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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.	:	

PLAN PROPONENTS' RESPONSE TO OBJECTING 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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Hopeman Brothers, Inc. ("Hopeman" or the "Debtor"), the debtor and debtor in possession in the above-captioned chapter 11 case (this "Chapter 11 Case") and the Official Committee of Unsecured Creditors (the "Committee" and together with the Debtor, the "Plan Proponents") hereby jointly submit, by and through their undersigned counsel, this Response (this "Response") to the Objecting Insurers' Objections to the *Proposed Findings of Fact and Conclusions of Law Regarding Confirmation of the Modified Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* (the "Plan") *and Approving Adequacy of the Disclosure Statement* [ECF No. 1267] (the "Proposed Findings")[1] issued by the United States Bankruptcy Court for the Eastern District of Virginia (the "Bankruptcy Court").

I. PRELIMINARY STATEMENT[2]

1. The Plan represents the good faith, best efforts of Hopeman and the Committee to make certain the extensive asbestos liability insurance Hopeman purchased many years ago will continue to be available to pay valid asbestos claims despite Hopeman's insolvency. Under the Plan, Hopeman's cash and rights to insurance coverage will be transferred to an Asbestos Trust for the benefit of Hopeman's asbestos claimants. All existing and future asbestos claims against Hopeman will be "channeled" to the Asbestos Trust and compensated through Hopeman's historical insurance coverage or, if uninsured, from available Asbestos Trust funds. Hopeman will reorganize and continue to provide notice to insurers upon receipt of claims and cooperate with insurers should they wish to mount a defense to any claim. Hopeman also will invest in an income-

[1] Capitalized terms used, but not otherwise defined herein, have the meaning assigned in the Proposed Findings or, if not defined therein, the Plan.

[2] Capitalized terms used, but otherwise defined in this Preliminary Statement, have the meanings given to such terms below.

producing real estate business to contribute additional funding to the Asbestos Trust. The asbestos claimants voted overwhelmingly (99.7%) in favor of the Plan.

2. As set forth in detail in the Proposed Findings, the Bankruptcy Court concluded that the Plan satisfies all requirements for confirmation under section 1129 of the Bankruptcy Code. In addition, the Bankruptcy Court concluded that the Plan's channeling injunction provisions are authorized by and comply with section 524(g). Consistent with section 524(g)(3)(A), however, the District Court must "issue or affirm" the channeling injunction for it to be effective.

3. The only parties opposing confirmation are historical insurers of Hopeman that may have to compensate asbestos claimants under liability policies intended to insure Hopeman for its liability for bodily injury.[3] Importantly, the Plan itself does not alter, and fully preserves, the insurers' policy rights and coverage defenses. Following the Effective Date of the Plan, insurers will be in the positions they contractually agreed to be in when they accepted premiums and issued their insurance policies decades ago. Notably, while addressing its arguments on the merits, the Bankruptcy Court correctly concluded that one of the Objecting Insurers, Liberty Mutual, lacks standing to object to either the Disclosure Statement or the Plan.[4]

4. The Proposed Findings accurately reflect the unrefuted evidence presented by the Plan Proponents at the confirmation hearing. The essential facts are not genuinely in dispute; the Objecting Insurers put on no witnesses and offered only documentary evidence that did not have

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[3] The current and former insurers that filed objections to the Proposed Findings are: Century Indemnity Company ("Century"),[3] Westchester Fire Insurance Company ("Westchester" and together with Century, "Chubb"), Liberty Mutual Insurance Company ("Liberty Mutual"), The Travelers Indemnity Company ("Travelers Indemnity"), Travelers Casualty and Surety Company ("Travelers Casualty"), St. Paul Fire and Marine Insurance Company ("St. Paul" and together with Travelers Indemnity and Travelers Casualty, collectively, "Travelers" and Travelers together with Chubb and Liberty Mutual, collectively, the "Objecting Insurers").

[4] Proposed Findings at p. 17.

any bearing on the requirements for confirmation of the Plan. The Objecting Insurers' arguments are wrong on the law or depend on alleged facts they never presented or established.

5. As set forth more fully below, the District Court should approve the Proposed Findings, confirm the Plan, and issue the Plan's proposed channeling injunction as contemplated by section 524(g).

II. PROCEDURAL HISTORY[5]

6. The Debtor filed its bankruptcy petition on June 30, 2024. After a contentious first six months in the case, the Debtor and the Committee agreed to participate in a judicial mediation with other parties-in-interest, which ultimately resulted in the Debtor, the Committee, and a third party, Huntington Ingalls Industries, Inc., agreeing to the essential terms of a proposed section 524(g) plan. The Debtor and Committee then served as joint proponents of the Plan and Disclosure Statement and their counsel jointly drafted the Plan-related documents (the "Plan Documents") based on the agreed essential terms.

7. On May 14, 2025, the Bankruptcy Court entered the Solicitation Procedures Order that, among other things, conditionally approved of the Disclosure Statement and authorized solicitation of the Plan. The Debtor then solicited votes on the Plan in accordance with the Solicitation Procedures Order.

[5] A more fulsome factual and procedural background is set forth in the *Plan Proponents': (I) Memorandum of Law in Support of (A) Final Approval of the Disclosure Statement With Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, and (B) Confirmation of the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code; and (II) Omnibus Reply to Plan Objections* [Docket No. 1076].

8. Two classes of claims were entitled to vote on the Plan, and both accepted the Plan.[6] The only vote cast by a holder of an allowed claim in Class 3 (General Unsecured Claims) voted in favor of the Plan. More than 99% of the holders of Claims in Class 4 (Channeled Asbestos Claims) voted in favor of the Plan.[7]

9. On August 25 and 26, 2025, the Bankruptcy Court held evidentiary hearings (the "Combined Hearing") to consider final approval of the Disclosure Statement and confirmation of the Plan. After carefully assessing the evidence and the arguments of the parties both at the Combined Hearing itself and in the voluminous briefing in the lead-up to and after the Combined Hearing, on October 31, 2025, the Bankruptcy Court issued the Proposed Findings approving the Disclosure Statement on a final basis and recommending that the District Court confirm the Plan, subject to the Plan Proponents making certain modifications to address discrete issues raised by the Objecting Insurers that the Bankruptcy Court found to be valid.

10. The Plan Proponents subsequently filed a Joint Statement accepting the Proposed Findings without any objections. The Plan Proponents appended to the Joint Statement proposed revisions to the Plan and certain Plan Documents to conform to the modifications called for by the Bankruptcy Court.[8]

11. The Objecting Insurers filed objections (collectively, the "Objections") to the Proposed Findings,[9] in which they primarily make the following specific objections: (i) the

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[6] *See Declaration of Jeffrey R. Miller with Respect to the Tabulation of Votes on the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [Docket No. 1077] (the "Voting Certification").

[7] *Id.*

[8] *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* [Docket No. 1309] (the "Joint Statement").

[9] *See 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*

Bankruptcy Court should not have approved of the Disclosure Statement on a final basis because it describes an unconfirmable plan; (ii) the Plan is unconfirmable because (a) the Plan does not comply with section 1123(a)(4), (b) the Plan does not protect privileged information, (c) the Plan is not "insurance neutral" with respect to the Travelers 2005 Agreement, (d) the Plan impairs Non-Settling Insurers' rights to information, (e) the Plan purports to assign rights Hopeman does not own, (f) the Plan was not proposed in good faith in satisfaction of section 1129(a)(3), (g) the Plan does not satisfy the best interest test of section 1129(a)(7), (h) the Plan does not satisfy certain requirements of section 524(g), and (i) the Debtor is ineligible for a discharge under section 1141, as well as a supplemental discharge under 524(g). As set forth below, each of these objections fails under the uncontroverted evidence and established case law.

III. STANDARD OF REVIEW

12. Bankruptcy Rule 9033(c) sets forth the standard for the District Court to apply when reviewing the Insurer Objections to the Proposed Findings.[10] Pursuant to Rule 9033(c), "the district judge 'must review *de novo* – on the record 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 [in accordance with this rule.]'"[11] "Upon such review, the Court 'may accept,

Chapter 11 of the Bankruptcy Code and Approving Adequacy of the Disclosure Statement [Docket No. 1312] ("Travelers Obj."), *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* [Docket No. 1313] ("Liberty Obj."), and *The Chubb Insurers' Objection 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 Disclosure Statement* [Docket No. 1314] ("Chubb Obj.").

[10] *See Liberty Mutual Ins. Co. v. Hopeman Bros., Inc.*, Civ. A. No. 3:25-cv-603 (DJN), 2025 WL 3205866, at *2 (E.D. Va. Nov. 17, 2025).

[11] *Id.* (quoting Fed. R. Bankr. P. 9033(c)(1)).

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.'"[12]

IV. ARGUMENT

A. THE BANKRUPTCY COURT PROPERLY CONCLUDED THAT LIBERTY MUTUAL LACKS STANDING TO OBJECT TO EITHER THE DISCLOSURE STATEMENT OR THE PLAN

13. Liberty Mutual wrongly asserts that the Bankruptcy Court erred in concluding that it lacked standing to object to the Plan. The Bankruptcy Court correctly found that Liberty Mutual is not a "party in interest" with standing to object to the Plan under section 1109(b) because Liberty Mutual is neither a creditor nor an insurer of Hopeman, and the Plan does not affirmatively commit Liberty Mutual to contribute any funding to pay claims addressed by the Plan or impair any of Liberty Mutual's defenses to claims or other rights.

14. Liberty Mutual is not a creditor of Hopeman. Although Liberty Mutual filed a proof of claim in Hopeman's bankruptcy, the Bankruptcy Court sustained Hopeman's objection to Liberty Mutual's claim and expunged it.[13] While Liberty Mutual has appealed that decision, Liberty Mutual presently does not have an allowed claim in Hopeman's bankruptcy.[14]

15. Liberty Mutual also does not owe any further insurance obligations to Hopeman. The Plan Proponents agree that Hopeman released Liberty Mutual and sold back to Liberty Mutual all of its rights to Liberty Mutual's coverage through the 2003 Agreements.[15]

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[12] *Id.* at *2 (quoting Fed. R. Bankr. P. 9033(c)(2)).

[13] *See Order Disallowing and Expunging Claim of Liberty Mutual Insurance Company* [Docket No. 907]. In sustaining Hopeman's objection to Liberty Mutual's claim, the Bankruptcy Court rejected Liberty Mutual's theories that Hopeman is liable under the 2003 Agreements for alleged breaches of what Liberty Mutual characterizes as the "Minimization Obligation" or the "Defense Obligation." Contrary to Liberty Mutual's arguments in its Objection at 12-15, the Plan did not need to remedy alleged breaches for which the Bankruptcy Court determined Liberty Mutual has no claim against Hopeman.

[14] Proposed Findings at 18.

[15] *Id*. at 19.

16. The Bankruptcy Court correctly applied the Supreme Court's decision in *Truck*[16] to conclude that Liberty Mutual lacks standing to object to the Plan. Contrary to Liberty Mutual's argument, Liberty Mutual offered no evidence that supports a finding of standing in its favor.

17. The Bankruptcy Court appropriately concluded on the undisputed facts that, unlike the insurer in *Truck*, Liberty Mutual asserts it has no financial responsibility for claims against the debtor addressed by the Plan.[17] In contrast to the plan in *Truck*, the Plan in this case does not purport to make Liberty Mutual liable for Plan payments to creditors or to use Liberty Mutual's prior policies otherwise to fund the Plan.[18] Nor does the Plan attempt to create new rights in favor of anyone against Liberty Mutual or impair any defenses that Liberty Mutual may have with respect to claims that non-debtors may file against Liberty Mutual despite Hopeman's release of Liberty Mutual.[19] In no way is Hopeman "attempting to put its hands in [Liberty Mutual's] pockets" through the Plan, which was the basis for recognizing insurer standing in *Truck*.[20]

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16 *Truck Ins. Exchange v. Kaiser Gypsum Co.*, 602 U.S. 269 (2024).

17 Proposed Findings at 19-20. The insurer in *Truck* had ripe coverage obligations under policies issued to the debtors and was indisputably liable to holders of valid asbestos claims against Kaiser Gypsum to be addressed by the Plan. See *Truck*, 602 U.S. at 281. Contrary to Liberty Mutual's argument that Liberty Mutual is akin to the insurer that was acknowledged to have standing in *In re Roman Catholic Diocese of Syracuse*, the debtor in the *Syracuse* case had filed an adversary proceeding against the insurer attempting to hold it liable for breach of contract for failing to cover claims asserted against the debtor and sought to assign its rights in that litigation to a trust. *See* 665 B.R. 866, 875 n. 5 (Bankr. N.D.N.Y. 2024). In the present case, Hopeman acknowledges it has no claims against Liberty Mutual. Thus, the mere fact that the insurer in *Syracuse* had been sued but not yet been held liable for breach of contract does not make that case analogous to this one since Hopeman makes no such claims against Liberty Mutual. The other cases Liberty relies upon in footnote 61 of its Objection for an expansive view of *Truck* involved current insurers of the debtors and other parties with a direct financial stake in the case. Liberty Obj. at 21 n.61. Those cases do not support Liberty Mutual's claim of standing.

18 Proposed Findings at 19.

19 *Id*. at 19-20.

20 *See Truck*, 602 U.S. at 282 (quoting *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 204 (3d Cir. 2011)). Liberty Mutual also argues that the Bankruptcy Court incorrectly applied the "insurance neutrality" doctrine to deprive Liberty Mutual of standing. Liberty Obj. at ¶ 22. That mischaracterizes the Bankruptcy Court's ruling. There was no error in the Bankruptcy Court considering, in addition to finding that Liberty Mutual was not a current insurer or creditor of Hopeman and that the Plan places no financial responsibility on Liberty for bankruptcy claims, that the Plan preserves rather than alters any of Liberty Mutual's rights. Proposed Findings at 20-21. Those were appropriate findings that the Plan does not impact Liberty Mutual, not a blind adherence to insurance neutrality as controlling the standing question, which the Bankruptcy Court analyzed under *Truck*.

18. Liberty Mutual, nevertheless, argues that if the Plan is confirmed, Liberty Mutual will be forced to defend against lawsuits filed by direct action claimants (and, potentially, any other asbestos claimants).[21] The Plan, however, is not the reason Liberty Mutual has been, or will be, sued. Liberty Mutual indisputably has been named as a defendant in direct action lawsuits for many years prior to and even after Hopeman's bankruptcy filing.[22] Nothing in the Plan itself creates any new rights in favor of any Asbestos Claimants to file claims against Liberty Mutual. "The Plan only clarifies that to the extent a person may have a claim against Liberty Mutual directly arising under non-bankruptcy law, that claim is unaffected by the Plan."[23] Any such claims arose from Liberty Mutual having issued liability insurance to Hopeman long ago, not from any provision in the Plan. The Plan itself "neither enhances nor diminishes those [claimants'] rights …; nor does the Plan impair or otherwise alter any defenses Liberty Mutual may have to such claimant's claims …."[24]

19. As the Bankruptcy Court properly found, the Plan appropriately clarifies that Liberty Mutual is not being released as part of the Plan. The Plan does so expressly in the definition of "Non-Settling Asbestos Insurers."[25] That provision was a necessary response to positions Liberty Mutual has taken in the bankruptcy (and which the Bankruptcy Court rejected) to clarify that the Plan is not providing Liberty Mutual with a third-party release.[26] That clarifying

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21 Liberty Obj. at 8.

22 *Id.* at ¶ 6.

23 Proposed Findings at 19.

24 *Id*. at 19-20.

25 *Id*. at 20; *see* Plan, § 1.83.

26 Proposed Findings at 20.

provision does not make Liberty Mutual a "party in interest" to the Plan as it does not alter any of Liberty Mutual's rights or defenses.[27]

20. Liberty Mutual next argues that Liberty Mutual's interests are impacted by the Plan because it would allow the proposed Asbestos Trust to intervene in Hopeman-related asbestos lawsuits in which Liberty Mutual is involved. The Bankruptcy Court recommended that the Plan be modified to make clear that the Plan will not create a right in favor of the Asbestos Trust to intervene but only *preserve* any such right the Asbestos Trust would have to intervene, subject to compliance with the proper procedural mechanism for intervention.[28] With that modification, the Court explained, the Plan appropriately serves as a pass-through of any insurance rights, duties and defenses, meaning that the Plan is neutral to Liberty Mutual and others on this provision. The Plan does not alter the right of any party, including Liberty Mutual, to oppose intervention by a third party, including the Asbestos Trust. Whether the Asbestos Trust can intervene in any particular case will be left to the court in which intervention is sought and will not be predetermined by the Plan.[29] Accordingly, the intervention provision, as modified, does not serve as a basis for Liberty Mutual to have standing to object to confirmation of the Plan.[30]

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[27] Liberty Mutual inconsistently argues, on the one hand, that it has no liability on the policies it issued to and settled with Hopeman, but then argues, on the other hand, that the Plan financially impacts Liberty Mutual by assigning to the Asbestos Trust interests Hopeman admits it does not have. It furthermore complains that the Plan abandons obligations allegedly owed to Liberty Mutual that the Bankruptcy Court determined Hopeman did not have. Liberty Obj. at 12-15. Liberty Mutual even speculates that the proposed Asbestos Trust may later argue it is not bound by the 2003 Agreements. *Id*. at 14 ¶6(c). These inconsistent and speculative allegations do not meet Liberty Mutual's burden to show it is a party in interest under §1109.

[28] Proposed Findings at 56.

[29] The Plan Proponents have suggested a proposed revision to the Plan to address the Bankruptcy Court's requested modification. *See* Joint Statement at ¶ D.

[30] If the District Court confirms the Plan with the modification proposed by the Bankruptcy Court, Liberty Mutual's faulty contention that it has standing based on its intervention argument alone evaporates. Liberty Mutual can point to nothing in the modified Plan itself that will impact Liberty Mutual financially or otherwise.

21. Simply put, Liberty Mutual lacks any financial stake in the Plan, which also does not alter any of Liberty Mutual's substantive or procedural rights or its coverage defenses. Under these facts, *Truck* does not provide Liberty Mutual with standing to object to confirmation.

B. THE BANKRUPTCY COURT PROPERLY APPROVED THE DISCLOSURE STATEMENT ON A FINAL BASIS

22. The Bankruptcy Court concluded, after careful assessment of the arguments of the parties (both oral and written) and the evidence admitted at the Combined Hearing, that the Disclosure Statement contained adequate information within the meaning of section 1125 of the Bankruptcy Code and approved of the Disclosure Statement on a final basis.[31] The Bankruptcy Court, alternatively, recommended that the District Court grant final approval of the adequacy of the Disclosure Statement to the extent such approval is required.[32]

23. Chubb is the only Objecting Insurer that opposes final approval of the Disclosure Statement. Its challenge (and its only specific objection) to approval of the Disclosure Statement is that it is inadequate because it allegedly describes a non-confirmable plan.[33] Chubb's arguments are redundant of its arguments about the Plan. Because the Plan is confirmable, as detailed below, the Disclosure Statement describes a confirmable plan.

24. In addition to its specific objection, Chubb incorporates solely by reference in its objection a number of other arguments it made in the Bankruptcy Court on why it contends the Disclosure Statement is inadequate.[34] The Bankruptcy Court addressed the adequacy of the Disclosure Statement and each of Chubb's arguments in its Proposed Findings, at pages 21-26. Chubb, however, does not specifically state in its objection why any of those findings or

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[31] Proposed Findings at 26.

[32] *Id*.

[33] *See* Chubb Obj. at ¶¶ 4 & 96.

[34] *Id*. at ¶¶ 95-96.

conclusions are incorrect. Accordingly, the District Court has no obligation under Rule 9033(c)(1) to conduct a *de novo* review of Chubb's arguments previously addressed by the Bankruptcy Court since Chubb did not make any "specific objection" to the Bankruptcy Court's Proposed Findings on those issues.[35]

25. To the extent the District Court determines that *de novo* review of the incorporated arguments of Chubb on the Disclosure Statement is appropriate, the Bankruptcy Court's Proposed Findings on these issues are detailed and sound.

