hopeman*** (provided, however, that any Cash, up to an amount to be disclosed in the Plan Supplement held by Hopeman as of the Effective Date shall be set aside by Hopeman or Reorganized Hopeman, as

on the terms of the Plan, the Excess Net Reserve Fund is transferred to the Asbestos Trust on the Effective Date. Therefore, it does not constitute "future" payments to the Asbestos Trust.

133. Second, the statutory language requires future "payments," not a single payment. 11 U.S.C. § 524(g)(2)(B)(i)(II). Thus, even if the transfer of the Excess Net Reserve Funds constituted a "future" payment (and it does not), this single transfer is insufficient.

134. Moreover, the Court further finds that the Net Reserve Funds[36] is an amount of cash needed to make payments under the Plan, nothing more, with the remaining amount, the Excess Net Reserve Funds,[37] being returned to the Asbestos Trust. Such amounts are not derived from operation of the Reorganized Debtor and do not qualify as future payments.

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applicable, in a segregated account as the Net Reserve Funds in accordance with Section 8.5 of the Plan), (b) ***the Excess Net Reserve Funds***, (c) all of Hopeman's or Reorganized Hopeman's, as applicable, rights or Proceeds payable under any and all agreements with Settled Asbestos Insurers (including any Proceeds held in or deposited into any qualified settlement fund pursuant to, or in connection with, an agreement with Settled Asbestos Insurers), and (d) all of Hopeman's or Reorganized Hopeman's, as applicable, Asbestos Insurance Rights." Dkt. 1141, Plan § 1.23 (emphasis added).

[36] "1.79. Net Reserve Funds means the lesser of (i) Cash in the amount to be disclosed in the Plan Supplement or (ii) the amount of Cash held by Hopeman as of the Effective Date, to be set aside by Hopeman on the Effective Date for the purpose of paying or making the Distributions contemplated by the Plan with respect to (a) Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Priority Claims, Allowed Secured Claims, and Allowed General Unsecured Claims (including the payment of any interest on any such Claims that may be allowed under the Plan or required to be paid by the Bankruptcy Code), (b) any fees and expenses of Hopeman, Reorganized Hopeman, the Committee and the Future Claimants' Representative that are payable by Hopeman or Reorganized Hopeman, as applicable, pursuant to the Plan, (c) any fees payable pursuant to section 1930 of title 28 of the United States Code (whether those fees pursuant to section 1930 of title 28 are payable before or after the Effective Date, (d) any other amounts that the Plan provides are to be paid from the Net Reserve Funds, and (e) such amounts as Reorganized Hopeman determines, in the reasonable exercise of its discretion, are or will be sufficient to fully satisfy (as and when due) all franchise taxes and other expenditures that are necessary to maintain its corporate existence in good standing under the laws of the state of its formation or that otherwise are necessary for Reorganized Hopeman to conduct its business after the Effective Date." Dkt. 1141, Plan § 1.79.

[37] "1.64. Excess Net Reserve Funds means any Net Reserve Funds remaining after the satisfaction in full of (a) all Allowed Administrative Expense Claims, Allowed Priority Tax

135. Indeed, the Court concludes that the Plan ***reverses*** the funding structure required by Section 524(g). Rather than requiring future payments from Reorganized Hopeman to fund the Asbestos Trust, the Plan does the opposite and requires that the Asbestos Trust to fund Reorganized Hopeman. The Trust Agreement provides that the Asbestos Trust "shall make additional contributions to the Reorganized Debtor in the future as necessary to ensure the Reorganized Debtor maintains sufficient working capital." Dkt. 1143, Second Plan Suppl., Ex. A, Trust Agreement, § 3.2(k). This obligation for the Asbestos Trust to fund Reorganized Hopeman further confirms that Reorganized Hopeman is not obligated to make future payments to the Asbestos Trust as required by Section 524(g).

136. Therefore, the Court concludes that the Plan fails to satisfy 11 U.S.C. § 524(g), specifically the requirement that the Debtor is obligated to make future payments to the Asbestos Trust pursuant to Section 524(g)(2)(B)(i)(II). Thus, the Plan cannot be confirmed.

