

STEPTOE LLP

Joshua R. Taylor (VSB No. 45919)
Catherine D. Cockerham (admitted *pro hac vice*)
Jefferson Klocke (admitted *pro hac vice*)
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 429-3000
jrtaylor@steptoe.com
ccockerham@steptoe.com
jklocke@steptoe.com

*Counsel for 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*

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

In re:

**HOPEMAN BROTHERS, INC.,

Debtor.**

Chapter 11

Case No. 24-32428 (KLP)

**TRAVELERS' OBJECTIONS TO THE BANKRUPTCY COURT'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CONFIRMATION
OF THE MODIFIED AMENDED PLAN OF REORGANIZATION OF HOPEMAN
BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND
APPROVING ADEQUACY OF THE DISCLOSURE STATEMENT**



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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 collectively with Travelers Indemnity and Travelers Casualty, “Travelers”),¹ parties in interest, respectfully submit the following objections to the Bankruptcy Court’s *Proposed Findings of Fact and Conclusions of Law Regarding Confirmation of the Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code and Approving Adequacy of the Disclosure Statement*, Dkt. 1267² (“Proposed Findings”). As set forth herein, the District Court should decline to adopt the Proposed Findings or confirm the *Second Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, Dkt. 1185 (the “Plan”)³ jointly proposed by Hopeman Brothers, Inc. (“Hopeman” or “Debtor”) and the Official Committee of Unsecured Creditors (“Committee” and collectively with Hopeman, the

¹ Travelers notes that page 14 of the Proposed Findings incorrectly identifies and defines “Travelers” by excluding St. Paul from the definition of the term “Travelers.” Travelers requests that the Proposed Findings be corrected to identify all three of the Travelers entities as “Travelers.”

² Fed. R. Bankr. P. 9033 provides that the District Court must review the Proposed Findings “on the record,” which includes all of the filings in the bankruptcy record and the exhibits admitted, testimony given, and arguments made, at the Confirmation Hearing. Docket cites throughout these objections refer to the Bankruptcy Court docket, No. 24-32428-KLP (Bankr. E.D.V.A). Due to the voluminous nature of the Bankruptcy Court record, Travelers respectfully requests that the Court take judicial notice of this docket and filings therein. *Great Midwest Ins. Co. v. WB Contracting Grp., Inc.*, No. 3:23-CV-680, 2023 WL 9197966, at *1 n.1 (E.D. Va. Dec. 22, 2023) (taking judicial notice of bankruptcy petition and bankruptcy court docket) (first citing *Anderson v. Fed. Deposit Ins. Corp.*, 918 F.2d 1139, 1141 n.1 (4th Cir. 1990) (“[T]he Bankruptcy Court is considered ‘a unit of the district court’ under 28 U.S.C. § 151, and ... a district court should properly take judicial notice of its own records[.]”); then citing Fed. R. Evid. 201(d)). Travelers believes the record should include, and the District Court should take into consideration, *inter alia*, Travelers’ Objection, Travelers’ Proposed Findings, all of the records referenced herein and in Travelers’ Objection, and the exhibits admitted at and the transcripts of the Confirmation Hearing.

³ Unless otherwise defined herein, capitalized terms used herein have the meanings given to them in the Plan.

“Plan Proponents”) because (i) some of the Proposed Findings are not supported by the evidence or law, and (ii) the Bankruptcy Court failed to address, much less sustain, a number of Travelers’ objections to the Plan which prevent confirmation. At a minimum, additional modifications to the Plan are required before it may be confirmed. In support thereof, Travelers respectfully states:

I. PRELIMINARY STATEMENT

1. Although the Bankruptcy Court correctly found that the Plan requires modification to address a few of Travelers’ objections, it erred in finding the Plan otherwise confirmable.

2. First, the Proposed Findings failed to address (or sustain) Travelers’ objection that the Plan is not “insurance neutral” given that the Plan’s insurance neutrality provisions do not extend to all relevant insurance agreements, including “Designated Insurance Agreements.” As the Bankruptcy Court correctly found, the Designated Insurance Agreements are not executory contracts and are not rejected under the Plan. Thus, the Plan cannot be confirmed without being modified to provide that it is insurance neutral as to the Designated Insurance Agreements.

3. Although the Bankruptcy Court correctly found that the Asbestos Trust created under the Plan should not have unfettered access to the Debtor’s books and records, the Court should clarify the Proposed Findings to expressly hold that FCR, TAC, and TAC/FCR Professionals are not permitted to access Hopeman’s privileged books and records.

4. The Proposed Findings incorrectly overrule Travelers’ objection that the Plan cannot be confirmed because it purports to transfer rights to the Asbestos Trust in certain Travelers’ policies and certain bad faith claims that are not property of Hopeman’s estate. In particular, the Bankruptcy Court erred when it concluded that it could authorize the Plan’s transfer of rights and interests without first determining whether the Debtor has such rights and interests.

5. The Proposed Findings are incorrect in finding that the Plan satisfies the requirements of Section 524(g) of the Bankruptcy Code. Contrary to the Proposed Findings, there is no obligation of Reorganized Hopeman to fund the Asbestos Trust.

6. Moreover, the Proposed Findings fail to address (or sustain) Travelers' objections that: (i) the Plan improperly impairs Non-Settling Insurers' rights to information from the Asbestos Trust; (ii) the judgment reduction provision of the Plan is insufficient; (iii) the Plan is impermissibly vague and ambiguous as to the determination of Uninsured Asbestos Claims; (iv) the proposed discharge and discharge injunction are impermissibly broad; and (v) Plan Documents improperly limit valid subpoenas.

7. Finally, the Proposed Findings incorrectly find that the Plan satisfies the requirements of Bankruptcy Code Section 1123(a)(4). In fact, the Plan fails to treat all holders of Class 4 Channeled Asbestos Claims the same as to the potential recovery of punitive damages.

II. BACKGROUND

A. Insurance Background

8. Hopeman's liability insurance program that is potentially applicable to asbestos-related claims consists of primary-layer insurance policies issued by Liberty Mutual from 1937 through 1984 and multiple layers of umbrella and excess policies issued by Liberty Mutual and other insurers from 1965 through 1984. Dkt. 767 (Disclosure Statement) at 9. Travelers issued certain umbrella and excess liability policies to Hopeman prior to 1984. While two policies are exhausted and released, Hopeman contends that thirteen Travelers policies may provide coverage for asbestos-related claims in the future (the "Travelers Policies"). Dkt. 1185 (Plan) § 1.12; Dkt. 853 (Plan Suppl.), at Ex. H (Asbestos Insurance Policies). None of the Travelers Policies requires

Travelers to defend asbestos-related claims or pay defense costs. *See* Travelers Ex. D⁴ (Dkt. 944-5, Policy No. 01 XN 542 WCA) at 3; *see also* Travelers Exs. C, F, H, I, K, L, N, O, Q, R, T, U;⁵ *see also*, Travelers Ex. A (Dkt. 949, Travelers 2005 Agreement) §§ C-E. Each Travelers Policy sits above other policies that have not exhausted their limits of liability. *See, e.g.*, Travelers Ex. W (Dkt. 1182, Debtor Rule 30(b)(6) Dep. Des.) at 146:13-147:7; Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr’g Tr.) at 166:25-167:16.

9. In June 1985, Travelers Casualty and Hopeman (and other insurance companies) entered into an Agreement Concerning Asbestos Claims (the “Wellington Agreement”). Certain Insurers Ex. 1 (Dkt. 8, Decl. of Christopher Lascell in Supp. of Ch. 11 Petition and First Day Pleadings of Hopeman Brothers, Inc.) (“Lascell Decl.”) ¶ 32; Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hrg. Tr.) at 6:18-22. Among other things, the Wellington Agreement establishes a framework for the payment of indemnity and defense costs regarding asbestos-related claims against Hopeman. Dkt. 767 (Disclosure Statement) at 9.⁶ Under the Wellington Agreement, Hopeman waived certain claims, including certain claims for bad faith against Travelers Casualty. Travelers Ex. B (Dkt. 949, Wellington Agreement) § VIII.3.