26. First, the Bankruptcy Court found that the Disclosure Statement adequately describes the proposed Plan and contains the information a creditor voting on the Plan would need to make an informed decision. The Disclosure Statement contains, among other topics, a history of the Debtor, the nature of its business and liabilities, the events leading up to the bankruptcy filing, the terms of the proposed Plan and the contemplated Asbestos Trust, financial information and projections for the reorganized entity, and other information typically required for a disclosure statement. The Bankruptcy Court also found that the Disclosure Statement otherwise "complies with all aspects of section 1125 because it contains information that is reasonably practicable to permit a hypothetical creditor to make an informed judgment about the Plan."[36]

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[35] *See In re Tronox Inc.*, 2014 WL 5825308, at *6 n.10 (S.D.N.Y. Nov. 10, 2014) (holding that, despite an attempt by a party to incorporate by reference all arguments, "Rule 9033(d) of the Federal Rules of Bankruptcy Procedure provides that this Court must only review *"specific* written objection[s]" to the Bankruptcy Court's findings of fact or conclusions of law. Fed. R. Bankr. P. 9033(d) (emphasis added). Further, Rule 9033(d) is modeled on Federal Rule of Civil Procedure 72(b), under which such incorporation by reference is not permitted because "[i]t is improper for an objecting party to attempt to relitigate the entire content of the hearing before the Magistrate Judge by submitting papers to a district court which are nothing more than a rehashing of the same arguments and positions ...."); *In re Finney*, 167 B.R. 820, 822 (E.D. Va. 1994) ("Rule 9033 requires objections to be written, identify the specific proposed findings or conclusions objected to, and state the grounds for said objections."); *see also Stone v. Director, TDCJ-CID*, 2022 WL 980792 at *3 (N.D. Tex. 2022) ("An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error.").

[36] Proposed Findings at 23.

27. Because the Plan contemplates injunctive relief, the Bankruptcy Court also found, as required by Rule 3016(c), that the Disclosure Statement provides sufficient notice of the injunction, exculpation, and release provisions in the Plan, including the Asbestos Permanent Channeling Injunction."[37] In addition, it concluded that "the Disclosure Statement describes the entities and the acts subject to the injunction under the Plan in specific and conspicuous language, making it clear to anyone who reads it."[38]

28. Second, the Bankruptcy Court addressed Chubb's assertion that the Disclosure Statement did not adequately inform creditors about the Litigation Trustee's compensation.[39] Chubb complained about the timing and means by which the Plan Proponents disclosed the Litigation Trustee's compensation. The Bankruptcy Court determined, however, that the Plan Proponents complied precisely with the timing and method of disclosure contemplated by the Solicitation Procedures Order.[40]

29. Importantly, the Bankruptcy Court also found that no party in interest – including Chubb – objected to or appealed the Solicitation Procedures Order, including on the grounds that solicitation should be delayed pending full disclosure of the Litigation Trustee's compensation. Moreover, no beneficiary of the proposed Asbestos Trust objected to the Plan because of any delayed notice of the Litigation Trustee's compensation either before or after voting in favor of the

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37 *Id.*

38 *Id.*

39 Even though Chubb was complaining about the Disclosure Statement, Chubb is not a creditor of Hopeman and did not have a right to vote on the Plan.

40 *See* Solicitation Procs. Order ¶ 6, Docket No. 782 at 3-4 (approving the "dates and deadlines . . . with respect to the Disclosure Statement, solicitation of votes to accept the Plan, voting on the Plan, and confirming the Plan," including a June 6, 2025, deadline to file the Plan Supplement); Initial Plan Suppl. Ex. A, Docket No. 853 at 5-55 (containing Amended Trust Agreement and filed on June 6, 2025).

Plan in the over two months between the voting and the delayed Combined Hearing on confirmation of the Plan and final approval of the Disclosure Statement.

30. The Bankruptcy Court also found no merit to Chubb's complaint that the Disclosure Statement failed to disclose that "the fees of the Litigation Trustee will significantly diminish the returns to be recovered by holders of Insured Asbestos Claims."[41] The Bankruptcy Court agreed with the Plan Proponents that Chubb's assertion was a misreading of the Plan and that there was no failure of disclosure on this issue. The Disclosure Statement adequately discloses that the Litigation Trustee will only be entitled to compensation in actions involving the Asbestos Trust,[42] with such compensation to be paid as an expense of the Asbestos Trust.[43] The Litigation Trustee will not be entitled to compensation in other circumstances.[44]

31. "Moreover, any settlement obtained through an action by the Asbestos Trust would, by definition, require complete disclosure and the Bankruptcy Court's approval, and the proceeds of the settlement would be held by the Asbestos Trust for the benefit of certain holders of Uninsured Asbestos Claims. The deduction of the Asbestos Trust expenses – which include the Litigation Trustee's Compensation – from the corpus of the Asbestos Trust is appropriate in these circumstances."[45]

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41 *See* Chubb Plan Obj. at ¶ 102.

42 *See* Am. Plan Suppl. Ex. A § 4.5(b), Docket No. 1143 at 28 (the "Asbestos Trust Agreement") ("The Litigation Trustee shall be entitled to 33.3% of all funds recovered in litigation in favor of the Asbestos Trust as the Litigation Trustee's compensation").

43 Plan, § 8.3(n).

44 Contrary to Chubb's assertions, no fee will be due to the Litigation Trustee if a Channeled Asbestos Claimant obtains a judgment on their tort claim through the court system, Disclosure Statement § 8.12(a), ECF No. 690 at 95 (expressly permitting a Channeled Asbestos Claimant to "initiate, commence, continue or prosecute an action against Reorganized Hopeman . . . and . . . any Non-Settling Asbestos Insurer for Wayne, in a court of competent jurisdiction to obtain the benefit of Asbestos Insurance Coverage"), and then seeks to recover such amounts from the applicable Non-Settling Asbestos Insurers, *id.* § 8.13(c). As the Bankruptcy Court found, a "plain reading of those provisions shows that, for such recoveries, there will be no compensation payable to the Litigation Trustee because the Litigation Trustee will not be involved in such an action." Proposed Findings at 24-25.

45 Proposed Findings at 25.

32. As to Chubb's argument of inadequacy of service of the Plan Supplement, the Bankruptcy Court thoroughly explained its rejection of that argument on pages 25-26 of the Proposed Findings:

> The Debtor performed in accordance with the Solicitation Procedures Order, which is a final, unappealable order. Moreover, the Bankruptcy Court finds that the Debtor provided actual notice of the forthcoming plan supplement and the mechanism by which any party-in-interest could obtain a copy. Certificate of Serv., ECF No. 864; Solicitation Procs. Order ¶ 20, ECF No. 782 at 8. The Debtor served the Solicitation Packages, Certificate of Serv. ¶¶ 7-9, ECF No. 864 at 2-3, which included a copy of the Solicitation Procedures Order disclosing that the Debtor would file a Plan Supplement and the deadline for such filing, *id.* ¶ 4(b), ECF No. 864 at 2; Solicitation Procs. Order Ex. 4, ECF No. 782 at 8. Furthermore, that notice apprised parties-in-interest, including holders of Claims in the Voting Classes, that they could—and how to—obtain copies of filings in this Chapter 11 Case free of charge on Verita's website. Solicitation Procs. Order Ex. 4, ECF No. 782 at 77. That notice was more than sufficient in these circumstances.

33. Accordingly, the Bankruptcy Court appropriately found that Chubb's objections to the Disclosure Statement were without merit and approved it on a final basis. Because the Bankruptcy Court had authority to do so under section 1125, the District Court is not obligated to conduct a *de novo* review as to the Bankruptcy Court's ruling on the Disclosure Statement.

34. Nevertheless, even if the District Court treats the Bankruptcy Court's ruling as a report and recommendation that the Disclosure Statement contains adequate information, the District Court should approve the Bankruptcy Court's report and approve of the Disclosure Statement on a final basis because the Bankruptcy Court correctly applied the law to the facts. *See* Fed. R. Bankr. P. 9033(c)(2).

C. THE PLAN SHOULD BE CONFIRMED BECAUSE IT COMPLIES WITH SECTION 1129 AND ALL OTHER APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE

35. Confirmation of a chapter 11 plan of reorganization like the Plan in this case is governed by section 1129 of the Bankruptcy Code. Among the requirements for confirmation,

section 1129(a)(1) provides that a plan may be confirmed only if "[t]he plan complies with the applicable provisions of this title."[46] The legislative history of section 1129(a)(1) indicates that the primary focus of this requirement is to ensure that the Plan complies with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan, respectively.[47]

36. As set forth below, the Objecting Insurers make specific objections that the Plan does not comply with section 1123(a)(4), 1123(a)(5), 1123(b) and certain other provisions in section 1129 of the Bankruptcy Code. These objections lack merit and should be overruled. The Bankruptcy Court correctly found that the that the Plan and Plan Proponents fully complied with section 1129 and all other applicable provisions of the Bankruptcy Code.

(i) The Bankruptcy Court Correctly Concluded That The Plan Complies With 11 U.S.C. § 1123(a)(4)

37. Section 1123(a)(4) provides that a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."[48] "[N]either the Code nor the legislative history precisely defines the standards of equal treatment,"[49] but "courts have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the

[46] 11 U.S.C. § 1129(a)(1); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 270-73 (Bankr. S.D. Ohio 1996) (examining each requirement of chapter 11 to demonstrate that section 1129(a)(1) was satisfied); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) ("[I]n order for a plan of reorganization to pass muster … it must comply with all the requirements of Chapter 11….").

[47] *See* S. Rep. No. 95-989, at 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), reprinted in 1978 U.S.C.C.A.N. 5962, 6368*; see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) (holding that legislative history indicates that section 1129(a)(1) was intended to require compliance with sections 1122 and 1123).

[48] 11 U.S.C. § 1123(a)(4).

[49] *In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) (quoting *In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986)).

same opportunity' for recovery."[50] Indeed, "[s]ection 1123(a)(4) does not require precise equality, only approximate equality."[51] Ultimately, "[w]hat matters, then, is not that claimants recover the same amount but that they have equal opportunity to recover on their claims."[52] And the Bankruptcy Court has discretion in determining whether this standard is met.[53]

38. Thus, courts have recognized that "[c]ertain procedural differences, such as a 'delay in receipt of distributions' for some claims, 'do[ ] not alone constitute unequal treatment.'"[54] "In fact, § 524(g) 'clearly envisions that asbestos claims will be paid periodically as they accrue and as they are allowed,' since it requires courts to ensure that there will be sufficient funds available for both future demands and present claims to receive similar treatment."[55] Accordingly, "differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant's opportunity to recover."[56] As the Bankruptcy Court properly concluded, "any

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[50] *Id.* at 327 (quoting *In re Dana Corp.*, 412 B.R. 53, 62 (S.D.N.Y. 2008)).

[51] *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) (citing *In re Dow Corning Corp.*, 255 B.R. 445, 497 (E.D.Mich.2000), *aff'd in part and remanded in part,* 280 F.3d 648 (6th Cir. 2002), *and In re Resorts Int'l, Inc.*, 145 B.R. 412, 447 (Bankr. D.N.J. 1990) ([Section 1123(a)(4)] "is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure since there is no statutory obligation upon plan proponents to quantify exactly what each class member is relinquishing by a release."); *see also In re LATAM Airlines Grp. S.A.*, No. 20-11254 (JLG), 2022 WL 2206829, at *35 (Bankr. S.D.N.Y. June 18, 2022) ("[B]y its terms, [§ 1123(a)(4)] does not mandate that members of the same class receive the same treatment on account of their claims." (citing *Quigley*, 377 B.R. at 116)); *In re Mesa Air Grp., Inc.,* No. 10-10018 MG, 2011 WL 320466, at *7 (Bankr. S.D.N.Y. Jan. 20, 2011) ("Without question, the 'same treatment' standard of section 1123(a)(4) does not require that all claimants within a class receive the same amount of money.") (quoting *In re Joint Eastern and Southern Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992)).

[52] *In re W.R. Grace & Co.*, 729 F.3d at 327.

[53] *In re Multiut Corp.*, 449 B.R. 323, 335 (Bankr. N.D. Ill. 2011) ("[B]ankruptcy courts have some discretion in deciding whether class members are receiving the same treatment.").

[54] *Id.* (quoting *In re New Power Co.*, 438 F.3d 1113, 1122-23 (11th Cir. 2006)).

[55] *Id.* (quoting *In re W. Asbestos Co.*, 313 B.R. 832, 842-43 (Bankr. N.D. Cal. 2003)).

[56] *Id.* (internal citation omitted); *see also In re W.R. Grace & Co.*, 729 F.3d at 330 ("[T]he District Court rightly determined that the Joint Plan satisfies the equal treatment provisions of § 1123(a)(4) and § 524(g). Although there may, at the margins, be some differences in recovery for direct and indirect claims, those differences do not amount to disparate treatment of creditors."); *Quigley*, 377 B.R. at 118 (holding that the Court could not "determine as a matter of law that the non-settling PI Claimants are receiving unequal treatment in violation of 11 U.S.C. § 1123(a)(4)" when certain claimants had settled with the debtor's nondebtor affiliate for an additional

inequality in the value of Channeled Asbestos Claims that is not dictated by the Plan but merely by applicable non-bankruptcy law does not violate section 1123(a)(4)."[57]

39. In the face of these principles, Travelers nevertheless argues that the Plan violates section 1123(a)(4) because *Uninsured* Asbestos Claims are limited only to compensatory damages and cannot recover punitive or exemplary damages and "[t]here is no similar limitation on Insured Asbestos Claims."[58] Travelers' argument fails for three reasons.

40. First, as the Bankruptcy Court properly concluded, section 1123(a)(4)'s requirements need not be satisfied where "the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest."[59] Here, no holder of a Channeled Asbestos Claim has objected to the Plan. Moreover, the Roussel Claimants—the only holders of Channeled Asbestos Claims who did not vote to accept the Plan—are not alleged to hold Uninsured Asbestos Claims. As a result, section 1123(a)(4)'s requirements are satisfied.

41. Second, section 7.2 of the Asbestos Trust Distribution Procedures, which provides that "[p]unitive or exemplary damages … shall not be considered or paid by the Asbestos Trust on any Uninsured Claim," is substantively identical to the analogous provision approved in the *Kaiser Gypsum* trust distribution procedures.[60] That provision is thus acceptable to the Fourth Circuit, and there is no basis to suggest it should not be acceptable in this case.

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payment that was paid outside of the plan); *Dow Corning*, 255 B.R. at 498 (affirming bankruptcy court's finding that § 1123(a)(4) was satisfied when each tort claimant's primary treatment was to enter a Litigation Facility notwithstanding claimants' subsequent choice to litigate or settle for less favorable treatment).

57 Proposed Findings at 36.

58 Travelers Obj. at ¶ 106.

59 11 U.S.C. § 1123(a)(4).

60 Kaiser Gypsum Asbestos Trust Distribution Procedures § 7.2, *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW) (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481.

42. Third, section 7.2 is entirely consistent with the purpose of asbestos trusts, which is to compensate injured individuals, not to punish any alleged bad actors.[61] Setting aside the procedural impossibilities of providing for the award of punitive or exemplary damages through the Asbestos Trust Distribution Procedures, such awards would jeopardize the Asbestos Trust's goal of protecting the interests of future claimants by disproportionately diminishing the corpus of the trust in a manner to the detriment of all Channeled Asbestos Claimants.

43. The Asbestos Trust Distribution Procedures in this case, like those in the *Kaiser Gypsum* case, contemplate treatment of insured and uninsured claims alike.[62] Channeled Asbestos Claimants can pursue whatever claims they may have in the tort system to the extent available to them under applicable non-bankruptcy law, but if a claim is presented to the Asbestos Trust because the holder of that claim is determined to hold an Uninsured Asbestos Claim, the Asbestos Trust will only allow for payment of the compensatory claim, not any punitive damages.[63] Because future Asbestos Insurance Settlements, exhaustion of coverage, or successful coverage defenses could cause any Insured Asbestos Claim to become an Uninsured Asbestos Claim, the treatment applies equally to all Channeled Asbestos Claims. "The Plan is designed to treat all Channeled Asbestos Claims similarly without disturbing any non-bankruptcy rights such holders may have to seek additional sources of recovery."[64] To the extent Insured Asbestos Claims become Uninsured Asbestos Claims, holders of those claims will be entitled to seek only compensatory damages from

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61 Proposed Findings at 37.

62 *Compare* Kaiser Gypsum Asbestos Trust Distribution Procedures §§ 5.3, 5.5, *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW) (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481, *with* Asbestos Trust Distribution Procedures §§ 5.1-5.3.

63 *See Kaiser Gypsum*, 135 F.4th at 201.

64 Id.

the Asbestos Trust. All claimants are subject to those same rules. Accordingly, there is no disparate treatment of the Channeled Asbestos Claims.

44. For all of these reasons, the District Court should overrule Travelers' objections and find that the Plan satisfies section 1123(a)(4).

(ii) The Discretionary Provisions in the Plan Are Authorized by Section 1123(b)

45. Section 1123(b) identifies various discretionary provisions that may be included in a plan of reorganization but are not required. These typically are provisions that provide the means to implement the reorganization and related transactions contemplated by the plan. The Objecting Insurers have objected to some of these provisions, but the Bankruptcy Court concluded these provisions are permitted by the Bankruptcy Code, except to the limited extent the Bankruptcy Court required modifications, which the Plan Proponents have agreed to address in the Plan. Addressed below are the arguments raised in the Objections as to these discretionary provisions.

(iii) The Plan Will Provide Meaningful Protection of the Privileges

46. The Plan contemplates the transfer of Hopeman's books and records to Reorganized Hopeman and the maintenance of Hopeman's attorney-client, work product, and other privileges.[65] The Plan also contemplates that the Asbestos Trust can have access to those books and records without compromising those privileges.[66] Travelers argues that the Plan cannot be confirmed unless the Plan and the Plan Documents are modified to expressly preclude the Asbestos Trust from sharing any of the Debtor's privileged books and records with the Trust Advisory Committee (the "TAC") or the Future Claimants' Representative (the "FCR"), and their professionals.[67]

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[65] Plan, § 8.3(l).

[66] *Id*.

[67] Travelers Obj. at ¶ 38.

Travelers claims this is necessary because, without those modifications, there likely will be privilege waivers and because access to this information could improperly disadvantage the Non-Settling Asbestos Insurers in subsequent litigation, and the access would be inconsistent with insurance neutrality.[68] Travelers concerns are misplaced, and the Plan, as the Plan Proponents have proposed to modify it consistent with the Proposed Findings, is sufficient without further modification.

47. As Travelers acknowledges, the Bankruptcy Court disagreed with the Plan Proponents' arguments that the access afforded to the Asbestos Trust, the TAC, the FCR, and their professionals would not risk a waiver of privileges.[69] In order to avoid potential privilege waivers (which, as the Bankruptcy Court noted, also would run the risk that a court presiding over a coverage dispute might determine that coverage may be denied due to alleged failures to cooperate), the Bankruptcy Court held that the Asbestos Trust's access to the Debtor's books and records must be limited "to the extent it is defending or processing an Uninsured Asbestos Claim."[70] The Plan Proponents believe the Bankruptcy Court's required modification adequately addresses this issue, and, accordingly, the Plan Proponents have proposed conforming modifications to the Plan and the Plan Documents to expressly limit the Asbestos Trust's access to the Debtor's books and records "only for the purpose of evaluating or processing Uninsured Asbestos Claims."[71]

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[68] *Id.* at ¶¶ 42-48.

[69] Proposed Findings at 44-45.

[70] *Id.* at 45.

[71] Joint Statement at 7 (reflecting modification of § 8.3(*l*) of the Plan to limit access to books and records) & 16 (modifying ¶ 20 of the proposed confirmation order to limit access to books and records).

48. This limitation, as the Bankruptcy Court held, should ensure common-interest and work-product privileges remain viable.[72] Travelers continued concerns about privileged materials being shared with the TAC, FCR, and their professionals, notwithstanding the proposed modification, is misplaced. Because the TAC, FCR, and their respective professionals derive access to this information exclusively through the Asbestos Trust's access, by necessity any limitation on access of the Asbestos Trust also limits the information that such additional parties will be able to access.[73]

49. Travelers points out that the Bankruptcy Court "did not accept the Objecting Insurers' insinuation that members of the TAC or the FCR may improperly use the privileged information contained in the Debtor's books and records to somehow advantage individual holders of Asbestos Claims." As the Bankruptcy Court's concluded, there is no reason to believe these professionals "will fail to uphold their fiduciary duties" by sharing privileged Hopeman documents and information to benefit their individual asbestos plaintiff clients.[74] Travelers, nonetheless, claims that the Bankruptcy Court has it backwards because, according to Travelers, these professionals would violate their professional duties to their clients if they failed to disclose privileged information—obtained in their roles as fiduciaries—to their individual asbestos clients.[75] Travelers assertions are unfounded.

