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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

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

LIBERTY MUTUAL INSURANCE COMPANY'S OBJECTION AND JOINDER 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

*****RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT COURT JUDGE*****

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Pursuant to Rule 9033(c) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"),[1] Liberty Mutual Insurance Company ("Liberty Mutual"), by and through its undersigned counsel, respectfully objects (this "Objection") to the *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. No. 1267] (the "FOF/COL").[2] Liberty Mutual respectfully submits that the Plan[3] violates the Bankruptcy Code[4] and established law and cannot be confirmed. Accordingly, the FOF/COL recommending confirmation of the Plan should not be adopted. In support of this objection, Liberty Mutual incorporates by reference *Liberty Mutual Insurance Company's Objection to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under the Bankruptcy Code* [Dkt. No. 961, filed under seal at Dkt. No. 954] ("Liberty Mutual's Confirmation Objection").[5]

PRELIMINARY STATEMENT

Hopeman Brothers, Inc. ("Hopeman" or the "Debtor") filed for bankruptcy on June 30, 2024 (the "Petition Date") with over 2,700 unresolved Asbestos Claims pending against it.[6] Over

[1] *See* Fed. R. Bankr. P. 9033(c).

[2] Docket cites throughout this Objection refer to the Bankruptcy Court docket, Case No. 24-32428-KLP (Bankr. E.D. Va.).

[3] The "Plan" shall refer to the *Second Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 1185]. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

[4] All references herein to the "Bankruptcy Code" shall refer to Title 11, Chapter 11 of the U.S. Code.

[5] Pursuant to Bankruptcy Rule 9033(b)(2), Liberty Mutual preserves all rights to designate any items from the record and, pursuant to Bankruptcy Rule 9033(c)(1), present additional evidence in order to aid the District Court. *See* Fed. R. Bankr. P. 9033(b)(2); (c)(1).

[6] *See* FOF/COL at 5.

20 years prior to the Petition Date, Liberty Mutual and Hopeman entered into certain settlement and indemnification agreements (the "2003 Agreements") whereby Hopeman fully and forever released Liberty Mutual from all claims and coverage obligations for Asbestos Claims under the insurance policies that Liberty Mutual issued or allegedly issued for the benefit of Hopeman (such policies, the "Liberty Mutual Policies").[7] In connection with entering into the 2003 Agreements, a trust (the "Trust") was created to manage and defend against Asbestos Claims. The Trust defended Liberty Mutual against Asbestos Claims regardless of whether such claims were asserted against Hopeman or directly against Liberty Mutual by so-called "direct action" Asbestos Claimants (collectively, the "Direct Action Claimants" and such claims, the "Direct Action Claims"). When the Trust exhausted the settlement funds that Liberty Mutual paid to settle all potential Asbestos Claim liability, Hopeman stepped in to defend against all Asbestos Claims, whether asserted against Hopeman or directly against Liberty Mutual.

Following the Petition Date, this decades-long arrangement between the parties changed dramatically. Liberty Mutual learned that, notwithstanding its historical settlement with Hopeman that provided material consideration for Hopeman and the Trust to administer Asbestos Claims, Hopeman no longer would defend Liberty Mutual in *any* lawsuits. In fact, through its bankruptcy, Hopeman affirmatively agreed that certain claimants could prosecute their claims against Liberty Mutual in state court. Hopeman's Plan codified that right for Direct Action Claimants and implied that the Asbestos Trust—a post-confirmation litigation trust to which all of Hopeman's Asbestos Claim liability and Asbestos Insurance Rights were channeled—could intervene in lawsuits filed against Liberty Mutual. The Plan grants the Asbestos Trust this right despite Hopeman having

[7] *See* Liberty Mutual's Confirmation Objection at ¶¶ 9-11; Certain Insurer Exs. 27-28.

unconditionally released Liberty Mutual of all claims and coverage obligations pursuant to the 2003 Agreements.

Liberty Mutual has been forced to participate in the bankruptcy process for one reason: to protect its bargained-for rights under the 2003 Agreements. At confirmation, Liberty Mutual asserted two primary arguments that the Bankruptcy Court rejected through its FOF/COL: (1) Liberty Mutual has standing to object to the Plan; and (2) the Plan cannot assign from Hopeman to the Asbestos Trust rights *against Liberty Mutual* that Hopeman did not possess as of the Petition Date.[8] Liberty Mutual respectfully submits that the Bankruptcy Court erred in the rulings it made through the FOF/COL with respect to both of these issues.

First, the Bankruptcy Court erred in ruling that Liberty Mutual lacks standing to object to the Plan. As this Objection demonstrates, the Plan impacts Liberty Mutual's rights in a number of ways. Among other things, if the Plan is confirmed, Liberty Mutual will be forced to defend against lawsuits filed by Direct Action Claimants and possibly the Asbestos Trust, a result that is directly contrary to the letter and spirit of the 2003 Agreements. Given that impact, Liberty Mutual objected to those provisions of the Plan that affect Liberty Mutual. Liberty Mutual's right to participate in Hopeman's bankruptcy proceedings was recently re-affirmed by the Supreme Court in *Truck Insurance Exchange v. Kaiser Gypsum Company*.[9] Despite binding case law and the

[8] *See* Tr. of Aug. 26, 2025 Hr'g [Dkt. No. 1175] at 99:1-107:9.

[9] *See* 602 U.S. 268, 269 (2024) ("Providing Truck an opportunity to be heard is consistent with *§1109(b)*'s purpose of promoting a fair and equitable reorganization process. Here, the Plan eliminates the Debtors ongoing liability, and claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan"); *see also In re AIO US, Inc.*, Case No. 24-11836 (CTG), 2025 Bankr. LEXIS 1369, at *35 (Bankr. D. Del. June 6, 2025) ("When confronted with questions that implicate the integrity of the bankruptcy process, the Court is inclined to be particularly open to hearing from anyone and everyone who might assist the Court in conducting a fair and appropriate process").

evidence presented at the confirmation hearing proving that Liberty Mutual has "party in interest" standing under *Truck*, the Bankruptcy Court manufactured a requirement for standing that does not exist under applicable Supreme Court precedent. In so doing, the Bankruptcy Court ruled that Liberty Mutual lacks standing to object to Hopeman's Plan. That ruling constitutes clear error under *Truck* and its progeny and should not be adopted by this Court.

Second, the Bankruptcy Court further erred by failing to rule on the issue of whether the Plan violated fundamental tenets of bankruptcy law by purporting to assign to the Asbestos Trust rights that Hopeman did not have. The Plan transfers Hopeman's rights in its Asbestos Insurance Policies (the "Asbestos Insurance Rights") to the Asbestos Trust by operation of section 1123(a)(5)(B) of the Bankruptcy Code.[10] The Asbestos Trust is charged with monetizing those rights for the benefit of Asbestos Claimants. Under the 2003 Agreements, however, Hopeman released any and all rights that it had in the Liberty Mutual Policies. Because Hopeman did not possess any Asbestos Insurance Rights against Liberty Mutual as of the Petition Date, and because section 1123(a)(5)(B) only permits the transfer of property of the estate, the Plan cannot legally transfer Hopeman's Asbestos Insurance Rights in the Liberty Mutual Policies where no such rights exist.

Liberty Mutual argued in Liberty Mutual's Confirmation Objection and at the confirmation hearing that the Bankruptcy Court must first determine whether the estate possesses such rights before it can authorize a transfer of estate property.[11] The Bankruptcy Court did not make such a determination. Instead, it ruled that such a question is "more appropriately addressed in the context

[10] The Plan's purported transfer of Hopeman's Asbestos Insurance Rights to the Asbestos Trust, as set forth in Article 8.3 of the Plan, is referred to herein as the "Insurance Assignment".