10. In 2005, Travelers and Hopeman entered into a confidential agreement, the Agreement Among Hopeman Brothers, Inc., The Travelers Indemnity Company, Travelers

⁴ “Travelers Ex.” refers to Travelers’ exhibits that were admitted into evidence at the confirmation hearing, and “Certain Insurers Ex.” refers to certain insurers’ exhibits admitted into evidence at the confirmation hearing. *See* Dkt. 1159 (Certain Insurers’ List of Witnesses and Exhibits for Confirmation Hearing); Dkt. 1182 (Corrected Notice of Filing of Travelers Exhibit W); Dkt. 1168 (admitting Certain Insurers Exhibits 1-28, Travelers Exhibits A-V, X-AB, and revised Travelers Exhibit W).

⁵ *See* Dkt. 944-4, 944-7, 944-9, 944-10, 944-12, 944-13, 944-15, 944-16, 944-18, 944-19, 944-21, 944.22.

⁶ Under that Agreement, excess carriers like Travelers Casualty whose excess policies exclude a defense duty are not required to pay defense costs. Travelers Ex. B ¶ XI.1 (Dkt. 949).

Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company (the “Travelers 2005 Agreement”). The Travelers 2005 Agreement provides certain terms and conditions governing the relationship between Hopeman and Travelers regarding the Travelers Policies and also provides [REDACTED]. See Travelers Ex. A, Dkt. 949.

B. Plan and Proposed Findings

11. On May 21, 2025, the Plan Proponents proposed the *Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code*, dated May 21, 2025, Dkt. 766 (the “May Plan”) and also filed the “Disclosure Statement.”⁷ The same day, the Bankruptcy Court approved, Dkt. 782, on a conditional basis, the Disclosure Statement and 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 final approval of the Disclosure Statement.

12. On June 6, 2025, the Debtor filed the *Notice of Filing of Plan Supplement Related to Amended Plan of Reorganization of Hopeman Brothers, Inc.*, Dkt. 853 (“Plan Supplement”), which included copies of: (i) the Revised Asbestos Trust Agreement, *id.* at 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 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.

⁷ *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”).

13. On July 7, 2025, Travelers filed “Travelers’ Objection”⁸ to the May Plan and the Disclosure Statement.⁹

14. On July 25, 2025, the Debtor filed the Plan Proponents’ Confirmation Brief.¹⁰ On August 18, 2025, the Debtor filed the Plan Proponents’ Supplemental Confirmation Brief.¹¹

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

16. 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

⁸ *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. Under Chapter 11 of the Bankruptcy Code* (“Travelers’ Objection”), as filed under seal at Dkt. 949 and with redactions, at Dkt. 944.

⁹ Century Indemnity Company and Westchester First Insurance Company (together, “Chubb”) and Liberty Mutual Insurance Company (“Liberty Mutual”) also filed objections to the Plan. Dkts. 959-960 and 953-954.

¹⁰ *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*, Dkt. 1076 (“Confirmation Brief”).

¹¹ *Plan Proponents’ Supplemental Memorandum of Law Regarding the Liquidation Analysis, the Best Interests Test Under Section 1129(A)(7) of the Bankruptcy Code, and the Scarcella Report*, Dkt. 1119 (the “Supplemental Confirmation Brief”).

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.

17. The Confirmation Hearing was held on August 25, 2025, and August 26, 2025, at which the Bankruptcy Court received evidence and heard argument concerning the Disclosure Statement and Plan. Dkts. 1174, 1175, 1300, 1301.¹² The Bankruptcy Court also directed the Plan Proponents, Travelers, Chubb, and Liberty Mutual to submit proposed Findings of Fact and Conclusions of Law on or before September 5, 2025. *See* Dkt. 1168.

18. On September 5, 2025, Travelers filed Travelers' Proposed Findings.¹³ On September 5, 2025, the Plan Proponents submitted the Plan with further amendments, along with the Plan Proponents' Proposed Findings.¹⁴ On October 31, 2025, the Bankruptcy Court entered the Proposed Findings. Dkt. 1267.

III. OBJECTIONS AND ARGUMENT

19. Under Bankruptcy Rule 9033, the District Court “must review *de novo*—on the record or after receiving additional evidence—any part of the bankruptcy judge's findings of fact or conclusions of law to which specific written objection has been made.” Fed. R. Bankr. P. 9033(c)(1). The Court “may accept, reject, or modify, the proposed findings of fact or conclusions

¹² Transcripts of the Confirmation Hearing are located on the Docket at Dkt. 1174 and Dkt. 1175 (both under seal pursuant to Dkt. 1251 (Order Granting Travelers' Motion for Redaction of August 25 and 26, 2025 Hearing on Transcripts)), with redacted versions located at Dkts. 1300, 1301, though transcript access is “restricted through 11/25/2025.”

¹³ *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*, Dkt. 1188 (“Travelers' Proposed Findings”).

¹⁴ *Notice of (I) Amended Proposed Findings and Conclusions, (II) Amended Proposed Confirmation Order, and (III) Amended Proposed Order Recommending Adoption of the Findings and Conclusions and Entry of the Confirmation Order*, Dkt. 1187 (“Plan Proponents' Proposed Findings”).

of law, take additional evidence, or remand the matter to the bankruptcy judge with instructions.”
Id. at (c)(2).

A. *The Bankruptcy Court Failed to Address Travelers’ Objection that the Insurance Neutrality Provisions Do Not Cover All Insurance Agreements*

20. Travelers objected that the Plan is not insurance neutral because the insurance neutrality provisions of the Plan do not include all relevant insurance agreements.¹⁵ Although the Bankruptcy Court found that the Plan must be “insurance neutral,” and that insurance neutrality provisions appear in Sections 6.2 and 8.18 of the Plan, the Bankruptcy Court failed to require modifications to the Plan to ensure these neutrality provisions cover all insurance agreements. *See* Dkt. 1267 (Proposed Findings) at 51-56. Specifically, the Bankruptcy Court did not address (and failed to sustain) Travelers’ objection that the Plan’s insurance neutrality provisions in Sections 6.2 and 8.18 do not include the Travelers 2005 Agreement, which is a “Designated Insurance Agreement.” *See* Dkt. 1175 & 1301 (Aug. 26, 2025 Confirmation Hr’g Tr.) 128:11-132:15; Dkt. 1188 (Travelers Proposed Findings) ¶¶ 30-33. This was an error, and the Plan must be modified so that the insurance neutrality provisions in Plan Sections 6.2 and 8.18 include the “Designated Insurance Agreements,”¹⁶ including the Travelers 2005 Agreement.

¹⁵ Travelers also objected that the Plan is not insurance neutral because it contains several provisions that constitute improper declaratory judgments concerning the Plan’s effect on insurers’ rights and obligations, impairing Travelers’ rights in possible future coverage litigation. *See, e.g.*, Dkt. 944 & 949 (Travelers’ Objection) ¶¶ 42, 60-65; Dkt. 1188 (Travelers’ Proposed Findings) ¶¶ 36-54. The Bankruptcy Court properly found that these objections are “well founded,” and that the Plan cannot be confirmed with such provisions. Proposed Findings at 54-55.

