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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	Chapter 11
Hopeman Brothers, Inc.,	Case No. 24-32428 (KLP)
Debtor.	

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

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Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, and Westchester Fire Insurance Company (on its own behalf and for policies issued by or novated to Westchester Fire Insurance Company) (collectively, the "Chubb Insurers")—through counsel and pursuant to Rule 9033(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules for the U.S. Bankruptcy Court for the Eastern District of Virginia (the "Local Rules")—file this Objection (the "Chubb Objection"[1]) 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* (the "Proposed Findings;"[2] ECF No. 1267) issued by the Bankruptcy Court on October 31, 2025. In support, the Chubb Insurers state as follows:

PRELIMINARY STATEMENT

1. The issues concerning the Plan before the Court, as recommended for approval by the Proposed Findings, boil down to an analysis of form over substance. A holistic view of the Plan and an examination of the Plan's provisions that is tethered directly to the Bankruptcy Code and controlling precedent demonstrates that the substance of the Plan, as recommended for approval by the Proposed Findings, fails to meet the requirements of § 524(g) and § 1129 of the Bankruptcy Code.

2. In particular, the Plan Proponents attempt to meet the form of the Bankruptcy Code's requirements by supposedly "reorganizing" the Debtor – a defunct entity that has had no

[1] Pursuant to Bankruptcy Rule 9033(b)(3), the Chubb Objection is timely filed because, on November 12, 2025, the Bankruptcy Court entered a Consent Order that extended the Parties' deadline to file objections through, and including, November 24, 2025. (ECF No. 1277.)

[2] Unless stated otherwise, capitalized terms used, but not defined, in this Chubb Objection shall have the meaning ascribed to them in the Bankruptcy Court's Proposed Findings.

business operations in over twenty years – into a passive real estate investor. Yet, the reality and substance is that the Debtor is liquidating by transferring substantially all of its assets to the Asbestos Trust for liquidation to its asbestos creditors, precluding it from a discharge and, in turn, from relief under § 524(g). Second, despite the foundational requirement that a reorganized debtor provide a § 524(g) trust with a source of ongoing funding to pay holders of Asbestos Claims and Demands, the Plan turns that element of the Bankruptcy Code on its head. The only ongoing funding requirement under the Plan is for the ***Asbestos Trust*** to provide ***Reorganized Hopeman*** with continued funding, thereby diminishing dollar-for-dollar the finite assets available to distribute to holders of Asbestos Claims and Demands. Third, the Plan Proponents attempt to meet the form of the Bankruptcy Code's "good faith" requirement by arguing that the Plan's genesis in mediation is *de facto* satisfaction of that requirement, yet the Plan Proponents presented no other substance or evidence to carry their burden of good faith and, concurrently, withheld evidence based on mediation privilege. Finally, the Plan Proponents attempt to meet the form of the Bankruptcy Code's "best interests" test by asserting that more claims will be paid in a chapter 11 than in chapter 7, yet the substance of the Plan Proponents' evidence reveals no claim estimation analysis or projections whatsoever to show that individual creditors' recoveries will be the same or greater under the Plan than they would receive in a chapter 7, again failing to carry their evidentiary burden.

3. When viewing the proposed Plan and the sparse evidentiary record, these failures, along with other infirmities, are apparent. The Proposed Findings even concede certain of these evidentiary failures—namely, the Plan Proponents' failure to present a claims estimation analysis. (ECF No. 1267, at 83.[3]) Nonetheless, the Proposed Findings recommend approval of the

[3] The Proposed Findings acknowledge that "[t]hese estimates were not included in the Liquidation Analysis presented to the Court. It is regrettable that this information was not presented during the Combined Hearing as it may have

Disclosure Statement and confirmation of the Plan, subject to certain technical modifications. Those modifications, however, cannot salvage the irreparable failure of the proposed Plan to satisfy critical requirements for confirmation, including 11 U.S.C. § 524(g), 11 U.S.C. § 1129(a)(3)'s good faith requirement, and 11 U.S.C. § 1129(a)(7)'s "best interests" test. [4]

4. Accordingly, the Chubb Insurers submit that final approval of the Disclosure Statement must be denied because the Plan is patently unconfirmable, and the Plan ought not to be confirmed. Therefore, the Chubb Insurers respectfully request that the Court reject the Bankruptcy Court's Proposed Findings and remand the matter to the Bankruptcy Court with instructions to require the Plan to be revised to meet the requirements of §§ 524(g) and 1129.

5. Bankruptcy Rule 9033(b)(2) requires objecting parties to "promptly order a transcript of the record, or the parts of it that all parties agree are—or the bankruptcy judge considers to be sufficient." Accordingly, the Chubb Insurers request that the Court take into consideration certain of the Chubb Insurers' objections, motions, and filings lodged with the Bankruptcy Court. *See* Fed. R. Bankr. P. 9033(b)(2). At this time, the District Court has not opened a unique case number designated for this matter. Accordingly, in the Conclusion of this Chubb Objection, the Chubb Insurers designate prior filings, which arguments and assertions the Chubb Insurers incorporate by reference, as though fully restated herein.

preemptively and conclusively addressed this part of Chubb's objection." (ECF No. 1267, at 83.)

[4] The Chubb Insurers address the Plan's impacts on holders of Asbestos Claims and Demands due to the disparate treatment of those holders of Claims and Demands, and the Plan Proponents' proposed Plan that leaves holders of current Asbestos Claims worse off than they would be in a chapter 7 scenario, demonstrates that this Plan is not proposed in good faith.

OBJECTIONS AND ARGUMENT

A. The Plan Fails to Comply with § 524(g) of the Bankruptcy Code.

6. In fundamental ways, the proposed Plan runs afoul of the requirements under § 524(g). Those failures include the Debtor's ineligibility for a § 1141(d)(3) discharge, not complying with the evergreen funding requirements under § 524(g)(2)(B(i)(II), and appointing a future claims representative ("FCR") who abandoned her duties and acquiesced to a "race to the courthouse" Plan that contains no mechanisms to ensure that the Asbestos Trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner. *See* 11 U.S.C. § 524(g)(2)(B)(ii)(V).

1. The Debtor Is Not Entitled to a § 1141(d)(3) Discharge, Precluding § 524(g) Relief.

7. The Plan Proponents devised a structure that strains to meet the requirements of § 524(g)(1)(A). The Plan Proponents' form-over-substance effort to shoehorn the Debtor into § 524(g) is best exemplified by their attempt to recast that long-defunct entity as a "real estate investor" post-confirmation in attempt to satisfy the requirement that a debtor must be engaged in business to qualify for a discharge. As explained below, Reorganized Hopeman will not engage in business, and the Plan also fails to meet the other two requirements for the Debtor to obtain a discharge.

8. Section 524(g)(1)(A) provides that "a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection ***to supplement*** the injunctive effect of a discharge under this section." 11 U.S.C. § 524(g)(1)(A) (emph. added). Thus, eligibility for a discharge under 11 U.S.C. § 1141 is a prerequisite for any injunction under § 524(g). *See In re Flinkote Co.*, 486 B.R.

99, 129 (Bankr. D. Del. 2012) ("It follows then that there must be a discharge for the channeling injunction to 'supplement.'"); *see also* 11 U.S.C. § 1141.

9. Section 1141(d)(3) provides that "[t]he confirmation of a [chapter 11] plan does not discharge a debtor if—(A) the plan provides for the liquidation of all or substantially all of the property of the estate; (B) the debtor does not engage in business after consummation of the plan; and (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title." 11 U.S.C. § 1141(d)(3)(A)-(C). As explained below, each of those three elements is present such that the Debtor is not entitled to a discharge.

a. The Debtor Will Transfer Substantially All Its Assets to the Asbestos Trust for Liquidation.

10. Here, the Debtor must reorganize—not liquidate—to obtain the injunctive relief that § 524(g) affords only to reorganizing debtors, and, despite the Plan Proponents' having ascribed the "reorganization" label to this Plan, a liquidation is what will be implemented if the Plan were confirmed. Notably, the Court has previously acknowledged the reality of a full-scale liquidation, despite a debtor's effort to characterize that liquidation as a reorganization. In an appeal arising from the Ascena Retail Group, Inc. chapter 11 cases, the Court wrote that "[a]s an initial matter, Debtor largely liquidated, rather than reorganized . . ." *Patterson v. Mahwah Bergen Retail Group, Inc.*, 636 B.R. 641, 690 (E.D. Va. 2022). The debtors in *Patterson* relied on, and needed, a reorganization to obtain non-debtor, third-party releases.[5] The Chubb Insurers submit that, here too, the Court should examine the practical reality of the Debtor's Plan and conclude that, regardless of what the Plan Proponents contend, the Plan effectuates the Debtor's liquidation.

[5] Prior to the District Court's decision on appeal, the Bankruptcy Court confirmed the Ascena Retail Group debtors' plan of "reorganization." (Bankr. E.D. Va. Case No. 20-33113-KRH, ECF No. 1811; *Order Confirming The Amd. Joint Chapter 11 Plan (Technical Modifications) of Mahwah Bergen Retail Group, Inc. (f/k/a Ascena Retail Group, Inc.) And Its Debtor Affiliates*; entered Feb. 25, 2021.) The words reorganized or reorganization appear nearly 250 times in the single filing comprised by that confirmation Order and plan.

11. The Proposed Findings accept the Plan Proponents' form over substance assertions that the Debtor is not liquidating but rather transferring substantially all of its assets to the Asbestos Trust. (ECF No. 1267, at 104.) The Proposed Findings rely primarily on the conclusory testimony of Debtor's principal, Mr. Lascell, that Hopeman is maintaining its corporate existence and "not liquidating" to find that "no assets are being liquidated under the terms of the Plan. Instead, property of the estate is being transferred . . . . There is no mention of liquidation of any assets and, therefore, this first element is not satisfied." (ECF No. 1267, at 104.) Whether the Plan actually mentions "liquidation" ignores the obvious actions and conveyances that would be implemented if the Plan is confirmed and consummated.