50. Notwithstanding Travelers' assertions to the contrary, the non-waiver provision in the Asbestos Trust Agreement already addresses this issue. The non-waiver provision includes the following proviso which modifies the extent of these parties' access to information: "provided

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[72] Proposed Findings at 45.

[73] Travelers Obj. at ¶ 40 (citing provisions of Plan Documents regarding extent of such parties' access).

[74] Proposed Findings at 46.

[75] Travelers Obj. at ¶ 47.

that any information provided by the Trust Professionals shall not constitute a waiver of any applicable privilege."[76] Thus, the access these parties have to information (including privileged books and records) is always subject to the caveat that it may not be shared if it would result in privilege waiver. This provision, in conjunction with the Plan Proponents' proposed modification of the Plan, significantly limits the previously "unfettered" access these parties would have had to the Debtor's books and records and to information needed to evaluate and process Uninsured Asbestos Claims. Moreover, the Plan Proponents' proposed limitation only would give those parties access to information needed to evaluate and process *Uninsured* Asbestos Claims—rendering it highly unlikely that the information provided would even have the sort of sensitive defense strategies about which Travelers expresses concern.

51. Furthermore, Travelers ignores the practical reality that these professionals are highly incentivized not to take any action that could jeopardize available coverage. As the Bankruptcy Court noted, privilege waivers run a risk that coverage courts find a breach of cooperation obligations that permit denying coverage.[77] The Asbestos Trust has no asset more important than the Asbestos Insurance Rights which will provide for the lion's share of Channeled Asbestos Claimants' recoveries. Should professionals violate their fiduciary duties by disclosing privileged information they would risk substantially harming their clients by voiding the coverage that may be their only source of recovery. Such professionals are unlikely to find such efforts commended as "zealous" advocacy.

52. The Plan Proponents respectfully submit that the modifications they have proposed to the Plan are consistent with the Bankruptcy Court's Proposed Findings, adequately address this

[76] Asbestos Trust Agreement, § 5.2(a).

[77] Proposed Findings at 46.

issue, and that Travelers' objections here should be overruled. The access provision does not improperly alter any of Travelers' rights or coverage defenses.

(iv) Travelers Misconstrues the Insurance Neutrality Considerations in the Plan

53. Travelers erroneously contends both that the Plan does not adequately describe its treatment of the Travelers 2005 Agreement and that the Plan does not leave its rights under the Travelers 2005 Agreement intact.[78] The Plan Proponents added the term "Designated Insurance Agreement" to, among other things, specifically identify for treatment the Travelers 2005 Agreement due to Travelers' concern that the Plan was not clear as to the treatment of that Agreement.[79]

54. The Travelers 2005 Agreement resulted in Hopeman's release of two Travelers insurance policies, articulated the manner in which additional Travelers policies would respond to asbestos claims when ripe, and imposed an uncapped obligation on Hopeman to indemnify Travelers if claims were later brought against Travelers under any of the released policies subject to the agreement.[80] If the Travelers 2005 Agreement were to be assumed in bankruptcy as an executory contract, the unsecured indemnification obligations could potentially dilute the recoveries of other unsecured creditors or exhaust the finite cash resources that would be available post-reorganization. Moreover, Travelers is not currently providing any ongoing coverage under

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78 Travelers Obj. at ¶ 20.

79 *See* Plan, § 1.51 ("Designated Insurance Agreement" means any prepetition settlement agreement or any prepetition coverage-in-place agreement (including any related indemnity obligations thereunder) between Hopeman and one or more Asbestos Insurers (a) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds or (b) as to, or on account of, which the Debtor did not receive any payment of insurance proceeds within the period of one year immediately preceding the Petition Date. For the avoidance of doubt, the term "Designated Insurance Agreement" (i) includes the Travelers 2005 Agreement, but (ii) does not include the Wellington Agreement. This defined term, or a substantially similar term, will be included in the Modifications.).

80 *See* Combined Hr'g Tr. Day 1 at 141:9-142:7.

the Travelers 2005 Agreement, and there otherwise would be no benefit to the Hopeman bankruptcy estate by assuming it. Hopeman, accordingly, determined in its good faith business judgment that there was no sound business reason to burden the Reorganized Debtor or Asbestos Trust with that prepetition agreement.[81] Therefore, the Plan expressly provides that "while the Plan Proponents do not believe that any such agreements constitute Executory Contracts, Hopeman is not assuming any Designated Insurance Agreement."[82] In other words, if a Designated Insurance Agreement is an Executory Contract, it is being rejected, not assumed.

55. Despite the Plan making perfectly clear the treatment of the Travelers 2005 Agreement, Travelers argues that principles of "insurance neutrality," as articulated in the recent *AIO* decision in Delaware, require that the Travelers 2005 Agreement—including its putative rights thereunder to receive unlimited indemnification from Hopeman—be treated as if it were an assumed Executory Contract or otherwise not discharged or impaired by the Plan.[83] Travelers' argument is simply wrong.

56. In addressing insurance neutrality, the *AIO* court was referring to the *debtors' coverage rights* under applicable insurance policies. The holding of the case is that the debtor's coverage rights should be no greater or lesser in bankruptcy than they were before bankruptcy.[84] Here, by contrast, Travelers is focused on *its* rights under the Travelers 2005 Agreement, particularly its putative rights to receive unlimited indemnification from Hopeman, as a potential

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81 *See* Combined Hr'g Tr. Day 2 at 176:16-177:6.

82 Plan, § 6.2.

83 Travelers Obj. at ¶ 26 (citing *In re AIO US, Inc.*, 2025 WL 2426380 (Bankr. D. Del. Aug. 21, 2025).

84 *See AIO US*, 2025 WL 2426380, at *15 (stating that a debtor's property rights, "including insurance policies," that are brought into the bankruptcy "are defined by non-bankruptcy law" and that, "unless there is some bankruptcy-related reason that requires otherwise, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding") (footnotes and internal quotation marks omitted).

creditor of Hopeman. And, as a potential creditor of Hopeman, Travelers is subject to the same Bankruptcy Code provisions as Hopeman's other creditors, allowing for discretionary provisions in a plan such as rejection of Executory Contracts, impairment of Claims under the Plan, and the discharge of Claims under Chapter 11.[85] Travelers' appeals to a need for "insurance neutrality" do not exempt it from those provisions.[86]

57. Indeed, contrary to what Travelers suggests, "insurance neutrality" does not mean "insurer advantage," even under the *AIO* decision. The Plan appropriately can address claims in accordance with the bankruptcy tools available to any debtor in a Chapter 11 case. Nothing about the treatment of the Travelers 2005 Agreement expands Hopeman's rights under the agreement or violates any Bankruptcy Code provision in not prioritizing any potential Travelers indemnity claim over other unsecured claims.[87] Accordingly, Travelers' objection regarding insurance neutrality should be overruled.

(v) <u>The Plan Does Not Impair Non-Settling Asbestos Insurers' Rights to Information</u>

58. Travelers also contends the Plan is not confirmable because it allegedly will impair Travelers' rights to information under its policies.[88] This argument also is without merit.

59. The Plan does not extinguish the Debtor's obligations under the Asbestos Insurance Policies to provide Travelers or other insurers with information required to be shared. Instead, the Plan expressly preserves those obligations to be owed by the Reorganized Hopeman as the

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85 *See* 11 U.S.C. §§ 365(a), 1123(a)(3), & 1141(d).

86 While the Plan Proponents have chosen to propose a Plan that is insurance neutral, nothing in the Bankruptcy Code requires a plan to be insurance neutral for it to be confirmed. *In re Boy Scouts of Am. and Del. BSA, LLC*, 650 B.R. 87, 189 (D. Del. 2023), *aff'd in part, rev'd in part, dismissed in part*, 137 F.4th 126 (3d Cir. 2025).

87 Travelers has not filed a proof of claim in Hopeman's bankruptcy and has not otherwise asserted it currently has any claim for breach of the Travelers 2005 Agreement.

88 Travelers Obj. at ¶ 32.

"Asbestos Insurance Cooperation Obligations."[89] The Plan also preserves any coverage defenses that the Non-Settling Asbestos Insurers may have, including any defenses to coverage that might arise from a possible future failure to comply with conditions precedent to coverage.[90]

60. Travelers similarly objects that section 6.5 of the Asbestos Trust Distribution Procedures "imposes improper impediments to the honoring Hopeman's obligations under insurance policies and agreements that are part of the Asbestos Insurance Rights, including the Travelers Policies."[91] In particular, Travelers argues that section 6.5 improperly purports to authorize the Asbestos Trust's noncompliance with obligations under Hopeman's insurance policies and settlement agreements to the extent the TAC or FCR does not consent to the Trust's compliance with those obligations.[92] Travelers is wrong for at least three reasons.

61. First, as explained above, Reorganized Hopeman is obligated under the Plan to continue to comply with its obligations under insurance policies and preserve any coverage defenses. To provide further protection to Non-Settling Asbestos Insurers, given the transfer of the Asbestos Insurance Rights to the Asbestos Trust, section 8.18 of the Plan expressly provides that "notwithstanding that the Asbestos Insurance Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust, the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies shall be subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized

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89 *See* Plan, § 1.10 ("Asbestos Insurance Cooperation Obligations" means, collectively, the assistance and cooperation, inspection and audit, and notice of occurrence provisions set forth in the Asbestos Insurance Policies, Asbestos CIP Agreements, and any other provisions purporting to require the cooperation of the insured party.").

90 *See id.*, § 8.18 (providing, inter alia, that the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies are subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations).

91 Travelers Obj. at ¶ 36.

92 *Id.*

Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations." In other words, if actions by Reorganized Hopeman impair a Non-Settling Asbestos Insurer's rights under its policies, then Travelers, like every other Non-Settling Asbestos Insurer, also may assert applicable coverage defenses and seek to deny coverage on account of such failures against the Asbestos Trust.

62. Second, Travelers also omits the purpose of section 6.5, which is readily apparent from the title of this section, "Confidentiality of Claimants' Submissions."[93] This provision simply is a mechanism to protect the interests of Channeled Asbestos Claimants. As explained above, while the Trustees must, in certain instances, consult with the TAC and the FCR, the Asbestos Trust Agreement only requires the Trustees to obtain TAC consent on items necessary to protect the divergent interests of their constituencies.[94] In these limited instances where consent is required, the TAC and the FCR must consider such a request "in good faith and in a timely fashion" and are prohibited from unreasonably withholding consent.[95] This does not create a conflict, it creates rights in favor of each of these fiduciaries to serve their respective constituencies while also protecting the interests of Channeled Asbestos Claimants (to protect confidential submissions) and also Non-Settling Asbestos Insurers (to ensure compliance with obligations under policies and preserve all defenses in the event of non-compliance).

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93 Trust Distribution Procedures, § 6.5.

94 *See* Asbestos Trust Agreement, § 2.2(f) (required to obtain the consent of the TAC and Future Claimants Representative to, among other things, if required to disclose information pursuant to section 6.5 of the Trust Distribution Procedures).

95 *See* Asbestos Trust Agreement, §§ 5.7(a), 5.7(b), 6.6(a) and 6.6(b) (setting forth the process for consultation with and obtaining consent of the TAC and the FCR, respectfully). Furthermore, if either the TAC or the FCR decide to withhold consent, they are required to "explain in detail its objections to the proposed action." Id. §§ 5.7(b)(ii), 6.6(b)(ii). In the event of a dispute between the Trustees, the TAC, and the FCR, the Asbestos Trust Agreement sets forth an appropriate procedure for ensuring such conflicts are resolved with the oversight of an impartial decisionmaker while preserving the parties' rights to seek review of such third-party decisionmaker's decision with the Bankruptcy Court *de novo*. *Id.* § 7.13.

63. Third, section 6.5 of the Trust Distribution Procedures contemplates "submissions to the Asbestos Trust ..., including a claim form and materials related thereto," being "treated as made in the course of settlement discussions between the holder and the Asbestos Trust ...." These submissions would only be used for "settlement discussions" regarding Uninsured Asbestos Claims. In contrast, Channeled Asbestos Claimants who initiate, commence, continue, or prosecute an action seeking to obtain the benefit of Asbestos Insurance Coverage, *i.e.*, an Insured Asbestos Claim, would serve that action on the Asbestos Trust, which, in turn, would notify the Non-Settling Asbestos Insurers of the action and thus give them the opportunity to defend.[96] Such a complaint would not be a confidential submission "in the course of settlement discussions" with the Asbestos Trust contemplated by section 6.5 of the Trust Distribution Procedures. Travelers provides no justification why Non-Settling Asbestos Insurers would need access to these documents relating to Uninsured Asbestos Claims.

(vi) <u>The Plan Does Not Purport to Assign Rights Hopeman Does Not Own</u>

64. In another discretionary provision, section 8.3(b) of the Plan, the Plan Proponents contemplate that Hopeman will transfer to the Asbestos Trust whatever Asbestos Insurance Rights Hopeman owns. Both Liberty Mutual and Travelers incorrectly assert that the Bankruptcy Court recommends allowing Hopeman, through the Plan, to assign to the Asbestos Trust insurance rights Hopeman no longer owns.[97] Those objections mischaracterize the Plan and the Bankruptcy Court's Proposed Findings.

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[96] Plan §§ 1.77, 8.12(a)-(b).

[97] Liberty Mutual argues that this would violate §1123(a)(5)(B), which would mean that the Plan would not comply with all other applicable provisions of the Bankruptcy Code as required by §1129(a)(1). Liberty Obj. at ¶¶ 27-32.

65. With respect to Liberty Mutual's objection on this issue, there is no dispute that Hopeman settled with Liberty Mutual and sold back its Liberty Mutual policies through the 2003 Agreements. The Bankruptcy Court found that the Plan Proponents unequivocally have acknowledged that Hopeman released its rights under policies issued by Liberty Mutual.[98] As the Bankruptcy Court explained, the assignment provision in the Plan will not convey rights Hopeman does not have.[99]

66. Under Liberty Mutual's own argument, nothing was left to be transferred by Hopeman with respect to Liberty Mutual's settled policies.[100] If the estate does not own anything, nothing is being transferred under section 8.3(b).

67. Nor did the Bankruptcy Court fail to rule on Liberty Mutual's objection on the assignment provision, as Liberty Mutual argues.[101] The Bankruptcy Court found that Liberty Mutual lacked standing but also overruled Liberty Mutual's objection on the assignment provision, finding that the Plan is not transferring any rights Hopeman does not own.[102] The Bankruptcy Court, however, appropriately declined to rule on a different issue, an insurance coverage issue, relating to the effect of the 2003 Agreements on the direct action lawsuits (or any other asbestos-related lawsuits by an asbestos claimant) against Liberty Mutual, leaving those decisions to the various courts handling those claims.[103]

68. Liberty Mutual's real complaint is that the Plan does not state what Liberty Mutual would like it to state, which is that asbestos claimants who assert claims against Liberty Mutual

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98 Proposed Findings at 19.

99 *Id*. at 50

100 Liberty Obj. at ¶ 28.

101 *Id*. at ¶ 32.

102 Proposed Findings at 50.

103 *Id*. at 50 & 55.

cannot sue Liberty Mutual as a result of the 2003 Agreements.[104] To the contrary, the Plan and Disclosure Statement make clear that nothing in the Plan modifies whatever rights those claimants may have against Liberty Mutual, or the defenses Liberty Mutual may have against those claims.[105] The Bankruptcy Court had no need to determine Liberty Mutual's coverage defenses in order to recommend confirmation of the Plan since whatever defenses Liberty Mutual had are unaltered by the Plan.[106]

69. Travelers lodges a similar complaint that the Plan seeks to transfer property to the Asbestos Trust that is not property of the Estate.[107] Specifically, Travelers complains because Hopeman indisputably has no remaining rights under the Travelers 2005 Agreement Asbestos Insurance Policies and waived certain Extracontractual Claims against Travelers under the Wellington Agreement.[108] Accordingly, like Liberty Mutual does with its policies, Travelers demands that the Plan be modified to clarify that the Asbestos Insurance Rights being assigned through the Plan do not include (i) the Travelers 2005 Agreement Asbestos Insurance Policies, and (ii) Extracontractual Claims that have been released or waived by Hopeman.[109]

70. Travelers' objection on the assignment issue also lacks merit. Hopeman does not dispute that the Travelers 2005 Agreement Asbestos Insurance Policies paid their limits and were

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[104] Liberty commenced an adversary proceeding seeking declaratory relief regarding its alleged lack of any liability on the Hopeman policies following the 2003 Agreements. The Bankruptcy Court recently recommended abstention or dismissal of that adversary proceeding. *See Liberty Mutual Ins. Co. v. Hopeman Bros., Inc.*, Adv. Pro No. 25-03020-KLP, Doc. 101 (Dec. 4, 2025).

[105] Plan § 6.2; Disclosure Statement at Art. IV.F.

[106] The Bankruptcy Court also examined and determined that the Plan and/or the Plan Proponents satisfied every requirement for confirmation under §1129 of the Bankruptcy Code. It did not "delegate" or defer the determination of any such Bankruptcy Code requirements for confirmation to other courts.

[107] Travelers Obj. at ¶ 62

[108] *Id.* at ¶ 64 (citations omitted).

[109] *Id.* at ¶ 72.

released under the Travelers 2005 Agreement and that Hopeman waived certain Extracontractual Claims against Travelers under the Wellington Agreement. Mr. Lascell testified that the Plan only purports to transfer rights, if any, under policies that are held by Hopeman,[110] and the Plan Proponents also agree that case law is plain the Debtor cannot transfer what it does not have.[111]

71. The Plan Proponents also submit that the Bankruptcy Court correctly rejected the contention by the Insurers that the Plan needs to more explicitly clarify the extent of the Debtor's Asbestos Insurance Rights.[112] The District Court should reach the same conclusion. In a recent opinion, the Third Circuit similarly rejected the efforts of certain insurers to amend the language of a confirmable plan "to determine the extent to which the Certain Insurers' rights and defenses are preserved."[113] The court found, *inter alia*, the following plan language sufficient: "The rights and obligations, if any, of any Non-Settling Insurance Company relating to these [trust distribution procedures], or any provision hereof, shall be determined pursuant to the terms and provisions of the Insurance Policies and applicable law."[114] Accordingly, the Third Circuit "decline[d] to rewrite the Plan and fasten suspenders to this already well-secured belt."[115] So too, here, no further language is needed to clarify the status of Hopeman's rights vis-à-vis Travelers or any of the other Insurers.

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[110] Combined Hr'g Tr. Day 1 at 76:10-25.

[111] *See In re Boy Scouts of Am.*, 137 F.4th 126, 164-65 (3d Cir. 2025) ("[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.").

[112] Travelers Obj. at ¶ 68 (noting that Bankruptcy Court did not expressly address this objection from Travelers in the Proposed Findings, but noted a similar objection raised by Liberty Mutual and decided not to require any modifications to the Plan).

[113] *Boy Scouts of Am.*, 137 F.4th at 165.

[114] *Id.*

[115] *Id.* at 166.

72. 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 Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute not through the Plan.

(vii) Travelers is Not Entitled to Adequate Protection in the Cash to be Transferred to the Asbestos Trust under the Plan, and the Judgment Reduction Provisions in the Plan Are Permissible

73. Travelers argues that the Bankruptcy Court erred in recommending confirmation of the Plan because the Plan provides for the transfer of, among other things, the proceeds of the Certain Settling Insurers Agreement to the Asbestos Trust "free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any kind."[116] Travelers asserts an interest in the proceeds of the Certain Settling Insurer Agreement because the CI Settlement Order[117] channeled all "Asbestos Claims"[118] to the proceeds of the Certain Settling Insurer Agreement.[119] Travelers then argues that because section 8.3 of the Plan provides for the transfer of the Asbestos Trust Assets (which include the proceeds of the Certain Settling Insurer Agreement) to the Asbestos Trust "free and clear of all Claims, Demands, Equity Interests, Encumbrances, and other interests of any Entity" that Travelers' interest in the proceeds of the Certain Settling Insurer

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116 Travelers Obj. at ¶ 55 (quoting Plan, § 8.3) (internal quotation marks omitted).

117 *Order (I) Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief* [Docket No. 442] (the "CI Settlement Order").