¹⁶ “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 within the period of one year immediately preceding the Petition Date. For the avoidance of doubt,

21. By way of background, the May Plan provided that certain agreements between Debtor and an Asbestos Insurer were “Asbestos CIP Agreements.” Dkt. 766 (May Plan) § 1.7. Travelers objected that the definition of “Asbestos CIP Agreement” was impermissibly vague, including as to its treatment of the Travelers 2005 Agreement. Dkt. 944 & 949 (Travelers’ Objection) ¶¶ 12-23. In response to Travelers’ Objection, the Plan Proponents modified the May Plan to: (i) edit the definition of “Asbestos CIP Agreement” and (ii) add a new term, “Designated Insurance Agreement,” which includes certain prepetition settlement agreements and coverage-in-place agreements, including the Travelers 2005 Agreement. Dkt. 1141 (August Plan) § 1.51; Dkt. 1185 (Plan) § 1.51. However, the Plan Proponents did not modify Sections 6.2 and 8.18 of the Plan to incorporate “Designated Insurance Agreement” into the insurance neutrality provisions.

22. In the Proposed Findings, the Bankruptcy Court found that the “Asbestos Insurance Policies, Asbestos CIP Agreements, Non-Asbestos Insurance Policies, and Designated Insurance Agreements, including the Travelers 2005 Agreement, are not executory contracts, and as such, are not capable of assumption or rejection.” Dkt. 1267 (Proposed Findings) at 43.¹⁷

23. As noted, the Court also found that the Plan must be insurance neutral, and that insurance neutrality provisions are in Plan Section 6.2, titled “Asbestos Insurance Agreements,” and Section 8.18, titled “Insurance Neutrality.” Dkt. 1267 (Proposed Findings) at 51-54. But to be truly insurance neutral, the insurance neutrality provisions in Sections 6.2 and 8.18 must provide for insurance neutrality as to all insurance agreements, including the Travelers 2005 Agreement.

the term “Designated Insurance Agreement” (i) includes the Travelers 2005 Agreement, but (ii) does not include an Asbestos CIP Agreement.” Dkt. 1185 (Plan) § 1.51.

¹⁷ The Plan Proponents and Travelers agree that the Travelers 2005 Agreement is not an Executory Contract. Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hrg. Tr.) at 6:13-15.

24. As the Proposed Findings correctly observed, a plan should “neither increase[] [the insurer’s] prepetition obligations nor impair[] its rights under the insurance contracts.” Dkt. 1267 (Proposed Findings) at 51 (quoting *Truck Ins. Exchange v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 271-72 (2024) (dicta)); see also *In re AIO US, Inc.*, No. 24-11836 (CTG), 2025 WL 2426380, at *15 & n.154 (Bankr. D. Del. Aug. 21, 2025) (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 this point clearly.” (citing *In re Boy Scouts of Am.*, 137 F.4th 126, 164 (3d Cir. 2025))).

25. 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 (citations omitted); Dkt. 1267 (Proposed Findings) at 51.

26. Accordingly, here, subject to the one exception noted by both Judge Goldblatt in *AIO* and by the Bankruptcy Court,¹⁸ 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 (citation omitted); *Boy Scouts*, 137 F.4th at 165 (“[A] plan cannot be confirmed when it incorporates provisions that impermissibly impair [contractual] counterparts’ rights.”) (citation omitted); *AIO US*, 2025 WL 2426380 at *17 (finding that any plan or order confirming a plan “should not put a thumb on the

¹⁸ The lone exception relates to “insurers’ rights to challenge the assignment of the policies to the trust.” *AIO US*, 2025 WL 2426380, at *2 (finding such rights are preempted by Section 1123(a)(5) of the Code). The Bankruptcy Court found the same exception applies. Dkt. 1267 at 55 (observing the Plan should not impair insurer rights or defenses “save for the voidability of anti-assignment provisions”).

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”).

27. As the Bankruptcy Court correctly observed, “In other words, a plan is insurance neutral if ‘all contractual rights and coverage defenses [are] fully preserved.’” Dkt. 1267 (Proposed Findings) at 51 (quoting *In re Flintkote Co.*, 486 B.R. 99, 117 (Bankr. D. Del. 2012), *aff’d*, 526 B.R. 515 (D. Del. 2014)).¹⁹

28. Accordingly, Plan Sections 6.2 and 8.18, the insurance neutrality provisions in the Plan, need to be modified to include all insurance agreements, including the Travelers 2005 Agreement, and should not be limited to neutrality with respect to the “Asbestos Insurance Policies” and “Asbestos CIP Agreements.” These sections read as follows, in relevant part:

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.

...

¹⁹ See also, e.g., *In re Pittsburgh Corning Corp.*, 453 B.R. 570, 604-05 (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 courts do not have the power to rewrite contracts to allow debtors to continue to perform on more favorable terms.”). Thus, 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*).

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 ...

Dkt. 1185 (Plan) §§ 6.2 & 8.18 (emphasis added).

29. First, while the language in subparts (i) and (ii) at the beginning of Section 8.18 (*i.e.*, preceding the “provided, however” clause) 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. Designated Insurance Agreements are not Asbestos CIP Agreements under the Plan. Dkt. 1185 (Plan) § 1.7. As the Bankruptcy Court correctly found, the Travelers 2005 Agreement is not an Executory Contract and, thus, will remain in place. So, to be confirmable, the Plan must fully preserve Travelers’ rights and defenses under the Travelers 2005 Agreement. Because Section 8.18 fails to include Designated Insurance Agreements, including the Travelers 2005 Agreement, Section 8.18 is too narrow and not insurance neutral.

30. Thus, for the Plan to be confirmable, Section 8.18 must be revised to include the Designated Insurance Agreements, *e.g.*,

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 any Designated Insurance Agreement (including the Travelers 2005 Agreement); 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, and any Designated Insurance Agreement (including the Travelers 2005 Agreement), 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 ...

31. Similarly, Section 6.2 fails to include Designated Insurance Agreements within its “preservation” provisions. Rather than confirming that the Travelers 2005 Agreement is not being altered or otherwise modified and 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, to be confirmable, Section 6.2 also must be modified to make the Plan insurance neutral, *e.g.*,

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. Furthermore, for the avoidance of doubt, and except to the extent a Designated Insurance Agreement constitutes an Executory Contract, none of the Designated Insurance 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 to the extent of a Designated Insurance 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.

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

32. Travelers objected to the Plan Documents as impairing Travelers' rights to information under its policies and agreements. Dkt. 944 & 949 (Travelers' Objection) ¶ 57; Dkt. 1188 (Travelers' Proposed Findings) ¶¶ 96-101. The Bankruptcy Court erred by failing to rule in favor of (or even address) this objection.

33. 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 Pittsburgh Corning Corp.*, 453 B.R. 570, 604-05 (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 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).

34. 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 documents and information to Asbestos Insurers. Dkt. 1185 (Plan) § 1.10 (referencing the "assistance and cooperation" provisions "set forth in Asbestos Insurance Policies, Asbestos CIP Agreements, and any other provisions purporting to require the cooperation of the insured party"); 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.

35. 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.

36. 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.*

37. 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 164-65 (a plan cannot be confirmed if "it incorporates provisions that impermissibly impair counterparts' rights"); *In re Stewart Foods, Inc.*, 64 F.3d 141, 145 (4th Cir. 1995) (a debtor "remains bound by the debtor's obligations under [non-executory] contracts after the bankruptcy filing"). At a minimum, Section 6.5 of the TDPs must be modified (i) to strike "with the consent of the TAC and the FCR" and (ii) to replace "may, in specific limited circumstances," with "shall."