12. In reality, the Debtor's Plan would liquidate substantially all of the Debtor's remaining assets. Prepetition, the Debtor had no employees, operations, or income generated from business activities. The Debtor existed solely to manage, administer, and defend claims against it arising from asbestos-related liabilities. (ECF No. 57, at 1-2.) Any "income" that the Debtor has generated since 2003 consists of interest earned from the proceeds of insurance policies that had been previously settled, which had dwindled to the point that Debtor filed its chapter 11 petition in June 2024 specifically because "[i]f allowed to continue on the current pace, Hopeman would deplete its remaining cash within the next 12 months." (*Id.* at 12.) Debtor disclosed that, "[u]pon such depletion, only the coverage remaining from unexhausted insurance policies would be available to cover the costs and liability associated with the Hopeman Asbestos PI Claims." (*Id.*) The Debtor's own bankruptcy schedules underscore that, at the Petition Date, the Debtor had no meaningful assets to monetize. (ECF No. 59, at 12-19.)

13. At the Petition Date, the Debtor owned no real property, which remains the case today. (ECF No. 59, at 11.) The Debtor scheduled personal property with a value of

$3,785,941.11, of which $1,894,516.00 (or just over 50%) was comprised of already-liquid cash held in either a checking account or money market account with Citizens Bank. (*Id*. at 11-12.) Accounts receivable — cash receipts — comprised another $1,156,876.11 of the Debtor's personal property assets. (*Id*. at 13.) The remaining amount of approximately $734,549 was comprised of (i) $420,935, for advance payments and retainers to professional service firms, and (ii) $313,614, held in a settlement trust account at Peoples Bank. (*Id*. at 13, 18, 19.) At the Petition Date, the Debtor held no investments, no inventory, no office equipment, furniture, or fixtures, no machinery, and no intellectual property. (*Id*. at 19.) Other than cash, or cash equivalents, the Debtor's only material assets were its interests in insurance policies; that remains the case today. (*Id*. at 21-23.)

14. The Plan provides for the transfer and conveyance of virtually all of these assets to the Asbestos Trust, the only exception being the Net Reserve Funds. (ECF No. 1185, at 11, defining the "Asbestos Trust Assets" and "Asbestos Trust Contribution"). (ECF No. 767, at 215.) Under the Plan, the Net Reserve Funds that would be retained by Reorganized Hopeman are amounts to pay and satisfy allowed claims, professional fees for the Plan Proponents and FCR, quarterly fees due to the U.S. Trustee's Office, taxes and fees to maintain Reorganized Hopeman's corporate existence, and "any other amounts that the Plan provides are to be paid from the Net Reserve Funds." (ECF No. 1185, at 17.) Thus, even the limited funds to be retained by Reorganized Hopeman will be distributed to non-asbestos claimants, professional advisors, and the U.S. Trustee's office, all before the Debtor's chapter 11 case may be closed. After those administrative payments, the funds retained by Reorganized Hopeman are minimal at best, in amounts theoretically necessary to maintain Reorganized Hopeman's corporate existence. Even so, the Plan contains an ongoing requirement for the Asbestos Trust to provide "working capital"

funding to Reorganized Hopeman, itself proof that Reorganized Hopeman will not conduct any meaningful income-generating business. (ECF No. 1143, at 23.)

15. The crux of the Plan Proponents' overreach to satisfy § 524(g) is the so-called "Restructuring Transaction" that is defined as a "low-cost, income generating business or interest in such business, which acquisition cost will be $500,000 or less." (ECF No. 767, at 81.) That investment is the $350,000 reflected in the chapter 11 scenario of the Liquidation Analysis that would be deployed to invest in a 1.7% minority interest in an apartment complex near Houston, Texas, and Reorganized Hopeman will hold just the remaining $150,000 as a reserve to satisfy potential expenses. (ECF No. 853, at 200.) Thus, substantially all of the Debtor's limited assets will be liquidated and transferred.

16. The Bankruptcy Code does not define the term "liquidate" but when considering a proposed chapter 11 plan of liquidation, the hallmarks of such a plan are "the cessation of debtor's operations, the sale of debtor's assets and the distribution of the proceeds among creditors." *In re Repurchase Corp.*, 332 B.R. 336, 341 (Bankr. N.D. Ill. 2005). That is exactly what this Plan provides. Conversely, "[a] plan that vests all property back into the debtors' names upon confirmation, provides an ongoing payment plan, and is filed to regenerate a business is not a liquidation plan. *In re Um*, No. 10-46731, 2015 WL 6684504, at *2 (Bankr. W.D. Wash. Sept. 30, 2015) (citing *In re Duncan*, APN 12-00068, 2012 WL 5462917, at *4 (Bankr. D. Ariz. Nov. 6, 2012)).

17. Here, the Debtor entered chapter 11 with no operating business. The Debtor had (and has) no real property, no employees, no investments, no inventory, no office equipment, no furniture, no fixtures, no machinery, and no intellectual property, as the Debtor's own schedules affirm. The Debtor admittedly existed only to "manage[] the extensive liability insurance policies"

and "to defend against and settle, when appropriate, Asbestos Claims." (ECF No. 1115, ¶ 9.) As the court concluded in *In re Western Asbestos Co.*, involving a debtor whose prepetition "operations" consisted solely of managing asbestos claims and insurance rights, "[t]here would be no substance left to 11 U.S.C. § 1141(d)(3) if the level of assets and business activity retained by Western Asbestos entitled it to a discharge." 313 B.R. 832, 853 (Bank. N.D. Ca. 2003). The same is true here. Moreover, if consummated, the Plan does not "regenerate" the Debtor. Instead, it distributes Debtor's remaining cash and insurance assets to the Debtor's creditors, with the latter being accomplished primarily through creation of the Asbestos Trust, which would own 100% of Reorganized Hopeman, for the benefit of its unsecured asbestos claimant creditors.

18. While cash has come into the Debtor's estate via a lump-sum payment of $18.5 million insurance proceeds from a settlement approved during the bankruptcy case, the Plan proposes to transfer and distribute most of that cash. A significant portion of those proceeds has already been used to pay Debtor's administrative expenses, and significantly more of those proceeds will be expended before this bankruptcy case concludes. The Reorganized Debtor would remain a corporate shell, and, after the Debtor transfers its only remaining material assets—insurance rights—Reorganized Hopeman would make a "passive real estate investment" that, as detailed below, is not a genuine business but instead an empty adjunct to its asset-distribution scheme through the Asbestos Trust. The Debtor will liquidate and there will be no regeneration or rehabilitation of any business operations. Thus, the Debtor's Plan fails to meet § 1141(d)(3)(A).

b. The Debtor Will Not Engage In Business After Plan Consummation.

19. Second, Reorganized Hopeman will not "engage in business" after consummation of the Plan, which fails § 1141(d)(3)(B). *See* 11 U.S.C. § 1141(d)(3)(B). Prepetition, the Debtor had no operations or employees, and that will remain the case with Reorganized Hopeman. Again, Reorganized Hopeman's only post-confirmation activity would relate to the "Restructuring

Transaction," through which Reorganized Hopeman will invest $350,000 to obtain a 1.7% interest in an apartment complex in Texas. (ECF No. 853, at 200.) This passive real estate investment bears no similarity whatsoever to the Debtor's prior operations: ship-joining, later cabinet installation, and, since 2003, ostensibly "managing" its insurance for asbestos claims.

20. Upon consummation of the Plan, Reorganized Hopeman will have no business operations at all. The Asbestos Trust, not Reorganized Hopeman, will have sole responsibility for "managing" asbestos claims and "managing" insurance (to the extent those activities could be considered "business operations," which they are not). Reorganized Hopeman will make a one-time investment into a minuscule share of an apartment complex for which it will have no authority, decision-making, or management duties. (Aug. 25, 2025 Hrg. Tr. at 197:14-17 (confirming Reorganized Hopeman "will have no management discretion to affect the actual business operations" of the apartment complex)). A third-party, Avid Realty Partners, manages the apartment complex. (ECF No. 853, at 200.) The passive nature of the investment is precisely why the Plan Proponents found it attractive, as the testimony at the Confirmation Hearing showed. (Aug. 25, 2025 Hrg. Tr. at 195:13-20.) Further, this investment contemplates a sale of the property in just 5 years, yet the Plan contains no information as to what Reorganized Hopeman will do to generate income after that point.[6] During the five-year horizon of its initial investment, the Debtor projects total net revenue of just $149,307. (ECF No. 853, at 235.) The Plan Proponents' advisors spent more than that amount in just two months, at the estate's expense, to identify this "investment." (ECF Nos. 630, 652.)

[6] This fact means the Plan is not feasible and cannot be confirmed under 11 U.S.C. § 1129(a)(11). *See, e.g.*, *In re Quigley Co., Inc.*, 437 B.R. 102, 143 (Bankr. S.D.N.Y. 2010) (proposed § 524(g) plan was not feasible and could not be confirmed where debtor failed to prove that, after an initial 5-year period post-confirmation, it would have sufficient business to continue operating).

21. In a 2003 *per curiam* decision, the Fourth Circuit rejected a debtor's contention that "'engag[ing] in any business after consummation of the plan' means any 'profit-making pursuit[].'" *In re Grausz*, 63 Fed. App'x 647, 650 (4th Cir 2003). Consistent with the principle that chapter 11 reorganizations serve the purpose of regenerating a business, the Fourth Circuit stated that "[i]t seems clear to us that § 1141(d)(3)(B) does not refer to basic employment by an individual debtor but to the *continuation* of a *prepetition* business, and, therefore, [the debtor's] argument fails." *See In re Grausz*, 63 Fed. App'x 647, 650 (4th Cir 2003).

22. Outside the context of § 1141(d)(3), Bankruptcy Courts, as well as Circuit Courts of Appeal and U.S. District Courts, have evaluated what it means to be "engaged in business" for determining a debtor's eligibility for relief under the Bankruptcy Code. Although under a different procedural context, these decisions are persuasive and offer guidance that is instructive as to being "engaged in business" when considering the Debtor's proposed Plan.