118 Under the CI Settlement Order, the term "Asbestos Claims" includes, among other things, "any Claims against Hopeman Persons or for which Hopeman Persons are alleged to be liable … that relates to, arises out of, or is caused in whole or in part by, in any manner or fashion, asbestos, asbestos-containing products, or material, activities involving asbestos containing materials, in whole or in part … [and the term] 'Asbestos Claim' includes Claims for contribution, indemnity, reimbursement, or otherwise arising from the foregoing." Certain Settling Insurers Agreement, § 1.3; CI Settlement Order, p. 1, n.1 (incorporating defined terms from, among other documents, the Certain Settling Insurer Agreement).

119 CI Settlement Order, ¶ 14; Travelers Obj. at ¶ 54.

Agreement would be impermissibly extinguished without the adequate protection required under section 363(e) of the Bankruptcy Code.[120]

74. Travelers' argument is incorrect for several reasons. First, Travelers incorrectly presupposes an entitlement to adequate protection. Travelers did not file a proof of claim in Hopeman's bankruptcy by the bar date for such claims and has not had a claim allowed in the case. Any such claim would, at best, be a contingent, unsecured claim. Even if Travelers could establish that it had a claim, as a mere unsecured creditor Travelers would have no entitlement to adequate protection.[121]

75. Second, the Asbestos Trust Assets are not being sold to the Asbestos Trust pursuant to section 363(f), they are being transferred free and clear to the Asbestos Trust pursuant to sections 1123(a)(5)(B) and 1141(c) of the Bankruptcy Code. In analyzing section 1123(a)(5)'s scope, the Fourth Circuit has recognized that it is an empowering statute that allows a trustee or Chapter 11 debtor in possession to transfer property of the estate as adequate means to implement a plan.[122] Section 1123(a)(5) does not expressly require adequate protection as does section 363(e), a mere "enabling" statute. Thus, the adequate protection provision Travelers relies upon simply does not apply in this context.

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[120] Travelers Obj. at ¶56.

[121] *See In re SunEdison, Inc.*, 562 B.R. 243, 252 (Bankr. S.D.N.Y. 2017) ("Unsecured creditors … do not have an interest in property of the estate that merits adequate protection, and there is no express statutory requirement that unsecured creditors receive adequate protection.").

Even if Travelers tried to assert a claim against Hopeman or its settlement proceeds, such a claim would be a claim for reimbursement or contribution that currently is contingent. Accordingly, its claim would be disallowed under section 502(e)(1)(B) of the Bankruptcy Code, which provides that "the court shall disallow any claim for reimbursement of contribution of any entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that – (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim …."

[122] *Universal Coop., Inc. v. FCX, Inc. (In re FCX, Inc.)*, 853 F.2d 1149, 1155 (4th Cir. 1988) (emphases added) (quoting 5 COLLIER ON BANKRUPTCY ¶ 1123.01, at 1123-10).

76. Finally, the judgment reduction provision in the Plan adequately compensates Travelers for any claim it arguably may have had against the proceeds of the Certain Settling Insurers Settlement. Despite Travelers' assertion to the contrary, the judgment reduction provision in the Plan contained in section 8.13(c)(i) protects Travelers from the loss of any contribution rights arising from the Certain Settling Insurers Settlement. Section 8.13(c)(i) provides**:**

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

77. The Certain Settling Insurers are "Settled Asbestos Insurers" under the Plan. While the Certain Settling Insurers Settlement was approved prior to confirmation of the Plan, the Certain Settling Insurers are within the protection of the Asbestos Permanent Channeling Injunction in section 10.3 of the Plan as a "Protected Party," as defined in section 1.95 of the Plan. Accordingly, Travelers will have the benefit of the judgment reduction provision in section 8.13(c)(i) should it have liability to a Channeled Asbestos Claimant. Travelers thus loses nothing by the transfer of the settlement proceeds.

78. Travelers next asserts that the judgment reduction provided by the Plan is too narrow because it is limited to "contribution rights" and would not compensate Travelers in the event it resolves a Channeled Asbestos Claim through settlement.[123] Travelers has not articulated how it would have any other rights against a Settled Asbestos Insurer that is lost through settlement

[123] Travelers Plan Obj. at ¶ 53.

with the Debtor. In addition, if Travelers elects to settle a Channeled Asbestos Claim, that will be its choice.

79. In addition, Travelers' assertions that the judgment reduction provision is not as broad as it would like because the provision is limited to contribution is of no moment, because Travelers lacks an entitlement to even the judgment reduction provided (much less more). The Plan Proponents have not proposed a provision that violates the Bankruptcy Code, and Travelers does not have a right to dictate provisions it would want to include if it were drafting the Plan.

80. Accordingly, the Court should overrule Travelers' objection on these issues.

(viii) <u>The Plan Is Not Vague or Uncertain Regarding the Determination of Uninsured Asbestos Claims and Does Not Increase Burdens on Insurers</u>

81. Travelers argues that the Bankruptcy Court erred by failing to "rule in favor of (or even address)" its objection that the Plan is impermissibly vague and uncertain regarding the determination of Uninsured Asbestos Claims.[124] This argument is wholly without merit. There is nothing vague or unambiguous about how to determine whether a claim is an Uninsured Asbestos Claims under the Plan.

82. The Plan clearly defines an "Uninsured Asbestos Claim" to mean "a Channeled Asbestos Claim (a) with a date of first exposure to asbestos or asbestos products or things falling after January 1, 1985, or (b) for which no coverage under any Asbestos Insurance Policy is available due to settlement (including an Asbestos Insurance Settlement), exhaustion, or a final and non-appealable ruling on a coverage issue or defense."[125]

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[124] Travelers Obj. at ¶ 73.

[125] Plan, § 1.114. This same definition is included in the Trust Distribution Procedures. *See* Trust Distribution Procedures, § 2.1 n.2.

83. Furthermore, section 8.16 of the Plan further provides, among other things, the following clear language regarding when a Channeled Asbestos Claim shall become an Uninsured Asbestos Claim:

> [a] Channeled Asbestos Claim shall become an Uninsured Asbestos Claim when (i) the Asbestos Trust has settled, in accordance with an Asbestos Insurance Settlement, all rights to the Asbestos Insurance Coverage applicable to the Channeled Asbestos Claim, or (ii) any Asbestos Insurance Coverage that otherwise may be applicable to such Channeled Asbestos Claim becomes unavailable due to exhaustion of the relevant Asbestos Insurance Coverage or due to Final Order ruling on a coverage issue or defense, in which event such Channeled Asbestos Claimant may seek payment or distribution on account of his Channeled Asbestos Claim from the Asbestos Trust in accordance with the Asbestos Trust Distribution Procedures.[126]

There is nothing remotely vague or ambiguous about either the definition of an Uninsured Asbestos Claim or how to determine when a Channeled Asbestos Claim shall become an Uninsured Asbestos Claim.

84. Furthermore, while the evidence presented at the Combined Hearing is that Hopeman is not currently aware of *any* Uninsured Asbestos Claims,[127] the Plan Proponents submit that the Plan wisely includes a number of provisions specifically addressing Uninsured Asbestos Claims to the extent such claims later arise, such as section 8.16 of the Plan cited above. The reason it does so is easily explained. Because the Plan expressly provides for the ability of the Asbestos Trust to enter into future Asbestos Insurance Settlements[128] and the applicable limits of the Debtor's Asbestos Insurance Policies may be subject to erosion, it was essential, particularly given the lengthy lifespan of asbestos trusts, that the Plan address the possibility that Uninsured

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126 Plan, § 8.16.

127 Combined Hr'g Tr. Day 1 at 137:8-138:2.

128 Plan, § 8.17.

Asbestos Claims either now or may one day exist. It is also possible that there will be Uninsured Asbestos Claims in the future even without future Asbestos Insurance Settlements, and the Plan accordingly includes as part of the procedures applicable to all Class 4 Channeled Claims, a process to address such Uninsured Claims.[129]

85. Finally, there is nothing wrong with the current structure of the Plan, which allows holders of Channeled Asbestos Claims who have Insured Asbestos Claims to pursue those claims against Non-Settling Asbestos Insurers while holders of any Uninsured Asbestos Claims, if any arise, proceed against the Asbestos Trust. In fact, this is the same structure as in the Kaiser Gypsum section 524(g) plan that was recently affirmed by the Fourth Circuit.[130] The fact that Travelers would like to re-write the Plan to establish different rules for how an Insured Asbestos Claim can become an Uninsured Asbestos Claim is not an appropriate objection to the Plan. The Plan itself is clear on how Channeled Asbestos Claims can pursue those claims, and none of the provisions of the Plan or the Asbestos Trust Distribution Procedures are prohibited by the Bankruptcy Code even if Travelers would prefer that the provisions were written differently. Accordingly, the District Court should overrule Traveler's vagueness objection.

(ix) The Plan Does Not Improperly Limit Valid Subpoenas

86. Travelers contends that the Plan improperly purports to limit valid subpoenas. Specifically, Travelers points to Section 6.5 of the Asbestos Trust Distribution Procedures to claim that "the TDPs purport to authorize the Asbestos Trust to withhold information responsive to a

[129] Id., §§ 1.114, 8.13(c)(iv) & 8.16.

[130] *In re Kaiser Gypsum Co., Inc.*, 135 F.4th 185, 190-91 (4th Cir. 2025) ("A key feature of the Plan relates to its separate treatment of insured and uninsured asbestos personal injury claims. The Plan provides that holders of insured asbestos personal injury claims—i.e., claims that fall within the scope of the Truck policy—would continue to assert actions against the reorganized Debtors, in name only, in the tort system. … Holders of uninsured asbestos personal injury claims—i.e., claims that fall outside the scope of the Truck policy—would submit their claims directly to the Trust for resolution through an administrative process.").

valid subpoena so long as the subpoena is issued by a court other than three courts specified in Section 6.5 of the TDPs . . . the Bankruptcy Court, a Delaware State Court, or the United States District Court for the District Court of Delaware."[131]

87. Travelers overstates the reach and purpose of section 6.5, which is apparent from the title of this section, "Confidentiality of Claimants' Submissions."[132] This provision is a mechanism intended to protect the confidential nature of information to be supplied by the beneficiaries of the Asbestos Trust, the Channeled Asbestos Claimants, to the Asbestos Trust as part of their claim submissions. The information to be submitted, such as medical and other personal information, will be part of confidential settlement discussions entitled to be protected as such. Limiting the means by which others can force the Asbestos Trust to reveal the claimants' confidential information (without their consent) makes perfect sense.

88. The limitations themselves also are logical. The Asbestos Trust is to be a Delaware Trust established pursuant to an Order of the Bankruptcy Court. The Asbestos Trust should be protected from having to spend its limited resources addressing subpoenas issued from any court or regulatory agency in the world outside of Delaware, under whose laws the Asbestos Trust will be formed, or the Bankruptcy Court.

89. There also is nothing remotely prejudicial to Travelers about this provision. The protections only concern confidential information of Channeled Asbestos Claims and subpoenas served on the Asbestos Trust. Nothing about the provision alters whatever rights Travelers or other parties may have to subpoena information directly from holders of Channeled Asbestos Claims, or from others, in any court that has jurisdiction to issue such a subpoena.

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[131] Travelers Obj. at ¶ 100.

[132] Asbestos Trust Distribution Procedures, § 6.5.

90. Moreover, as set forth above, Reorganized Hopeman has the duty to comply with the Asbestos Insurance Cooperation Obligations under the Asbestos Insurance Coverage, and the failure to uphold these obligations could jeopardize the Asbestos Trust's coverage rights. The Plan expressly provides that Travelers, like every other Non-Settling Asbestos Insurer, may assert applicable coverage defenses in an attempt to deny coverage on account of any such alleged failures, so there are other means for Travelers to acquire information, if it truly needs it for defense of a claim, from sources other than the Asbestos Trust.[133]

(x) The Plan Was Proposed in Good Faith in Satisfaction of Section 1129(a)(3) of the Bankruptcy Code

91. Section 1129(a)(3) conditions confirmation of a plan on, among other things, a showing that "[t]he plan has been proposed in good faith and not by any means forbidden by law."[134] A number of the Circuit Courts of Appeal have held that "a plan is proposed in good faith where it 'fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code.'"[135] "The two recognized objectives of the Code, in turn, are preserving going concerns and maximizing property available to satisfy creditors."[136] While compliance with the objectives of the Bankruptcy Code, standing alone, may not "conclusively establish[] good faith, we agree it provides strong evidence of the standard being met."[137] Finally, "in determining whether a plan is consistent with these objectives and purposes, courts must consider the totality of the circumstances."[138]

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133 *See id.*, § 8.18.

134 11 U.S.C. § 1129(a)(3).

135 *In re Kaiser Gypsum Co.*, 135 F.4th at 193 (internal citations omitted).

136 *Id.* at 194 (internal citations and quotation marks omitted).

137 *Id.*

138 *Id.* (internal citations omitted).

92. The Bankruptcy Court correctly concluded that the Plan was proposed in good faith in satisfaction of section 1129(a)(3), as evidenced by: (i) the arms'-length negotiations pursuant to which the terms of the Plan were agreed upon as between the Plan Proponents; (ii) evidence, including the Liquidation Analysis, demonstrating that the Plan serves valid bankruptcy objectives by maximizing the value of the Debtor's assets for the benefit of its creditors; (iii) unrefuted testimony demonstrating that the Plan satisfied the Debtor's goals in the bankruptcy, namely "to provide a fair process for addressing unresolved Asbestos Claims, and to provide a means to try to maximize the return for creditors while also allowing the current owners of Hopeman to step aside and transfer the responsibilities to Trust fiduciaries"; (iv) overwhelming creditor support (as evidenced by, among other things, acceptance of the Plan by over 99% of the Channeled Asbestos Claims entitled to vote on the Plan); and (v) the Debtor's efforts, and success, in engaging with and reaching settlements and other resolutions with various parties in interest throughout this Chapter 11 Case.[139]

93. Chubb and Liberty Mutual argue that the Bankruptcy Court erred in finding that the Plan was proposed in good faith. They contest the Bankruptcy Court's holding on, essentially, two grounds: (i) they claim that the Bankruptcy Court lacked evidence to make that determination because, according to Chubb and Liberty Mutual, the only evidence adduced in support of a good-faith finding was conclusory testimony; and (ii) that the Bankruptcy Court erred in purportedly permitting the Plan Proponents to use the mediation as both a shield and a sword, by shielding communications from the mediation from disclosure while simultaneously citing to the mediation process as a basis for good faith.[140] Chubb and Liberty Mutual are both wrong on both counts.

[139] Proposed Findings at 59-62.

[140] Liberty Obj. at ¶ 34-36; Chubb Obj. at ¶ 49-63.

a. Ample Evidence Supports the Bankruptcy Court's Holding That the Plan Was Proposed in Good Faith

94. Notwithstanding the assertions of Chubb and Liberty Mutual, the record is replete with evidence supporting the Bankruptcy Court's holding that the Plan was proposed in good faith in satisfaction of section 1129(a)(3). First, the Bankruptcy Court found significant evidence of good faith through the unrefuted testimony of Christopher Lascell, Hopeman's president, including:

- the Debtor filed for bankruptcy due to dwindling liquidity and a desire to establish a process due to a belief that the bankruptcy filing was in the best interest of the Debtor's creditors because it would enable the Debtor to establish a process that would maintain the Asbestos Insurance Coverage to address the Debtor's asbestos-related liabilities. *See* Combined Hr'g Tr. Day 1 at 20:18 - 21:5;

- the Debtor engaged with certain parties in interest, including Chubb, both prior to and after the Petition Date, and reached resolutions with such parties in interest, including the prepetition settlement reached with Chubb. *Id.* at 21:6 – 23:4;

- with respect to the Mediation, (i) the Debtor's purpose was to seek a consensual resolution of objections raised to the Debtor's motion to seek approval of the prepetition Chubb settlement (*Id.* at 23:9-15), (ii) the Mediator was appointed, the Mediation occurred, and the Mediation began in January and continued into March 2025 (*Id.* at 23:16 – 24:1), (iii) the parties that participated in the Mediation were not limited to the Debtor and the Committee (*Id.* at 24:1-4), (iv) and that a settlement was reached between the Debtor, the Committee, and HII but not Chubb (*Id.* at 24:5-8);

- the terms of the settlement reached between the Debtor, the Committee, and HII at the mediation, their subsequent disclosure, and that the Plan is consistent with the terms of the settlement reached. *Id.* at 24:9 – 25:24;

- with respect to the Plan and the settlement reached at the Mediation, (i) the terms of both the settlement and the Plan were negotiated at arm's-length, (ii) were not the product of collusion, (iii) the Committee did not exercise undue influence in settlement negotiations, (iv) negotiations regarding the Plan were conducted by and with the Mediator and that the Mediation, and the Mediator's involvement, ended after the settlement was reached. *Id.* at 29:23 – 31:11;

- the dynamic between the Debtor and the Committee prior to reaching the settlement at Mediation, that the Debtor and the Committee reached an agreement by, in terms of mechanics, conversing in an effort to find common

ground in the Mediation (but not any statements or communications made as part of negotiations or otherwise at the Mediation), and that the Debtor believed the parties had reached common ground and that such common ground would be supported by the Debtor's creditors. *Id.* at 31:12 – 34:11; and

- the Debtor and the Committee, as the joint proponents of the Plan, continued to work collaboratively on the Plan following the conclusion of the Mediation, that the Debtor's representatives primarily relied on its advisors to negotiate the terms and open issues of the Plan with the Committee's advisors while remaining informed of developments in the process and attending presentations and meetings on issues as recommended by the Debtor's advisors. *Id.* at 120:14 – 122:15.

Similarly, the unrefuted testimony of Ronald Vann Epps, managing director at the Debtor's financial advisor, Stout, established:

- With the exception of a small number of claims that had been settled some twenty-years prior to the Combined Hearing, the Debtor was not aware of, and had never identified, a pending, unresolved asbestos-related claim pertaining to a period in time during which the Debtor did not have asbestos liability coverage. *Id.* at 137:8 – 138:5.

- That the Debtor hoped to reach a consensual resolution of the pending motion to approve the prepetition Chubb settlement at the mediation, but no such resolution was reached with Chubb, although resolutions were reached with the Committee that were evidenced in a 524(g) settlement term sheet. *Id.* at 138:14 – 139:13;

- The Debtor pivoted away from the original plan of liquidation because of the widespread and unexpected creditor opposition to such plan, and the Debtor's inability to sustain the cost of continued pursuit of such a contested plan. *Id.* at 145:8 -146:7.

- The Debtor's belief that the Plan is the best available option, given the widespread opposition to the original plan of liquidation which the Debtor could not feasibly pursue given its limited liquidity and the significant cost of continued pursuit of such plan, and that the Debtor believes the plan provides the best chance to maintain the Debtor's Asbestos Insurance Policies in a manner that permits the Channeled Asbestos Claimants (the individuals affected by the asbestos-products such insurance policies cover) the opportunity to pursue such coverage. *Id.*

95. As the testimony above demonstrates, the Bankruptcy Court's holding that the Plan Proponents proposed the Plan in good faith thereby satisfied section 1129(a)(3) is grounded in

robust evidentiary support. The objections of Chubb and Liberty Mutual are thus contrary to the abundant evidence of good faith and should be overruled.

b. The Plan Proponents Did Not Violate the Sword-Shield Principle as to the Mediation Communications

96. Both Chubb and Liberty Mutual argue that the Bankruptcy Court's holding that the Plan was proposed in good faith cannot stand because according to them, the only evidence supporting the ruling stems from the Mediation which the sword-shield rule prohibits the Plan Proponents from using because of the Debtor's invocation of the Mediation Order to "claw back" mediation materials that had been produced.[141] As set forth above, Chubb and Liberty Mutual are simply incorrect that the Bankruptcy Court lacked evidence of the Plan Proponents' good faith beyond the occurrence of the Mediation. Ample evidence, separate and apart from the Mediation itself, supports the Plan Proponents' good faith, and, by extension, the Bankruptcy Court's ruling.

97. The arguments of Chubb and Liberty Mutual also fail for two additional reasons: (i) the Plan Proponents did ***not*** improperly offer evidence protected by the Mediation Order; and (ii) Chubb and Liberty Mutual improperly characterize the relevance of the Mediation to the Plan Proponents' arguments. The Plan Proponents have not, as Chubb and Liberty Mutual suggest, argued that the negotiation of the Plan under the supervision of the Mediator requires a *per se* good-faith finding. Instead, the Plan Proponents' references to the Mediation have been in response to the Objecting Insurers' entirely unsupported assertion that the Plan is the product of collusion between the Plan Proponents, which is fanciful given that the settlement that formed the basis of the Plan ultimately proposed by the Plan Proponents was reached during the judicially-supervised Mediation.