[11] *See* Section III of Liberty Mutual's Confirmation Objection.

of a future coverage dispute."[12] The Bankruptcy Court's refusal to rule on Liberty Mutual's objection means that the Bankruptcy Court did not determine whether the Plan complies with section 1123(a) of the Bankruptcy Code. Failing to make this determination leaves unresolved the question of whether the Plan satisfies section 1129(a) of the Bankruptcy Code. The Bankruptcy Court has an independent duty to ensure compliance with the Bankruptcy Code, and it failed to discharge that duty when it declined to rule on Liberty Mutual's objection.

For these and the other reasons set forth herein, Liberty Mutual respectfully submits that the Court should decline to adopt the FOF/COL issued by the Bankruptcy Court.[13]

STANDARD OF REVIEW

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."[14] The Court "may accept, reject, or modify, the proposed findings of fact or conclusions of law, take additional evidence, or remand the matter to the bankruptcy judge with instructions."[15]

INTRODUCTION

1. Prepetition, Liberty Mutual issued the Liberty Mutual Policies to Hopeman and Wayne Manufacturing Corporation.[16]

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[12] FOF/COL at 50.

[13] As set forth *infra*, Liberty Mutual joins in the objections of certain other insurers to specific rulings made in the FOF/COL. To assist the Court in its review of the insurers' objections, Liberty Mutual fully incorporates and only supplements (rather than fully repeating) those specific objections.

[14] Fed. R. Bankr. P. 9033(c)(1).

[15] *Id.* at (c)(2).

[16] *See* Plan Proponents' Ex. 16 at ¶¶ 10-11, 19.

2. On March 21, 2003, Hopeman and Liberty Mutual entered into the 2003 Agreements.[17] Through those agreements, Liberty Mutual agreed to contribute significant consideration in exchange for Hopeman releasing Liberty Mutual from any actual or potential obligations relating in any way to Asbestos Claims.[18] Christopher Lascell, the Debtor's current President, confirmed during the confirmation hearing that: (1) the 2003 Agreements released all rights that Hopeman has or may have related to the Liberty Mutual Policies; (2) Liberty Mutual owes no duties to Hopeman under the Liberty Mutual Policies; and (3) Hopeman has no rights remaining under the Liberty Mutual Policies.[19] Nonetheless, Mr. Lascell testified at the confirmation hearing that the Plan intends to transfer Hopeman's rights under the Liberty Mutual Policies, if any, to the Asbestos Trust.[20]

3. The Bankruptcy Court approved the Insurance Assignment in the Plan without concluding that Hopeman has Asbestos Insurance Rights related to the Liberty Mutual Policies *or* that such rights are property of Hopeman's estate.[21] Instead, the Bankruptcy Court chose to leave unresolved the "nature of the Debtor's Asbestos Insurance Rights", finding that the issue of what rights Hopeman possesses "are more appropriately addressed in the context of a future coverage dispute."[22]

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[17] *See* Certain Insurer Exs. 27-28.

[18] *See* Certain Insurer Ex. 27 at 17-18.

[19] *See* Tr. of Aug. 25, 2025 Hr'g [Dkt No. 1174] at 74:1-10.

[20] *See id.* at 77:1-14.

[21] *See* FOF/COL at 56 ("For the avoidance of doubt, the Plan may provide for the transfer of the Asbestos Insurance Rights to the Asbestos Trust, provided that the rights are accompanied by all terms and conditions.").

[22] *Id.*

4. Leaving this determination to a multitude of coverage courts was improper for a number of reasons. First, it is axiomatic that "determining the nature and extent of property of the estate is a fundamental function of a bankruptcy court . . . and fundamental to the administration of a bankruptcy case."[23] Second, by delegating its decision-making function to other courts, the Bankruptcy Court introduced ambiguity where none previously existed. Hopeman's representatives and advisors repeatedly testified and represented that Hopeman has no rights whatsoever in the Liberty Mutual Policies. Those unequivocal statements of fact should have—and could have—ended the inquiry with respect to this issue. Now, with the Bankruptcy Court's ruling, courts that lack bankruptcy expertise and any prior knowledge of these bankruptcy proceedings will be tasked with interpreting the Plan and determining what assets the Debtor did or did not have at the time of the Insurance Assignment. This inevitably will result in conflicting rulings that will prejudice Liberty Mutual's interests and cause confusion among the parties.

5. Although the Bankruptcy Court should have acknowledged that the 2003 Agreements operated to dispossess Hopeman of *any* interest in the Liberty Mutual Policies, the inquiry would not have ended there, as the Plan still impacts Liberty Mutual. In addition to effectuating a release and creating a Trust, the 2003 Agreements imposed several obligations on Hopeman that were designed to ensure that *Hopeman* (not the Trust) would protect Liberty Mutual against the assertion of Asbestos Claims. These obligations include, among others:

a. Hopeman must affirmatively minimize the assertion of Asbestos Claims against Liberty Mutual (the "Minimization Obligation").[24]

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[23] *Sharp v. Corp. (In re Vineyard Nat'l Bancorp)*, Case No. 10-bk-21661RN, 2013 Bankr. LEXIS 1823, at *19 (Bankr. C.D. Cal. May 3, 2013) (citation omitted) (cleaned up); *see Nationwide Mut. Fire Ins. Co. v. Smoky Mt. Country Club Prop. Owners Ass'n*, Case No. 19-CV-237, 2020 U.S. Dist. LEXIS 35071, at *5 (W.D.N.C. Feb. 27, 2020) ("a bankruptcy court has jurisdiction to determine what constitutes property of the estate") (citation omitted).

[24] *See* Certain Insurer Ex. 28 at 12.

b. Hopeman must defend against any Asbestos Claim asserting a Direct Action Claim against Liberty Mutual (the "Defense Obligation").[25]

6. The parties agree, and the Bankruptcy Court acknowledged, that Direct Action Claimants continued to file Direct Action Claims against Liberty Mutual from 2003 through the Petition Date.[26] Even after the funds in the Trust had been exhausted, Hopeman honored its Defense Obligation and continued defending Liberty Mutual against Direct Action Claims. However, following the filing of its bankruptcy case, Hopeman abandoned the Defense Obligation and the Minimization Obligation, which has caused Liberty Mutual to incur damages.[27] The Plan does nothing to remedy those breaches. Instead, the Plan impermissibly impairs Liberty Mutual's contractual rights in multiple ways.

a. First: The Plan vitiates the Defense Obligation. Prior to the Petition Date, Hopeman defended Liberty Mutual against Direct Action Claims. However, if the Plan is confirmed, neither "Reorganized" Hopeman nor the Asbestos Trust will defend any Asbestos Claims asserted against Liberty Mutual.[28] Thus, Liberty Mutual will be forced to incur defense costs defending against Direct Action Claims which, but for the Plan, would be defended by Hopeman at no cost to Liberty Mutual.[29]

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[25] *See id.*

[26] *See* FOF/COL at 67.

[27] Liberty Mutual asserted these damages in its proof of claim against the Debtor's estate, which the Bankruptcy Court disallowed. *See id.* at 15. Liberty Mutual believes this disallowance was in error and has appealed it. This appeal remains pending. *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00486-DJN (E.D. Va. Jun. 26, 2025).

[28] *See* Tr. of Aug. 25, 2025 Hr'g [Dkt No. 1174] at 155:22-25 ("Reorganized Hopeman and the [Asbestos] [T]rust are not going to be defending any claims, correct, against the nonsettled carriers with respect to the insured claims that go out to the tort system.").