Claims, Allowed Priority Claims, Allowed Secured Claims and Allowed General Unsecured Claims (including the payment of any interest on any such Claims that may be allowed under the Plan or required to be paid by the Bankruptcy Code), (b) any fees and expenses of Hopeman, Reorganized Hopeman, the Committee, the Future Claimants' Representative that are payable by Hopeman or Reorganized Hopeman, as applicable, pursuant to Section 9.1 of the Plan, (c) any fees payable pursuant to section 1930 of title 28 of the United States Code (whether those fees pursuant to section 1930 of title 28 are payable before or after the Effective Date), (d) any other amounts that the Plan provides are to be paid from the Net Reserve Funds, and (e) such amounts as Reorganized Hopeman determines, in the reasonable exercise of its discretion, are or will be sufficient to fully satisfy (as and when due) all franchise taxes and other expenditures that are necessary to maintain its corporate existence in good standing under the laws of the state of its formation or that otherwise are necessary for Reorganized Hopeman to conduct the business for which Section 8.11 of the Plan provides." Dkt. 1141, Plan § 1.64.

K. The Plan Cannot Be Confirmed Because the Discharge and Discharge Injunction in Section 10.2 Are Overly Broad.

137. In the Travelers Objection, Travelers argued that both the discharge and discharge injunction in the Plan are too broad. Dkt. 944, Travelers Objection ¶¶ 92-94. The Plan Proponents did not respond to these objections. The Court agrees with Travelers.

138. Section 1141(d)(1)(A) of the Bankruptcy Code provides that "the confirmation of a plan "discharges the debtor of any debt that arose before the date of such confirmation, and any debt of a kind specified in 502(g), 502(h), or 502(i)." 11 U.S.C. § 1141(d)(1)(A). Only a debtor is entitled to a discharge under Section 1141. No other entity is entitled to a discharge.

139. Section 10.1[38] of the Plan provides for a discharge of not only the Debtor, but also Reorganized Hopeman. However, Reorganized Hopeman, which means "Hopeman on and after the Effective Date" (*see* Dkt. 1141, Plan §1.101), is not a debtor and therefore is not entitled to a discharge under 11 U.S.C. § 1141. As noted, the Plan Proponents did not respond to this objection.

140. The Court concludes that it cannot confirm the Plan while it provides a discharge to Reorganized Hopeman, a non-debtor.

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[38] "10.1. Discharge of Hopeman and Reorganized Hopeman. Except as specifically provided in the Plan, any of the other Plan Documents, or the Confirmation Order, pursuant to sections 524 and 1141(d)(1)(A) of the Bankruptcy Code, confirmation of the Plan shall discharge Hopeman and Reorganized Hopeman on the Effective Date from any and all Claims and Demands of any nature whatsoever, including, without limitation, all Claims, including, to the fullest extent permitted by law, Channeled Asbestos Claims, and liabilities that arose before the Confirmation Date and all debts of the kind specified in sections 502(g), 502(h) and 502(i) of the Bankruptcy Code whether or not: (a) a Proof of Claim based on such Claim was filed under section 501 of the Bankruptcy Code, or such Claim was listed on any of Hopeman's Schedules; (b) such Claim is or was allowed under section 502 of the Bankruptcy Code; or (c) the holder of such Claim has voted on or accepted the Plan. Except as otherwise specifically provided for in the Plan, as of the Effective Date, the rights provided in the Plan to holders of Claims, Demands and Equity Interests shall be in exchange for and in complete satisfaction, settlement and discharge of all Claims (including, to the fullest extent permitted by law, Asbestos Claims and Demands) against, Liens on, and Equity Interests in Hopeman, Reorganized Hopeman, and all of their its respective assets and properties." Dkt. 1141, Plan § 10.1 (emphasis omitted).

141. Additionally, Section 10.1 provides a discharge of all Claims and Demands against Hopeman "that arose before the Confirmation Date." Dkt. 1141, Plan § 10.1. Section 524(a) of the Bankruptcy Code provides that a discharge operates as an injunction against the commencement or continuation of any action with respect to the discharged debts. 11 U.S.C. § 524(a). Section 524(a) does not extend beyond debts discharged.