C. Tort Plaintiffs' Lawyers May Not Have Access to Debtor's Privileged Records

1. The Proposed Findings Should be Clarified to Bar the TAC, FCR, and TAC/FCR Professionals From Accessing Privileged Hopeman Documents and Information Due to Privilege Waiver Concerns²⁰

38. Travelers objected to the Plan and Plan Documents as (i) giving the Asbestos Trust unfettered access to Hopeman's books and records and (ii) failing to preclude the FCR and TAC from accessing the privileged books and records. Dkt. 944 & 949 (Travelers' Objection) ¶ 95; Dkt. 1188 (Travelers Proposed Findings) ¶¶ 87-95. The Plan provides that Hopeman's books and records—including privileged materials reflecting Hopeman's defense strategies against Asbestos Claims—shall be transferred to Reorganized Hopeman. Dkt. 1185 (Plan) § 8.3(l). The Bankruptcy Court agreed with Travelers that the Asbestos Trust's access to the books and records should be limited "to the extent [the Asbestos Trust] is defending or processing an Uninsured Asbestos Claim." Dkt. 1267 (Proposed Finding) at 45. However, for the sake of clarity, the Proposed Findings should be modified to expressly provide that the Asbestos Trust is precluded from sharing the privileged books and records with the TAC, FCR, and TAC/FCR Professionals.

39. The Trust Agreement provides for 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.

²⁰ The header on page 44 of the Proposed Findings is titled, "The Plan's discretionary provisions regarding the Asbestos Trust's access to certain documents should be approved." However, given that the Bankruptcy Court found that the provisions must be modified, *see* Dkt. 1267 at 45-46, the header should be revised to note that modifications are required.

40. The Trust Agreement gives the TAC and FCR full access to Hopeman’s privileged books and records 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).

41. While the Proposed Findings are not completely clear (and thus require clarification by the District Court), it appears the Bankruptcy Court properly concluded that the TAC and the FCR should be barred from accessing Hopeman’s privileged documents and information due to waiver concerns. Dkt. 1267 (Proposed Findings) at 46. The Bankruptcy Court noted that because the TAC and FCR “each represent only certain constituencies of the Asbestos Trust, the Bankruptcy Court is not persuaded that the FCR and the TAC would necessarily be covered by the common interest doctrine” *Id.* In other words, whereas the TAC will seek to maximize the recoveries of current claimants, and the FCR will seek to maximize recoveries of future claimants, the Asbestos Trust will work to ensure fair evaluation and potential payment—or *claim denial*—with respect to Uninsured Asbestos Claims to *both* sets of claimants, per the TDP and other Plan Documents. Dkt. 1143 (Second Plan Suppl.) Ex. A, Trust Agreement ¶¶ 1.2, 2.1; Dkt. 1143 (Second Plan Suppl.) Ex. B, Trust Distribution Procedures §§ 5.2, 5.3, and 6.1. Since the TAC and FCR will not share a common legal interest with the Asbestos Trust, giving the TAC, the FCR, or TAC/FCR Professionals access to privileged Hopeman books and records would necessarily result in an improper waiver of privilege. In light of this, the Court should clarify that the Plan is not confirmable unless the Plan Documents, including Sections 5.5(a) and 6.4(a) of the Trust

Agreement, are amended to preclude the TAC, FCR and TAC/FCR Professional from accessing Hopeman's privileged books and records.

2. *Insurance Neutrality and Additional Waiver Concerns Further Justify Denying the TAC, the FCR, and TAC/FCR Professionals Access to Hopeman's Privileged Documents and Information*

42. The Plan Documents also should preclude the TAC, FCR, and TAC/FCR Professional from accessing Hopeman's privileged books and records to ensure insurance neutrality and due to additional privilege waiver concerns. The Bankruptcy Court erred by failing to endorse these *additional* reasons for preventing access by the TAC and FCR to Hopeman's privileged information.

43. Nothing in the Plan or Trust Agreement prohibits the appointment of asbestos plaintiffs lawyers to the TAC, the FCR, or to positions as TAC/FCR Professionals. In fact, the Plan Proponents' candidates for the TAC and FCR are lawyers for tort plaintiffs who have brought asbestos claims against Hopeman. For instance, under the Trust Agreement, attorneys Stephen J. Austin and Lisa Nathanson Busch will be 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 claimants who have sued Hopeman, including claimants that are part of the Committee. *See, e.g.*, Dkt. 69 (Appointment of Unsecured Creditors Committee).

44. Despite allowing plaintiffs' lawyers to serve on the TAC, FCR, and as TAC/FCR Professionals, as noted above, the Trust Agreement gives members of those bodies access to Hopeman's privileged books and records that the Asbestos Trust obtains from Reorganized Hopeman. Dkt. 1143 (Second Plan Suppl.) Ex. A, Trust Agreement ¶¶ 5.5(a), 6.4(a). Thus, the Trust Agreement permits 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.

45. The Plan is not confirmable to the extent the Plan Documents would give plaintiffs' lawyers access to Hopeman's privileged information, as such access would result in a waiver of privilege. Plaintiffs' counsel are directly adverse to Reorganized Hopeman with respect to the Channeled Asbestos Claims, which arise from Hopeman's purported liability for such claims. The TAC, the FCR, and TAC/FCR Professionals cannot be permitted to access the documents and information without such access resulting in an improper privilege waiver.

46. Additionally, nothing would prevent plaintiffs' attorneys who serve as TAC/FCR members, or are TAC/FCR Professionals, from using privileged Hopeman information for the benefit of their individual asbestos plaintiff clients. 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 prejudice the defense of Channeled Asbestos Claims against Reorganized Hopeman (thus, increasing its liability and the potential liability of Non-Settling Insurers) and violate the principle that the Plan 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).

47. The Bankruptcy Court did “not accept the Objecting Insurers' insinuation that members of the TAC or the FCR may improperly use the privileged information contained in the Debtor's books and records to somehow advantage individual holders of Asbestos Claims” and suggested that the foregoing concerns are misplaced because there was no reason to believe the

TAC or FCR would “fail to uphold their fiduciary duties.” Dkt. 1267 (Proposed Findings) at 46. The Bankruptcy Court seemed to suggest that attorneys who are TAC or FCR members, or are TAC/FCR Professionals, would allegedly violate fiduciary duties if they used privileged Hopeman documents and information to benefit their individual asbestos plaintiff clients. *Id.* But this is backwards—such attorneys would violate their professional duties if they **failed** to use privileged Hopeman documents and information for the benefit of their individual clients. *E.g.*, Va. Rules of Prof. Conduct R. 1.3 cmt. 1 (2025) (lawyer must represent clients with “zeal”).²¹ Further, once those attorneys access privileged Hopeman information, they will not be able to unlearn it, *i.e.*, the egg cannot be unscrambled.

48. Accordingly, before the Plan can be confirmed, the Plan Documents (including Sections 5.5(a) and 6.4(a) of the Trust Agreement) must be amended to preclude the Asbestos Trust from sharing any of Hopeman’s privileged documents or information with the TAC, the FCR, or any TAC/FCR Professionals.

D. The Plan’s Judgment Reduction Provision is Insufficient

49. The Bankruptcy Court erred when it failed to rule in favor of (or even address) Travelers’ Objection that the Plan’s judgment reduction provision is insufficient to protect Travelers’ interests and rights. Dkt. 944 & 949 (Travelers’ Objection) ¶¶ 43-53, Dkt. 1188 (Travelers Proposed Findings) ¶¶ 68-86.

²¹ The Trust Agreement’s purported non-waiver provision does not cure this problem. Dkt. 1076 ¶ 168 & nn.202-03 (citing to Dkt. 1143 (Second Plan Suppl.), Ex. A, Trust Agreement ¶¶ 5.5(a) & 6.4(a)). That provision merely states that disclosure of privileged information to the TAC, FCR, and TAC/FCR Professionals shall not result in waiver. By its terms, the provision does not bar such information from being used to improperly prejudice the Non-Settling Insurers and Reorganized Hopeman. Moreover, the provision does not even apply to transfers of Hopeman’s privileged books and records, and, in any event, is ineffective because a disclosure of privileged information to an adversary necessarily results in waiver, as the Plan Proponents concede. *See* Dkt. 1188 ¶ 93 (also noting, at n.27, that the Court cannot dictate the res judicata effect of its orders).