[29] Moreover, Liberty Mutual has filed an adversary proceeding against the Debtor seeking a declaratory judgment that Liberty Mutual has no further obligation to pay Asbestos Claims arising out of the acts or omissions of Hopeman in the conduct of its business. *See Liberty Mut. Ins. Co. v. Hopeman Bros., Inc., et al.*, Adv. Pro. No. 25-3020 (E.D. Va. May 23, 2025) (adversary complaint filed under seal) the ("Adversary Proceeding"). On August 29, 2025, the Bankruptcy Court entered a Report and Recommendation recommending, *inter alia*, that the reference in the Adversary Proceeding be withdrawn to the U.S. District Court for the Eastern District of Virginia (the "District Court") to decide the non-core claims at issue in the Adversary Proceeding. *See* Adversary Proceeding Dkt. No. 79. On November 17, 2025, the District Court entered a

b. Second: The Plan breaches the Minimization Obligation, including by (among other things) (1) purporting to transfer admittedly non-existent rights under the Liberty Mutual Policies to the Asbestos Trust,[30] (2) gratuitously describing Liberty Mutual as a "Non-Settling Asbestos Insurer",[31] and (3) allowing the Asbestos Trust to intervene in any Insurance Policy Action that otherwise would involve only a Channeled Asbestos Claimant and Liberty Mutual (as Hopeman disclaimed any intervention right pursuant to the 2003 Agreements).[32]

c. Third: Although Hopeman disclaimed and released all claims against Liberty Mutual in 2003,[33] the Asbestos Trust has made no such disclaimer. In fact, counsel to Hopeman acknowledged that the Asbestos Trust (which is controlled by Asbestos Claimants) "would presumably still like to have whatever rights [Hopeman] [has]," even though Hopeman claims it has none.[34] If the Plan is confirmed, the Asbestos Trust may argue that it is not bound by the prepetition settlement agreement between Liberty Mutual and Hopeman or the statements made by Hopeman or its representatives during the bankruptcy case.[35] As a result, the Asbestos Trust could attempt to sue Liberty Mutual for claims allegedly owned by Hopeman and transferred to

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Memorandum Order approving the Bankruptcy Court's Report and Recommendation and withdrawing the reference. *See* Adversary Proceeding Dkt. No. 94. On November 18, 2025, the District Court entered an Order directing Judge Phillips to file proposed findings of fact and conclusions of law regarding pending motions to dismiss the Adversary Proceeding by December 9, 2025. *See* Adversary Proceeding Dkt. No. 97. It would be premature for this Court to authorize a transfer of Hopeman's alleged Asbestos Insurance Rights related to the Liberty Mutual Policies to the Asbestos Trust before the District Court has completed its adjudication of the issues in the Adversary Proceeding.

[30] See Plan at § 8.3.

[31] *See id.* § 1.83.

[32] *See id.* at § 8.13(c)(v).

[33] *See* FOF/COL at 7.

[34] Tr. of Aug. 26, 2025 Hr'g **[**Dkt. No. 1175**]** at 26:8-13 ("The debtor is transferring every right it has under a policy to the [Asbestos] [T]rust, whatever those happen to be. We take the position we don't have any. Creditors[']committee and the [Asbestos] [T]rust would presumably still like to have whatever rights we have. And that's what we're giving them.").

[35] The Bankruptcy Court repeatedly cited the opinions of the Bankruptcy Court of the District of Delaware, the District Court for the District of Delaware, and the Third Circuit Court of Appeals in the recent Boy Scouts of America bankruptcy case. *See, e.g.*, FOF/COL at 33, 50. Notably, the post-confirmation litigation trust in the Boy Scouts case has now taken the position that "even though it is the assignee and successor-in-interest to BSA, it is not bound by its assignor's admissions, its course of performance or findings of this Court". *See In re Boy Scouts of Am. and Delaware BSA, LLC*, Case No. 20-10343 (LSS), *Motion of Liberty Mutual Ins. Co. to Enforce the Confirmation Order and Plan* [Dkt. No. 13249] (filed Nov. 10, 2025) at ¶ 75.

the Asbestos Trust under the Plan (even though all such claims were released). Additionally, the Asbestos Trust could utilize its right under Section 8.13(c)(v) of the Plan to intervene in the action of an Asbestos Claimant and sue Liberty Mutual on behalf of an Asbestos Claimant.[36] Either of these actions would result in the exact situation that the Bankruptcy Court has stated cannot occur: an entity asserting that Liberty Mutual is financially responsible for bankruptcy claims.[37] Because the Bankruptcy Court failed to rule on the issue of whether Hopeman had any interest in the Liberty Mutual Policies that could be transferred to the Asbestos Trust, Liberty Mutual would be forced to assert in a multitude of courts that (i) the Asbestos Trust (as successor-in-interest to Hopeman) is not a proper party to any Insurance Policy Action involving Liberty Mutual; and/or (ii) no valid claim can be asserted by the Asbestos Trust (or assigned by the Asbestos Trust to a Direct Action Claimant) involving Liberty Mutual, since all such claims were expressly released by Hopeman.

7. The following chart summarizes three ways that the Plan affects Liberty Mutual:

	Prepetition	**Post-Confirmation**
Direct Action Claims Against Liberty Mutual	Defense by Hopeman	No Defense by Hopeman or the Asbestos Trust
Claims By Insured Against Liberty Mutual	Disclaimed and Released by Hopeman	Not Disclaimed or Released by the Asbestos Trust

[36] The Bankruptcy Court agreed with Liberty Mutual that "[t]he inclusion of [the intervention] provision should serve to merely protect any right that the Asbestos Trust may have, subject to compliance with the proper procedural mechanism for intervention. Similarly, any party in such an Insurance Policy Action should retain the right to object to the Asbestos Trust's motion to intervene. To the extent that the Plan language extends beyond the foregoing, it should be modified"). FOF/COL at 56 (citation omitted). In response, the Plan Proponents proposed to remove some of the prejudicial language regarding the Asbestos Trust's intervention rights. *See Joint Statement of Plan Proponents in Response to the 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. No. 1309] (the "Proposed Revisions") at ¶ D. But even with the Proposed Revisions, the Asbestos Trust can still intervene in ***any*** Insurance Policy Action. This gives the Asbestos Trust an intervention right that Hopeman did not have prepetition, since it released all such rights in 2003. Therefore, even if the Proposed Revisions are incorporated, the intervention right is still impermissible as it relates to actions against Liberty Mutual.

[37] *See* FOF/COL at 19 ("the Plan does not seek to impose any financial responsibility upon Liberty Mutual for *bankruptcy claims*, as required by *Truck Insurance*") (emphasis in original).

Intervention Right in Asbestos Claims Against Liberty Mutual	Disclaimed and Released by Hopeman	Not Disclaimed or Released by the Asbestos Trust; Affirmatively Granted Pursuant to Section 8.13(c)(v)

8. At bottom, Liberty Mutual seeks to hold Hopeman—and, as its successor-in interest, the Asbestos Trust—to the terms of the 2003 Agreements. It is a bedrock principle that bankruptcy courts "do not have the power to rewrite contracts to allow debtors to continue to perform on more favorable terms."[38] Rather, the Bankruptcy Code provides the debtor with the same rights and defenses under a prepetition contract as those held by the debtor before the bankruptcy.[39] The Plan both eliminates Hopeman's obligations *and* grants new rights to the Asbestos Trust that Hopeman did not have. These changes fundamentally rewrite the parties' contractual relationship under the 2003 Agreements.