[141] *Order Authorizing Mediation of Chubb Insurers Settlement Motions* [Docket No. 433] (the "Mediation Order").

98. The Mediation Order provides the following regarding the material it protects and the extent of such protections:

> A communication of any type, whether oral or written, made or provided in connection with the Mediation, including, without limitation, statements, reports, admissions, or proposals given by the Mediator to any Party (the "Mediation Communications"), may not be used by any Party for any purpose, including impeachment, in any arbitral, judicial or other proceeding, including this chapter 11 case (each a "Proceeding") and may not be disclosed to any non-Party to the Mediation, including this Court. The Mediation Communications shall be confidential, shall not be subject to discovery, shall be inadmissible in any Proceeding, and shall also be subject to protection under Rule 408 of the Federal Rules of Evidence, Local Bankruptcy Rule 9019-1(J), and any equivalent comparable state law.[142]

Against this backdrop, Chubb first claims that, in violation of the Mediation Order, the Debtor sought to introduce evidence of mediation-related discussions and documents, which the Bankruptcy Court erroneously admitted over its objection.[143] Chubb also notes that Liberty Mutual, similarly, objected to the Plan Proponents' reliance on mediation-related evidence to support a good-faith finding while simultaneously withholding discovery relating thereto.[144]

99. A review of the exchanges of which Chubb complains demonstrates the inaccuracy of its assertions. *See* Combined Hr'g Tr. Day 1 at 29:25 – 34:2.[145]

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[142] Mediation Order at ¶ 8.

[143] Chubb Obj. at ¶ 51.

[144] *Id.*

[145] **Q [Mr. Brown, Counsel to the Debtor]:** Was the plan and the underlying settlement negotiated at arm's length?

A [Mr. Lascell, President of the Debtor]: It was, yeah.

Objection [Ms. Davis, Counsel to Chubb]: Objection. Your Honor, the negotiation of the plan, it happened in mediation. We were not permitted to inquire as to mediation-related communications. And we were – well, there were some documents from mediation produced and then clawed back from us. So it will be – it's being used as a sword and a shield for them to testify – for anyone from Hopeman or the committee to testify as to what happened in mediation and whether it was in good faith because we have no means to test it.

[Response, Mr. Brown]: Your Honor, that's not a proper objection to the question. The question is whether or not, in his view, it's arm's length. That is subject to cross-examination.

[The Court]: Ms. Davis, in the future, you need to stand when you raise your objections. And I am going to overrule the objection for the reason that Mr. Brown stated.

Q: [Mr. Brown]: So let me ask it again. Was the plan and the underlying settlement negotiated at arm's length.

Q: [Mr. Brown]: Well, then how did the committee and the debtor ultimately get to an agreement?

Objection [Mr. Finnerty, Counsel to Liberty Mutual]: Your Honor, I'd like to renew the objection that Ms. Davis made. This Court's order says that no party may use any information in connection with the mediation for any purpose. This is a party using information in connection with mediation for their affirmative case. We've been precluded from discovery on these documents. Your Court's order prohibited any information concerning the mediation whatsoever to be used. It's being used right now as affirmative evidence. This is improper, and it's contrary to Your Court's order. Thank you, Your Honor.

Response [Mr. Brown]: That's not what the Court order[ed]. The Court ordered no[] statements that were made during the mediation offers and counteroffers aren't supposed to be made. The Fact that there was an agreement reached during the mediation, that's not protected by this order

Further Response [Mr. Finnerty]: Your Honor, may I read from the Court's order?

[The Bankruptcy Court]: You may.

[Mr. Finnerty]: "Communication of any type, whether oral or written, made or provided in connection with mediation, including, without limitation, statements, reports, admissions or proposals given by the mediator or any party", which includes Hopeman. That's not in the order, but obviously it does. "May not be used by any party for any purpose, including impeachment in any arbitrable, judicial, or other proceeding, including this Chapter 11 case. It may not be disclosed to any nonparty of the mediation, including this Court."

[Mr. Brown]: Nothing about my question, Your Honor, calls for that response.

[The Bankruptcy Court]: You're not asking for communications or disclosure –

[Mr. Brown]: No.

[The Bankruptcy Court]: -- of any statements that were made?

[Mr. Brown]: I am not, Your Honor.

[The Bankruptcy Court]: Ask your question again.

[Mr. Brown]: Yes.

Q [Mr. Brown]: How did the parties get to an agreement? After they were fighting, prior to mediation, how did they get to an agreement?

[The Bankruptcy Court]: All right. You may testify about what the mechanics were during the mediation but not repeat any of the statements that were made.

Counsel to the Debtor did not adduce testimony comprising "Mediation Communications" that are subject to the restrictions of the Mediation Order.[146]

100. The authorities relied upon by Chubb and Liberty Mutual do not alter this result. Chubb cites several unremarkable cases regarding the sword-shield principle.[147] Those cases are irrelevant because, again, the Plan Proponents did not introduce evidence protected by the Mediation Order. Thus, there was no offensive use of privileged material by the Plan Proponents.

101. Chubb also cites a transcript of a bench ruling made by Judge Silverstein of the United States Bankruptcy Court for the District of Delaware in the *Boy Scouts*' mass-tort bankruptcies. *Boy Scouts* is readily distinguishable. The *Boy Scouts* debtors also had a mediation order entered by the bankruptcy court, but, unlike the Mediation Order here, the *Boy Scouts* order included a carve-out from the protections afforded to the mediation materials that provided, "[i]f a party puts at issue any good faith finding concerning the mediation and any subsequent action concerning the insurance coverage the parties right to seek discovery, if any, is preserved."[148] Prior to the confirmation hearing, the *Boy Scout*s debtors filed a motion seeking entry of a protective order that would shield, among other categories of materials, certain mediation-related communications.[149] The *Boy Scouts* court denied the motion on three grounds (i) the court determined that the debtor's intent to use the fact of mediation as evidence of good faith mandated that the other parties were entitled to discovery into the *bona fides* of the mediation, (ii) certain findings sought in the proposed confirmation order implicated issues that parties would require

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A [Mr. Lascell]: Okay. Understood. We – we went – went to mediation and had conversation with the mediator and other – other parties to find common ground.

146 *See Id.* at 32:3 – 34:2.

147 Chubb Ob. at ¶¶ 56-57.

148 *Boy Scouts*, No. 20-10343-LSS, ECF No. 6798, Oct. 5, 2021 Hr'g Tr. at 3:17-19.

149 *Id.* at 4:4-22.

discovery on, and (iii) the evidence sought in discovery was not contended to be available from any other source.[150]

102. Two key differences readily distinguish *Boy Scouts*. First, unlike the *Boy Scouts* debtors, the Plan Proponents in this case did ***not*** seek entry of a protective order, instead, after certain mediation-related materials were produced, a letter was sent clawing back such materials pursuant to the restrictions set forth in the Mediation Order. None of the Objecting Insurers, nor, for that matter, any party in interest in this Chapter 11 Case, has sought relief from the Mediation Order to use these documents. Thus, analogizing to the *Boy Scouts* court denying the debtors' request for a protective order simply has no bearing because the material Hopeman clawed back was already subject to the protections of an order entered by the Bankruptcy Court, thus *Boy Scouts*, at most, would support an argument that, had the Objecting Insurers sought relief, the Bankruptcy Court should have granted relief from the Mediation Order to probe the *bona fides* of the Mediation in discovery and introduce such evidence as it bears on good faith. Here, however, neither Chubb, Liberty Mutual, nor any of the Objecting Insurers sought relief from the Mediation Order to introduce evidence regarding communications revealed in discovery regarding the Mediation. Nor did any of the Objecting Insurers advise the Bankruptcy Court that they had identified any document that was a "smoking gun" or that they otherwise desired to introduce into evidence despite the clawback request.

103. Second, unlike the mediation order entered in *Boy Scouts*, the Mediation Order here does not include an express carve-out preserving any rights a party in interest may have to seek discovery into issues bearing on good faith if put at issue.

[150] *Id.* at 13:9 – 15:7.

104. Finally, it bears emphasizing that for all of the Objecting Insurers' complaints, the Debtor ***did*** produce hundreds of pages of documents, as reflected in the clawback letter itself,[151] containing mediation-related materials. Chubb and Liberty Mutual, essentially, contend that they were prevented from putting on their case by the Plan Proponents' alleged sword-shield use of mediation material (which, as noted above, is incorrect), but query why, if the Mediation would have revealed evidence of the collusion the Objecting Insurers repeatedly accused the Plan Proponents of in pre-Combined Hearing briefing, why did they fail to seek relief from the Mediation Order? Here too, the simplest answer is often the correct one: no such relief was sought because the materials corroborated the above-board nature of the settlement discussions. Thus, the Objecting Insurers were not only disincentivized to seek relief, doing so likely would have bolstered the Plan Proponents' case.

105. In sum, neither the questions asked by Mr. Brown, nor the answers provided by Mr. Lascell sought or divulged information protected by the Mediation Order. Mr. Lascell's unrefuted testimony that he believed the settlement that formed the basis for the Plan was negotiated at arms' length did not require disclosing any communication during the Meditation. Any failure by the Objecting Insurers to seek relief from the Mediation Order to introduce evidence gathered in discovery was their own choice. Thus, there was no sword-shield concern that required redress by the Bankruptcy Court.

[151] Chubb Ex. 8; Combined Hr'g Tr. Day 1 at 279:3-20.

(xi) The Plan Satisfies the Best Interests Test Set Forth in Section 1129(a)(7)

106. Based on the Liquidation Analysis,[152] no non-accepting holder of a Class 3 General Unsecured Claim or a Class 4 Channeled Asbestos Claim will receive less under the Plan than such holder would receive in a liquidation of the Debtor's assets.[153] As a result, the evidence supports that the Bankruptcy Court correctly found that the Plan, which was almost unanimously accepted by the holders of Class 3 General Unsecured Claims and Class 4 Channeled Asbestos Claims who voted on the Plan, satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.[154]

107. Specifically, "Section 1129(a)(7) imposes a requirement for confirmation that each holder of a claim or interest in an impaired class either accept the plan or 'receive or retain under the plan … property of a value, as of the effective date of the plan, that is not less than the amount such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title ….'"[155] This test requires that each holder of an impaired claim or interest either accept the plan or receive or retain under the plan not less than it would receive in a Chapter 7 liquidation."[156] The Bankruptcy Court properly applied the law to the evidence admitted at the Combined Hearing in holding that the Plan satisfies the best interests test in section 1129(a)(7).

108. Chubb, however, contends that the Bankruptcy Court erred in finding that the Plan satisfied the best interests test of section 1129(a)(7) for three reasons. It alleges (i) the Bankruptcy

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[152] The methodology used to estimate the total liquidation proceeds available for Distribution and the principal assumptions and considerations underlying the liquidation analysis are described in the Disclosure Statement and the Liquidation Analysis.

[153] Combined Hr'g Tr. Day 1 at 181:10–186:6.

[154] *See Tranel v. Adams Bank & Trust Co. (In re Tranel)*, 940 F.2d 1168. 1172 (8th Cir. 1991); *In re AOV Indus., Inc.*, 31 B.R. 1005, 1008-13 (D.D.C. 1983), *aff'd in part*, *rev'd in part*, 792F.2d 1140, 1144 (D.C. Cir. 1986) (if no impaired creditor receives less than liquidation value, a plan of reorganization is in best interests of creditors), *vacated in light of new evidence*, 797 F.2d 1004 (D.C. Cir. 1986); *In re Econ. Lodging Sys., Inc.*, 205 B.R. 862, 864-65 (Bankr. N.D. Ohio 1997); *Eagle-Picher*, 203 B.R. at 266.

[155] *In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2006) (quoting 11 U.S.C. § 1129(a)(7)).

[156] *ReGen Cap. I., Inc. v. Halperin (In re Wireless Data, Inc.)*, 547 F.3d 484, 495 (2d Cir. 2008).

Court erred in ruling that section 1129(a)(7) requires consideration of future demand holders, as opposed to just the current asbestos creditors with the right to vote on the Plan; (ii) the Bankruptcy Court allegedly "adopted findings proposed by the Plan Proponents that are internally contradictory and impossible to square"; and (iii) the Plan Proponents "failed to adduce sufficient evidence at the Combined Hearing."[157] Chubb is wrong on all counts.

a. Established Case Law Compels the Conclusion That the Best Interests Test Requires Assessing the Value of Future Asbestos Claims

109. The Bankruptcy Court correctly found that "it is appropriate to take the value of future Asbestos Personal Injury Claims into account in determining the Claims that would be required to be paid in a liquidation under chapter 7 of the Bankruptcy Code."[158] This finding is consistent with established case law holding "it is appropriate to take the value of future Asbestos Claims into account in determining the Claims that would be required to be paid in a liquidation under chapter 7 of the Bankruptcy Code."[159]

110. Under the Fourth Circuit's analysis in *Grady*, even those Channeled Asbestos Claimants who have yet to manifest an injury do hold Claims. "'While other courts apply several different tests to determine when a claim arises, in the Fourth Circuit Court . . . [courts] apply the

[157] Chubb Obj. at ¶ 65.

[158] Proposed Findings at 81

[159] *Eagle-Picher*, 203 B.R. at 275; *see also In re W.R. Grace & Co.*, 446 B.R. 96, 127 (Bankr. D. Del. 2011) (recognizing, in addressing objecting party's argument the best interests test was not satisfied, that "In this bankruptcy case, in addition to the current Libby claims that remain to be liquidated ***there will be future demands due to the nature of asbestos disease***.") (emphasis added).

conduct test.'"[160] "'The "conduct test" focuses on the actual act that gives rise to a state or federal claim … not the contingency that gives rise to the right of payment.'"[161]

111. In *Grady*, the Fourth Circuit affirmed the determination that a woman, Ms. Grady, who used an A.H. Robins-made Dalkon Shield prepetition but did not manifest an injury until after the petition date, held a prepetition claim that was subject to the automatic stay.[162] Ms. Grady and the legal representative of future claimants appointed in the Robins bankruptcy appealed the lower court's holding, relying on the "accrual" test adopted by the Third Circuit in *Frenville* under which "a right to payment must exist pre-petition before a claim can exist."[163] The Fourth Circuit observed that the only courts that had followed *Frenville* were in the Third Circuit, and that "[a]ll of the cases coming to our attention which have considered the issue have declined to follow *Frenville*'s limiting definition of claim."[164] Thus, the Fourth Circuit rejected *Frenville*'s accrual test, instead adopting the conduct test.[165]

112. Even the Third Circuit, in *Jeld-Wen, Inc. v. Van Brunt (In re Grossman's Inc.)*, later adopted *Grady*'s conduct test, holding "[w]e agree … that a 'claim' arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a 'right

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160 *Grady v. A.H. Robins Co.*, 839 F.2d 198, 202 (4th Cir. 1988); *see also In re Schechter*, No. 10-72175-FJS, 2012 WL 3555414, at *5 (Bankr. E.D. Va. Aug. 16, 2012) (quoting *In re Camellia Food Stores, Inc.*, 287 B.R. 52, 57 n.2 (Bankr. E.D. Va. 2002).

161 *In re Schechter*, 2012 WL 355414, at *5 (quoting *In re Boyette*, No. 09-04573-8-RDD, 2010 WL 4777631, at *2 (Bankr. E.D.N.C. Nov. 17, 2010)).

162 *Grady*, 839 F.2d at 199.

163 *Id.* at 200-201 (citing *Avellino & Bienes v. M. Frenville Co., Inc. (Matter of M. Frenville Co., Inc.)*, 744 F.2d 332, 335-336 (3d Cir. 1984)).

164 *Grady*, 839 F.2d at 201 (internal citations omitted).

165 *Id.* at 202-203; *see also In re Baseline Sports, Inc.*, 393 B.R. 105, 128 (Bankr. E.D. Va. 2008) ("Given the broad definition that the Code gives to the term 'claim,' the Fourth Circuit specifically rejected the concept that a right of payment must exist prior to the bankruptcy filing in order for a claim to arise pre-petition. Instead, it applied a conduct test where it merely required the events giving rise to a claim occur pre-petition. Whether a claim arises pre-petition, therefore, turns on whether the events giving rise to the claim occurred prior to the date the Debtor filed its bankruptcy petition.") (internal citations and quotation marks omitted).

to payment' under the Bankruptcy Code."[166] The *Grossman* court, in adopting the conduct test, also observed that "various bankruptcy courts have followed a form of the conduct test when considering the existence of an asbestos-related claim."[167] Finally, the Third Circuit noted that the due-process concerns potentially implicated by "discharging future claims of individuals whose injuries were not manifest [on the petition date]" had been accounted for by Congress through many of the requirements of section 524(g) which "are specifically tailored to protect the due process rights of future claimants."[168]

113. The Chubb Insurers' argument that the best interests test should ignore future claims in the analysis is contrary to case law that acknowledges that the Bankruptcy Code's definition of "claims" and section 524(g)(5)'s definition of "demands" are, essentially, overlapping, leading such courts to reject interpretations of the terms as mutually exclusive that would "produce[ ] a result demonstrably at odds with the intentions of its drafters."[169]

114. Accordingly, the Bankruptcy Court correctly determined that it is entirely *inappropriate* for future Claims, *i.e.*, Demands, that are to be addressed in the Plan, to be ignored for purposes of the best interests test.

b. The Proposed Findings Are Not Inconsistent and Have Evidentiary Support

115. For the reasons set forth above, those individuals who have been exposed to products contaminated with asbestos that are attributable to the Debtor all hold claims that must be considered for purposes of the best interests test. Chubb, nonetheless, argues that even

166 607 F.3d 114, 125 (3d Cir. 2010) (internal citations omitted).

167 *Id.* (collecting cases).

168 *Id.* at 127 (internal citation and quotation marks omitted).

169 *See, e.g., In re Flintkote Co.*, 486 B.R. 99, 124 (Bankr. D. Del. 2012) (internal citation and quotation marks omitted).

assuming it was proper to factor such claimants into the Liquidation Analysis for the best interests test, that the Bankruptcy Court erred in finding the best interests test satisfied because "the Proposed Findings are logically inconsistent."[170] Chubb claims this is so because "the Bankruptcy Court determined that the Plan would last longer and pay ***more claims*** than a Chapter 7 liquidation proceeding, [while] also conclud[ing] 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."[171] Case law belies this objection. In the context of a chapter 7 case, asbestos personal injury claims would be put into a pool of general unsecured claims to await payment, and the trustee could not pay claims until all the claims were liquidated. That would take many years.

116. As the Delaware bankruptcy court found in *W.R. Grace*, in rejecting one group of claimants' arguments that the debtors' section 524(g) plan did not satisfy the best interests test:

> Libby Claimants' arguments … do not account for the costs of Chapter 7 administration or for the fact that, if these estates were liquidated, there would be a finite amount available for distribution. In addition, the Libby Claimants are not the only creditors with asbestos personal injury claims against Debtors. Thus, their recovery as a group is not the proper gauge of the recovery in a Chapter 7 versus a successful reorganization. Rather, as in any Chapter 7, their claims would be put into a pool of general unsecured creditors to await payment until all the claims in the class were liquidated, all the assets reduced to cash, distribution made, and insurance claims resolved. Because of the nature of asbestos disease and the latency period for some asbestos-related diseases, it is unclear what provisions, if any, might have to be made for future demands, inasmuch as "a prerequisite for recognizing a 'claim' is that the claimant's exposure to product giving rise to the claim occurred prepetition." *In re Grossman's, Inc.*, 607 F.3d at 125. The latency period can be decades and if distribution cannot be made until all claims are liquidated, the entire bankruptcy distribution process could be long-delayed while all claimants and future demand holders proved their claims were liquidated.[172]

[170] Chubb Obj. at ¶ 78.

[171] *Id.* (emphasis in original).

[172] *In re W.R. Grace*, 446 B.R. at 127 (emphases added).