1. *The Plan Cannot be Confirmed Because it Permits Travelers' Rights to be Extinguished Without Adequate Protection*

50. To be confirmable, the Plan must adequately protect Travelers' potential claims against other insurers, including because Travelers could have claims against insurers that have settled with Hopeman for those insurers' share of defense or indemnity costs for Asbestos Claims.

51. It is undisputed that Travelers does not have any contractual obligation to provide a defense to Hopeman or pay defense costs under the Travelers Policies. *See, e.g.*, Travelers Ex. D (Dkt. 944-5, Policy No. 01 XN 542 WCA) at 3; Travelers Ex. A (Dkt. 949) §§ 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. Certain Insurers Ex. 1 (Dkt. 8, Lascell Decl.) ¶¶ 31-33; Dkt. 767 (Disclosure Statement) at 9. For example, Travelers Casualty, along with Hopeman and various other Hopeman insurers, are signatories to the Wellington Agreement. *See, e.g.*, Certain Insurers Ex. 1 (Dkt. 8, Lascell Decl.) ¶ 32; Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr'g Tr.) at 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 (Dkt. 949, 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.*

52. To the extent insurers with a defense payment obligation settle with Hopeman, Non-Settling Asbestos Insurers might be forced to pay defense costs to avoid entry of default judgments. To the extent such insurers without defense obligations, like Travelers, provide a defense to Hopeman to avoid entry of default judgments, they could incur costs that are other insurers' responsibility. 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. *See e.g., Hartford Accident & Indem. Co. v. Mich. Mut. Ins. Co.*, 463 N.E.2d 608, 610-11 (N.Y. 1984) (finding that 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) (concluding an insurer’s settlement with insured does not immunize that insurer from claims by other insurers, including equitable contribution claims). Further, the same is true regarding 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) (recognizing 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.).

53. However, the Plan does not adequately protect these state law rights.

54. By way of background, earlier in the bankruptcy proceedings, the Bankruptcy Court entered a Settlement Order [Dkt. 442]²² approving the Certain Settling Insurers Agreement between Hopeman and certain insurers. Pursuant to the Settlement Order, the Bankruptcy Court entered an injunction (i) enjoining certain claims against the Settling Insurer Persons (as defined in the Settlement Order) and (ii) channeling all “Asbestos Claims”—which include claims for “contribution, indemnity, reimbursement or otherwise arising from” asbestos-related claims against Hopeman—to the settlement proceeds. *See id.* ¶¶ 7-8, 14-15; Dkt. 53 (Settlement Mot.),

²² *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*, Dkt. 442 (“Settlement Order”).

Ex. A (Settlement Agreement) § 1.3. Thus, the Settlement Order bars Travelers from pursuing claims against those settled insurers for shares of defense or indemnity costs, and instead channels all such contribution, indemnity, reimbursement, and other rights to the settlement proceeds.

55. 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 kind.” Dkt. 1185 (Plan) § 8.3 (emphasis added). In other words, although the Settlement Order attaches Travelers’ claims to the settlement proceeds, the Plan does not allow Travelers to pursue its claims against the settlement proceeds. Therefore, the Plan fails to adequately protect²³ 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, which will receive those proceeds.

56. 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).²⁴ 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 their incurrence of obligations

²³ 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, Inc.*, 322 F.3d 283, 288-90 (3rd Cir. 2003), interests include claims, not just liens.

²⁴ 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 (emphasis added) (citation omitted).

that would otherwise have been borne by a settling insurer—*i.e.*, a lien on the proceeds the settling insurer paid to the Trust. *See In re SportStuff, Inc.*, 430 B.R. 170, 179 (BAP 8th Cir. 2010) (holding the bankruptcy court erred in extinguishing additional insureds’ contribution claims 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).

2. The Plan’s Judgment Reduction Provision is Insufficient

57. The Plan Proponents have suggested that the Plan’s judgment reduction provision adequately protects Travelers’ interests, but this is wrong. While the Plan provides a judgment reduction provision allowing Travelers to reduce its liability (if any) in limited circumstances, it does not sufficiently protect Travelers’ rights. As discussed, under the Settlement Order, claims for “contribution, indemnity reimbursement or otherwise” arising from Asbestos Claims are channeled to the settlement proceeds, *see supra* ¶ 54, but the judgment reduction only applies to contribution claims.

58. Specifically, Section 8.13(c)(i) of the Plan narrowly provides:

If any Non-Settling Asbestos Insurer against whom an Insurance Policy Action²⁵ 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.

²⁵ 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. 1185 (Plan) § 8.13(c).

Dkt. 1185 (Plan) § 8.13(c)(i) (first and third emphasis added); *see also* Dkt. 1143 (Second Plan Suppl.), Ex. B, TDPs § 5.2(a)(vi)(a).

59. As an initial matter, the judgment reduction provision is too narrow, applying only to “contribution” rights and not extending to claims by a Non-Settling Asbestos Insurer against a Settled Asbestos Insurer with respect to a Channeled Asbestos Claims under other potential theories of recovery, such as “indemnity, reimbursement, or otherwise,” including breach of contract, subrogation, offset, breach of duty of good faith, or other similar claims, whether based on contract, statute, common law, or equity.

60. In their Confirmation Brief, the Plan Proponents resisted expanding the clause beyond contribution by asserting that Travelers “has not articulated how it would have any other rights.”²⁶ Dkt. 1076 (Confirmation Br.) ¶ 296. However, as noted, the Settlement Order extends beyond contribution claims, and in any event, Travelers has 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 supra* ¶ 52; *see also* Dkt. 944 & 949 (Travelers’ Objection) ¶ 53. Moreover, 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, 636-37 (Ct. App. 2000) (insurers may assert equitable indemnity and equitable subrogation claims against other insurers). Indeed, in the confirmed 524(g) plan in *Kaiser Gypsum*, the judgment reduction

²⁶ 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. 1185 (Plan) §1.9.

provision extended beyond contribution to *any* claim based on, arising under, or related to an insurance policy or settlement based on, or related to, any insurance policy, “including any claim for contribution, reimbursement, indemnity or subrogation, or bad faith refusal to settle.”²⁷ Therefore, because the judgment reduction provision is limited to contribution, it fails to adequately protect Travelers interests and the Plan cannot be confirmed.

61. Additionally, 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.²⁸ 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.*, Nos. 3:18-CV-05637-RBL, 3:18-CV-05638 BHS, 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

²⁷ 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. Sep. 24, 2020), ECF No. 2481, at §§ III.P; I.A.11. Further, 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 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.

²⁸ 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.

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 provisions impermissibly operate to extinguish insurer claims without their consent. *Id.*, 137 F.4th at 169. Accordingly, the Plan cannot be confirmed as written.

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

62. Travelers objected to the Plan because it purports to transfer to the Asbestos Trust rights in the Travelers 2005 Agreement Asbestos Insurance Policies and certain Extracontractual Claims that the Debtor does not have. Dkt. 944 & 949 (Travelers' Objection) ¶¶ 68-73; Dkt. 1188 (Travelers' Proposed Findings) ¶¶ 102-112.