9. Two conclusions can be drawn from this fact.

a. First: Because the Plan affects Liberty Mutual's interests, and because Asbestos Claimants and, potentially, the Asbestos Trust will be permitted to bring Asbestos Claims against Liberty Mutual pursuant to the Insurance Assignment, Liberty Mutual is "financially responsible" for bankruptcy claims under *Truck* and therefore has standing to object to the Plan.

b. Second: Because the Plan "impermissibly impairs" Liberty Mutual's rights, the Plan does not comply with the Bankruptcy Code and cannot be confirmed.[40]

[38] *In re Crippin*, 877 F.2d 594, 598 (7th Cir. 1989).

[39] *See, e.g.*, *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 245 n.66 (3d Cir. 2004).

[40] *In re Boy Scouts of Am.*, 137 F.4th 126, 165 (3d Cir. 2025).

OBJECTION

I. The Bankruptcy Court Misapplied the Supreme Court's Decision in *Truck* to Wrongly Conclude that Liberty Mutual Lacks Standing to Object to Hopeman's Disclosure Statement and Plan.

10. The Bankruptcy Court's ruling regarding Liberty Mutual's standing was twofold:[41]

    a. Liberty Mutual is not "financially responsible" for bankruptcy claims against Hopeman because Liberty Mutual has not demonstrated an "affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors".[42] In the absence of such financial responsibility, Liberty Mutual is not a party in interest under *Truck*.[43]

    b. Because the Plan purportedly does not alter "Liberty Mutual's liability or the rights of the holders of Channeled Asbestos Claimants against Liberty Mutual, or vice versa," Liberty Mutual lacks standing to object to the Plan.[44]

11. Both conclusions were in error. Under *Truck*, Liberty Mutual is a "party in interest" to Hopeman's bankruptcy case within the meaning of section 1109(b) of the Bankruptcy Code and, accordingly, has standing to object to the Disclosure Statement and Plan.

A. The Bankruptcy Court Wrongly Distinguished the *Truck* Decision on the Facts.

12. The Bankruptcy Court dedicated only one paragraph of its 106-page opinion to the Supreme Court's seminal decision in *Truck*. The *Truck* case, which went to the Supreme Court on appeal from the Fourth Circuit Court of Appeals, arose out of a dispute between a debtor ("Kaiser") and its primary liability insurer ("Truck"). Truck objected to Kaiser's proposed plan

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[41] At the outset, the Bankruptcy Court emphasized that, because it disallowed Liberty Mutual's proof of claim, Liberty Mutual does not currently have creditor status notwithstanding its pending appeal. *See* FOF/COL at 18. Liberty Mutual does not need to be a creditor to qualify as a party in interest under section 1109(b) of the Bankruptcy Code. Under *Truck*, Liberty Mutual has standing to object to the Plan because its financial interests might be affected by the Plan, whether it is a creditor or not. *See Truck*, 602 U.S. at 277 (noting that section 1109(b) "provides an illustrative but not exhaustive list of parties in interest").

[42] FOF/COL at 20.

[43] *See id.*

[44] *Id.* at 20-21.

of reorganization to resolve its extensive asbestos liabilities, arguing that the plan was (among other things) a collusive bargain not proposed in good faith.[45] Describing the question as "not difficult", the Supreme Court unanimously held that Truck, as an interested insurer, had standing as a party in interest to the proceedings because it could be "directly and adversely affected by the reorganization proceedings".[46]

13. In its cursory analysis, the Bankruptcy Court noted that the Supreme Court "focused on the fact that the insurer [in *Truck*] 'had financial responsibility for bankruptcy claims.'"[47] The Bankruptcy Court then held that "the Plan does not seek to impose any financial responsibility upon Liberty Mutual for *bankruptcy* claims, as required by *Truck Insurance*."[48] But this is incorrect. Kaiser's plan did not (for example) incorporate a settlement with Truck pursuant to which Truck would deposit funds into a trust to pay asbestos claimants. Instead, insured asbestos claimants would file their claims in the tort system to obtain the benefit of insurance coverage, while uninsured claimants would submit their claims directly to Kaiser's trust for resolution.[49]

14. The Debtor's Plan works exactly the same way. Certainly, Liberty Mutual is not paying Asbestos Claimants directly through the Plan, but neither was Truck. What the Supreme Court meant by the phrase "financial responsibility for bankruptcy claims" is the same situation that is occurring here: an Asbestos Claimant or the Asbestos Trust brings a tort claim against an

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[45] *Truck*, 602 U.S. at 275-76.

[46] *Id*. at 284 ("There may be difficult cases that require courts to evaluate whether truly peripheral parties have a sufficiently direct interest. This case is not one of them. Insurers such as Truck with financial responsibility for claims are not peripheral parties").

[47] FOF/COL at 18 (quoting *Truck*, 602 U.S. at 281, 283)).

[48] *Id.* at 19 (quoting *Truck*, 602 U.S. at 281) (emphasis in original).

[49] *See Truck*, 602 U.S. at 275.

insurer and argues that the insurer must defend and/or indemnify its Asbestos Claim.[50] *Truck*'s facts are directly analogous to the facts at bar. If Truck had standing, so does Liberty Mutual.

B. The Bankruptcy Court Relied on a Factually Inapposite, Out-of-Circuit Decision to Create a New Standing Requirement that Does Not Appear in *Truck.*

15. Instead of following *Truck* (or the Fourth Circuit's subsequent decision incorporating it),[51] the Bankruptcy Court looked outside the Fourth Circuit to find an outlier case supporting the addition of a brand new standing requirement under section 1109(b) — a requirement that does not appear in the *Truck* decision.[52] This new requirement, arising from an opinion out of the case *In re Roman Catholic Diocese of Albany*, mandates that an insurer can only be a party in interest if it demonstrates an "affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors".[53]

16. This requirement appears nowhere in *Truck* or *Kaiser*, only *Albany*. *Albany* has yet to be reviewed by the district court or the Second Circuit and, setting aside its limited precedential value, it can be readily distinguished on the facts. In *Albany*, Judge Littlefield observed that "there is currently a clear distinction between this case and *Truck*: there has been no proposed plan filed in this case."[54] Not so here. Moreover, Judge Littlefield cited with approval post-*Truck* caselaw holding that, where a plan proposes to assign the debtor's "interest in insurance claims and

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[50] *Id.*

[51] *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co.* (*In re Kaiser Gypsum Co.*), 135 F.4th 185 (4th Cir. 2025).

[52] *See* FOF/COL at 20 (citing *In re Roman Catholic Diocese of Albany*, Case No. 23-10244, 2025 Bankr. LEXIS 2185 (Bankr. N.D.N.Y. 2025)).

[53] *Id.*

[54] *In re Roman Catholic Diocese of Albany*, 2025 Bankr. LEXIS 2185, at *10.

recoveries against the Certain Insurers to the Trust", "liability does not need to be acknowledged or adjudicated before the teachings of *Truck* apply".[55]

17. The facts here are more analogous to the decision cited by Judge Littlefield, *In re Roman Catholic Diocese of Syracuse,* than to the facts in *Albany* itself. In *Syracuse,* like this case, a plan had already been filed, and the objecting insurers sought to participate in the confirmation process.[56] Moreover, the objecting insurers had not acknowledged nor been found to be financially responsible for the survivors' claims.[57] Notwithstanding that fact, Judge Kinsella stated that *Truck* was "directly on point" and held that the objecting insurers were parties in interest under section 1109(b) and *Truck.*[58]

18. The Plan — which has been solicited, voted on, and has proceeded to the final stages of confirmation — purports to assign Hopeman's Asbestos Insurance Rights to the Asbestos Trust. As aforementioned, the purported Insurance Assignment affects Liberty Mutual in multiple ways, including by violating the Defense Obligation and Minimization Obligation and by allowing the Asbestos Trust to intervene in any Insurance Policy Action and assign extracontractual claims

[55] *Id.* at *11-12 (citing *In re Roman Catholic Diocese of Syracuse*, 665 B.R. 866, 875 (Bankr. N.D.N.Y. 2024)).