142. Although the discharge in Section 10.1 is limited to discharging Claims, Demands, and liabilities "*that arose before the Confirmation Date,*" the discharge injunction in Section 10.2[39] is broader and is not limited to Claims that "arose before the Confirmation Date."

143. The Court is unaware of any authority that allows a discharge injunction that is broader than the discharge. And as noted, the Plan Proponents did not respond to this objection.

144. The Court concludes that it cannot confirm the Plan while the scope of the discharge injunction is broader than the scope of the discharge itself.

[39] "10.2. Hopeman Discharge Injunction. Except as specifically provided in the Plan (including Section 8.12, Section 8.13, Section 8.15, and Section 8.16 hereof), any of the other Plan Documents, or the Confirmation Order, all Entities who have held, hold, or may hold Claims (including, to the fullest extent permitted by law, Asbestos Claims and Demands) against Hopeman are permanently enjoined, on and after the Effective Date, from: (a) commencing or continuing in any manner any action or other proceeding of any kind against Hopeman, Reorganized Hopeman, or their respective property with respect to such Claim or Demand, other than to enforce any right to a Distribution pursuant to the Plan or any other right provided under this Plan; (b) enforcing, attaching, collecting, or recovering by any manner or means of any judgment, award, decree, or order against Hopeman, Reorganized Hopeman, or their respective property with respect to such Claim or Demand; (c) creating, perfecting, or enforcing any Encumbrance of any kind against Hopeman, Reorganized Hopeman, or their respective property with respect to such Claim or Demand; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due to Hopeman or against the property or interests in property of Hopeman, with respect to such Claim or Demand; and/or (e) commencing or continuing any action, in any manner, against Hopeman, Reorganized Hopeman, or their respective property that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. The foregoing injunction shall extend to the successors of Hopeman (including, without limitation, Reorganized Hopeman) and their respective properties and interests in property. The discharge provided in this provision shall void any judgment obtained against Hopeman at any time, to the extent that such judgment relates to a discharged Claim or Demand." Dkt. 1141, Plan § 10.2 (emphasis omitted).

L. The Plan Cannot Be Confirmed Because the Plan Documents Improperly Purport to Limit Valid Subpoenas

145. In the Travelers Objection, Travelers argued that the TDPs improperly limit the Asbestos Trust's obligation to respond to subpoenas. Dkt. 944, ¶¶ 101. Pursuant to 11 U.S.C. § 1129(a)(3), a bankruptcy plan must be proposed in good faith and may not be proposed by any means forbidden by law. The Plan Proponents have failed to establish that the Plan was filed and proposed in good faith pursuant to § 1129(a)(3). The Plan lacks good faith because the TDPs contain provisions that serve no valid purpose.

146. The TDPs purport to authorize the Asbestos Trust to withhold information responsive to a valid subpoena so long as the subpoena is issued by a court *other* than three courts specified in Section 6.5 of the TDPs. Specifically, Section 6.5 of the TDPs states:

> The Asbestos Trust will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder, to another trust established for the benefit of asbestos personal injury claimants pursuant to section 524(g) of the Bankruptcy Code or other applicable law, to such other persons as authorized by the holder, or in response to a valid subpoena of such materials **issued by the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware**.

Dkt. 1143, Second Plan Suppl., Ex. B, TDPs § 6.5 (emphasis added).

147. The Court concludes there is no valid purpose for this limitation (and Plan Proponents have presented none). Further, this Court is unaware of any authority that would allow it to preemptively determine the validity of a subpoena issued by other courts or to limit the subpoena authority of other courts. *See generally,* Fed. R. Civ. P. 45 ("A subpoena must issue from the court where the action is pending.").

148. Moreover, the provision could improperly impair the rights of insurers, including Travelers, to obtain information by subpoena from the Asbestos Trust.

149. The Plan cannot be confirmed to the extent Section 6.5 of the TDPs continues to include the language bolded above (*i.e.,* "issued by the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware").