63. The undisputed record evidence establishes that two Travelers insurance policies were exhausted and released by Hopeman prior to the bankruptcy: (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 "Travelers 2005 Agreement Asbestos Insurance Policies").²⁹ See Travelers Ex. W (Dkt. 1182, Debtor Rule 30(b)(6) Dep. Des.) at 179:12-180:22 (identifying these two Travelers policies as released and that the Debtor has no rights remaining under them); Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr'g Tr.) at 141:9-142:2, 166:11-167:3 ([REDACTED]); Dkt. 1116 (Van

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. CP [sic] 2669174, and (ii) Aetna Casualty and Surety Company Policy No. 01 XN 541 WCA." Plan § 1.111. The first policy number contains a typo and should be Policy No. CUP 2669174.

Epps Decl.) ¶ 33 (Hopeman “released two specifically-identified Travelers excess insurance coverage policies”); Travelers Ex. AA (Dkt. 944-25, Debtor’s Resp. to Travelers’ Interrogs.) at No. 17. In other words, Hopeman indisputably has no remaining rights under the Travelers 2005 Agreement Asbestos Insurance Policies.

64. The undisputed record evidence also shows that under the Wellington Agreement, Hopeman waived certain Extracontractual Claims³⁰ against Travelers Casualty. Travelers Ex. B (Dkt. 949, Wellington Agreement) § VIII.3; Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr’g Tr.) at 6:18-23 (stipulating that Travelers Casualty is a signatory to the Wellington Agreement). Further, under the Travelers 2005 Agreement, Hopeman [REDACTED] [REDACTED]. Travelers Ex. A (Dkt. 949, Travelers 2005 Agreement) § VII.A.

65. Despite the Debtor’s prior release of the Travelers 2005 Agreement Asbestos Insurance Policies and certain Extracontractual Claims against Travelers, the Plan provides that Asbestos Insurance Rights will be transferred to the Asbestos Trust on the Effective Date. Dkt. 1185 (Plan) § 8.3(b). It further grants the Asbestos Trust “the exclusive right to pursue, monetize, settle, or otherwise obtain the benefits of the Asbestos Insurance Rights” *Id.* § 8.13(a).³¹

66. 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:

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. 1185 (Plan) § 1.67.

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).

(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. 1185 (Plan) § 1.13.

67. The Plan defines the Travelers 2005 Agreement Asbestos Insurance Policies as “Asbestos Insurance Policies,” *see* Dkt. 1185 (Plan) § 1.111,³² and thus, purports to include rights under these policies as part of the “Asbestos Insurance Rights” that will be transferred to the Asbestos Trust. However, as set forth above, the undisputed evidence confirms that Hopeman has no remaining rights or coverage under the Travelers 2005 Agreement Asbestos Insurance Policies. Further, the definition of “Asbestos Insurance Rights” includes “any and all Extracontractual Claims,” *see* Dkt. 1185 (Plan) § 1.13, even though the Debtor has already released or waived certain Extracontractual Claims against Travelers, as explained above.³³

68. While the Bankruptcy Court did not expressly address Travelers’ objection in the Proposed Findings, it noted a similar objection raised by Liberty Mutual, and declined to require any modifications to the Plan. Rather, the Bankruptcy Court concluded:

The Debtors cannot transfer what they do not have As a matter of law, if the Debtor does not have any rights, no transfer is effectuated. **But issues regarding**

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. 1185 (Plan) §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. 1185 (Plan) § 8.13(e); Dkt 1143 (Second Plan Suppl.) Ex. B, TDPs § 5.2(a)(x).

the nature of the Debtor's Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute.

Dkt. 1267 (Proposed Findings) at 50 (emphasis added).

69. While the Bankruptcy Court correctly concluded that the Debtor cannot transfer to the Asbestos Trust rights that it does not have, this Bankruptcy Court erred: 1) by failing to determine what rights the Debtor has (and therefore, what rights the Plan may transfer from the Debtor to the Asbestos Trust) and 2) thus approving the Plan's transfer of non-existent rights related to Travelers from Hopeman to the Asbestos Trust.

70. 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 commencement of the case." 11 U.S.C. §541(a)(1). Thus, the Debtor's bankruptcy filing cannot augment or shrink the nature of property of the estate, and the Debtor "cannot possess anything more than the debtor itself did outside bankruptcy." *Mission Prod. Holdings v. Tempnology, LLC*, 587 U.S. 370, 381 (2019). Hopeman's rights are no greater than existed prepetition. *See* 11 U.S.C. § 541; *see Mission Prod. Holdings*, 587 U.S. at 381 ("Whatever limitations on the debtor's property apply outside of bankruptcy apply inside of bankruptcy as well.") (citation modified).

71. To approve the Plan's transfer of assets from the Debtor to the Asbestos Trust, the Court first must determine whether the Debtor has such assets – if the estate has no rights, it cannot transfer them. *See In re Worcester Country Club Acres, LLC*, 655 B.R. 41, 46 (Bankr. D. Mass. 2023) (holding disputed land and rights could not be sold without first adjudicating ownership and determining whether they were property of the debtor's estate); *In re Williams-Johnson*, No. 00-61211-T, 2002 Bankr. LEXIS 828, at *6 (Bankr. E.D. Va. Jan. 17, 2002).

72. Since, as discussed above, the undisputed evidence is that no such rights exists, the Court cannot approve the Plan's purported transfer from Hopeman to the Asbestos Trust of

(i) rights under the Travelers 2005 Agreement Asbestos Insurance Policies and (ii) Extracontractual Claims that have been released or waived by Hopeman. At a minimum, section 1.13 of the Plan (the definition of “Asbestos Insurance Rights”), or some other part of the Plan, must be modified to provide in sum or substance:

For the avoidance of doubt, notwithstanding any provision herein to the contrary, the term “Asbestos Insurance Rights” does not include any rights, title, privileges, interests, claims, demands or entitlements in or to (i) the Travelers 2005 Agreement Asbestos Insurance Policies or (ii) any Extracontractual Claims waived and/or released pursuant to the Wellington Agreement or 2005 Travelers Agreement.

F. *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.*

73. Travelers objected to confirmation of the Plan because the Plan provides for Channeled Asbestos Claimants to file suit in the tort system under vague and ambiguous terms, including the definitions of Uninsured Asbestos Claims and Insured Asbestos Claims. Dkt. 944 & 949 (Travelers’ Objection) ¶¶ 74-82; Dkt. 1188 (Travelers Proposed Findings) ¶¶ 113-124. The Bankruptcy Court erred by failing to rule in favor of (or even address) this objection.

74. Where a plan of reorganization is ambiguous and lacks sufficient details, it is not confirmable. *In re Pittsburgh Corning*, 453 B.R. at 604-05 (ambiguous language regarding treatment of insurance rendered plan unconfirmable); *In re Claar Cellars LLC*, 623 B.R. 578, 593 (Bankr. E.D. Wash. 2021) (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).

75. 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. 1185 (Plan) §§ 8.3(h) & 10.3 (emphasis omitted).

76. Under the Plan, there are two types of Channeled Asbestos Claims: Insured Asbestos Claims and Uninsured Asbestos Claims. Dkt. 1185 (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. 1143 (Second Plan Suppl.) Ex. B, TDPs § 5.3(a).

77. Under the Plan, Insured Asbestos Claims are Channeled Asbestos Claims that are not “Uninsured Asbestos Claims.” Dkt. 1185 (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.

78. As an initial matter, no Plan Document 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. However, this presumes a classification for the claim before it is determined.

79. 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.*

80. Without clear provisions regarding how claims will be determined to be Uninsured Asbestos Claims and Insured Asbestos Claims, the Plan is ambiguous and cannot be confirmed. *See In re Claar Cellars LLC*, 623 B.R. at 593 (finding a plan failed to satisfy Section 1123(a)(3) by “ignor[ing] details” and “promis[ing] an outcome but [leaving] in the dark” how that outcome will be achieved); *see also In re Pittsburgh Corning*, 453 B.R. at 604-05.