117. In affirming the bankruptcy court's decision in *W.R. Grace*, the district court similarly observed:

> [T]the Libby Claimants fail to take into account the practical implications of what Chapter 7 liquidation would entail in this case. As the Bankruptcy Court properly noted, valuation of Grace creditors' claims under Chapter 7 is highly speculative due to the uncertainty associated with future claims related to latent pleural disease. These future claims are not and cannot yet be known. The Joint Plan accounts for this uncertainty in its proposed structure, and guarantees all claimants—both current and future—some degree of recovery. ***In contrast, a liquidation under Chapter 7 has no such reassurance in place. Rather, creditors' claims in a Chapter 7 proceeding would be put into a pool that would not distribute payments until all claims in the class were liquidated and all the assets were reduced to cash value***. *See In re Kiwi Int'l Air Lines, Inc.*, 344 F.3d 311, 318 n. 6 (3d Cir. 2003); see also In re Baker & Getty Fin. Servs., Inc., 106 F.3d 1255, 1259 n. 7 (6th Cir. 1997). ***Given the latent nature of asbestos-related pleural disease, excessive time could pass until all future claims are ascertained. Thus, a Chapter 7 liquidation would need to be held open for a seemingly indefinite amount of time while all personal injury claimants pursued jury trials and settlements in the tort system. Such a process would result in inevitable delay and disparate—or, even worse, unavailable—recovery amongst personal injury claimants. Such uncertainty is certainly not within the creditors' best interests.***[173]

118. For purposes of the best interests test, a hypothetical chapter 7 trustee would need to resolve all creditors' claims, some of which are still latent claims for unmanifested diseases, before deciding how to distribute any of the remaining proceeds of the settlement with the Certain Settling Insurers. That exercise will take many years and delay any distributions since there would be no claimants' trust and no FCR to agree on amounts the trustee safely could distribute to claimants in advance of a final decree. This reality is demonstrated by *In re D/C Distribution, LLC*, 617 B.R. 600 (Bankr. N.D. Ill. 2020), which Chubb relied on in pre-Combined Hearing

[173] *In re W.R. Grace & Co.*, 475 B.R. 34, 144-45 (D. Del. 2012) (emphases added) (footnotes omitted).

briefing in support of Chubb's claim that liquidation in a hypothetical chapter 7 would neither delay claimants' recoveries nor reduce such recoveries with chapter 7 fees.

119. *D/C Distribution* actually supports the proposition that recoveries in a chapter 7 case would be significantly delayed. The *D/C Distribution* court's order lifting the stay was entered thirteen years after the chapter 7 case was first filed[174] and after the trustee's efforts to settle with insurers had not borne fruit over that time.[175]

120. There is no basis to assume a trustee in a hypothetical chapter 7 of Hopeman would immediately consent to stay relief rather than pursue settlements with insurers particularly since here, unlike in *D/C Distribution*, Hopeman already was able to reach and consummate a settlement with one group of insurers, the Certain Settling Insurers, and had proposed another settlement with Chubb in a liquidation scenario, even though that settlement has not been approved by the Bankruptcy Court.

121. Importantly, in this case as well, the hypothetical chapter 7 trustee in the best interest test would need to resolve all creditors' claims, some of which are still latent claims for unmanifested diseases, before deciding how to distribute any of the remaining proceeds of the settlement with the Certain Settling Insurers. That exercise will take many years and would substantially delay any distributions to claimants.

122. Accordingly, *D/C Distribution* does little more than demonstrate the sort of unworkable delay that the holders of Channeled Asbestos Claims would face in a hypothetical liquidation under chapter 7. It does not support that such a hypothetical liquidation would be resolved by immediately lifting the stay as to virtually all Asbestos Claims, nor does it address

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[174] *D/C Distribution, LLC*, 617 B.R. at 618.

[175] *Id.* at 605 & 613.

how future claims included in the Plan will be addressed by a chapter 7 trustee, which may take decades to resolve.

123. Mr. Tully's testimony at the Combined Hearing established that the "waterfall" contemplated by the Plan, which is depicted in the Liquidation Analysis, renders the value of the Claims treated thereunder irrelevant.[176] Mr. Tully testified that the Liquidation Analysis effectively is a waterfall because it makes an assessment under the Chapter 11 plan scenario and the Chapter 7 hypothetical of what assets are available, and then it distributes payments to claimants according to the priority of their claims.[177] Mr. Tully further testified that, under the Liquidation Analysis, asbestos claimants, as unsecured creditors, are at the bottom of the waterfall and get the remaining assets.[178] Ultimately, Mr. Tully testified that he did not need to estimate the Asbestos Claims in the Liquidation Analysis because the assets available for distribution under the Plan, shown at the bottom of the waterfall, are greater than the assets that would be available in a hypothetical liquidation under Chapter 7 which, as established above, would have to treat the same Claims.[179] Indeed, Mr. Tully testified that in his opinion, based on his experience and knowledge of this case, it is not even a close call whether claimants will receive more under the Plan than they would in a Chapter 7.[180] There is no evidence or testimony to the contrary.

124. In sum, Mr. Tully's unrefuted testimony, and the Liquidation Analysis included as part of the Disclosure Statement, established:

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[176] Mr. Tully is a Senior Managing Director for FTI, the Court-approved financial advisor to the Committee, who has around twenty-seven years of experience in bankruptcy-related matters, including other Chapter 11 asbestos cases. *See* Combined Hr'g Tr. Day 1 at 169:23–172:5. Mr. Tully provided his opinion testimony without objections being made at the time the testimony was offered.

[177] *Id.* at 256:24–257:6.

[178] *Id.* at 257:7-11.

[179] *Id.* at 256: 15–259:22.

[180] *Id.* at 186:3-6.

- the Liquidation Analysis he prepared reflects a waterfall consistent with the absolute-priority rule embodied in the Bankruptcy Code such that the assets reflected therein would flow down the line to pay claims with the assets being available for distribution to the holders of asbestos claims being those remaining after satisfying all other claims;

- the structure of the Plan results in an enduring framework that will permit the holders of Channeled Asbestos Claims to pursue recoveries from the Non-Settling Asbestos Insurers (including any direction action claims they may hold), which would result in greater recoveries than expected in a hypothetical chapter 7 liquidation;

- that based on his experience (including based on his review of projections in other matters), his expert opinion testimony was that recoveries under the Plan would likely be heavier in the earlier years and lighter in the later years which reduces the impact of reducing such recoveries for present value;

- the lower estimated recoveries in a hypothetical chapter 7 liquidation would also be diminished by the required payment of statutory fees to a hypothetical chapter 7 trustee in addition to the payments that would be required for such hypothetical chapter 7 trustee's professionals; and

- the finality offered by the proposed Asbestos Permanent Channeling Injunction to the Non-Settling Asbestos Insurers better incentivizes settlement, making it more likely that favorable settlements would be achieved post-confirmation under the Plan.

125. As reflected above, the Bankruptcy Court's Proposed Findings are not inconsistent and are supported by the record: they (i) correctly apply the law to conclude that under *Grady*'s conduct test the same claims must be considered under the Plan as in a hypothetical chapter 7 liquidation for purposes of the best interest test;[181] (ii) credit Mr. Tully's unrefuted testimony that the long, enduring structure offered under the Plan will result in asbestos claimants achieving higher recoveries under the asbestos insurance policies than would be achieved in a hypothetical chapter 7 liquidation;[182] and (iii) recognize the fundamental difficulties an asbestos case presents for a hypothetical chapter 7 trustee including the potential Hobson's choice of setting an arbitrary initial bar date that would subordinate the recoveries of late-filed claims (which, almost certainly,

[181] Proposed Findings at 76-84.

[182] *Id.* at 79-80, 83

will be attributable to individuals who hold claims but have yet to manifest an injury and thus lack the information needed to assert claims and protect their rights) or to forgo an early bar date in favor of pursuing a liquidation process that would require a lengthy, indefinite period of time before issuing any distributions (likely resulting in many afflicted claimants suffering or dying without compensation).[183]

126. The Bankruptcy Court further, properly, acknowledged the inherently speculative nature of estimating the amount that would be available for distribution to creditors in a hypothetical chapter 7 case, particularly in an asbestos context, and relied on *W.R. Grace & Co.*, for the proposition that the Bankruptcy Court need only make a well-reasoned estimate supported by such evidence adduced at the hearing.[184] The evidence here was more than sufficient for the Bankruptcy Court to make a well-reasoned estimate that the Plan is in the best interest of holders of Asbestos Claims and, therefore satisfied section 1129(a)(7)(A).

127. For the foregoing reasons, the Plan Proponents respectfully submit that Chubb's objection as to the best interests test should be overruled.

D. THE BANKRUPTCY COURT CORRECTLY FOUND THAT THE PLAN COMPLIES WITH SECTION 524(g) OF THE BANKRUPTCY CODE

128. As set forth in the Proposed Findings,[185] the Plan comports with the Bankruptcy Code's requirements in section 524(g) for issuance of a channeling injunction to enjoin entities from taking legal action to recover, directly or indirectly, payment in respect of Asbestos Claims or Demands against Reorganized Hopeman inconsistent with the Plan and the Asbestos Claim Trust Distribution Procedures.

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[183] *Id.* at 84.

[184] *Id.* at 84.

[185] *Id.* at 89-103.

129. Nevertheless, the Objection Insurers make limited and erroneous objections to the Proposed Findings regarding compliance with section 524, contending that (a) the Plan does not satisfy the requirements of section 524(g)(2)(B)(i)(II), (b) the Plan does not comply with section the 524(g)(2)(B)(ii)(V), and (c) the FCR did not honor her obligations consistent with section 524(g)(4)(B)(i).[186] Each of these objections fails as explained below.

(i) The Plan Satisfies the Funding Obligations of Section 524(g)(2)(B)(i)(II)

130. Section 524(g)(2)(B)(i)(II) requires that the Asbestos Trust established pursuant to the Plan "be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments including dividends …."[187] The Fourth Circuit has interpreted section 524(g)(2)(B)(i)(II) as "mandat[ing] that the trust (1) 'be funded in whole or in part by the securities of [one] or more [involved] debtors,' *and* (2) 'by the obligation of such debtor or debtors to make future payments, including dividends.'"[188] The Proposed Findings correctly determined that the Plan satisfies both requirements.

131. First, pursuant to Section 8.6 of the Plan, one-hundred percent (100%) of Reorganized Hopeman's Common Stock will be transferred to the Asbestos Trust.[189] This satisfies the first of section 524(g)(2)(B)(i)(II)'s two requirements, that the Asbestos Trust be funded, in whole or in part, by the securities of 1 more debtors involved in such plan.[190] The Bankruptcy Court correctly held as much. *See* Proposed Findings at 91 ("The Plan satisfies [the first

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186 Travelers Obj. at ¶¶ 88-94; Liberty Obj. at ¶¶ 37-39; Chubb Obj. ¶¶ 4-19.

187 11 U.S.C. § 524(g)(2)(B)(i)(II).

188 *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co. (In re Kaiser Gypsum Co.)*, 135 F.4th 185, 198 (4th Cir. 2025).

189 Plan, § 8.6.

190 *See* 11 U.S.C. § 101(49)(A)(ii) (defining a "security," as, among other things, stock).

requirement of section 524(g)(2)(B)(i)(II)] in part by providing that all Reorganized Hopeman Common Stock will be issued to the Asbestos Trust.").

132. Second, the transfer of all of reorganized Hopeman's Common Stock also satisfies the second requirement of section 524(g)(2)(B)(i)(II), that the Asbestos Trust be funded by the obligation of the Debtor to make future payments, including dividends, because, by virtue of the Asbestos Trust's ownership of all of Reorganized Hopeman's Common Stock, it will have, subject only to limitations on the issuance of dividends under Virginia law (Reorganized Hopeman's place of incorporation) and its corporate charter, unilateral authority to cause Reorganized Hopeman to issue dividends.[191] Moreover, the Plan obligates Reorganized Hopeman to contribute the Excess Net Reserve Funds to the Asbestos Trust.[192] Thus, the Plan also satisfies section 524(g)(2)(B)(i)(II) second requirement.

133. The Bankruptcy Court correctly held that the second requirement of section 524(g)(2)(B)(i)(II) was satisfied, but the Bankruptcy Court couched its conclusion on slightly different, but nonetheless accurate, grounds. The Bankruptcy Court began by recognizing that "[t]he Plan Proponents and the Objecting Insurers disagree … about whether the Plan obligates the debtor to make future payments, including dividends, as required by the statute."[193] The Bankruptcy Court then observed that section 524(g)'s funding requirement is intended to ensure

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[191] *See In re Quigley Co., Inc.*, 437 B.R. 102, 141 (Bankr. S.D.N.Y. 2010) (recognizing "The term 'security' includes both debt and equity … [and] the transfer of the debtor's equity to the trust would allow the trust to declare dividends and use the dividends to fund the trust."); *see also In re Flintkote Co.*, 486 B.R. at 131 (Bankr. D. Del. 2012) ("Section 524(g)(2)(B)(i)(II) requires that the trust be funded 'in whole or in part by the securities of 1 or more debtors' and that the debtor 'make future payments, including dividends to the trust, but it does not specify the manner in which this must be accomplished. In this case, all the stock of Reorganized Flintkote will be transferred to the Trust. Thus, the Debtor's securities are being used to fund the Trust and any dividends declared will be paid to the Trust.").

[192] *See* Plan, § 1.23 (defining the "Asbestos Trust Contribution" to include, among other things, the Excess Net Reserve Funds); 8.2(a)(ii) (providing for the "making of the Asbestos Trust Contribution, notwithstanding that the contribution of the Excess Net Reserve Funds ***may occur after the Effective Date***.").

[193] Proposed Findings at 92.

an evergreen source of funds to pay both current and existing asbestos liability, but correctly noted, in accordance with the Fourth Circuit's analysis, that "'[T]he statute doesn't expressly require indefinite future payments or a minimum payment amount.'"[194] The Bankruptcy Court then correctly held that this requirement was satisfied by virtue of the Debtor's Asbestos Insurance Rights, in keeping with the Fourth Circuit's express statement that "the evergreen source of funding may be insurance proceeds."[195]

134. Each of the Objecting Insurers contends that the Bankruptcy Court erred in concluding that the second of section 524(g)(2)(B)(i)(II)'s requirements was satisfied.[196] The Objecting Insurers are wrong.

a. The Bankruptcy Court Properly Applied *Kaiser*

135. Chubb first takes issue with the Bankruptcy Court's reliance on *Kaiser* in holding that the Debtor's Asbestos Insurance Rights constitute an evergreen source of funding.[197] Chubb acknowledges that the non-eroding coverage held by the *Kaiser* debtors "may indeed be evergreen," but contends that the Debtor's insurance is wholly distinguishable because such coverage is subject to eroding policy limits such that "each claim that gets paid under a policy reduces the amounts remaining to pay successive claims."[198] *Kaiser* forecloses Chubb's argument. The Fourth Circuit did ***not*** hold that section 524(g)(2)(B)(i)(II) requires an *evergreen* source of funding. On the contrary, the Fourth Circuit suggested the opposite. The Fourth Circuit observed that the *Kaiser* debtors' trust "would be funded by three main sources" one of which was a "secured

194 *Id.* (quoting *Kaiser Gypsum Co.*, 135 F.4th at 198-99).

195 *Id.*

196 *See* Chubb Obj. at ¶¶ 29-37; Liberty Obj. at ¶¶ 37-39; Travelers Obj. at ¶¶ 88-94.

197 Chubb Obj. at ¶ 30.

198 *Id.* at ¶¶ 31-32.

five-year, $1 million note issued by the Debtors."[199] The *Kaiser* debtors' argued that the $1 million note satisfied both prongs of section 524(g)(2)(B)(i)(II) because "(1) 'security' under the Bankruptcy Code includes notes, and (2) the reorganized Debtors have an 'obligation' to make future payments to the Trust—a $1 million payment on the note within five years."[200] Truck, the insurer that issued the *Kaiser* debtors non-eroding policies, disagreed, "arguing primarily that the single $1 million note doesn't provide what it terms an 'evergreen' source of funding for the Trust and is therefore pretextual."[201] The Fourth Circuit concluded that "the Debtor's reading of § 524(g)(2)(B)(i)(II) is the correct one," reasoning:

> To reiterate, § 524(g)(2)(B)(i)(II) sets forth two funding-related requirements: that the trust be funded—in whole or in part—by the "securities" of one or more involved debtors, *and* that such funding stems from 'the obligation of such debtor or debtor to make future payments, including dividends." The Trust plainly comports with the text of this provision. It is funded by the Debtors' security: the $1 million note. And by its very nature, that $1 million note obliges the Debtors to make a future payment(s).[202]

136. In rejecting Truck's arguments to the contrary, the Fourth Circuit observed that the *Kaiser* debtors' "insurance proceeds (including excess coverage proceeds) will thus provide the 'evergreen' source of funding for the asbestos liabilities that ***Truck contends is necessary***."[203] Ultimately, however, the Fourth Circuit concluded that the statute does not require "*indefinite* future payments or a minimum payment amount," both of which are incapable of squaring with Chubb's contention that section 524(g)(2)(B)(i)(II) mandates an evergreen source of funding. Thus, contrary to Chubb's assertions, the Bankruptcy Court did nor err in concluding that the

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199 *Kaiser Gypsum Co.*, 135 F.4th at 198.

200 *Id.*

201 *Id.* (citing *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d Cir. 2004)).

202 *Kaiser Gypsum Co.*, 135 F.4th at 198.

203 *Id.* (emphasis added).

Debtor's Asbestos Insurance Rights constitute an evergreen source of funding because *Kaiser* makes clear section 524(g)(2)(B)(i)(II) imposes no such requirement.

b. Section 524(g)(2)(B)(i)(II) Does Not Impose an "Ongoing Business" Requirement

137. Both Chubb and Liberty Mutual challenge the Bankruptcy Court's holding that section 524(g)(2)(B)(i)(II) does not impose an "ongoing business requirement." The Bankruptcy Court, however, was correct in concluding that section 524(g)(2)(B)(i)(II) does not impose an "ongoing business" requirement, a conclusion supported by caselaw, including *Kaiser*, and bedrock principles of statutory interpretation.

138. At the outset, the notion that section 524(g)(2)(B)(i)(II) imposes a so-called "ongoing business" requirement stems from *dicta* in the Third Circuit's *Combustion Eng'g* opinion.[204] In *Combustion*, the Third Circuit was called upon to address a number of challenges to a debtor's section 524(g) plan, including arguments by a group of objecting insurers that the requirements of section 524(g)(2)(B)(i)(II) were not satisfied by the debtor's plan.[205] In reviewing section 524(g)(2)(B)(i)(II), the Third Circuit observed that "[t]he implication of [section 524(g)(2)(B)(i)(II)'s funding] requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants."[206] The Third Circuit then noted that the record demonstrated that:

> Combustion Engineering's post-confirmation business operations would be, at most, minimal. Combustion Engineering would emerge from Chapter 11 with no employees, no products or services, and in a cash neutral position. Its sole business activity would relate to the

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[204] *See In re Quigley Co., Inc.*, 437 B.R. at 140 ("In ***dicta***, the *Combustion Engineering* Court stated the provision [section 524(g)(2)(B)(i)(II)] implied that the reorganized debtor must be a going concern, such that it is liable to make future payments into the trust to provide an evergreen funding source for future asbestos claimants.") (emphasis added) (internal citation and quotation marks omitted).

[205] *Id.* at 248.

[206] *Id.*.

> ownership of an environmentally contaminated piece of real estate in Connecticut (a so-called "brown field") and related lease activities.[207]

The Third Circuit concluded that on those facts "it [was] debatable whether Combustion Engineering could satisfy § 524(g)(2)(B)(i)(II)," but, ultimately, the Third Circuit declined to address the issue because "[w]hile the Objecting Insurers argue that § 524(g)(2)(B)(i)(II) is not satisfied, they do not have standing to raise this matter. ***Therefore, we need not address it***."[208] The Third Circuit's observation that section 524(g)(2)(B)(i)(II) carries an implication that the reorganized debtor must be a going concern—the origin of the purported ongoing-business requirement—is textbook *dicta* because the statement could have been deleted from the opinion without even affecting, much less "seriously impairing," the Third Circuit's holding that the objecting insurers lacked standing to raise the issue.[209] Liberty Mutual complains that the Bankruptcy Court's ruling "lends little to no credence to the two Circuit-level decisions that have addressed similar situations akin to this one," but Liberty Mutual does not even attempt to argue that any purported reference to an "ongoing business" requirement by the Third Circuit in *Combustion* is anything but *dicta* (nor could it).

139. The Fourth Circuit's interpretation of section 524(g)(2)(B)(i)(II) reinforces this conclusion. In *Kaiser* the Fourth Circuit interpreted section 524(g)(2)(B)(i)(II) as a "***funding*** requirement," which "sets forth two funding-related requirements."[210] Chubb fails to offer the District Court any grounds on which it could determine that an "ongoing business" requirement

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[207] *Id.*

[208] *Id.* (emphases added).