[56] *In re Roman Catholic Diocese of Syracuse*, 665 B.R. at 872.

[57] *Id.*

[58] *Id.* at 875.

that Hopeman may possess to Direct Action Claimants.[59] Liberty Mutual has thus demonstrated that the Insurance Assignment could affect its financial interests, which is all that *Truck* requires.[60]

19. In sum, the Bankruptcy Court erroneously relied on a non-binding decision with little to no persuasive value to incorporate a new standing requirement into section 1109(b) that the Supreme Court did not espouse and which other courts post-*Truck* have not required.[61]

C. The Bankruptcy Court Relied on the Insurance Neutrality Doctrine, Which Was Repudiated by the Supreme Court.

20. In *Truck*, the Supreme Court explained why the insurance neutrality doctrine is "conceptually wrong and makes little practical sense."[62] A bankruptcy plan may state that the

[59] *See* Plan at § 8.13(e). Liberty Mutual objected to the provision of the Plan that would allow the Asbestos Trust to intervene in any Insurance Policy Action that may involve Liberty Mutual. The basis of Liberty Mutual's objection is that the Asbestos Trust—as the assignee of Hopeman's interests—has no greater rights than the assignor, Hopeman. However, Hopeman has released *all* of its rights and claims against Liberty Mutual. The Bankruptcy Court acknowledged Liberty Mutual's objection and determined that the Plan "should be modified" to the extent it grants the Asbestos Trust rights to intervene in any action beyond whatever rights the Asbestos Trust possess under applicable law. *See* FOF/COL at 56. However, the Plan Proponents' Proposed Revisions in response to the FOF/COL are insufficient, and the Plan still impairs Liberty Mutual's rights, as discussed *supra* ¶ 6(c) n.34 and *infra* ¶ 26 n.77.

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

[61] In addition to the bankruptcy court's ruling in *Syracuse*, courts across the country have applied *Truck* expansively in a broad variety of circumstances. *See, e.g.*, *In re AIO US, Inc.*, 2025 Bankr. LEXIS 1369, at *29 (insurers in a mass tort case were parties in interest with a right to participate in the confirmation process, a conclusion which "flow[ed] directly from *Truck Insurance*, which held that an insurer was a party in interest entitled to object to confirmation of a plan of reorganization filed by its insured"); *DeSmidt v. Nationstar Mortg. LLC (In re De Smidt)*, BAP No. CC-24-1071-FGL, CC-24-1072-FGL, 2025 Bankr. LEXIS 663, at *16 (B.A.P. 9th Cir. Mar. 19, 2025) (third parties had standing to object to a motion to reopen chapter 7 case because "if the bankruptcy court had reopened the case . . . the [third-parties] would have had to incur attorneys' fees defending against Mr. De Smidt's claims"); *In re Steward*, 668 B.R. 203, 211 (Bankr. N.D. Ill. 2025) (insurer had standing to seek to lift the automatic stay because the insurer had "an economic interest that is directly and adversely affected by the stay"); *In re Team Sys. Int'l, LLC*, Case No. 22-10066 (CTG), 2024 Bankr. LEXIS 2573, at *4-5 (Bankr. D. Del. Oct. 21, 2024) (standing applies to "all parties with a direct financial stake in the outcome"; therefore, equity holders that could potentially recover from the debtor's estate had standing to object to a claim).

[62] *Truck*, 602 U.S. at 283.

prepetition *status quo* will be maintained post-confirmation and that the Plan "neither enhances nor diminishes" the rights of the debtor and the insurers.[63] But, "[b]ankruptcy reorganization proceedings can affect an insurer's interests in myriad ways. . . . [f]or example, a plan that purports to maintain an insurer's coverage defenses could nonetheless allow claims at amounts far above their actual value".[64] Or, "a plan may . . . impair the insurer's financial interests by inviting fraudulent claims[.]"[65] Because bankruptcy courts cannot predict the myriad ways that post-confirmation events may unfold, "the §1109(b) inquiry asks whether the reorganization proceedings *might* affect a prospective party, not how a particular reorganization plan *actually* affects that party."[66]

21. In focusing on how (in its view) "Liberty Mutual's rights, claims, and defenses . . . are all unimpacted by the Plan"[67] and "[n]othing in the Plan alters Liberty Mutual's liability or the rights of the holders of Channeled Asbestos Claimants against Liberty Mutual, or vice versa,"[68] the Bankruptcy Court analyzed the Plan's *insurance neutrality*. This is, under binding Supreme Court precedent, the wrong analysis in the standing context. The Bankruptcy Court emphasized that "even after Liberty Mutual and the Debtor entered into the 2003 Agreements, holders of Asbestos Claims and others continued to sue Liberty Mutual in Louisiana,"[69] suggesting that the Plan merely maintains the *status quo*. But, according to the Supreme Court, "whether and how

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[63] *See* FOF/COL at 19.

[64] *Truck*, 602 U.S. at 281 (citation omitted).

[65] *Id.*

[66] *Id.* at 283 (emphasis in original).

[67] FOF/COL at 20.

[68] *Id.* at 21.

[69] *Id.* at 67.

the particular proposed Plan here affects [the insurer's] prepetition and postpetition obligations and exposure is not the question."[70] Rather, the fact that Liberty Mutual's financial exposure *could* be "directly and adversely affected" by the Plan is sufficient to give Liberty Mutual standing in the bankruptcy proceedings.[71]

22. The Bankruptcy Court paid lip service to the repudiation of the insurance neutrality doctrine[72] but, substantively, it based its conclusion that Liberty Mutual lacks standing on that very doctrine. No amount of "insurance neutrality" language in the Plan can deprive Liberty Mutual of standing, because the Plan could result in financial ramifications for Liberty Mutual that would not exist but for the Insurance Assignment. This is sufficient under *Truck* to confer standing on Liberty Mutual.

D. The Bankruptcy Court Acknowledged that the Plan Negatively Impacted Liberty Mutual, Which Demonstrates that Liberty Mutual Has Standing.

23. Although the Bankruptcy Court held that Liberty Mutual did not have standing, the Bankruptcy Court addressed Liberty Mutual's objection to the Asbestos Trust's unfettered intervention right on the merits. The Bankruptcy Court held that the Plan "should be modified" if it extends beyond protecting the Asbestos Trust's right to intervene subject to proper procedural mechanisms and other parties' right to object.[73] In so holding, the Bankruptcy Court acknowledged that the Plan altered Liberty Mutual's rights; therefore, Liberty Mutual has standing to object to the Plan based on this holding alone.

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[70] *Truck*, 602 U.S. at 283-84.

[71] *Id.* at 284.

[72] *See* FOF/COL at 18 (citing *Truck*, 602 U.S. at 283 ("Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer's prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers")).

[73] *Id.* at 56.