23. First, Bankruptcy Courts have evaluated the criteria necessary for a pension or other type of trust to be eligible for bankruptcy relief as a debtor that qualifies as a "business" trust. *See* 11 U.S.C. §§ 109(a), 101(41), and 101(9)(A) ("only a person . . . may be a debtor" and a "person" includes a "corporation" which includes a "business trust"). In that context, courts consider the entity's profit-making goals and purpose. *See, e.g., In re Catholic School Employees Pension Trust*, 599 B.R. 634 (1st Cir. B.A.P. 2019); *White Family Cos. v. Dayton Title Agency, Inc.*, 284 B.R. 238, 254-55 (S.D. Ohio 2002) (quoting *In re Kenneth Allen Knight Trust*, 96-5353, 1997 WL 415318 (6th Cir. July 22, 1997)) (writing that "trusts created with the primary purpose of transacting business or carrying on commercial activity for the benefit of investors qualify as business trusts"); *In re Palsata Trust*, No. 21-10157-KHK, 2021 WL 1605675 (Bankr. E.D. Va. April 23, 2021) (applying a totality of the circumstances test for whether the trust "(i) was formed

for the purpose of transacting business for a profit rather than merely preserving the *res*; (ii) actually engaged in substantial business prior to the petition date; and (iii) in-fact has all of the indicia of a corporate entity").

24. In *Catholic School Employees Pension Trust*, the First Circuit B.A.P. held that a pension trust was not a "business trust" because it "was not created for a business purpose," and instead was "intended as a 'passive' investment vehicle" in which the assets were passively managed through investments in other enterprises. *Catholic School Employees Pension Trust*, 599 B.R. at 665-66. The First Circuit B.A.P. also noted that formation for a non-"profit generating" purpose like "protecting a gift or contribution" was not consistent with a "business" trust. *Id*. at 666-67. That logic applies equally to the § 1141(d)(3)(B) analysis. Through that lens, Reorganized Hopeman's purely passive structure, non-corporate purpose, and continued existence as a wholly-owned subsidiary of the Asbestos Trust with no employees or operating assets, all confirm that it will not be engaged in business after consummation of the Plan and does not meet the requirements for a discharge under the Bankruptcy Code.

25. Similarly, Bankruptcy Courts considering whether a debtor is a "single asset real estate" debtor – which under 11 U.S.C. § 101(51B) requires that the debtor's activities be limited to "operating the real property and activities incidental thereto" with "no substantial business is being conducted by the debtor" – have held that the phrase "no substantial business" distinguishes "between entrepreneurial, active labor and efforts versus merely passive income." *In re Pioneer Austin East Develop. I, Ltd.*, No. 10-30177, 2010 WL 2671732, at *2 (Bankr. N.D. Tex. July 1, 2010) (internal citations omitted); *see also In re Scotia Pacific Co., LLC*, 508 F.3d 214, 218 (5th Cir. 2007) (quoting *In re Club Golf Partners, L.P.*, No. 07-40096, 2007 WL 1176010, at *4 (E.D. Tex. Feb. 15, 2007) (noting that single asset real estate designation requires revenue "simply and

passively received as investment income by the debtor as the property's owner" versus revenue derived from "entrepreneurial, active labor and effort")). The "no substantial business" standard illuminates the difference between active and passive businesses in chapter 11. Through that lens, Reorganized Hopeman will have "no substantial business" after consummation of the Plan. After all, it is undisputed that Reorganized Hopeman would have "merely passive income" and would not engage in "entrepreneurial, active labor and effort." Nor could it – there will be no employees, no business assets or operations, and only marginal income that plainly will not be sufficient even to maintain Reorganized Hopeman's corporate existence given the ongoing "working capital" funding requirement running from the Asbestos Trust to Reorganized Hopeman.

26. As reflected by these authorities, Reorganized Hopeman would not be "engaged in business" after consummation of the Plan. The non-corporate purpose of Reorganized Hopeman and its adjunct relationship with the Asbestos Trust, pursuant to which the Asbestos Trust will fund Reorganized Hopeman's cash shortfalls, fail the "business" test. It is also undisputed that Reorganized Hopeman will not undertake entrepreneurial or labor-intensive commercial activity and, instead, is structured solely as a "passive" investment entity with no management rights or discretion akin to any basic, retail investor. These circumstances preclude any finding that Debtor would be "engaged in business" after consummation of the Plan as required by § 1141(d)(3).

c. The Debtor Is Not Entitled to a Discharge Under § 727(a) of The Code

27. Third and finally, as to the § 1141(d)(3) requirements, the Plan fails subsection (C) because the Debtor is not eligible for a discharge under § 727(a). *See* 11 U.S.C. § 1141(d)(3)(C). Section 727(a) provides twelve alternatives in which the Code will not grant a debtor a discharge; subsection 727(a)(1) states that "[t]he court shall grant the debtor a discharge, unless—(1) the debtor is not an individual." 11 U.S.C. § 727(a)(1). The Debtor, currently, and as Reorganized Hopeman, is not an individual; the Debtor is a Virginia corporation. *See, e.g.*, *In re Korfonta*, 417

B.R. 707, (Bankr. E.D. Va. 2009) (writing that "for example, only individuals, not corporations, are entitled to a discharge . . .").

28. Therefore, each of the three elements of § 1141(d)(3) are present, and the Debtor is not entitled to a discharge. Thus, § 524(g)(1)(A) is not applicable because the Code provides that a channeling injunction exists "to ***supplement*** the injunctive effect of a discharge under this section." 11 U.S.C. § 524(g)(1)(A) (emph. added). *See In re RML, LLC*, 662 B.R. 858, (Bankr. S.D.N.Y. 2024) (writing that "the Code's separate discharge provisions remain applicable and are 'supplemented' – not disturbed or eliminated – by the additional relief that § 524(g) authorizes"). The Debtor is not eligible for a discharge, as detailed above, so there is nothing that § 524(g) may supplement.

2. The Plan Does Not Comply With Section 524(g)(2)(B)(i)(II) Because the Insurance Here Is Not "Evergreen" and the Only Obligation to Make Future Payments Runs from the Asbestos Trust to Reorganized Hopeman.

29. Section 524(g)(2)(B)(i)(II) requires the Asbestos Trust "to be funded in whole or in part by…the obligation of [the] debtor . . . to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II). As the Bankruptcy Court recognized, this funding requirement "is intended to ensure an evergreen source of funds to pay both current and existing asbestos liability." (ECF No. 1267, at 92.)

30. The Proposed Findings erroneously conclude that the Plan complies with this requirement for two reasons. (ECF No. 1267, at 92.) Citing the *In re Kaiser Gypsum Co.* case, the Bankruptcy Court relies on the "insurance proceeds" as an "evergreen" source of funding. In addition, the Bankruptcy Court found there is no "ongoing business" requirement in § 524(g), but that even if there were, (i) Reorganized Hopeman is engaged in "the business of managing Asbestos Claims and its insurance assets" after consummation of the Plan; (ii) Reorganized Hopeman's passive investment scheme is an "ongoing business," citing the *In re Flintkote* case

and an unreported chapter 11 disclosure statement and confirmation order from the *In re Gulfmark Offshore, Inc.* case in the District of Delaware, and (iii) the anticipated "dividends and distributions" therefrom, which "***may*** be transferred" to the Asbestos Trust, are sufficient. (ECF No. 1267, at 92-95 (emph. added).) The Proposed Findings are wrong.

31. First, the insurance at issue in the *Kaiser Gypsum* case is radically different from the insurance here. Significantly, the Kaiser Gypsum insurance was "non-eroding," meaning it covered all defense and indemnity payments without any policy limits. *Truck Insur. Exchange, Inc. v. Kaiser Gypsum Co.*, 135 F.4th 185, 198 (4th Cir. 2025). In that context, the insurance proceeds may indeed be evergreen.

32. Here, by contrast, the Debtor's excess insurance ***is*** subject to eroding policy limits. Debtor filed its chapter 11 petition because it sought to avoid "the classic 'race to the courthouse' for claimants to recover remaining insurance proceeds" that is now created by the Plan. (ECF No. 8, ¶ 37.) As Mr. Lascell testified, each claim that gets paid under a policy reduces the amounts remaining to pay successive claims. (Aug. 25, 2025 Hrg. Tr. at 103:7-9; 103:20-23.) That is the opposite of an "evergreen" source of funding, and the Proposed Findings on that point should be rejected.

33. Second, the precedent relied on by the Bankruptcy Court is entirely inapposite. In *Flintkote*, that court received extensive evidence and determined that the debtor's "real estate activities [we]re fairly considered a 'business'" and not "merely 'passive investing.'" *In re Flintkote*, 486 B.R. at 133. In stark contrast to the Plan here, the *Flintkote* debtor:

- owned six real estate properties that it leased to quick-service restaurants and had "plans to acquire seven additional properties by the end of the second year after the effective date;"
- actively participated in its business by, among other things, "search[ing] for properties to acquire," "evaluating tenant risk," "periodically inspecting the

> restaurants," "monitoring the tenant's financial performance," "collecting and distributing the rents," and conducting broader "market review, to ensure that the brands operated by [its] tenants are performing profitability;"
>
> - operated a second business line providing consulting and executive management services, which the court considered as part of the debtor's "ongoing business;"
>
> - with the company "retain[ing] approximately $37.6 million in cash, $10.7 million in real estate assets, and $300,000 in other assets" that its management would ***continue*** operating; and
>
> - such that Reorganized Flintkote would "earn $1,071 million in both annual EBIT and annual EBITN in the third year, post-effective date and beyond."

Id. at 133 – 134. On that record, the *Flintkote* court found that those future earnings, combined with $300 million in cash that debtor would contribute to the Trust upon confirmation, were sufficient to "meet the express funding requirements of § 524(g)(2)(B)(i)(II)." *Id*. at 135, 138. In contrast, Debtor would contribute less than $12 million in cash to the Asbestos Trust upon confirmation, and its "future earnings" amount to less than a total of $200,000 over five years – *i.e*., approximately $40,000 per year. The total "earnings" that Debtor is projected to generate in five years are less than the average value of a single mesothelioma claim against it. (Aug. 25, 2025 Hrg. Tr. at 203:14 – 204:1.)