[209] *City of Martinsville, Va. v. Express Scripts, Inc.*, 128 F.4th 265, 271 n.5 (4th Cir. 2025) ("Discerning holding from dicta is not always easy. Generally, however, a '[d]ictum is a "statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding."'") (quoting *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (quoting *Pittston Co. v. U.S.*, 199 F.3d 694, 703 (4th Cir. 1999)).

[210] *Kaiser Gypsum Co.*, 135 F.4th at 198 (emphases added).

exists in section 524(g)(2)(B)(i)(II) in the face of a binding Fourth Circuit opinion that interprets that section of the Bankruptcy Code as merely imposing a funding requirement. Indeed, the Fourth Circuit attributed Truck's argument that section 524(g)(2)(B)(i)(II) requires an evergreen source of funding to the Third Circuit's *Combustion Engineering* decision.[211] Critically, the Fourth Circuit, immediately after attributing Truck's argument to *Combustion Engineering*, concluded that the *Kaiser* debtor's reading of section 524(g)(2)(B)(i)(II)—under which the *Kaiser* debtors' issuance of a $1 million five-year payment note satisfied the requirements of section 524(g)(2)(B)(i)(II)—"is the better one."[212]

140. *Kaiser* also makes short shrift of Liberty Mutual's contentions regarding the other alleged Circuit-level decision addressing a similar situation: *Fireman's Fund Insultation Co. v. Plant Insulation Co. (In re Plant Insulation Co.)*, 734 F.3d 900, 905-06 (9th Cir. 2013). Liberty Mutual points to *Plant Insulation* in an effort to draw an analogy to the Ninth Circuit's rejection of the *Plant Insulation* debtors' contention that, for purposes of section 524(g)(2)(B)(i)(III), any contingency (no matter how unlikely) suffices for purposes of the asbestos trust gaining ownership of the reorganized debtor, claiming that the Debtor's argument that any postpetition business suffices "lends as much meaning to the 'ongoing business' requirement as a meteor striking the Empire State Building leads to the 'specified contingencies' requirement.[213] Liberty Mutual's emphasis on *Plant Insulation* is somewhat surprising given that ***none*** of the Objecting Insurers take issue with the Bankruptcy Court's determination that section 524(g)(2)(B)(i)(III) is satisfied

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[211] *See id.* at 198 ("Truck disagrees, arguing primarily that the single $1 million note doesn't provide what it terms an 'evergreen' source of funding for the Trust and is therefore pretextual.") (citing *In re Combustion Eng'g*, 391 F.3d at 248 ("The implication of this requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants.'").

[212] *Id.*

[213] Liberty Obj. at ¶ 38.

here. In any event, even the analogy Liberty Mutual attempts to draw is of no moment, as the Fourth Circuit criticized the Ninth Circuit's decision in *Plant Insulation* because the Ninth Circuit's holding deviated from the plain language of section 524(g)(2)(B)(i)(III) by reading into the statue a "realistic possibility" qualifier on the contingency it mandates, which appears nowhere in the statute.[214] Here too, section 524(g)(2)(B)(i)(II) simply contains no "ongoing business" requirement, and the District Court should deny Liberty Mutual's invitation to improperly engraft such a requirement into the statute.

141. Finally, bedrock principles of statutory interpretation erase any doubt that section 524(g) does ***not*** contain an "ongoing business" requirement. The District Court, like the Bankruptcy Court, should "begin[] where all such inquiries must begin: with the language of the statute itself."[215] As the Bankruptcy Court correctly observed, "[t]he statute is unambiguous – the plain language of section 524(g)(2)(B)(i)(II) is devoid of any reference to an ongoing-business requirement."[216] "In light of the many express requirements laid out in § 524(g), … had Congress intended § 524(g) require a debtor to operate a viable, ongoing, pre-petition business, it would have included statutory language to that effect in § 524(g)(2)(B)."[217] Thus, "where, as here, the statute's language is plain 'the sole function of the courts is to enforce it according to its terms.'" *Ron Pair Enters., Inc.*, 489 U.S. at 241 (quoting *Caminetti v. U.S.*, 242 U.S. 470, 485 (1917)).

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214 *Kaiser Gypsum Co.*, 135 F.4th at 199-200.

215 *United States v. Ron Pair Enters. Inc.*, 489 U.S. at 241.

216 Proposed Findings at 92-93 (citing *Kaiser Gypsum Co.*, 135 F.4th at 198 (reciting section 524(g)'s funding requirements, without any mention of an ongoing-business requirement)).

217 *Flintkote*, 486 B.R. at 131.

c. To the Extent Section 524(g)(2)(B)(i)(II) Imposes an "Ongoing Business" Requirement, It Is Satisfied Here

142. Assuming *arguendo* that section 524(g)(2)(B)(i)(II) imposes an ongoing-business requirement, it nevertheless would be satisfied here. As the Third Circuit opined in *Combustion*'s *dicta*, the purported ongoing-business requirement appears intended to ensure that an "evergreen funding source" is available to the Asbestos Trust. Other courts, in engrafting an ongoing-business requirement to a debtor's eligibility to seek relief under chapter 11 prior to the Supreme Court's decision in *Toibb*,[218] similarly observed "[i]n other words, the requirement of an 'ongoing business' may be viewed as a shorthand expression for the requirement of being able to repay debts and to effectuate a plan."[219]

143. Here, pursuant to the Restructuring Transactions:

> Reorganized Hopeman will acquire a minority ownership interest, and receive net cash flows on account of that interest, in a multifamily property near Houston, Texas … [While] Reorganized Hopeman may sell its membership interests in the Property; it is anticipated that Reorganized Hopeman will continue holding its membership interest in the Property and will receive quarterly common equity cash flow distributions ***for the foreseeable future***. From time to time, Reorganized Hopeman may periodically set aside and reserve any dividends or distributions from the Property that are or will be sufficient to fully satisfy (as and when due) all franchise taxes and other expenditures necessary to maintain Reorganized Hopeman's corporate existence in good standing under applicable law ***and to fulfill the Asbestos Insurance Cooperation Obligations and conduct other business***. ***The balance of any dividends or distributions that remains (after the Net Reserve Funds is funded) may be transferred by Reorganized Hopeman to the Asbestos Trust and will become part of the Asbestos Trust Assets***.[220]

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[218] *Toibb*, 501 U.S. at 166 (finding that courts could not engraft an "ongoing business" requirement into the Bankruptcy Code to prevent nonbusiness debtors from filing under chapter 11 since section 109(d) of the Bankruptcy Code contains no such restriction).

[219] *In re Markunes*, 78 B.R. 875, 879 (Bankr. S.D. Ohio 1987).

[220] Plan Supplement, Ex. F, at 1 (emphases added).

Furthermore, the requirement, to the extent it exists, is a relatively low standard and does not require a debtor to operate a viable, ongoing business. As the *Flintkote* court observed:

> Nothing in § 524(g) plainly and unambiguously requires a debtor to continue in a pre-petition business, let alone a viable pre-petition business…. In light of the many express requirements laid out in § 524(g), the Court finds that had Congress intended § 524(g) to require a debtor to operate a viable, ongoing, pre-petition business, it would have included statutory language to that effect in § 524(g)(2)(B). However, such a specification is plainly absent, and thus the Court should not consider the legislative history or statutory purpose in the face of unambiguous statutory language. Even if the Court were to give weight to the legislative history behind § 524(g), the history does not contain this requirement. The House Committee Report discussing § 524(g) states that "[t]he asbestos trust/injunction mechanism established in the bill is available for use by *any asbestos company facing a similarly overwhelming liability*."[221]

144. Indeed, other courts have confirmed section 524(g) plans where the debtor(s) had post-reorganization businesses nearly ***identical*** to the Restructuring Transactions proposed here.[222] Moreover, Reorganized Hopeman's business, which involves obtaining an interest in an operating entity and receiving correspondent cash flows from such entity, is the functional-equivalent of a debtor whose business consists of owning non-debtor operating subsidiaries. A number of courts have confirmed chapter 11 plans of reorganization, including section 524(g) plans, where the debtor was a holding company whose business involved owning non-debtor operating

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[221] *In re Flintkote*, 486 B.R. at 131 (emphasis in original) (internal citations omitted).

[222] *See*, *e.g., In re Yarway Corp.*, Case No. 13-11025 (Bankr. D. Del. 2013), *Findings of Fact and Conclusions of Law in Support of Order Confirming the Plan of Reorganization for Yarway Corporation Under Chapter 11 of the Bankruptcy Code Proposed by Yarway Corporation and TYCO International PLC* [Docket No. 860], at 10 (noting that debtor Yarway owned an interest in an entity, which, in turn, owns an interest in a joint venture which owns and operates a five-story commercial office building), & 38 (finding "After the Effective Date, Reorganized Yarway will continue to own and manage its interest in STI Properties. STI Properties, in turn, is a member of a joint venture which owns and operates a commercial office building near Cleveland, Ohio. Accordingly, the Debtor will have an ongoing business after the Effective Date.") (internal citation omitted); *see also In re Sepco Corp.*, Case No. 16-50058 (Bankr. N.D. Ohio 2016), *Order Confirming the Second Amended Plan of Reorganization, as Modified, for Sepco Corporation Under Chapter 11 of the Bankruptcy Code, and Report and Recommendation to the District Court* [Docket No. 732], at Ex. A (Plan), § 8.10 (describing "Restructuring Transactions" under which the debtor would acquire a minority ownership interest in, and receive rents from, an entity that owns an office building in Pennsylvania).

subsidiaries.[223] Indeed, while the Debtor no longer carried on its former ship-joining or cabinet-making operations at the time of the Petition Date, and had not for nearly 20 years, the Debtor did manage its insurance assets and asserted claims against it, ***including investing its cash and proceeds of insurance settlements in low-risk assets to generate a return to be used to satisfy claims***, which is exactly what Reorganized Hopeman will do after the Effective Date.

145. Accordingly, even if section 524(g)(2)(B)(i)(II) imposed an ongoing-business requirement, it is satisfied here.

(ii) The Plan Complies with Section 524(g)(2)(B)(ii)(V)

146. Section 524(g)(2)(B)(ii)(V) of the Bankruptcy Code requires a court to find that:

> the 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.[224]

Here, contrary to arguments by Chubb that there are no mechanisms to ensure current and future holders of Insured Asbestos Claims will be valued and paid in substantially the same manner,[225] the Bankruptcy Court correctly found that the Plan and the Asbestos Trust Distribution Procedures (the "TDP") contemplated therein satisfy the requirements of section 524(g)(2)(B)(ii)(V).[226]

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[223] *In re Specialty Prods. Holding Corp.*, Case No. 10-11780 (Bankr. D. Del. 2010); *In re DDI Corp.*, Case No. 03-15261 (Bankr. S.D.N.Y. 2003); *In re XO Commc'ns, Inc.*, Case No. 02-12947 (Bankr. S.D.N.Y. 2002); *In re Williams Commc'ns Grp., Inc.*, Case No. 02-11957 (Bankr. S.D.N.Y. 2002); *In re NII Holdings, Inc.*, 288 B.R. 356 (Bankr. D. Del. 2002); *In re Mercury Finance Co.*, 224 B.R. 380 (Bankr. N.D. Ill. 1998).

[224] 11 U.S.C. § 524(g)(2)(B)(ii)(V).

[225] Chubb Obj. at ¶¶ 38-40.

[226] Proposed Findings at 100.

147. Subsection (V) is focused on making sure similar claims and demands will receive substantially similar treatment from a trust. Stated differently, to the extent that a trust makes payments on claims, subsection (V) requires mechanisms to ensure payments by the trust of earlier claims do not prejudice later claims. Under the scenario currently contemplated by the TDP, payments from the Asbestos Trust are only to be made on Uninsured Asbestos Claims, not on Insured Asbestos Claims, and those Uninsured Asbestos Claims are, in fact, subject to clear mechanisms as determined by the Bankruptcy Court and summarized below. [227]

148. All Insured Asbestos Claims, which are the focus of Chubb's objection, are provided identical treatment under the TDP by allowing pursuit of those claims in the tort system to the extent of available insurance.[228] Chubb offers no authority for its argument that the contemplated mechanisms must limit individual creditors' rights to recover from insurers to avoid earlier litigants from having an advantage over later litigants in pursuing exhaustible insurance coverage. If those Insured Asbestos Claims become Uninsured Asbestos Claims, in whole or in part, they are covered by the mechanisms for ensuring similar payments by the Asbestos Trust on similar claims. The fact that Insured Asbestos Claims may become Uninsured Asbestos Claims if insurance is exhausted is not the concern of subsection (V). The Asbestos Trust itself will be managing its payments to claimants in an equitable fashion under the mechanisms governing those payments.[229]

149. The TDP contains clear mechanisms to provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Asbestos Personal Injury Claims and future asbestos-related Demands in substantially the same manner. Specifically, the

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[227] TDP, §§ 4 and 5.

[228] TDP, § 2.2.

[229] *Id.* at §§ 4.1, 4.2.

TDP provides for the processing and payment of the Uninsured Asbestos Claims, including the uninsured portions of Insured Asbestos Claims, that would have been paid by the Debtor prepetition, on an impartial, first-in-first-out basis, while also permitting the Channeled Asbestos Claimants whose claims are Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system.[230] Additionally, to ensure substantially equivalent treatment of all present and future Uninsured Asbestos Claims, the Asbestos Trust's Administrative Trustee will be required to determine, with the consent of the TAC and the FCR, the percentage of value that holders of present and future Uninsured Asbestos Claims are likely to receive from the Asbestos Trust (the "Payment Percentage").[231]

150. This determination will take account of, among other things, estimates of the Asbestos Trust's assets and liabilities (including projected expenses).[232] Further, at least once every three years, the Administrative Trustee will be required to reconsider the then-applicable Payment Percentage based on current information.[233] In determining whether to adjust the Payment Percentage, the Administrative Trustee is obligated to assess whether the then-applicable Payment Percentage is based on accurate, current information, and, if after reconsideration, the Administrative Trustee believes a change to the Payment Percentage is necessary, then the Administrative Trustee may effectuate such change with the consent of the TAC and the FCR.[234] Each Distribution made to an asbestos claimant will reflect the Payment Percentage in effect at the time of such Distribution.[235] To further ensure equitable treatment of similarly-situated claims, in

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230 *Id.*

231 *Id.* at §§ 4, 5.

232 *Id.* at § 2.2.

233 *Id.* at § 4.2.

234 *Id.*

235 *Id.* at§ 4.3.

the event the Administrative Trustee determines it appropriate to increase the Payment Percentage, and such proposed increased Payment Percentage is subsequently adopted in accordance with the terms of the TDP, the Administrative Trustee will be required to make supplemental payments to all asbestos claimants who previously liquidated their Asbestos Personal Injury Claims based on a lower Payment Percentage.[236]

151. Accordingly, given these mechanisms in the Plan and the TDP contemplated therein, the Bankruptcy Court correctly found that the Plan and the TDP satisfy the requirements of section 524(g)(2)(B)(ii)(V).[237]

(iii) The FCR Fulfilled Her Obligations

152. Section 524(g)(4)(B)(i) requires that the Bankruptcy Court "appoint[] a legal representative for the purpose of protecting the rights of person that might subsequently assert demands …."[238] The Bankruptcy Court did precisely that by entering the *Order Appointing Future Claimants' Representative* [Docket No. 732] ("FCR Appointment Order"). Chubb, nonetheless, contends that the Plan cannot be confirmed because "[t]he 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)."[239] In making that assertion, Chubb both ignores the record in the case and, ironically, contradicts itself by pointing to evidence of the FCR doing precisely what Chubb claims there is no evidence of.

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[236] *Id.*

[237] Proposed Findings at 100.

[238] 11 U.S.C. § 524(g)(4)(B)(i).

[239] Chubb Obj. at ¶ 43.

153. Chubb attempts to demonstrate that the FCR failed to comply with her duty to act as a legal representative for her constituency by taking ire with the FCR for billing what Chubb, evidently, considers an insufficient amount of time.[240] While emphasizing that the FCR's fee statement reflects that the FCR herself "***only***" spent a combined total of 9.7 hours in the thirty-eight (38) days between the filing of the application to retain the FCR [Docket Nos. 689, 690] (the "FCR Application") and the filing of the initial Plan Supplement, Chubb acknowledges in a footnote that the FCR's professionals' fee statements reflect over eighty-nine (89) hours of time on tasks concerning the Debtor's Plan in the thirty-five (35) day period between May 2, 2025, and June 6, 2025.[241] Thus, Chubb, in truth, suggests that the District Court should be troubled by the fact that the FCR and her professionals spent just shy of one-hundred (100) hours working on the Debtor's Plan in just over a month. The Plan Proponents cannot fathom why that would be alarming. On the contrary, one would think the FCR's constituency would appreciate the service of an experienced fiduciary with sufficient experience working in cases of this nature so as to not require excessive expenditures of time and money (all of which, of course, serve to deplete funds otherwise available to the FCR's constituency).

154. In any event, Chubb fails to offer the District Court any authority that even purports to mandate some minimum expenditure of time by a FCR, much less any authority that supports the proposition that the Plan Proponents were required to adduce evidence that the FCR expended some arbitrary amount of hours to carry out her duty. Indeed, Chubb simply contends that there is a complete dearth of evidence, while, ironically, pointing out evidence that the FCR and her professionals expended nearly a hundred hours in just over a month working on tasks related to

[240] *Id.* at ¶ 46 ("[T]he First C&L Fee Statement shows that the FCR, herself, billed ***only*** 5.20 hours of time in connection with tasks concerning the Debtor's proposed Plan.").

[241] *Id*. at ¶ 46, n.7.

the Plan. Chubb tries to bolster the appeal of its, candidly, weak assertions by conjuring a strawman: namely that the Plan was "a *fait accompli*." Chubb supports that proposition with nothing more than its own characterization of the timeline between the appointment of the FCR and the entry of the Solicitation Procedures Order as abbreviated, and then invites the District Court to share Chubb's ire at the supposed absence of "evidence that the FCR, presented with a Plan that was a *fait accompli*, took any meaningful action to protect the interests of her constituency."[242]

155. Chubb fails to offer the District Court any reason to accept that premise, because there is none. The simplest explanation, as the old adage goes, is often the best. The Plan Proponents submit that the more rational explanation is that the FCR and her professionals, being well-qualified by their prior experience in mass-tort asbestos bankruptcies, were able to quickly and efficiently get up to speed on the Plan and to represent her constituents without need of the excessive billing Chubb demands evidence of. Indeed, it should come as no surprise that the FCR would be unlikely to share Chubb's ire with the Plan, as Chubb is an insurer incentivized to take any and all action (as the record in this Chapter 11 Case more than demonstrates) to minimize its exposure to the FCR's constituency.. It would be far more surprising if the FCR found herself aligned with the views of dissenting insurers on the terms of a section 524(g) plan, particularly one that enjoys such widespread support from the holders of Channeled Asbestos Claims.

156. Indeed, the FCR filed a memorandum in support of confirmation of the Plan, confirming therein that she determined that the Plan "clearly is the best alternative for recovery for future claimants."[243] Counsel for the FCR also appeared at the Combined Hearing and

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[242] *Id*. at ¶ 46.

[243] *See Joinder Memorandum of the FCR in Support of Proponents' Memorandum of Law in Support of: (A) Final Approval of the Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code, and (B) Confirmation of the Amended Plan of Reorganization of*

supported confirmation.[244] Accordingly, section 524(g)(4)(B)(i) was satisfied by the Bankruptcy Court's entry of the FCR Appointment Order, and Chubb offers no authority for the asserted proposition that there must be evidence that the FCR's negotiated the terms of the Plan. Instead, Chubb helpfully has identified evidence that the FCR and her professionals spent, in just over a month alone, over 100 hours on tasks concerning the Plan. Thus, the record supports that the FCR carried out her duties and obligations, including "participat[ing] in the negotiation of the reorganization plan …,"[245] which is precisely what Chubb contends was required. The Bankruptcy Court therefore did not err in concluding that section 524(g)(4)(B)(i) was satisfied and Chubb's objection on this issue should be overruled.

E. THE DEBTOR IS ELIGIBLE FOR A DISCHARGE UNDER SECTION 1141

157. Two of the Objecting Insurers, Chubb and Liberty Mutual,[246] incorrectly assert that the Plan cannot be confirmed under the supplemental channeling injunction provisions of section 524(g) because the Debtor allegedly does not qualify for a discharge under section 1141(d)(3) of the Bankruptcy Code. The Objecting Insurers' assertions do not withstand scrutiny, and their objections should be overruled. The Bankruptcy Court correctly found that the Debtor is entitled to both a discharge under section 1141, as well as a supplemental channeling injunction under section 524(g) (as explained in more detail below).