24. In sum, the Bankruptcy Court's standing decision was erroneous in four ways:

a. The Bankruptcy Court wrongly distinguished *Truck*, the facts of which are analogous to the facts at bar.

b. The Bankruptcy Court arbitrarily narrowed *Truck*'s expansive[74] interpretation of section 1109(b) by creating a new standing requirement that does not appear in the Supreme Court's opinion. The Bankruptcy Court's reliance on *Albany* — an out-of-circuit decision which is non-binding and factually inapplicable — does not constitute an appropriate legal basis on which to do so.

c. The Bankruptcy Court based its standing ruling on the insurance neutrality doctrine, which is no longer used to assess standing post-*Truck*.

d. The fact that the Bankruptcy Court ruled on the merits of the intervention issue (which issue was raised only by Liberty Mutual) is in and of itself sufficient to demonstrate that the Plan affects Liberty Mutual's interests, rendering Liberty Mutual a party in interest with standing to be heard on issues relating to the Plan.

II. The Bankruptcy Court Improperly Approved the Insurance Assignment in Violation of the Bankruptcy Code.

25. In another one-paragraph analysis, the Bankruptcy Court dismissed Liberty Mutual's argument that the Plan is unconfirmable because it purports to transfer Hopeman's Asbestos Insurance Rights with respect to the Liberty Mutual Policies to the Asbestos Trust when no such rights exist.[75] The Bankruptcy Court ruled as follows:

> The Debtors cannot transfer what they do not have. *In re Boy Scouts of Am.*, 137 F.4th at 164–65 ("[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.") As a matter of law, if the Debtor does not have any rights, no transfer is effectuated. But issues regarding the nature of the Debtor's

[74] *See Truck*, 602 U.S. at 277 ("Section 1109(b)'s text is capacious.").

[75] *See* FOF/COL at 50.

> Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute.[76]

26. Liberty Mutual agrees that "[t]he Debtor[] cannot transfer what [it] does not have."[77] But this is exactly what the Plan does: it purports to transfer Hopeman's rights under the Liberty Mutual Policies, *if any*, to the Asbestos Trust.[78] Neither the Bankruptcy Code nor any other statute or precedent provides a legal basis that permits a transfer of property that does not belong to the Debtor. Despite Liberty Mutual raising the issue, the Bankruptcy Court declined to determine whether and to what extent Hopeman possesses any rights in the Liberty Mutual Policies.[79] Unless the Plan is modified to explicitly state that (1) the Debtor has no Asbestos Insurance Rights related to the Liberty Mutual Policies, and (2) no such Asbestos Insurance Rights will be transferred to the Asbestos Trust, the Insurance Assignment as it relates to Liberty Mutual is contrary to law, and the Plan cannot be confirmed.[80]

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[76] *Id.*

[77] *Id.*

[78] *See* Tr. of Aug. 25, 2025 Hr'g [Dkt No. 1174] at 77:1-14.

[79] The Bankruptcy Court ruled that the Plan "should make clear that the Asbestos Insurance Rights are being transferred to the Asbestos Trust subject to any existing terms and conditions". FOF/COL at 50. The Plan Proponents responded by including a statement to that effect in Section 8.3(b) of the Plan. *See* Proposed Revisions at ¶ A. But this statement does nothing to resolve the issue identified by Liberty Mutual herein. An impermissible transfer that is "subject to applicable terms and conditions" is still impermissible. *Id.*

[80] As set forth in the Joinder *infra*, Liberty Mutual joins in Section III.E of the Travelers Objection (as defined herein). In the Travelers Objection, Travelers (as defined therein) requests that section 1.13 of the Plan (the definition of "Asbestos Insurance Rights"), or some other part of the Plan, be modified to provide that the term "Asbestos Insurance Rights" does not include any rights, title, privileges, interests, claims, demands or entitlements in or to Travelers' insurance policies or extracontractual claims related to Travelers' insurance policies that have been released. *See* Travelers Objection at ¶ 72. Liberty Mutual joins in this requested relief. Such modifications are also appropriate with respect to the Debtor's rights, title, privileges, interests, claims, demands or entitlements in the Liberty Mutual Policies, and extracontractual claims related to the Liberty Mutual Policies that have been released by operation of the 2003 Agreements.

A. Under Section 1123(a)(5) of the Bankruptcy Code, the Bankruptcy Court Cannot Confirm a Plan that Purports to Transfer Rights that are Not Property of the Debtor's Estate.

27. The statutory authority under which Hopeman purports to assign the Asbestos Insurance Rights to the Asbestos Trust is section 1123(a)(5)(B) of the Bankruptcy Code.[81] But Section 1123(a)(5)(B) only authorizes a chapter 11 plan to "provide adequate means for the plan's implementation, such as . . . transfer of all or any part of the *property of the estate* to one or more entities, whether organized before or after the confirmation of such plan."[82] If the property is not property of the estate, a plan cannot transfer it under section 1123(a)(5)(B) (or section 363, for that matter). That is why, if there is a dispute over the property's ownership, the bankruptcy court is required to adjudicate the dispute before approving a sale of the disputed property.[83]

28. Here, there was no dispute over the Debtor's Asbestos Insurance Rights vis-à-vis the Liberty Mutual Policies. The Bankruptcy Court correctly found that the Debtor released all of its Asbestos Insurance Rights with respect to the Liberty Mutual Polices in 2003.[84] It is black-letter law that a bankruptcy court may exercise jurisdiction over — and by extension, a plan may affect — *only* property of a debtor's estate, which is defined by section 541 of the Bankruptcy Code.[85] A debtor's estate is comprised of, among other things, "all legal or equitable interests of

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[81] *See* Plan at § 8.3(b), (h), and (i); FOF/COL at 50.

[82] 11 U.S.C. § 1123(a)(5)(B) (emphasis supplied).

[83] *See, e.g.*, *Stokes v. Duncan (In re Stokes)*, Case No. MT-13-1097-TaPaJu, 2013 Bankr. LEXIS 4654, at *23 (B.A.P. 9th Cir. 2013) ("This was not a situation where the parties disputed the estate's interest in the assets sold before the sale. In fact, had they disputed the estate's interest before the sale, the bankruptcy court would have been required to adjudicate the dispute") (citing *Darby v. Zimmerman (In re Popp)*, 323 B.R. 260 (B.A.P. 9th Cir. 2005)).

[84] *See* FOF/COL at 7.

[85] *See* 11 U.S.C. § 541(a)(1).

the debtor in property as of the commencement of the case."[86] Those property interests neither expand nor contract by happenstance of bankruptcy.[87] Therefore, as of the Petition Date, the Debtor had no Asbestos Insurance Rights with respect to the Liberty Mutual Policies, and it has no such rights now.[88]

29. Nonetheless, Article 8.3(b) of the Plan provides that "[o]n the Effective Date [of the Plan]. . . the Asbestos Insurance Rights shall be automatically transferred to, and indefeasibly vested in, the Asbestos Trust[.]"[89] The definition of "Asbestos Insurance Rights" includes "any and all of Hopeman's rights, . . . causes of action, and choses in action under, for, or related to . . . the Asbestos Insurance Policies".[90] The term "Asbestos Insurance Policies" means "the insurance policies identified on Exhibit H of the Plan ***and*** any other insurance policy of Hopeman, whether known or unknown, that provides or potentially provides coverage for any Channeled Asbestos Claim."[91] Therefore, the Liberty Mutual Policies are included within the definition of Asbestos Insurance Policies, and Hopeman purports to transfer any rights that it may have under the Liberty Mutual Policies to the Asbestos Trust.[92]

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[86] *Id.*

[87] *See Mission Prod. Holdings v. Tempnology*, 587 U.S. 370, 381 (2019).