81. Additionally, under the Plan, a Channeled Asbestos Claim qualifies as an “Uninsured Asbestos Claim” on the basis of “no coverage under any Asbestos Insurance 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. 1185 (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.

82. First, with respect to settlements, no Plan Document explains what is meant by “no coverage under any Asbestos Insurance Policy is available due to settlement,” including whether a “settlement” includes Asbestos CIP Agreements or Designated Insurance Agreements and who must be a party to the “settlement.” Section 8.16 adds more confusion, because it provides that “A Channeled Asbestos Claim shall become an Uninsured Asbestos Claim when (i) the Asbestos Trust has settled, in accordance with an Asbestos Insurance Settlement, all rights to the Asbestos Insurance Coverage applicable to the Channeled Asbestos Claim” Dkt. 1185 (Plan) § 8.16. It is unclear how Section 8.16 (referencing a settlement by the Asbestos Trust pursuant to an Asbestos Insurance Settlement) interacts with the definition of Uninsured Asbestos Claim, which requires merely a “settlement,” including but not limited to an Asbestos Insurance Settlement.

83. Second, the Plan effectively forces Channeled Asbestos Claimants to pursue 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 a *lack* of underlying exhaustion.

84. 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 the Travelers Policies are not currently “on the risk.” Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr’g Tr.) at 167:4-12; Dkt. 1116 (Van Epps Decl.) ¶ 33; *see also, e.g.*, Travelers Ex. W (Dkt. 1182, Debtor Rule 30(b)(6) Dep. Des.) at 146:13-147:7. And as the Plan Proponents concede, before the Travelers Policies may be called upon to pay claims, exhaustion of the underlying policies would have to occur. Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr’g Tr.) at 167:13-16.

85. 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, undisputed coverage defense). 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.”

86. 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.

87. To be confirmable, the Plan Documents must be modified to resolve the ambiguities identified above. Further, the definition of “Uninsured Asbestos Claim” must be modified to

include Channeled Asbestos Claims for which no coverage under any Asbestos Insurance Policy is available due to the lack of underlying exhaustion or the application of a coverage issue or defense that neither the Channeled Asbestos Claimant or Asbestos Trust disputes.

G. The Bankruptcy Court Incorrectly Determined that the Plan Satisfies Section 524(g)(2)(B)(i)(II) of the Bankruptcy Code.

88. Section 524(g) requires that the Asbestos Trust “be funded in whole or in part 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). Here, the Plan does not satisfy 524(g) because the Debtor is not obligated to make future payments to the Asbestos Trust. *See, e.g.*, Dkt. 944 & 949 (Travelers’ Objection) ¶¶ 87-91; Dkt. 1188 (Travelers’ Proposed Findings) ¶¶ 125-36.

89. The Bankruptcy Court found that Reorganized Hopeman anticipates receiving dividends and distributions from a minority interest in a multifamily property and an investment in high quality fixed income securities. Proposed Findings at 94. The Court then concluded that:

after payment of the necessary expenses under the Plan, any remaining dividends and distributions **may be transferred** by the Reorganized Hopeman to the Asbestos Trust becoming part of the Asbestos Trust Assets. *Id.*; Plan §§ 1.64, 8.2(a)(ii), ECF No. 1185 at 15, 30 (providing that the Trust will be funded on an ongoing basis from Excess Net Reserve Funds.) In other words, Reorganized Hopeman **is obligated to make** future payments as required by Section 524(g)(2)(B)(i)(II).

Id. at 94-95 (emphasis added). The Bankruptcy Court’s conclusion that Reorganized Hopeman **is obligated to make** such future payments to the Asbestos Trust is wholly unsupported.

90. The Bankruptcy Court was correct in finding that the Reorganized Debtor **may** transfer excess funds to the Asbestos Trust. However, the evidence is uncontroverted that any such potential dividends to the Trust are entirely optional and discretionary; there is no obligation. 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 Suppl.), Ex. C (Amended By-Laws) 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 Suppl.), Ex. F (Restructuring Transaction) (emphasis added). During the Confirmation Hearing, Mr. Conor Tully, a Plan Proponent witness, 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.

Dkt. 1174 & 1300 (Aug. 25, 2025 Confirmation Hr’g Tr.) at 205:3-7, 205:17.

91. Although the Reorganized Debtor **may** fund the Asbestos Trust under the Plan, that does not impose an obligation. *Biden v. Texas*, 597 U.S. 785, 802 (2022) (“This Court has ‘repeatedly observed’ that ‘the word ‘may’ clearly connotes discretion The statute says ‘may.’ And ‘may’ does not just suggest discretion, it ‘*clearly* connotes’ it.”) (internal citations omitted). Thus, the Reorganized Debtor has no “obligation ... to make future payments,” as required by Section 524(g)(2)(B)(i)(II). At most, a possibility of a future payment exists, which is insufficient.

92. Additionally, the Bankruptcy Court incorrectly held that the “Trust will be funded on an ongoing basis from Excess Net Reserve Funds.” Dkt. 1267, Proposed Findings at 95. 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. Dkt 1185 (Plan) §§ 1.22 & 8.3.³⁴ The Asbestos Trust Contribution includes “the Excess Net Reserve Fund.” Dkt. 1185 (Plan) § 1.23.³⁵ Thus, because the Excess Net Reserve Fund is transferred to the Asbestos Trust on the Effective Date, it cannot be a “future” payment as required by Section 524(g)(2)(B)(i)(II). Moreover, as a single payment, it cannot constitute future “payments” to the Asbestos Trust.

93. Indeed, 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 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). The Asbestos Trust’s obligation to fund Reorganized Hopeman further confirms that Reorganized Hopeman is not obligated to make future payments to the Trust as required by Section 524(g).

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. 1185 (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 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. 1185 (Plan) § 1.23 (emphasis added).

94. Because there is no obligation under the Plan requiring Reorganized Hopeman to make future payments to the Asbestos Trust, the Plan fails to satisfy the requirements of Section 524(g)(2)(B)(i)(II). Thus, the Plan cannot be confirmed.

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

95. Travelers objected to the Plan on the basis that both the Plan's discharge and discharge injunction are too broad. Dkt. 944 & 949 (Travelers' Objection) ¶¶ 92-94; Dkt. 1188 (Travelers' Proposed Findings) ¶¶ 137-44. The Plan Proponents did not refute (or respond to) this objection. The Bankruptcy Court erred by failing to rule in favor of (or address) this objection.

96. 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) (citation modified). Only a debtor is entitled to a discharge under Section 1141. No other entity is entitled to a discharge. However, Section 10.1 of the Plan provides that for a discharge of not only the Debtor, but also Reorganized Hopeman: "confirmation of the Plan shall discharge Hopeman and Reorganized Hopeman" Dkt. 1185 (Plan) § 10.1. Reorganized Hopeman, which means "Hopeman on and after the Effective Date" (*see* Dkt. 1185 (Plan) §1.101), is not a debtor and therefore is not entitled to a discharge under 11 U.S.C. § 1141. The Bankruptcy Court erred in proposing to confirm the Plan without limiting section 10.1 to providing a discharge of the Debtor only. To be confirmable, Section 10.1 must be modified to limit the discharge to only the Debtor.

97. Further, 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 is broader and is not limited to Claims that "*arose before the Confirmation Date*." 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.

98. 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 is broader and is not limited to Claims that “arose before the Confirmation Date.” The discharge injunction provides that “all Entities who have held, hold, or *may hold* Claims . . . against Hopeman are permanently enjoined, on and after the Effective Date,” from asserting Claims against Hopeman or Reorganized Hopeman. Dkt. 1185 (Plan) § 10.2 (emphasis added). To the extent that a new claim arises after the Confirmation Date, and thus is not discharged, Travelers should not be enjoined from pursuing that claim against Reorganized Hopeman. Thus, confirmation of the Plan is not appropriate unless Section 10.2 is modified to limit the discharge injunction to enjoining Claims, Demands and liabilities “*that arose before the Confirmation Date*.”