34. The Bankruptcy Court's reliance on *Gulfmark* is misplaced. (ECF No. 1267, at 95.) The Proposed Findings refer to the disclosure statement filed in that case and that court's subsequent plan confirmation order. *See In re Gulfmark Offshore, Inc.*, No. 17-11125-KG, 2017 WL 5461364 (Bankr. D. Del. Oct. 4, 2017). Upon review of the *Gulfmark* plan confirmation order — again, there is no memorandum opinion or decision from that Court — that debtor did not appear to have any asbestos liabilities, and there is no reference whatsoever to § 524(g). A further review of the *Gulfmark* chapter 11 case docket, including the hearing agenda for the plan confirmation hearing, reflects that, prior to the October 4, 2027 entry of the plan confirmation

order, only two parties-in-interest filed objections to plan confirmation, one party filed a reservation of rights, and four parties provided informal comments. (Bankr. D. Del. Case No. 17-11125-KG, ECF No. 319, filed October 2, 2017.) One of those two objections asserted, in 6 pages, that noteholders that are non-accredited investors are entitled to additional funds. (Bankr. D. Del. Case No. 17-11125-KG, ECF No. 292, filed September 20, 2017.) The other objection asserted, on behalf of the Texas Comptroller of Public Accounts, that the plan's setoff provision was improper and the plan's release and exculpation provisions were too broad. (Bankr. D. Del. Case No. 17-11125-KG, ECF No. 232, filed July 26, 2017.)

35. There is no indication that *Gulfmark* ever considered the "ongoing business" or funding requirements of § 524(g). *Gulfmark* has no bearing on § 524(g)'s funding requirement, as it does not appear from any of the referenced documents that the case in any way concerned, much less determined or found evidence of, § 524(g)'s requirements. Any tangential similarity of *Gulfmark* to the issues and disputes currently before the Court, of which there appear to be none, are irrelevant to the issues before the Court here.

36. Third, post-consummation Reorganized Hopeman would not be engaged in the business of "managing Asbestos Claims and its insurance assets" which, itself, is not a viable income-earning business. The entire premise of the Plan is that Reorganized Hopeman is transferring its asbestos claims liabilities and insurance assets to the Asbestos Trust. As such, Reorganized Hopeman will have no ongoing "business" of managing claims or insurance, all of which will be undertaken by the Asbestos Trust or, given the Plan's tort system "pass-through" construct, handled directly by the claimants and insurance carriers.

37. Finally, even if the passive apartment complex investment could be considered a business (and, as discussed above, it cannot)— the Plan contains no verifiable "obligation" for

Reorganized Hopeman to fund the Asbestos Trust. The Plan requires that the Asbestos Trust support and fund Reorganized Hopeman, not the other way around. On the Effective Date, the Asbestos Trust will provide Reorganized Hopeman with initial net reserves of $150,000. (ECF No. 1143, at 24, Trust Agreement § 3.2(k).) Going forward, the Asbestos Trust also is required to make additional financial contributions to Reorganized Hopeman in the future, as necessary to ensure that Reorganized Debtor maintains sufficient working capital. (*Id.*; Aug. 25, 2025 Hrg. Tr. 205:18 – 206:12.) Conversely, while Reorganized Hopeman "may" issue miniscule dividends to the Asbestos Trust (ECF No. 853, at 200), the Plan contains no ***obligation*** of Reorganized Debtor to provide dividends or other capital contributions, if any, or any ongoing funding to the Asbestos Trust. (Aug. 25, 2025 Hrg. Tr. 205:3-17 and 206:13 – 207:5; ECF No. 1143, at 24, Trust Agreement § 3.2(k).) Because the Plan's post-consummation funding obligations directly contravene § 524(g)(2)(B)(i)(II), it cannot be confirmed.

3. The Plan Does Not Comply with Section 524(g)(2)(B)(ii)(V) Because There Are No "Mechanisms" to Ensure Holders of Current Insured Asbestos Claims and Demands will be Valued and Paid in Substantially the Same Manner.

38. Section 524(g)(2)(B)(ii)(V) requires that the Asbestos Trust "will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner." 11 U.S.C. § 524(g)(2)(B)(ii)(V).

39. The Proposed Findings conclude that this requirement is met. The Bankruptcy Court's determination, however, relies solely on the Asbestos Trust Distribution Procedures applicable to "Uninsured Asbestos Claims" or "the uninsured portions of Insured Asbestos Claims." (ECF No. 1267, at 99 – 100.) The Bankruptcy Court undertook no analysis whatsoever

as to whether the Plan contains mechanisms to ensure that the Asbestos Trust will value, and be in a financial position to pay, present ***Insured*** Asbestos Claims and demands involving Insured Asbestos Claims in substantially the same manner.

40. That is not adequate. According to Plan Proponents, there currently are no Uninsured Asbestos Claims, only Insured Asbestos Claims. (Aug. 25, 2025 Hrg. Tr. at 137:8-20.) The Asbestos Trust Distribution Procedures do not incorporate any of the "mechanisms" outlined in § 524(g)(2)(B)(ii)(V) as to Insured Asbestos Claims, who will face the "race to the courthouse" for the finite limits of available insurance proceeds. (*Id*., at 218:15 – 219:15.) The greater the amount of insurance proceeds paid to holders of current Insured Asbestos Claims, the less that remain for future holders of Insured Asbestos Claims. The wholesale lack of evidence as to the Plan's compliance with § 524(g)(2)(B)(ii)(V) as to Insured Asbestos Claims is improper and precludes confirmation.

4. The FCR Failed to Honor her Obligation to Future Claimants.

41. Section 524(g)(4)(B)(i) requires that the Bankruptcy Court "appoint[] a legal representative for a the purposes of protecting the rights of persons that might subsequently assert demands" against a trust established in conjunction with a § 524(g) channeling injunction. 11 U.S.C. § 524(g)(4)(B)(i). This legal representative is known as a "future claims representative" or "FCR".

42. Courts have recognized that the FCR's duties and obligations include "participat[ion] in the negotiation of the reorganization plan and object[ing] to terms that unfairly disadvantage future claimants." *In re Imerys Talc Am., Inc.*, 48 F.4th 361, 367 (3d Cir. 2022). "An FCR must be able to act in accordance with a duty of independence from the debtor and other parties in interest in the bankruptcy, a duty of undivided loyalty to the future claimants, and an

ability to be an effective advocate for the best interests of the future claimants." *Id.* at 374 (internal footnote omitted).

43. The record in this case lacks sufficient – or any – evidence that the FCR participated in the formulation of the Plan in a manner that afforded due process to the rights and interests of future claimants and demand-holders, as required by § 524(g). The timing and sequence of events, confirmed by the FCR's and her professionals' fee statements, demonstrates that the FCR devoted minimal time to analyzing the circumstances of Debtor's case and this Plan before agreeing that it was ready for solicitation. As a result, the Debtor's and Committee's hand-picked FCR supported a Plan negotiated ***without*** her involvement, and one which creates a "race to the courthouse" with a disproportionately negative impact on her constituency.

44. On April 29, 2025, the Plan Proponents filed with the Bankruptcy Court (A) the initial proposed Plan of Reorganization and its accompanying proposed Disclosure Statement (ECF Nos. 689, 690), and (B) the joint application seeking appointment of the FCR (the "FCR Application"). (ECF No. 688.) Notably, the FCR Application seeks appointment of Ms. Eskin "as of the date of the entry of the Order appointing her." (ECF No. 688, at 8.) The FCR Application did not seek *nunc pro tunc* or retroactive relief as to Ms. Eskin's appointment and duties as FCR. On May 14, 2025, the Bankruptcy Court entered an Order approving the FCR Application (the "FCR Appointment Order"). (ECF No. 732.)

45. On May 21, 2025, the Plan Proponents filed with the Bankruptcy Court the Amended Plan of Reorganization and related Disclosure Statement (the "Solicitation Plan" and the "Solicitation Disclosure Statement"), which the Bankruptcy Court—that same day—approved for purposes of soliciting votes on that proposed Solicitation Plan. (ECF Nos. 766, 767.) In the six days between the FCR's appointment and May 20, 2025, the FCR "agreed that the [Solicitation

Plan and Solicitation Disclosure Statement] are ready for solicitation in their revised form." (Bankr ECF No. 759 at 11, n. 14.) Thus, on May 21, 2025, the Bankruptcy Court entered the Solicitation Procedures Order, which, among other relief, authorized and established the timing and deadlines for service of the proposed Solicitation Plan and Solicitation Disclosure Statement on relevant parties-in-interest, including claimants entitled to vote on the Solicitation Plan. (ECF No. 782.)

46. The FCR is an attorney and member of Campbell & Levine, LLC, the law firm that serves as the FCR's lead outside counsel, which the Bankruptcy Court approved by Order entered on July 15, 2025. (ECF No. 995.) On July 16, 2025, Campbell & Levine, LLC filed with the Bankruptcy Court its First Monthly Fee Statement, which includes time entries as counsel for the FCR between May 2, 2025 and June 30, 2025 (the "First C&L Fee Statement"). (ECF No. 1027.) After the April 29, 2025 filing of the FCR Application and before the May 21, 2025 entry of the Solicitation Procedures Order—the period of time during which the FCR could have negotiated and provided comments as to the Solicitation Plan and Solicitation Disclosure Statement—the First C&L Fee Statement shows that the FCR, herself, billed ***only*** 5.20 hours of time in connection with tasks concerning Debtor's proposed Plan. (ECF No. 1027, at 11-13.) Between May 21, 2025 and June 6, 2025, the date on which the Plan Proponents filed with the Bankruptcy Court the first Plan Supplement, the First C&L Fee Statement shows that the FCR, herself, billed ***only*** 4.5 hours of time in connection with tasks concerning Debtor's proposed Plan. (ECF No. 1027, at 13-14.[7]) There is no evidence that the FCR, presented with a Plan that was a *fait accompli*, took any meaningful action to protect the interests of her constituency.