[88] *See id.*; *Tyler v. Ownit Morg. Loan Trust*, 460 B.R. 458, 463 (E.D. Va. 2011) (estate had no interest in property that had been validly conveyed prior to the petition date).

[89] Plan at § 8.3(b).

[90] *Id.* at § 1.13.

[91] *Id.* at § 1.12 (emphasis added).

[92] *See* Tr. of Aug. 26, 2025 Hr'g **[**Dkt. No. 1175**]** at 26:1-10 (Debtor's counsel: "We, the debtor, do not believe we have rights in the Liberty policy. Okay? We have none", and "I don't know how more plain we can say it. The debtor is transferring every right it has under a policy to the [Asbestos] [T]rust, whatever those happen to be.").

30. As noted herein, the Bankruptcy Court decided that "issues regarding the nature of the Debtor's Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute."[93] But the effect of the Insurance Assignment should never reach a coverage court, because the Insurance Assignment cannot be effectuated—under section 1123(a)(5)(B) or any other section of the Bankruptcy Code—where the Bankruptcy Court has failed to adjudicate a dispute over whether those transferred rights constitute property of the Debtor's estate.[94] Therefore, the Insurance Assignment as it relates to Liberty Mutual is contrary to law and cannot be approved unless the Plan clarifies that (1) the Debtor has no Asbestos Insurance Rights related to the Liberty Mutual Policies, and (2) no such Asbestos Insurance Rights will be transferred to the Asbestos Trust.

B. By Refusing to Adjudicate Liberty Mutual's Allegation that the Plan Does Not Comply with Section 1123(a)(5) of the Bankruptcy Code, the Bankruptcy Court Did Not Uphold Its Obligations Under Section 1129(a) of the Bankruptcy Code.

31. Hopeman admitted that it has no Asbestos Insurance Rights with respect to the Liberty Mutual Policies. Given those admissions and the objections that Liberty Mutual raised at confirmation, it would have been simple enough for Hopeman to amend the Plan to clarify this point. It chose not to do so. And the Bankruptcy Court chose to find that Hopeman's admissions do not pose a legal impediment to approving the Insurance Assignment because "if the Debtor

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[93] FOF/COL at 50.

[94] *See* 11 U.S.C. § 363(b) (authorizing a debtor, "after notice and a hearing" to "use, sell, or lease . . . property of the estate"); *In re Worcester Country Club Acres*, 655 B.R. 41, 45 (Bankr. D. Mass. 2023) ("'Implicit within the statutory grant of authority to sell property under section 363 . . . is the requirement that the estate actually have an interest in the property to be sold.' . . . Simply put, '[a] bankruptcy court may not allow the sale of property as 'property of the estate' without first determining whether the debtor in fact owned the property.'") (citing *Warnick v. Yassian (In re Rodeo Canon Dev. Corp.)*, 362 F.3d 603, 608 (9th Cir. 2004) (other citations omitted)). Plan sales under section 1123(a)(5)(B) of the Bankruptcy Code — which subsection explicitly references "property of the estate" — are subject to the same limitations as plan sales under section 363 of the Bankruptcy Code.

does not have any rights, no transfer is effectuated".[95] Essentially, the Bankruptcy Court held that the Debtor's attempt to transfer its Asbestos Insurance Rights related to the Liberty Mutual Policies is harmless because, if Liberty Mutual is correct and the Debtor indeed has no Asbestos Insurance Rights in the Liberty Mutual Policies, the transfer will not affect Liberty Mutual at all. But "[the Court] has an independent duty to ensure that the requirements of 11 U.S.C. § 1129 are satisfied, even if no objections to confirmation have been made."[96] Among other things, section 1129 of the Bankruptcy Code requires that the Plan comply with the applicable provisions of the Bankruptcy Code. Faced with Liberty Mutual's objection to the Insurance Assignment, the Bankruptcy Court did not discharge its "independent duty" to ensure that the Plan provisions authorizing the Insurance Assignment comply with the other applicable provisions of the Bankruptcy Code.

32. The Bankruptcy Court erred under section 1129(a) of the Bankruptcy Code by failing to adjudicate whether the subject of the Insurance Assignment constitutes property of the estate. "Undoubtedly, determining the nature and extent of property of the estate is a fundamental function of a bankruptcy court . . . and fundamental to the administration of a bankruptcy case."[97] By abdicating its authority to coverage courts across the country, the Bankruptcy Court has invited a multitude of non-bankruptcy courts to adjudicate the meaning and effect of the Plan on Liberty Mutual and Hopeman. Decentralizing the forum for making this determination no doubt will invite opposing conclusions and, in any event, does nothing to promote "the administration of [this]

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[95] FOF/COL at 50.

[96] *In re Prime Cap. Ventures, LLC*, Case No. 24-11029, 2025 Bankr. LEXIS 779, at *5 (Bankr. N.D.N.Y. Mar. 28, 2025) (citation omitted).

[97] *Sharp v. Corp. (In re Vineyard Nat'l Bancorp)*, 2013 Bankr. LEXIS 1823, at *19; *see Nationwide Mut. Fire Ins. Co. v. Smoky Mt. Country Club Prop. Owners Ass'n*, 2020 U.S. Dist. LEXIS 35071, at *5 ("a bankruptcy court has jurisdiction to determine what constitutes property of the estate") (citation omitted).

bankruptcy case."[98] As a practical matter, Liberty Mutual will bear the cost of repeatedly litigating an issue that should have been decided in the Bankruptcy Court. This result directly prejudices Liberty Mutual and is impermissible under section 1129(a). Therefore, the Plan cannot be confirmed.

JOINDER

33. In addition to the issues addressed in this Objection, the Plan cannot be confirmed for a number of other reasons, which are set forth in *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* (the "Travelers Objection") and the *Chubb Insurers' Objections to 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* (the "Chubb Objection"), each filed contemporaneously herewith. Liberty Mutual joins in the arguments and positions set forth in Sections III.E, III.G, and III.H of the Travelers Objection and Sections A.1–1.2 and B.1 of the Chubb Objection for the reasons stated therein, including the relevant factual discussions related to those sections.

I. The Debtor Has Not Met Its Burden to Show that the Plan Was Proposed in Good Faith.

34. In further support of its joinder to Section B.1 of the Chubb Objection, Liberty Mutual emphasizes that the Debtor has not offered satisfactory – or indeed, *any* – evidence of the Plan Proponents' good faith in negotiating and proposing the Plan, other than conclusory

[98] *In re Vineyard Nat'l Bancorp*, 2013 Bankr. LEXIS 1823, at *19.

statements by Mr. Lascell and the mere existence of a mediation.[99] In holding that the Plan was proposed and negotiated in good faith, the Bankruptcy Court held that "[a] negative inference should not be drawn against the debtor merely because it chose to protect the privacy of attorney-client communications."[100] Liberty Mutual agrees. However, unlike in the *W.R. Grace* case cited by the Bankruptcy Court, the Debtor is not merely protecting certain, specific information that is subject to attorney-client privilege. The Debtor has shielded *all* facts, correspondence, documents, and other relevant materials related to the drafting and negotiation of the Plan during the mediation.