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

99. Pursuant to 11 U.S.C. § 1129(a)(3), a bankruptcy plan must be “proposed in good faith” and not for any means forbidden by law. The Plan Proponents cannot 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. Specifically, Travelers objected to the Plan because the TDPs improperly limit the Asbestos Trust’s obligation to respond to subpoenas. Dkt. 944 & 949 (Travelers’ Objection) ¶ 101; Dkt. 1188 (Travelers’ Proposed Findings) ¶¶ 145-149. The Bankruptcy Court erred by failing to rule in favor of (or even address) this objection.

100. 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:

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).

101. There is no valid purpose for this limitation, and the provision could improperly impair the rights of insurers, including Travelers, to obtain information by subpoena from the Asbestos Trust. Further, no authority allows a court to preemptively determine the validity of a subpoena issued by other courts or to limit the subpoena authority of other courts (and the Plan Proponents have offered none). In fact, the Plan Proponents agree that the TDPs should not dictate “where a subpoena can be issued.” Dkt. 1175 & 1301 (Aug. 26, 2025 Confirmation Hr’g Tr.) at 160:11-14. Yet, they refused to strike the TDP provision with this very limitation.

102. The Bankruptcy Court erred in not requiring this restriction to be stricken. The Plan should not be confirmed unless “issued by the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District of Delaware” is stricken from section 6.5 of the TDPs.

J. *The Bankruptcy Court Erred in Finding That The Plan Complies With 11 U.S.C. § 1123(a)(4).*

103. Travelers objected to the Plan because it does not comply with Section 1123(a)(4) of the Bankruptcy Code, as the Plan fails to provide the same treatment to all holders of Class 4 Channeled Asbestos Claims. Objection, Dkt. 944 & 949 (Travelers’ Objections) ¶¶ 102-104, Dkt. 1188 (Travelers’ Proposed Findings) ¶¶ 150-157.

104. “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; *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 239 (3d Cir. 2004). 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)).³⁶

105. In the Plan here, Class 4 is comprised of all “Channeled Asbestos Claims,” which means, collectively, “the Asbestos Claims and Demands.” Dkt. 1185 (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.

106. 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; Insured Asbestos Claims can pursue punitive or exemplary damages.

107. The Bankruptcy Court erred when it overruled Travelers’ objection and found that it “fails for three reasons.” Dkt. 1267 (Proposed Findings) at 36-37. First, the Bankruptcy Court erred by concluding that Section 1123(a)(4)’s “same treatment” requirement need not be satisfied because “no holder of a Channeled Asbestos Claim has objected to the Plan.” The Bankruptcy

³⁶ 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.

Court reasoned that the “only holders of Channeled Asbestos Claims that did not vote to accept the Plan – the Roussel Claimants – are not believed to hold Uninsured Asbestos Claims.” *Id.*

108. But 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,” there is no evidence that any holder of an Uninsured Asbestos Claim has agreed to less favorable treatment. As the Bankruptcy Court noted, the only holders that did not vote to accept the Plan do not hold Uninsured Asbestos Claims. *Id.* Indeed, the Plan Proponents concede that there are no known Uninsured Asbestos Claims. Dkt. 1076 (Confirmation Brief) ¶¶ 239, 246, 249. Therefore, it is **not possible** that any holders of Uninsured Asbestos Claims agreed to less favorable treatment than holders of Insured Asbestos Claims.

109. Second, the Bankruptcy Court erroneously concluded that Section 7.2 of the TDPs is “acceptable” to the Fourth Circuit because an analogous provision is included in the Kaiser Gypsum trust distribution procedures. Dkt. 1267 (Proposed Findings) at 36-37. However, no party in *Kaiser Gypsum* objected to the analogous provision in the TDPs in that case, and the provision was not before the Fourth Circuit on appeal. Thus, while the Fourth Circuit rejected other objections to the bankruptcy plan in *Kaiser Gypsum*, the Fourth Circuit did not consider whether the disparate treatment of punitive damages between Insured Asbestos Claims and Uninsured Asbestos Claims complies with Section 1123(a)(4) of the Bankruptcy Code. *See In re Kaiser Gypsum Co., Inc.*, 135 F.4th 185 (4th Cir. 2025). Thus, the Fourth Circuit’s decision in *Kaiser Gypsum* does not support or allow for the disparate treatment of Uninsured Asbestos Claims and Insured Asbestos Claims contemplated by the Plan here.

110. Third, the Bankruptcy Court concluded 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 the Court found “is to compensate injured individuals, not to punish alleged bad actors” and that allowing punitive damages would jeopardize the trust’s goal of protecting future claimants by disproportionately diminishing the trust corpus. Dkt. 1267 (Proposed Findings) at 37. Even if the Court assumes this unsupported finding is true, it supports the conclusion that **no** Channeled Asbestos Claimant should be permitted to recover punitive damages (whether an Insured Asbestos Claim or Uninsured Asbestos Claim). It does not allow the Court to ignore the requirements of Section 1123(a)(4) or allow disparate treatment between Insured Asbestos Claims and Uninsured Asbestos Claims.

111. The Bankruptcy Court then concluded that the Plan treats all Channeled Asbestos Claims “similarly,” even though holders of Insured Asbestos Claims (unlike Uninsured Asbestos Claims) may seek “additional sources of recovery” in the tort system. Dkt. 1267 (Proposed Findings) at 37. The Court should reject this conclusion. As discussed, all Channeled Asbestos Claims are not treated similarly—and do not have the same opportunity for recovery—because some are permitted to pursue punitive damages, while others are barred from doing so.

112. For the reasons set forth above, 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.

IV. PROPOSED CONFIRMATION ORDER

113. If the Court is inclined to approve the Proposed Findings or to confirm the Plan with additional modifications, Travelers is prepared to meet and confer with the Plan Proponents regarding a revised form of Plan, Plan Documents, and proposed confirmation order to see if they can work through language that comports with this Court’s ruling.³⁷ To the extent a dispute arises,

³⁷ On November 20, 2025, the Plan Proponents filed a “Joint Statement” in response to the Proposed Findings, advising that they do not object to the Proposed Findings and submitting

Travelers requests that the Court set a schedule for the filing of a revised Plan, Plan Documents, and proposed confirmation order and for the filing of objections to the forms of those documents.

V. JOINDER AND RESERVATION

114. In addition to the objections set forth above, Travelers reserves the right to adopt as its own any objections asserted by any person or entity. Further, Travelers joins the objections of other parties in interest, but only to the extent that such objections are or may be relevant to Travelers.

VI. CONCLUSION

For the foregoing reasons, Travelers respectfully requests that the Court decline to adopt the Proposed Findings and deny confirmation of the Plan and grant such other and further relief as the Court deems just and proper.

Dated: November 24, 2025

Respectfully submitted,

/s/ Joshua R. Taylor

Joshua R. Taylor (VSB No. 45919)

Catherine D. Cockerham (admitted *pro hac vice*)

Jefferson Klocke (admitted *pro hac vice*)

STEPTOE LLP

1330 Connecticut Avenue, N.W.

Washington, D.C. 20036

Telephone: (202) 429-3000

jrtaylor@steptoe.com

cckerham@steptoe.com

jklocke@steptoe.com

*Counsel for 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*

further proposed revisions to the Plan and a proposed Confirmation Order. Dkt. 1309. Travelers will respond to the Joint Statement as appropriate in accordance with the Court-ordered schedule (Dkt. 1277) and reserves all rights and objections.