[7] To be clear, and based on the First C&L Fee Statement, the FCR's professionals, also attorneys with Campbell & Levine, LLC and including the FCR, invoiced the Debtor's estate for approximately 89.3 hours of time concerning the Debtor's plan of reorganization between May 2, 2025 through June 6, 2025. (ECF No. 1027, at 11-14.)

47. The Proposed Findings address the FCR's appointment and execution of her duties to future claimants as required by § 524(g)(4)(B)(i) in less than a page. (ECF No. 1267, at 102.) The FCR did not appear at the Combined Hearing. Nor was testimony or evidence adduced regarding the fairness of the Plan to future claimants or supporting the Plan's satisfaction of the § 524(g) requirements from the perspective of future claimants. Accordingly, the Proposed Findings state that "[b]ased on the representations of counsel at the Combined Hearing, the FCR supports the Plan as the best option for 'maximum recovery to future claimants.'" (ECF No. 1267, at 102.) That cannot possibly satisfy the Plan Proponents' burden to establish that all confirmation requirements have been met, including those of § 524(g). There is no evidence in the record that the FCR acted "in accordance with a duty of independence from the debtor and other parties in interest in the bankruptcy, a duty of undivided loyalty to the future claimants, and an ability to be an effective advocate for the best interests of the future claimants." *Imerys Talc Am., Inc.*, 48 F.4th at 374. This dearth of evidence precludes entry of the Proposed Findings with respect to the Plan's compliance with§ 524(g)(4)(B)(i).

B. The Plan Fails To Satisfy §§ 1129(a)(3) and (a)(7).

48. The Proposed Findings cannot be reconciled with at least two requirements of § 1129. First, there is no legitimate support in the record for the Proposed Findings regarding the Plan's and the Plan Proponents' compliance with the good faith requirement of § 1129(a)(3). Second, as the Proposed Findings essentially admit, the Plan Proponents failed to sustain their evidentiary burden under § 1129(a)(7) of proving compliance with the best interest test.

1. There Is a Lack of Sufficient, Appropriate Evidence Supporting Compliance With § 1129 (a)(3)'s Good Faith Requirement

49. The Chubb Insurers object to the Proposed Findings' conclusion that the Plan Proponents met their burden of proof to show that the Plan was proposed in "good faith," as

required by 11 U.S.C. § 1129(a)(3). *In re LBD, PLLC*, No. 20-10414-BFK, 2021 WL 3278070, at *3 (Bankr. E.D. Va. July 30, 2021) (internal citations omitted). "The Fourth Circuit has held with respect to the good faith test: 'A comprehensive definition of good faith is not practical. Broadly speaking, the basic inquiry should be whether or not under the circumstances of the case there has been an abuse of the provisions, purpose, or spirit of [the Chapter] in the proposal or plan.'" *In re LBD*, 2021 WL 3278070, at *3 (citing *Deans v. O'Donnell* (*In re Deans*), 692 F.2d 968, 972 (4th Cir. 1982) (internal citations omitted)); *see also In re Walker*, 165 B.R. 994, 1001 (E.D. Va. 1994) ("[W]hether a plan is filed in good faith is a matter to be assessed in view of the totality of the circumstances which necessitated the plan, in perspective of the purposes of the Bankruptcy Code").

50. The Plan Proponents rely on the fact that the key terms of the Plan were agreed as part of mediation as the primary support that the Plan was proposed in good faith. (*See* ECF No. 1120, at 42.) At the Combined Hearing, Mr. Lascell provided purported support for the good faith of the Plan by reciting the words of § 1129(a)(3). (Aug. 25, 2025 Hrg. Tr. at 29:23-30:2, 22-25, 31:1.) The Debtor's insurance expert and financial advisor, Ronald Van Epps, testified at the Combined Hearing that he was also present at mediation, and that the settlement and deal embodied in the Plan was reached "as part of the mediation process." (Aug. 25, 2025, Hrg. Tr. at 138:24-25.) Neither Mr. Lascell's nor Mr. Van Epps's testimony reference or include any facts that support a finding of "good faith" required by § 1129(a)(3). The representative for the Committee's financial advisor, Conor Tully of FTI, provided no testimony or facts that support a finding of "good faith" required by § 1129(a)(3). The Committee otherwise provided no testimony or evidence supporting the Plan Proponents' burden with respect to § 1129(a)(3).

51. During Plan-related discovery, the Debtor produced certain documents and communications regarding the Plan negotiations, including mediation-related documents and communications, and the Committee pointed to Debtor's production as the Committee's own. Almost immediately thereafter, on July 2, 2025, the Debtor's counsel sent a letter to counsel for Chubb, Liberty, and Travelers seeking to claw back certain "confidential mediation communications . . . made or provided during the Court-ordered judicial mediation conducted by the Honorable Kevin R. Huennekens from January 3, 2025 to March 7, 2025." (Chubb Ex. 8; Aug. 25, 2025, Hrg. Tr., at 279:5-20.) Because the Bankruptcy Court's mediation confidentiality order (the "Mediation Order") precluded the use of any mediation communications as evidence, the objecting insurers abided by Debtor's request and did not further rely on mediation-related documents in depositions, Plan confirmation objections, or at the Combined Hearing.

52. Because mediation was the Plan Proponents' only evidence supporting findings under § 1129(a)(3), Debtor sought to introduce evidence of mediation-related discussions and documents at the Combined Hearing. The Chubb Insurers objected to reliance on the mediation as evidence for good faith but were immediately overruled. (Aug. 25, 2025, Hrg. Tr. at 30:3-18.) Counsel for Liberty Mutual likewise objected to the Plan Proponents' reliance on mediation-related evidence as support for demonstrating the good faith of the Plan while at the same time withholding discovery relating thereto. (Aug. 25, 2025, Hrg. Tr. at 32:5 – 33:24.) The Bankruptcy Court overruled that objection, too. The objecting insurers thus abided by the Bankruptcy Court's Mediation Order and evidentiary rulings.

53. Demonstrating that no good deed goes unpunished, the Proposed Findings rely almost exclusively on the judicial mediation to make its good faith finding and chide Chubb and the other objecting parties for not challenging the Mediation Order or seeking to offer into evidence

the communications which the Mediation Order expressly prohibited from disclosure[8]. (ECF No. 1267, at 63-65.) The Bankruptcy Court found that ***"[t]he Plan is the product of extensive arms'-length negotiations – overseen by the Judicial mediator***, a distinguished bankruptcy judge – among Hopeman, the Committee, HII, and the FCR." (ECF No. 1267, at 60 (emph. added).) The Bankruptcy Court also found that, in formulating the Plan, the "Debtor provided substantial information to all constituencies and, thereafter, reached agreements with the Committee, the FCR, the Certain Settling Insurers, HII, and certain other parties-in-interest that will be implemented through the Plan." (ECF No. 1267, at 61.) But the FCR was appointed months after the mediation, and there is no evidence whatsoever that the FCR participated in any negotiations with the Plan Proponents regarding the Plan. Nevertheless, the Bankruptcy Court cites the mediation and these purported stakeholder negotiations as the exclusive evidence of good faith.

54. The Plan Proponents cannot use the Mediation Order, and the mediation process generally, as both a sword to demonstrate good faith and a shield to preclude objecting parties from offering into evidence discovery that might contradict their good faith claims. Rather than improperly blessing exactly that outcome through the Proposed Findings, the Bankruptcy Court should have stricken all evidence regarding the mediation unless Plan Proponents affirmatively waived any protections against disclosure in the Mediation Order. If the Bankruptcy Court will not revise the Proposed Findings, or the Plan Proponents do not agree to waive any Mediation Order protections, then Chubb respectfully requests that the District Court take additional evidence

[8] This is not the only whipsaw ruling by the Bankruptcy Court during the bankruptcy proceedings. The Proposed Findings also fault the objecting insurers for not seeking discovery regarding the Plan upon learning that a § 524(g) plan was in the offing, ***before*** the Plan was filed. But the Bankruptcy Court quashed a subpoena that the Chubb Insurers requested after learning that a § 524(g) plan was being negotiated because it was allegedly "procedurally improper." (ECF Nos. 876, 934).

concerning all mediation communications to ensure a fair evidentiary presentation on good faith under § 1129(a)(3).

55. The Plan Proponents have placed at issue the mediation and mediation-related communications while at the same time withholding the underlying mediation communication evidence. The Plan Proponents' assertions of fact premised on mediation and concurrent refusals to disclose information and documents that implicate the mediation, relying on the Mediation Order's privilege, are an improper "sword / shield" use of privilege, that contravenes binding Fourth Circuit law, and decisions of the Eastern District of Virginia and the U.S. Bankruptcy Court of the Eastern District of Virginia. Other Bankruptcy Courts have similarly rejected the hypocritical assertion of mediation privilege in mass tort bankruptcy cases.

56. Over forty years ago, the Fourth Circuit espoused the sword / shield rule in an appeal from bankruptcy litigation concerning a nondischargeability action. *In re Edmond*, 934 F.2d 1304 (1991). There, the court ruled that the debtor "could not have peanut butter on both sides of his bread" and the Fourth Circuit, citing U.S. Supreme Court precedent, agreed, ruling that "the Fifth Amendment privilege cannot be invoked as a shield to oppose depositions while discarding it for the limited purpose of making statements to support a summary judgment motion." *Id.* at 1304, 1308.