M. The Plan Cannot Be Confirmed Because It Provides for Different Treatment of Claims within the Same Class.

150. Travelers objected to the Plan because it does not comply with Section 1123(a)(4) of the Bankruptcy Code because the Plan fails to provide the same treatment to all holders of Class 4 Channeled Asbestos Claims. Dkt. 944, Travelers Objection ¶¶ 102-104. The Court agrees.

151. "Equality of distribution among creditors is a central policy of the Bankruptcy Code." *Begier v. I.R.S.*, 496 U.S. 53, 58 (1990); *see also In re W.R. Grace & Co.*, 729 F.3d at 327; *Combustion Eng'g*, 391 F.3d at 239. Section 1123(a)(4) provides that a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Courts "have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the same opportunity' for recovery." *In re W.R. Grace & Co.*, 729 F.3d at 327 (quoting *In re Dana Corp*., 412 B.R. 53, 62 (S.D.N.Y. 2008)).[40]

152. In the Plan here, Class 4 is comprised of all "Channeled Asbestos Claims," which means, collectively, the "the Asbestos Claims and Demands." Dkt. 1141, Plan §§ 4.4 & 1.37. "Asbestos Claims" includes both (1) Insured Asbestos Claims and (2) Uninsured Asbestos Claims. *Id.* §§ 1.8, 1.77, & 1.114.

[40] Further, Section 524(g) also requires that "present claims and future demands that involve similar claims [be paid] in substantially the same manner." 11 U.S.C. § 524(g)(2)(B)(ii)(V). "Together, the two provisions ensure that claims in a class that will be channeled to a § 524(g) trust receive the same treatment, regardless of when they are brought." *In re W.R. Grace & Co.*, 729 F.3d at 327.

153. The Court concludes that the Plan improperly treats Insured Asbestos Claims differently from Uninsured Asbestos Claims. Section 7.2 of the TDPs provides: "Punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or paid by the Asbestos Trust on any Uninsured Asbestos Claim, notwithstanding their availability, or award, in the tort system." Dkt. 1143, Second Plan Suppl., Ex. B, TDPs § 7.2. There is no similar limitation on Insured Asbestos Claims. Specifically, the Court finds that neither the Plan nor the TDPs prevents a holder of an Insured Asbestos Claim from pursuing punitive damages, even though these claims are also in Class 4.

154. The Plan Proponents contend that Section 1123(a)(4)'s requirements need not be satisfied because "no holder of a Channeled Asbestos Claim has ***objected*** to the Plan." Dkt. 1076, Confirmation Br. ¶ 246. While the "same treatment" requirement of Section 1123(a)(4) need not be satisfied where "the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest," the Court finds that there is no evidence that any holder of an Uninsured Asbestos Claim has agreed to less favorable treatment. As the Plan Proponents concede, there are no known Uninsured Asbestos Claims. Dkt. 1076, Confirmation Br. ¶¶ 239, 246, 249. The Court therefore concludes that it is impossible that any holders of Uninsured Asbestos Claims agreed to less favorable treatment than holders of Insured Asbestos Claims.

155. The Plan Proponents also argue that the TDPs' bar on the payment of punitive or exemplary damages by the Asbestos Trust on an Uninsured Claim is "entirely consistent with the purpose of asbestos trusts," which they allege "is to compensate injured individuals, not to punish any alleged bad actors." Even if the Court assumes this unsupported statement is true, it does not

allow the Court to ignore the requirements of Section 1123(a)(4) or allow the disparate treatment of Insured Asbestos Claims and Uninsured Asbestos Claim.[41]

156. Finally, the Plan Proponents assert that the Plan can be confirmed because Section 7.2 of the TDPs is substantively identical to a provision in the *Kaiser Gypsum* trust distribution procedures, which procedures related to the 524(g) plan affirmed by the Fourth Circuit. Dkt. 1076, Confirmation Br. ¶ 247. The Court finds this argument unpersuasive. The Fourth Circuit did not consider or address the disparate treatment of punitive damages between Insured Asbestos Claims and Uninsured Asbestos Claims because the issue was not before it or raised in the case. *See, e.g., In re Kaiser Gypsum Co., Inc.*, 135 F.4th 185 (4th Cir. 2025). Thus, the Court concludes that the *Kaiser Gypsum* decision does not support or allow for the disparate treatment of Uninsured Asbestos Claims and Insured Asbestos Claims contemplated by the Plan here.