35. As Liberty Mutual argued before the Bankruptcy Court at the confirmation hearing, neither *W.R. Grace*, nor any other case, stands for the proposition that, simply because a plan was negotiated pursuant to judicial mediation, that plan was *per se* proposed in good faith.[101] In fact, Liberty Mutual presented caselaw to the Bankruptcy Court that stands for the opposite proposition. In *In re Diocese of Camden*, a judicial mediation resulted in a proposed sale between a debtor and an insurer.[102] The debtor refused to waive the mediation privilege and, as a result, the bankruptcy court had been presented with no evidence regarding how the sale price was negotiated.[103] The debtor argued that the mere existence of mediation was sufficient to prove the parties' good faith in negotiating the sale,[104] just as Hopeman argued that that the mere existence of mediation is sufficient to prove the Plan Proponents' good faith in negotiating the Plan. The bankruptcy court

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[99] The Debtor, as the Plan proponent, bears the burden of proof on all confirmation issues, including that of good faith. *See In re LBD, PLLC*, Case No. 20-10414-BFK, 2021 Bankr. LEXIS 2036, *7 (Bankr. E.D. Va. Jul. 30, 2021) (citations omitted).

[100] FOF/COL at 64 (citing *In re W.R. Grace & Co.*, 729 F.3d 332, 348 (3d Cir. 2013)).

[101] *See* Tr. of Aug. 26, 2025 Hr'g at 116:10-21.

[102] 635 B.R. 722, 741 (Bankr. D.N.J. 2023).

[103] *See id.*

[104] *See id.*

in *Camden* "decline[d] to adopt such a *per se* rule" and rejected the proposed sale.[105] The Bankruptcy Court should have rejected the proposed Plan for the same reason. Instead, the Bankruptcy Court held that the Plan was proposed in good faith without addressing *Camden* at all, much less distinguishing its facts or legal holding.[106] This ruling constituted clear error.

36. To be clear, Liberty Mutual does not question Judge Huennekens' integrity or skill as a mediator. However, the fact remains that, notwithstanding the Debtor's use of the mediation privilege as a sword and a shield, Liberty Mutual presented evidence to the Bankruptcy Court that (1) the Committee drafted the term sheet that became the Plan,[107] (2) the Committee was the engineer and driving force behind the decision to pivot from a liquidating plan to a section 524(g) Plan (which Hopeman opposed),[108] (3) four out of five individuals on the Settlement Trust Advisory Committee overseeing the post-confirmation Asbestos Trust are the *very same* lawyers representing Committee members,[109] (4) the Litigation Trustee was chosen by the Committee,[110] and (4) the passive investment "business" of "Reorganized" Hopeman was chosen by the Committee's financial advisor with no involvement from the Debtor's representatives.[111] Given this evidence, *In re ACandS, Inc.* — in which "the prepetition committee [] drafted (or more likely directed debtor's counsel in drafting) the prepetition trust, and apparently chose the trustee for the trust; . . . and it was the prepetition committee who decided who was going to get what," leading

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[105] *Id.* at 741-42.

[106] See FOF/COL at 59-60.

[107] *See* LM Ex. 4.

[108] *See* LM Ex. 5.

[109] *See* Liberty Mutual's Confirmation Objection at ¶ 65.

[110] *See id.* at ¶ 69.

[111] *See id.* at ¶ 38.

the bankruptcy court to conclude that the plan had not been proposed in good faith — is directly on point.[112]

II. The Plan Does Not Satisfy Section 524(g) of the Bankruptcy Code.

37. In further support of its joinder to Section III.G of the Travelers Objection and Sections A.1-A.2 of the Chubb Objection, Liberty Mutual respectfully states that the Bankruptcy Court erred in ruling that "[w]hile section 524(g)(2)(B)(i)(II) does not contain an ongoing-business requirement, the Bankruptcy Court concludes that if there were such a requirement it would be satisfied here".[113] Section 524(g) of the Bankruptcy Code codified the seminal 1989 *Johns-Manville* asbestos liability case, where the debtor's ongoing business provided an "evergreen" source of value for future asbestos claimants.[114] But aside from the Asbestos Claims against Hopeman, Hopeman's proposed Plan bears no resemblance to the plan in *Johns-Manville*. In reality, Hopeman is not reorganizing (it has no business to reorganize, as it has not operated since 2003).[115] The extent of its post-confirmation "business" will be to receive cash flows on a real estate investment and passive interest on $150,000 in cash.[116]

38. In *Fireman's Fund Insulation Company v. Plant Insulation Company (In re Plant Insulation Company)*, the Ninth Circuit vacated confirmation of asbestos debtor Plant Insulation's

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[112] 311 B.R. 36, 42-43 (Bankr. D. Del. 2004) (cited in the FOF/COL at 64-65).

[113] FOF/COL at 94.

[114] *Fireman's Fund Insulation Co. v. Plant Insulation Co. (In re Plant Insulation Co.)*, 734 F.3d 900, 905-06 (9th Cir. 2013) (citing *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d. Cir. 1988) and *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d. Cir. 2004)).

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

[116] *See* FOF/COL at 94.

proposed plan because it did not comply with section 524(g).[117] Plant Insulation's asbestos trust would only gain ownership of the reorganized debtor (another section 524(g) requirement) if certain unlikely contingencies occurred, but the debtor argued (and the Bankruptcy Court agreed) that "any contingency suffice[d]."[118] The Ninth Circuit disagreed, reasoning, "[i]f 'specified contingencies' could include any contingency — such as a meteor hitting the Empire State Building — then the subsection has no content because the plan drafters could write it out of existence at will."[119] Hopeman essentially argues that "any postpetition business suffices," even if it consists of a less than 2% passive ownership interest in an apartment building. This lends as much meaning to the "ongoing business" requirement as a meteor striking the Empire State Building lends to the "specified contingencies" requirement. The Ninth Circuit recognized that Plant Insulation's plan had been "proposed in an attempt to fit within the statute"—as has Hopeman's—and rejected that attempt,[120] noting that the entire statute operates as a comprehensive "scheme that ensures that, after the bankruptcy, the trust stands in for the debtor with regard to asbestos claims *and the debtor continues to operate its business for the benefit of the trust*."[121]

39. The Bankruptcy Court emphasized that the Third Circuit's discussion of the "ongoing business" requirement in *Combustion Engineering* is dicta,[122] and did not even address *Plant Insulation*. As such, the Bankruptcy Court's ruling lends little to no credence to the two

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[117] *See* 734 F.3d at 917.

[118] *See id.* at 915.

[119] *See id.*

[120] *See id.* at 906.

[121] *See id.* at 916 (emphasis supplied).

[122] *See* FOF/COL at 93-94.

Circuit-level decisions that have addressed situations akin to this one. Both decisions stand for the proposition that, as a comprehensive, integrated statute, section 524(g) was intended to allow debtors facing asbestos liability to provide evergreen funding to asbestos trusts through continued operation of their businesses, which are to be relieved of crushing asbestos liability through the channeling trust. This is not what Hopeman's plan does. Hopeman's attempt to make the square peg of the Committee's desired Plan structure fit into the round hole of section 524(g) cannot be squared with the statute and should be rejected.

CONCLUSION

40. The Bankruptcy Court erred in holding that Liberty Mutual did not have standing to object to the Plan. Additionally, the Bankruptcy Court erred in approving the Insurance Assignment in the Plan as it relates to Liberty Mutual. The Insurance Assignment, as it relates to Hopeman's Asbestos Insurance Rights related to the Liberty Mutual Policies, purports to transfer property that is not owned by the Debtor's estate and, therefore, is contrary to applicable law.

41. Therefore, Liberty Mutual respectfully requests that this Court should reject the FOF/COL and remand the case to the Bankruptcy Court for further proceedings.

Date: November 24, 2025

Respectfully submitted,

/s/ Douglas M. Foley

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on November 24, 2025, a true and correct copy of the foregoing **LIBERTY MUTUAL INSURANCE COMPANY'S OBJECTION 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** was served upon all parties receiving electronic notice through the Court's ECF notification system.

Dated: November 24, 2025

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