57. A bankruptcy decision from Judge Cacheris of the U.S. District Court for the Eastern District of Virginia, sitting in the first instance due to a jury demand, applied the Fourth Circuit's *Edmond* decision to the attorney-client privilege where a party sought to exclude a lawyer's prepetition notes and had instructed that lawyer not to answer 63 questions at a deposition due to attorney-client privilege. *Galaxy Computer Servs. Inc. v. Baker*, 325 B.R. 544, 558-59 (E.D. Va. 2005). As Judge Cacheris put it: "The weight of authority indicates that to permit [the

lawyer] to testify to issues which she refused to testify to during her deposition based on privilege would allow the Defendants to use the attorney-client privilege as both a shield and a sword. Thus, [the lawyer] may only testify at trial within the scope of her deposition . . . ." *Id.*[9]

58. The assertion of mediation privilege as a "sword / shield" in the context of § 1129(a)(3) in a mass tort bankruptcy case is not novel. In the *Boy Scouts'* chapter 11 bankruptcy cases, Judge Silverstein of the U.S. Bankruptcy Court for the District of Delaware rejected the use of mediation privilege in the same manner advanced here. Judge Silverstein issued an October 25, 2021 bench ruling that denied those debtors' attempts to withheld mediation documents and information based on a mediation privilege where they were simultaneously relying on the mediation as evidence of § 1129(a)(3) good faith. (Bankr. D. Del. No. 20-10343-LSS, ECF No. 6798, Oct. 25, 2021 Hrg. Tr. at 5:24-25 – 13:9-12.).

59. The same rule applies here. The Bankruptcy Court excuses its application by faulting Chubb and the other objectors for not seeking relief from the Mediation Order. (ECF No. 267, at 65.) That is both factually wrong and inappropriate.

60. Had the objectors known then that the Bankruptcy Court would end up explicitly relying on the evidence adduced regarding the mediation as the primary evidence of good faith under § 1129(a)(3), perhaps they would have objected again. Not knowing that, the objectors accepted the Bankruptcy Court's rulings, abided by the terms of the Mediation Order, and did not seek to offer into evidence any of the mediation documents produced by the Debtor during

[9] Hopeman, itself, has prior experience with this "sword / shield" issue. *See Hopeman Bros., Inc. v. Cont'l Casualty Co.*, No. 4:16-CV-187, 2018 WL 4169282 (E.D. Va. Jan. 12, 2018) (In prior litigation, U.S. Magistrate Judge Leonard, relying on the *Galaxy* case, struck inadmissible portions of a declaration from Mr. Van Epps on behalf of Hopeman that made factual assertions previously subject to attorney-client privilege objections from Hopeman at Mr. Van Epps's' deposition.). "[T]he excerpt of Van Epps' Rule 30(b)(6) deposition transcript shows that Plaintiff's counsel blocked Defendants' inquiry into at least some matters about which the Van Epps Declaration opines." *Id.*, at *4.

discovery. Now, the Bankruptcy Court not only punishes them for doing so by relying on the mediation as evidence of good faith, the Proposed Findings blame them as well.

61. The appropriate remedy, at this stage, is to strike any evidence of good faith that relies on mediation among the Plan Proponents, which, in turn, eliminates all evidence of good faith under § 1129(a)(3). *Cf. Lawson v. Murray*, 837 F.2d 653 (4th Cir. 1988) (striking entire testimony of witness who provided exculpatory testimony but refused cross-examination through invocation of Fifth Amendment rights). Therefore, the Plan Proponents have failed to carry their burden of good faith and the proposed Plan fails to meet § 1129(a)(3). *See Kearny Partners Fund, LLC ex rel. Lincoln Partners Fund, LLC v. U.S.*, 946 F. Supp. 2d 1302, 1317 (M.D. Fla. 2013) (internal citations and quotation marks omitted) ("Under the sword and shield doctrine, a party who raises a claim that will necessarily require proof by way of a privileged communication cannot insist that the communication is privileged . . . When an abuse has occurred under this doctrine, courts may invoke a variety of sanctions, including preventing the withholding party from unfairly prejudicing the other party by precluding the introduction of evidence previously withheld on privilege grounds . . . or ordering that the party's failure to produce the evidence gives rise to the presumption that the evidence is unfavorable.").

62. In the event striking such evidence is not available at this point and Plan Proponents continue to withhold underlying mediation documents while relying on the mediation as its evidence of good faith, the objectors must be permitted at the District Court to offer additional evidence concerning all the mediation communications. Only that will ensure due process and a fair opportunity under § 1129(a)(3).

63. Finally, in addition to improperly relying on the Plan's genesis in mediation as "evidence" of good faith, the Proposed Findings conclude that Debtor met its burden to establish

good faith because "[t]he Plan serves valid bankruptcy objectives by preserving and maximizing the value of the Debtor's assets (its insurance policies) for the benefit of its creditors (the holders of Asbestos Claims)." (ECF No. 1267, at 60.) The Proposed Findings cite the Plan Proponents' Liquidation Analysis as supposed evidence of good faith. (*Id*.) As explained below, that Liquidation Analysis cannot possibly satisfy § 1129(a)(7), so it cannot be relied upon as evidence of good faith under § 1129(a)(3).

2. The Plan Fails To Satisfy § 1129(a)(7)'s "Best Interests" Test.

64. The Bankruptcy Court may confirm a chapter 11 plan of reorganization "only if…[w]ith respect to each impaired class of claims or interests (A) each holder of a claim or interest of such class (i) has accepted the plan; or (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date…." 11 U.S.C. § 1129(a)(7)(A). This "best interest test" requires the Court to determine that each individual holder of an impaired claim or interest that did not accept the plan will receive as much as such holder would have received in a Chapter 7 liquidation. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 441 n.13; *In re A.H. Robins, Co., Inc*., 880 F.2d 694, 698 (4th Cir. 1989). The Plan Proponents bear the burden of proving by a preponderance of the evidence that the Plan complies with the best interests test under § 1129(a)(7), with the Court required to make an "independent" finding on that issue based on the evidence adduced by the Plan Proponents at the Combined Hearing, rather than on non-evidentiary assumptions and conclusory assertions. *In re Smith*, 357 B.R. 60, 66-67 (M.D.N.C. 2006).

65. Despite recognizing these fundamental precepts, the Proposed Findings wrongly hold that the Plan Proponents met their burden under § 1129(a)(7). (ECF No. 1267, at 84, finding that the Plan Proponents met their burden due to "the uncertainty inherent in asbestos cases.") The

flaws in that determination are three-fold. First, the Bankruptcy Court erroneously ruled that § 1129(a)(7) requires consideration of the "best interests" of non-creditor demand holders, as opposed to just the asbestos claimant creditors with the right to vote on the Plan. Second, the Bankruptcy Court adopted findings proposed by the Plan Proponents that are internally contradictory and impossible to square. Third, the Plan Proponents failed to adduce sufficient evidence at the Combined Hearing to support the Bankruptcy Court's conclusions. The Bankruptcy Court expressly recognized as much, noting that the Plan Proponents failed to enter any asbestos claims estimation reports into the record even though such evidence may have "preemptively and conclusively" addressed compliance with § 1129(a)(7). (ECF No. 1267, at 83.) Nevertheless, the Bankruptcy Court somehow concluded that the Plan Proponents met their burden to satisfy the "best interests" test under chapter 11. The record demonstrates otherwise.

a. The Proposed Findings Erroneously Hold that § 1129(a)(7) Requires Consideration of the "Best Interests" of Non-Creditor Demand Holders

66. The first flaw in the Proposed Findings on § 1129(a)(7) is that it considers the wrong population for the "best interests" test. The Liquidation Analysis combines current, impaired asbestos claimants and potential future claimant demand-holders as the "creditors" whose recoveries must be tested. The Bankruptcy Court approved this process by finding that "the Bankruptcy Code's definition of 'claims' and section 524(g)(5)'s definition of 'demands' are, essentially, overlapping" such that "it is appropriate to take the value of future Asbestos Personal Injury Claims into account" for the best interests test. (ECF No. 1267, at 81.) This is wrong.

67. Potential future asbestos demand-holders do not fall within the scope of § 1129(a)(7) because, by definition, a demand is "not a claim" in the bankruptcy case such that holders of demands are not creditors. *See* 11 U.S.C. § 524(g)(5) (defining "demand", among three required factors, as "a demand for payment, present or future, that . . . was not a claim during the

proceedings . . .”). Instead, the “best interests” test focuses on assuring only that creditors who vote against a plan or do not vote – *e.g.*, asbestos claimant creditors with pending claims – would receive as much in a Chapter 7 liquidation as they would under the Plan. The values that may be recovered by holders of asbestos demands are not part of “best interests” test and the Plan Proponents’ Liquidation Analysis should not have included potential future claims.

68. The Bankruptcy Court’s error ignores the relevant statutory text and controlling caselaw. Section 1129(a)(7) applies to “each holder of a claim or interest” in an “impaired class of claims.” 11 U.S.C. § 1129(a)(7)(a)(i)-(ii). Under Supreme Court precedent, this means “individual creditors holding impaired claims.” *Bank of America Nat’l Trust & Sav. Ass’n*, 526 U.S. at 441 n.13 (emph. added). A “creditor” is an “entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.” 11 U.S.C. § 101(10). Unknown, potential “future” asbestos claimants are not creditors, but demand-holders. *See* 11 U.S.C. § 524(g)(5)(A)-(C).

69. Section 1129(a)(7) also refers only to known individual creditors with the current power to vote on the Plan. That is why it acknowledges that if each claim holder “has accepted the plan,” then that is sufficient to satisfy the best interest test. 11 U.S.C. § 1129(a)(7)(a)(i). Again, the Supreme Court has confirmed as much, holding that the protection extends to “individual creditors…even if the class as a whole votes to accept the plan.” *Bank of Am. Nat’l Trust & Sav. Ass’n*, 526 U.S. at 441 n.13.

70. Contrary to the Bankruptcy Court’s ruling, the definition of a “demand” in § 524(g) is not “overlapping” with the definition of a “claim” as set forth in § 101(5). In fact, § 524(g) specifically distinguishes between a pre-confirmation bankruptcy “claim” like that of the asbestos

creditors voting on the plan from a "demand" of the kind held by potential future asbestos claimants, stating:

> In this subsection, the term "demand" means a demand for payment, present or future, that (A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization; (B) arises out of the same or similar conduct or events that gave rise to claims addressed by the injunction issued under paragraph (1); and (C) pursuant to this plan is to be paid by a trust described in paragraph 2(B)(i).