157. For the reasons set forth above, the Court concludes that the Plan cannot be confirmed because it does not provide the same treatment for Insured Asbestos Claims and Uninsured Asbestos Claims and thus, does not satisfy Section 1123(a)(4) of the Bankruptcy Code.

III. WAIVER OF THE 14-DAY STAY IS NOT JUSTIFIED

158. The Plan Proponents have requested that this Court recommend that any Confirmation Order be effective immediately upon entry of an order by the District Court adopting the Bankruptcy Court's report and recommendation regarding the Plan's compliance with the requirements of Section 524(g) of the Bankruptcy Code and waive the 14-day stay under Fed. R. Bankr. P. 3020(e). Dkt. 1076, Confirmation Br. ¶¶ 335-36. Since the Plan cannot be confirmed,

[41] Notably, given that Insured Asbestos Claims are also channeled to the Asbestos Trust (*see* Dkt. 1141, Plan § 8.3(h)), the Plan Proponents' argument supports the conclusion that no Channeled Asbestos Claimant should be permitted to recover punitive damages, whether an Insured Asbestos Claim or Uninsured Asbestos Claim.

the Court need not rule on this request. However, even if the Plan were confirmable, the Court would not be inclined to waive, or recommend waiving, the 14-day stay.

159. Fed. R. Bankr. P. 3020(e) provides that "[u]nless the court orders otherwise, a confirmation order is stayed for 14 days after its entry."[42] The stay is intended to provide a time for an objecting party to obtain a stay pending appeal of the confirmation order, during which time the plan will not be implemented. *See In re Levelbest, LLC*, No. 19-11673, 2023 Bankr. LEXIS 117, at *18-*19 (Bankr. S.D.N.Y January 13, 2023) (the goal of 3020(e) is to provide enough time for a party to request a stay pending appeal before the plan is implemented and an appeal becomes moot). Thus, the stay operates as a courtesy to the appellate court, providing it time to "consider the merits of the motion for a stay pending appeal before a plan is consummated." *AIO US*, 2025 WL 2426380, at *29.

160. The Plan Proponents assert that waiver of the 14-day stay is merited due to "overwhelming support for the Plan." Dkt. 1076, Confirmation Br. ¶ 336. The Court disagrees, and finds that this is not a basis to deprive objecting parties of their right to seek a stay pending appeal.

161. The Plan Proponents otherwise make conclusory statements that the relief "is in the best interests of the Debtor's Estate and creditors and will not prejudice any party in interest." *Id.* The Plan Proponents provided no support for these conclusory statements.

162. If the 14-day stay were waived, the rights of the objecting insurers would be prejudiced. They would lose the ability to seek a stay pending appeal before the Plan could be consummated. Consummation may moot their appeal, depriving them of their rights and interests.

[42] Fed. R. Bankr. P. 6004(h) similarly provides for a stay with respect to the sale or use of property: "Unless the court orders otherwise, an order authorizing the use, sale, or lease of property (other than cash collateral) is stayed for 14 days after the order is entered."

163. There is no emergency or need for a waiver of the 14-day stay. The Debtor has no employees and ceased its business operations in 2003,[43] and there is no evidence of any harm to the Debtor from maintaining the stay.

164. Various parties have objected to the confirmation of the Plan. Therefore, even if the Plan were confirmable, the Court would not waive, or recommend waiving, the 14-day stay provided under Fed. R. Bankr. R. 3020(e).

IV. CONCLUSION

165. Based on the foregoing, the Bankruptcy Court concludes that the Plan cannot be confirmed and **DENIES** the Plan Proponents' request for confirmation of the Plan.

[43] *See* Dkt. 1115, Lascell Decl. ¶ 5; Dkt. 8, Decl. of Christopher Lascell in Supp. of Ch. 11 Petition and First Day Pleadings of Hopeman Brothers, Inc. ¶¶ 1, 19 (Certain Insurers Ex. 1).