11 U.S.C. § 524(g)(5) (emph. added).

71. The Bankruptcy Court's erroneous statutory interpretation cites *Grady v. A.H. Robbins, Co.*, which relied on the "conduct test" to hold that future tort claims were "claims" under § 101(5) of the Bankruptcy Code, as well as its reliance on the *In re Eagle-Picher* decisions from the U.S. District Court from the Southern District of Ohio. (ECF No. 1267, at 81-82 (citing *Grady v. A.H. Robbins, Co.*, 839 F.2d 198 (4th Cir. 1988), *In re Eagle-Picher Indus.*, 203 B.R. at 256, 275 (S.D. Ohio 1996), and *In re Eagle-Picher Indus.*, Case No. C-1-96-206, 1996 U.S. Dist. LEXIS 22742, at *22-23 (S.D. Ohio Sep. 25, 1996)).) The Bankruptcy Court adopted the Plan Proponents' argument that, because the asbestos exposure allegedly giving rise to a future unknown claim "occurred prior to the Debtor's bankruptcy filing," then such future demand-holders have "claims" for purposes of the best interest test. (ECF No. 1267, at 82.)

72. That finding disregards the specific statutory language in 11 U.S.C. § 524(g)(5) and renders that provision meaningless. *Cf. Fischer v. U.S.* 603 U.S. 480, 487 (2024) (writing that "approaches to statutory interpretation track the common sense intuition that Congress would not ordinarily introduce a general term that renders meaningless the specific text that accompanies it"). Section 524(g)(5) acknowledges the "conduct" test cited in *Grady* and *In re Eagle-Picher* to define a "demand," but it explicitly differentiates such a "demand" from a "claim during the proceedings leading to the confirmation of a plan of reorganization." 11 U.S.C. § 524(g)(5). By

the plain language of § 524(g)(5), a future demand-holder cannot be a "holder of a claim" within an impaired class under the Plan for purposes of § 1129(a)(7).

73. Caselaw stretching back to the original *Johns-Mansville* case that served as the precursor to § 524(g) confirms that the analysis under § 1129(a)(7) is limited to ***present*** asbestos claimants who vote on the plan and does not include potential future claimant demand-holders. The *Johns-Manville* court explained:

> Subsection 1129(a)(7) incorporates the former 'best interest of creditors' test and requires a finding that each holder of a claim or interest either has accepted the plan or has received no less under the plan than what he would have received in a Chapter 7 liquidation. At the confirmation hearing, Manville presented an extensive liquidation analysis based on documentary evidence and expert testimony. Kane submitted no evidence. The Bankruptcy Judge accepted Manville's proof that all creditors and equity holders would receive substantially more under the Plan than they would have received if Manville were liquidated. In particular, the Bankruptcy Court found that Class–4 ***present asbestos health claimants*** would receive 100% on their claims under the Plan but would have received only 56%–81% in a liquidation.

Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988) (emph. added).

74. Finding that the "best interests" test focuses on asbestos creditors with pending claims and voting rights does not leave potential future asbestos demand-holders unprotected. Section 524(g) requires appointment of the FCR to protect the interests of future demand-hholders. 11 U.S.C. § 524(g)(4)(B)(i). Section 524(g) also provides that a confirmed plan must deal equitably with both present asbestos claimants and potential future asbestos claimant demand-holders. 11 U.S.C. § 524(g)(2)(B)(ii)(III). The *Quigley* court aptly articulated the distinction between § 1129(a)(7) and § 524(g)(2)(B)(ii)(III), holding that, "[w]hile the 'fair and equitable' test under § 524(g) protects the Futures, § 1129(a)(7) is ***designed to protect individual dissenting members of an impaired, accepting class***, establishing the minimum that they must receive or

retain under the plan." *In re Quigley Co.*, 437 B.R. 102, 144 (Bankr. S.D.N.Y. 2010) (emph. added).

75. Finally, the U.S. Supreme Court has stated that § 1129(a)(7) "applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan." *Bank of Am. Nat'l Trust & Sav. Ass'n*, 526 U.S. at 441 n.13. Potential, future asbestos claimant demand-holders are not "individual creditors holding impaired claims" or "individual dissenting members" in the bankruptcy case because they are not creditors and do not vote on the plan. The Bankruptcy Court's recommendation that § 1129(a)(7) requires consideration of the best interests of non-voting potential "future" asbestos claimant demand holders is incorrect. It requires denial of Plan confirmation.

76. Nevertheless, the Proposed Findings initially outlined the scope of the best interest test under § 1129(a)(7) as limited to the interests of pending asbestos claimants that did not vote in favor of the Plan, which was correct. (ECF No. 1267, at 77.) As the Bankruptcy Court initially said, there were seven creditors with Class 4 Channeled Asbestos Claims that "did not vote in favor of the Plan" and "because these creditors did not vote to accept the Plan, the Court must determine whether the Plan is in ***their*** best interests." (ECF No. 1267, at 77 (emph. added).) The Bankruptcy Court, however, failed to properly apply this test. Instead, the Bankruptcy Court adopted the Plan Proponents' incorrect position that the Plan satisfies the "best interests" test because asbestos creditors and holders of demands as a group are better off under the Plan than they would be under a Chapter 7 since "more claims" will be paid under the Plan. (ECF No. 1267, at 80-82.) That is not the correct test, so the Proposed Findings must be rejected on that basis alone.

77. In fact, the "best interests" test requires the Court to determine whether an individual creditor will receive at least as much under the Plan as he or she would in a Chapter 7 liquidation – which necessarily encompasses only holders of current claims. The Plan Proponents presented no evidence that could allow the Bankruptcy Court to make any such finding.

b. The Proposed Findings Are Irredeemably Inconsistent

78. Even if it were appropriate to consider non-voting demand holders as part of the "best interests" test, the Proposed Findings are internally inconsistent and unsupported by the evidence. Most significantly, although the Bankruptcy Court determined that the Plan would last longer and pay ***more claims*** than a Chapter 7 liquidation proceeding, it also concluded that it was appropriate for the Liquidation Analysis to assume the ***same claims*** will be paid under both the Plan and the Chapter 7 liquidation. Logically, it is not possible to square those two conclusions.

79. Mirroring the Plan Proponents' argument, the Bankruptcy Court determined that the Plan is in the asbestos claimants' "best interests" because its structure "will have a significantly longer duration that will lead to more claimants receiving compensation for their injuries" under the Plan. (ECF No. 1267, at 79.) This echoes the Liquidation Analysis, which explicitly assumes that "Other Asbestos Insurance" is more valuable under the Plan because a greater number of asbestos claims will be paid under the Plan compared to the Chapter 7 liquidation scenario. (ECF No. 1174, at 232.) It also echoes the testimony from the Combined Hearing, at which each of the Plan Proponents' witnesses asserted that the Plan would result in materially higher values for the insurance assets because the Plan would pay ***more*** claims than in a Chapter 7 liquidation because there is no bar date under the Plan, unlike a chapter 7 liquidation. (Aug. 25, 2025 Hrg. Tr. at 36:14 – 37:14 (Mr. Lascell), 167:24 – 168:5 (Mr. Van Epps), and 183:13-21 (Mr. Tully).)

80. Despite that testimony, the Liquidation Analysis assumes that the total amount of asbestos claims would be ***the same*** under both the Plan and in a Chapter 7 liquidation, with Mr.

Tully testifying that "the claims are the claims." (Aug. 25, 2025 Hrg. Tr. at 232:16; ECF No. 1174, at 232.) As the Bankruptcy Court put it, "the Plan Proponents take the position that it is not necessary to estimate the amount of Asbestos Claims – if the total amount of claims are the same in both scenarios, then creditors must fare better in Chapter 11 as there will be more dollars to distribute." (ECF No. 1267, at 82.) That logic is irreconcilable. It cannot be both that there will be "more claims" paid under the Plan versus a Chapter 7 liquidation, and also that the "same" number of claims will be paid under the Plan's chapter 11 scenario and a hypothetical Chapter 7 scenario set out in the Liquidation Analysis.

81. The Bankruptcy Court sidesteps this obvious inconsistency, asserting instead that "the total amount of claims that would be filed in a Chapter 7 is speculative at best." (ECF No. 1267, at 83.) That is not proper. If the evidence before the Bankruptcy Court leads it to conclude that an issue is "speculative," then the Court must deny confirmation on that basis because the Plan Proponents have failed to meet their burden. Where record evidence is contradictory, it is incumbent on the Bankruptcy Court to resolve the contradiction, not ignore it.

82. This is not an idle issue. The Liquidation Analysis assumes that the "Other Asbestos Insurance" asset is two-to-three times more valuable under the Plan than under a Chapter 7 liquidation ($80 million - $120 million under the Plan versus $40 million in Chapter 7). (ECF No. 767, at 215-216.[10]) If, as the evidence adduced reflects, that is due to "more" claims being paid under the Plan, then the question of how many "more" claims is imperative. After all, if the number and value of the additional claims payable under the Plan is five-to-six times greater than under Chapter 7, then the distribution to asbestos claimants – both those with present claims and

[10] Notably, the Proposed Findings do not address the objection that the Liquidation Analysis shows the "Other Asbestos Insurance" asset under Chapter 7 as a present value figure and the "Other Asbestos Insurance" asset under the Plan as a nominal figure. (ECF No. 1189, at 49-50.) This additional, unresolved contradiction by the Bankruptcy Court further undermines its conclusion regarding compliance with § 1129(a)(7).

future claimants – is undoubtedly going to be higher in Chapter 7 and a liquidation would be in their best interest.

83. Prior to the Combined Hearing, the Bankruptcy Court was well aware that this ratio mattered. In the Bankruptcy Court's order precluding Chubb's expert from testifying at the Combined Hearing, it held that the determination of the reasonableness of the Liquidation Analysis "turns on (1) the pool of available assets to be distributed in a Chapter 7 liquidation; and (2) the estimated amount of claims to be paid under the Plan." (ECF No. 1147, at 3 (internal footnote omitted).) This is correct: a proper liquidation analysis is complete only with both the numerator (available assets) and the denominator (total liabilities) under both the Chapter 11 scenario and the Chapter 7 scenario. Absent both components of the assets/liabilities equation it not possible to determine whether an asbestos claimant creditor that did not vote for the Plan would receive as much or more under a Chapter 7 liquidation.

84. The Plan Proponents did not, however, include asbestos claims estimates in the Liquidation Analysis or present asbestos claims estimation evidence at the Combined Hearing. (ECF No. 1267, at 83.) Under the Bankruptcy Court's own ruling that prevented Chubb from presenting expert testimony, the Plan Proponents' failure to introduce a claims estimation, alone, must preclude confirmation. (ECF No. 1147.) After all, if "the estimated amount of claims[] to be paid under the Plan" is necessary to determine the adequacy of a Liquidation Analysis, the Plan Proponents' failure to either include such an estimate in its Liquidation Analysis or present evidence of such estimates at the Combined Hearing, it is impossible for the Bankruptcy Court to have made its "independent" best interests determination under § 1129(a)(7). (ECF No. 1147, at 3.)

c. There Is No Record Evidence to Support the Proposed Findings

85. The failure of Plan Proponents to present such evidence is fatal to their compliance with § 1129(a)(7). It is their burden to prove by a preponderance of the evidence that the Plan complies with the best interests test under § 1129(a)(7). (ECF No. 1267, at 76.) Likewise, the Bankruptcy Court must make an "independent" finding on the best interest test "based on the evidence adduced by the Plan Proponents" before the Bankruptcy Court. (*Id*., at 77 (citing *In re Smith*, 357 B.R. at 67).) While it is not an "exact science," the Plan Proponents cannot meet their burden with, and the Bankruptcy Court cannot base its independent findings on, "non-evidentiary assumptions and conclusory assertions." (*Id*. (citing *In re Smith*, 357 B.R. at 67 and *In re Multiut Corp.*, 449 B.R. at 344).)

86. The Proposed Findings point to no "evidence adduced by the Plan Proponents" to support compliance with the best interests test under § 1129(a)(7). Nor could they, as the record from the Combined Hearing is clear that the Liquidation Analysis was based wholly on conclusory assertions and assumptions regarding the available insurance assets and expenses under each of the Plan and the Chapter 7 scenarios. For example, there was no evidence offered regarding the calculation of any of the figures in the Liquidation Analysis beyond the stated assumptions, conclusory assertions, and general judgment. Indeed, as to the key "Other Asbestos Insurance" asset figure in the Liquidation Analysis, the best testimony that the Plan Proponents' witness could offer was that it "was an amalgamation of a bunch of information…[a]nd, you know, then, applying judgment and…putting a range on it." (Aug. 25, 2025 Hrg. Tr. at 238:8-15.) He offered no evidence as to which "information" was amalgamated, how that information was relevant, the basis for his supposed judgment, or any other factor or data.

87. The Proposed Findings acknowledge this glaring lack of evidence, noting that, even though asbestos claims estimations were available to the Plan Proponents who could have provided

the evidence necessary to "conclusively" determine compliance with the best interest test, the Plan Proponents simply failed to present it:

> Mr. Tully testified during the Combined Hearing that the Plan Proponents had retained experts to prepare asbestos claims estimation reports. … ***These estimates were not included in the Liquidation Analysis presented to the Court.*** It is regrettable that this information was not presented during the Combined Hearing as it may have preemptively and conclusively addressed this part of Chubb's objection.

(ECF No. 1267, at 83 (emph. added).)

88. The Bankruptcy Court excuses this evidentiary failure by relying on the "logic" of the *W.R. Grace* case and pointing to the supposed "uncertainty inherent" in asbestos cases. (ECF No. 1267, at 83 – 84.) Neither of these grounds holds up.

89. First, the relevant evidence already exists. As the Bankruptcy Court stated, the Plan Proponents "had retained experts to prepare asbestos claims estimation reports" in this proceeding. (*Id*. at 83; *see also* Aug. 25, 2025 Hrg. Tr. at 234:7-11). Indeed, those "asbestos claims estimation reports" cost the Debtor's estate over $700,000. (Aug. 25, 2025 Hrg. Tr. at 192:6-12.) Plan Proponents simply chose not to include those asbestos claims estimates (or any other evidence) in the Liquidation Analysis or enter them into evidence at the Combined Hearing. (ECF No. 1267, at 83.)

90. The Bankruptcy Court's reliance on *W.R. Grace* is similarly off-base. The *W.R. Grace* discussion cited in the Proposed Findings addressed whether the liquidation analysis had to "identify the specific amount" and "exact percentage dividend" to be recovered by the "Libby Claimants" under a Chapter 7 liquidation. *In re W.R. Grace & Co.*, 475 B.R. 34, 142 (D. Del. 2012). The court concluded that "[i]t is not necessary to itemize or specifically determine precise values during this estimation procedure." *Id.* There is no question, however, that it was necessary for the Plan Proponents to submit actual evidence in support of the best interest test, with the court

stating that a "well-reasoned estimate of the liquidation value that is supported by the evidence on the record" is necessary. *Id.*

91. Moreover, in *W.R. Grace*, the plan proponents presented extensive factual and expert evidence about the liquidation analysis at the confirmation hearing, including asbestos claims estimation evidence:

> At the Confirmation Hearing, Grace presented several witnesses that testified about the liquidation value of creditor claims under Chapter 7 in comparison to their recovery under the Chapter 11 Joint Plan. An expert witness in mass tort bankruptcy liquidation testified that Grace's creditors stand to recover substantially more under the Joint Plan than through liquidation. Additionally, a claims estimation expert testified that the value of assets available for distribution to creditors was significantly higher under the Joint Plan than it would be under Chapter 7 liquidation.

In re W.R. Grace & Co., 475 B.R. 34, 143 (D. Del. 2012).

92. Significantly, the *W.R. Grace* case is not the only other matter in which proponents of a § 524(g) plan presented fact and expert evidence to support its liquidation analysis and compliance with the best interest test under § 1129(a)(7). In fact, proponents of such plans routinely submit evidence such as asbestos claims estimates in a liquidation analysis or in support of a § 524(g) plan at a confirmation hearing. *See, e.g.*, *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) ("At the confirmation hearing, Manville presented an extensive liquidation analysis based on documentary evidence and expert testimony."); *In re Eagle-Picher Indus.*, 203 B.R. 256, 262 (S.D. Ohio. 1996) (discussing how bankruptcy court held a hearing on asbestos claims estimation and entered an order "in which it estimated the aggregate value of Asbestos Personal Injury Claims as of the Petition Date").

93. The Bankruptcy Court had no equivalent evidence before it at the Combined Hearing. The Plan Proponents relied on assumptions and assertions rather than submitting the "asbestos claims estimation reports" that had previously been prepared for each of Debtor and the

Committee. The Bankruptcy Court precluded Chubb from presenting its expert evidence. Given the Plan Proponents' burden, and the Bankruptcy Court's requirement to make independent findings based on the record evidence rather than on non-evidentiary assumptions or conclusory assertions, that failure is conclusive. The record lacks sufficient evidence to support the Proposed Findings on § 1129(a)(7), and the Plan is not confirmable.

CONCLUSION

94. In response to the Proposed Findings, the Chubb Insurers also join certain of the arguments and authorities asserted on behalf of Travelers Indemnity Company, Travelers Casualty and Surety Company, formerly known as the Aetna Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company (collectively, "Travelers") also filed with the Court on November 24, 2025. The Chubb Insurers join, and incorporate by reference, Travelers' arguments and objections asserted under the following three headings in the Travelers' Objections: (i) Tort Plaintiffs Lawyers May Not Have Access To The Debtor's Privileged Records; (ii) The Plan Cannot Be Confirmed Because It Seeks To Transfer Property That Is Not Property Of Hopeman's Estate; and (iii) The Plan Cannot Be Confirmed Because The Plan Documents Are Impermissibly Vague And Uncertain Regarding The Determination Of Uninsured Asbestos Claims And Increased Burdens On Insurers.

95. As indicated above, pursuant to Bankruptcy Rule 9033(b)(2), the Chubb Insurers respectfully request that—in addition to the record and exhibits for the Combined Hearing and all filings cited previously in this Chubb Objection—the District Court take into consideration the following motions, objections, and other papers filed with the Court by the Chubb Insurers:

FILING	DATE	ECF NO.
Chubb Insurers' Objection To Plan Confirmation (Public, Redacted)	July 7, 2025	958
Chubb Insurers' Objection To Plan Confirmation (Sealed)	July 8, 2025	961
Debtor's Motion In Limine	Aug. 7, 2025	1089

FILING	DATE	ECF NO.
Chubb Insurers' Objection To Motion In Limine	Aug. 18, 2025	1121
Reply In Support Of Motion In Limine	Aug. 20, 2025	1136
Order Granting Motion In Limine	Aug. 22, 2025	1147
Certain Insurers' List of Witnesses And Exhibits For The Combined Hearing	Aug. 24, 2025	1159
Chubb Insurers' Proposed Findings Of Fact And Conclusions Of Law Denying Approval Of The Disclosure Statement And Denying Plan Confirmation	Sept. 5, 2025	1189
Order Granting Chubb Insurers' Motion To File Plan And Disclosure Statement Objections Under Seal	Sept. 9, 2025	1191

96. As to each of the filings made by the Chubb Insurers listed above, the Chubb Insurers incorporate by reference, as though fully restated herein, the arguments previously asserted in support of the Chubb Insurers' position that the Debtor's proposed Disclosure Statement does not contain adequate information and the proposed Plan does not meet the necessary requirements for confirmation. Pursuant to Bankruptcy Rule 9033(b)(2), the Chubb Insurers reserve 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.

97. For the foregoing reasons, the Chubb Insurers object to the Proposed Findings. The Chubb Insurers respectfully request that the Court reject the Proposed Findings, and remand the case to the Bankruptcy Court with instructions consistent with the Court's opinion.

Dated: November 24, 2025

Respectfully submitted,

/s/ James K. Donaldson

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CERTIFICATE OF SERVICE

I certify that on November 24, 2025, a true and accurate copy of the foregoing was filed with the Court and served on all necessary parties through the Court's CM-ECF system, through electronic notice.

/s/ James Donaldson