158. Pursuant to section 1141(d)(3), "[t]he confirmation of a plan does not discharge a debtor if – (A) the plan provides for the liquidation of all or substantially all of the property of the

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Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code; and, Omnibus Reply to Plan Objections [Docket No. 1114].

244 *See* Combined Hr'g Tr. Day 2 at 58:22-61:7.

245 *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 367 (3d Cir. 2022).

246 Liberty Mutual does not offer any of its own substantive arguments on this issue. Instead, Liberty Mutual merely joins in Chubb's objection on this point. *See* Liberty Obj. at ¶ 33; *see also* Chubb Obj. at ¶¶ 7- 28

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."[247] Because the requirements of section 1141(d)(3) are "in the conjunctive, if any one provision does not apply, confirmation of a plan results in the discharge of debt."[248]

159. Notwithstanding the Objecting Insurers' arguments to the contrary, neither section 1141(d)(3)(A) nor (B) applies here; thus the Debtor is entitled to a discharge.[249]

(i) Section 1141(d)(3)(A) Is Not Triggered Because the Plan Does Not Provide for the Liquidation of All or Substantially All of the Property of the Estate

160. Section 1141(d)(3)(A) provides that "confirmation of a plan does not discharge a debtor if— [among other things] (A) the plan provides for the liquidation of all or substantially all of the property of the estate."[250] The Bankruptcy Court correctly found that the Plan itself reflects, and Mr. Lascell confirmed in his unrefuted testimony, that the Plan does not provide for the liquidation of all or substantially all of the property of the estate.[251] In fact, no assets are being liquidated under the Plan.

161. Instead, in stark contrast to a liquidation, the Plan preserves the Debtor's existence by providing for its survival as Reorganized Hopeman, and that the property of the estate is being transferred – either to Reorganized Hopeman or the Asbestos Trust (the owner of Reorganized Hopeman).[252] The Plan provides that Reorganized Hopeman will receive the "Net Reserve

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[247] 11 U.S.C. § 1141(d)(3)(A)-(C) (emphasis added).

[248] *In re River Cap. Corp.*, 155 B.R. 382, 287 (Bankr. E.D. Va. 1991).

[249] The Plan Proponents do not dispute that the Debtor, as a corporation, would not be entitled to a discharge under section 727(a) of the Bankruptcy Code.

[250] 11 U.S.C. § 1141(d)(3)(A).

[251] *See* Proposed Findings at 104; *see also* Combined Hr'g Tr. Day 1 at 35:7-36:13,

[252] *See* Plan, § 8.6 (providing for the cancellation of the "existing Equity Interests" and issuance of 100% of the Reorganized Hopeman Stock … to the Asbestos Trust."); and Plan, § 8.3(a).

Funds," which it will use to consummate the Restructuring Transactions in accordance with the Plan, including investing in a business and capitalizing the reorganized entity.[253] The Asbestos Trust will receive the Asbestos Trust Assets.[254] As part of the Asbestos Trust Assets, the Debtor also will make the Asbestos Trust Contribution—which will ***transfer***, not ***liquidate***—the Asbestos Insurance Rights to the Asbestos Trust, the newly-formed owner of Reorganized Hopeman, to maintain the Debtor's Asbestos Insurance Rights in their existing unliquidated form for the benefit of the holders of Channeled Asbestos Claims.[255] All other property of the estate will be transferred to Reorganized Hopeman.[256] As the Bankruptcy Court correctly found, there is no mention of liquidation of any assets.[257]

162. Nevertheless, Chubb claims otherwise. Chubb emphasizes that, as of the Petition Date, the Debtor's only assets were cash and its remaining insurance policies,[258] and that the Debtor "existed solely to manage, administer, and defend claims against it arising from asbestos-related liabilities."[259] Chubb, accordingly, characterizes the notion that the Plan provides for the reorganization of the Debtor as a sham, and Chubb criticizes the Bankruptcy Court for "accept[ing] 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."[260] Chubb's assertions do not withstand scrutiny.

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253 *Id.* at §§ 8.5 and 8.10.

254 *Id.* at § 8.3(a).

255 *Id.* at § 8.3.(b)

256 *Id.* at § 9.2.

257 *See* Proposed Findings at 104.

258 Chubb Obj. at ¶¶ 12-13.

259 *Id.* at ¶ 11.

260 *Id.*

163. As an initial matter, the bulk of Chubb's argument focuses on the limited nature of the Debtor's assets and operations as of the Petition Date, but those arguments are irrelevant. The plain language of section 1141(d)(3)(A) restricts a debtor's entitlement to a statutory discharge if, among other things, "***the plan provides*** for the liquidation of all or substantially all of the property of the estate …."[261] The state of the Debtor's operations and the extent of its assets as of the Petition Date has nothing to do with whether ***the Plan*** provides for a liquidation. It is hornbook law that "where, as here, the statute's language is plain, the sole function of the Court is to enforce it according to its terms."[262] Chubb does not—and cannot—offer the District Court a basis under which it would be appropriate to disregard the plain language of section 1141(d)(3)(A) to conclude that the limited nature of the Debtor's operations and assets—***as of the Petition Date***—demonstrates (much less overrides) what the ***Plan*** (the relevant touchstone for purposes of section 1141(d)(3)(A)) provides.

164. Chubb claims to find support for the so-called substance-over-form analysis in the District Court's decision in *Mahwah Bergen*.[263] In particular, Chubb claims that the District Court "has previously acknowledged the reality of a full-scale liquidation, despite a debtor's efforts to characterize that liquidation as a reorganization."[264] Chubb supports this so-called acknowledgment with nothing more than a ten-word quotation, taken out of context, from the District Court's fifty-page opinion.[265]

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[261] 11 U.S.C. § 1141(d)(3)(A) (emphasis added).

[262] *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (internal citations and quotation marks omitted).

[263] *See* Chubb Obj. at ¶ 10 (citing *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641 (E.D. Va. 2022)).

[264] *Id.*

[265] *See id.* ("'[a]s an initial matter, Debtor largely liquidated, rather than reorganized ….'") (quoting *Mahwah Bergen*, 636 B.R. at 690).

165. *Mahwah Bergen* is inapposite because the Court's opinion there ***never*** addressed section 1141(d)(3). On the contrary, the opinion turned on the impropriety of the third-party releases as best evidenced by the statements that immediately follow the abridged quotation Chubb relies on:

> As an initial matter, Debtor largely liquidated, rather than reorganized. This alone cuts against the essential nature of the releases. The third and final asset sale transaction closed on December 23, 2020 – well before confirmation of the Plan. That the deal closed and the assets changed hands well before any releases was finalized or went into effect demonstrates that the Plan does not hinge on the inclusion of the releases.

Mahwah Bergen, 636 B.R. at 690. The Plan here does not provide for or implicate the controversial third-party releases sought in *Mahwah Bergen.*

166. Indeed, because the Plan is proposed pursuant to section 524(g), the Plan presents the District Court with the single context in which non-consensual third-party releases are expressly permitted under the Bankruptcy Code.[266]

167. Moreover, the Debtor's decision to pivot to a plan proposed pursuant to section 524(g) was done, not for the benefit or at the behest of third-party lenders or ordinary course creditors that agreed to support a restructuring, but as a result of the widespread desire for, and consent to, such a plan by the Committee and overwhelming majority of the Debtor's creditors.[267]

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[266] *See Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 222 (2024) (recognizing that, "[f]or asbestos-related bankruptcies—and only for such bankruptcies—Congress has provided that, '[n]otwithstanding' the usual rule that a debtor's discharge does not affect the liabilities of others on that same debt, courts may issue 'an injunction … bar[ring] any action directed against a third party' under certain statutorily specified circumstances. § 524(g)(4)(A)(ii). That the code *does* authorize courts to enjoin claims against third parties without their consent, but does so in only *one* context, makes it all the more unlikely that § 1123(b)(6) is best read to afford courts that same authority in *every* context.") (emphasis in original) (alterations in original).

[267] *See* Combined Hr'g Tr. Day 1 at 145:12-23; Voting Certification (reflecting unanimous acceptance of the Plan by Class 3 (General Unsecured Claims) and acceptance by 99.71 percent in number and 99.71 percent in amount of Class 4 (Channeled Asbestos Claims)).

168. The *Mahwah Bergen* opinion also is inapposite because, as the District Court is aware, the *Mahwah Bergen* plan, unlike the Plan here, was structured to allow for two possible paths, depending on whether the principal sale transaction closed by the effective date, ***including a possible liquidation***. Specifically, if the sale was not consummated by the effective date, the *Mahwah Bergen* plan provided that the estate's assets would vest in the reorganized debtors,[268] new directors and officers of reorganized Ascena would be appointed,[269] and reorganized Ascena was to issue new common stock to fund distributions.[270] Should the sale transaction be consummated by the effective date, however, the *Mahwah Bergen* plan provided that the reorganized debtors would continue in existence for the purpose of "winding down the Estates as expeditiously as reasonably possible and liquidating any assets held by the Reorganized Debtors after the Effective Date and after consummation of the Sale Transaction."[271] Thus, the *Mahwah Bergen* plan, unlike the Plan here, provided for a liquidation and merely preserved optionality in the event that the previously approved sale of substantially all of the debtors' assets did not close by the effective date.

169. Finally, Chubb points to *Western Asbestos*, an out-of-circuit decision issued by the Bankruptcy Court for the Northern District of California over 20 years ago, to argue that the Debtor is not entitled to a discharge pursuant to section 1141(d)(3)(A).[272] Setting aside the lack of persuasiveness of the decision, Chubb is correct that the court in *Western Asbestos* concluded that

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[268] *Mahwah Bergen* Plan Art. IV.G.

[269] *Id.* at Art. IV.K.

[270] *Id.* at Art. IV.D.2. Notably, in a situation in which the debtors did not consummate the sale transaction by the effective date, there also is no mention of any continued operations, ongoing business activities, or other commercial activities as being available as a source of funding for the *Mahwah Bergen* Plan.

[271] *Id.* at Art. IV.E.

[272] Chubb Obj. at ¶ 17 (citing *In re Western Asbestos Co.*, 313 B.R. 832 (Bankr. N.D. Cal. 2003)).

a debtor whose prepetition operations consisted solely of managing asbestos claims and insurance rights was ineligible for a discharge under section 1143(d)(3)(A).[273] The *Western Asbestos* court reached this conclusion, in part, based on the determination that the then-defunct debtor's post-confirmation "business activity will be to assign the Policies to the Trust, if possible, and, if not, to pursue its rights under the Policies itself and ***ultimately wind up its affairs***."[274] The *Western Asbestos* court, however, did not engage in an analysis of each of the three conditions set forth in section 1141(d)(3), instead concluding, as a general matter, that "[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."[275] *Western Asbestos*, like *Mahwah Bergen*, also is distinguishable.

170. Unlike the *Western Asbestos* debtor, Reorganized Hopeman here will engage in business, as discussed in greater detail below, vis-à-vis the Restructuring Transactions. Through the Restructuring Transactions, Reorganized Hopeman will make investments that will result in it obtaining a minority interest in an operating entity that will generate cash flow through distributions and/or dividends for the foreseeable future.[276]

171. To deny a discharge on the basis that the Debtor is liquidating in a chapter 11, the plain language of section 1141(d)(3)(A) requires the District Court to find that the Plan provides for the liquidation of all or substantially all of the property of the Debtor's estate. That requirement

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[273] *Western Asbestos Co.* 313 B.R. at 853.

[274] *Id.* (emphasis added).

[275] *Id.*

[276] *See also Flintkote*, 486 B.R. at 132 ("[T]here is no requirement under § 1141(d) that a debtor continue the same business lines and activities that it engaged in pre-petition. The requirement under the statute in order to a receive a discharge, is simply to 'engage in business after consummation of the plan.' § 1141(d)(3)(B). There is no qualification in the statute that the business must be a pre-petition business, nor any language qualifying what level of business activity is sufficient."); *see also* Combined Hr'g Tr. Day 1 at 172:12–181:9.

cannot be satisfied where, as here, there is no mention of liquidation in the Plan.[277] Indeed, courts have refused to hold that a debtor's plan, for purposes of section 1141(d)(3)(A), constitutes a liquidating plan where the plan expressly contemplated a possible liquidation of the debtor's assets but retained other potential alternatives for a reorganization.[278]

172. For the reasons set forth above, the Plan Proponents respectfully submit that section 1141(d)(3)(A) is not satisfied here, the Debtor is entitled to a discharge, and the Objecting Insurers' objection should be overruled.

(ii) Section 1141(d)(3)(B) Is Not Triggered Because the Reorganized Debtor Will Engage in Business Post-Confirmation

173. Section 1141(d)(3)(B) of the Bankruptcy Code provides that "confirmation of a plan does not discharge a debtor if— [among other things] (B) the debtor does not engage in business after consummation of the plan."[279] Through the Restructuring Transactions, Reorganized Hopeman will make investments that will result in it obtaining a minority interest in an operating entity that will generate cash flow through distributions and/or dividends for the

[277] In fact, Hopeman originally contemplated liquidation in the proposed plan of liquidation it filed shortly after it entered bankruptcy. See Docket No. 56. However, Hopeman ultimately agreed with the Committee to a different path, to reorganize under §524(g) rather than liquidate, which is why the Plan Proponents filed a Plan of Reorganization rather than another plan of liquidation.

[278] *See e.g., Fin. Sec. Assur. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 804 (5th Cir. 1997) ("According to T-H NOLP's Plan, there are three options with respect to the Hotel: (1) the refinancing of FSA's debt and paying FSA in full; (2) the sale of the Hotel; or (3) the transfer of the Hotel to FSA in satisfaction of its nonrecourse debt. The first option proposed by T-H NOLP does not result in liquidation of the property, but instead results in liquidation of FSA's claim, and is obviously the one preferred by T-H NOLP. Moreover, if T-H NOLP is successful in refinancing the debt, its business operations will continue … T-H NOLP will pursue the refinancing option simultaneously with its efforts to market the Hotel under the section option. However, no evidence was presented to support the fact that refinancing within two years was so unlikely that sale of the Hotel … or *daiton en* payment … were the only viable options. We also note that FSA fails to cite any authority for the proposition that where alternative of a Plan is liquidation of the property two years after a plan's effective date, it constitutes a liquidation under 1141(d)(3)(A). We refuse to so hold."); *see also Matter of First Am. Health Care of Georgia, Inc.*, 220 B.R. 720, 726 (Bankr. S.D. Ga. 1998) ("Where a plan of reorganization provides viable options other than to liquidate and distribute the property of the estate, it is not a liquidating plan for purposes of section 1141.").

[279] 11 U.S.C. § 1141(d)(3)(B).

foreseeable future. Thus, section 1141(d)(3)(B) is not implicated, and Hopeman is entitled to a discharge.

174. Chubb contends otherwise, arguing that under the Fourth Circuit's unpublished (and therefore non-binding) opinion in *Grausz,*[280] section 1141(d)(3)(B) may only be satisfied by the continuation of a prepetition business. Chubb is incorrect. As the *Flintkote* court observed in the context of another section 524(g) plan, *Grausz* is "clearly inapposite" here as:

> *Grausz* is ***an unpublished case*** involving an individual Chapter 11 debtor whose plan called for ***the liquidation of his prepetition businesses***. The debtor argued that because, post-consummation, he would be working as a consultant for an entity unrelated to the bankruptcy, he was engaged in business sufficient to satisfy § 1141(d) and receive a discharge. The Court of Appeals noted that the business Dr. Grausz worked for post-consummation was unrelated to the entities in bankruptcy, and that § 1141(d)(3)(B) "does not refer to basic employment by an individual debtor but to *continuation* of a *pre-petition* business. Thus, Dr. Grausz's prepetition business was liquidating; there was no ongoing business at all. Instead, Dr. Grausz simply became an employee for an entirely unrelated entity. The circumstances here are clearly inapposite, as Flintkote is: (1) not an individual debtor, (2) not liquidating, and (3) continuing to engage in business post-confirmation.[281]

175. The same is true here, Hopeman is: (1) not an individual debtor, (2) not liquidating, and (3) will continue to engage in business, vis-à-vis the Restructuring Transactions, post-confirmation.

176. The *Flintkote* court's refusal to write into section 1141(d)(3)(B) a requirement that a debtor continue to engage in a *prepetition* business is consistent with a litany of other decisions

[280] Chubb Obj. at ¶ 11 (citing *Grausz v. Sampson (In re Grausz)*, 886 F.2d 693 (4th Cir. 1989)).

[281] *Flintkote*, 486 B.R. at 132. (bolded emphasis added) (internal citations omitted).

that have rejected the same argument in the context of motions to dismiss a bankruptcy for cause on the grounds that a debtor lacked an ongoing business and thus was incapable of rehabilitation.[282]

177. Chubb next argues that the passive nature of Reorganized Hopeman's business does not suffice for purposes of section 1141(d)(3)(B), beseeching the District Court to engraft an "active business" requirement into section 1141(d)(3)(B). Chubb purports to find support for this fictitious requirement in decisions purportedly assessing what it means to be engaged in business in ***non-section 1141(d)*** contexts. Chubb's arguments should be rejected for three reasons: (i) the Supreme Court's teachings in *Toibb* demonstrate the impropriety of Chubb's request to engraft an arbitrary, fictitious "active business" requirement into section 1141(d)(3)(B), (ii) such a standard would be inconsistent with case law actually interpreting section 1141(d)(3)(B), and (iii) the single-asset-real-estate ("SARE") debtor cases Chubb relies on actually support the Plan Proponents' position.

178. First, *Toibb* clearly instructs courts to follow and enforce the plain language of the Bankruptcy Code, and admonishes unwarranted efforts to engraft non-existent requirements into unambiguous statutes based on legislative history and/or policy considerations. As the *Southern California Edison* court recognized:

> In *Toibb v. Radloff*, 501 U.S. 157 (1991), the [Supreme] Court enforced the plain language of the bankruptcy statute defining the class of debtors permitted to file under Chapter 11, reversing the lower courts. The lower courts relied on legislative history, policy considerations, and the structure of the Code to ***engraft an "ongoing business" requirement*** for debtors who sought to file under Chapter 11. The Court stated: when "the resolution of a question of federal law turns on a statute and the

[282] *See, e.g., In re Honx, Inc.*, Case No. 22-90035, 2022 WL 17984313, at *3 (Bankr. S.D. Tex. Dec. 28, 2022) ("The Committee's contention that HONX has no ongoing business and therefore cannot be said to have a goal of 'rehabilitation' misses the point. There is no ongoing business requirement in the Code.") (citing *Toibb v. Radloff*, 501 U.S. 157, 166 (1991) (finding that courts could not engraft an "ongoing business" requirement in the Code to prevent nonbusiness debtors from filing under chapter 11 since section 109(d) of the Bankruptcy Code contained no such restriction) (emphasis added).

> intention of Congress[,] we look first to the statutory language and then to the legislative history if the statute is unclear.[283]

Here, the plain language of section 1141(d)(3)(B) restricts a debtor's entitlement to a discharge where it will not engage in business post-confirmation, but section 1141(d)(3)(B) does not mandate that such business be "active" nor does it provide that business of a passive nature does not suffice. The District Court's role is not to re-write the statute as befits Chubb, rather it is to interpret and enforce the plain language of the Bankruptcy Code, which, in this case, makes clear that the Restructuring Transactions, and the minority ownership interest that Reorganized Hopeman will obtain through such transactions, is sufficient for purposes of section 1141(d)(3)(B).

179. Second, courts, including those considering confirmation of plans proposed pursuant to section 524(g), have analyzed section 1141(d)(3)(B) and concluded, contrary to the arbitrarily high bar Chubb advocates for here, that it imposes no requirements regarding the level of business activity:

> [T]here is no requirement under § 1141(d) that a debtor continue the same business lines and activities that it engaged in pre-petition. The requirement under the statute in order to a receive a discharge, is simply to "engage in business after consummation of the plan." § 1141(d)(3)(B). ***There is no qualification in the statute that the business must be a pre-petition business, nor any language qualifying what level of business activity is sufficient***.[284]

180. Third, and finally, the SARE debtor cases Chubb cites in support of its effort to characterize Reorganized Hopeman's passive business as insufficient under section 1141(d)(3)(B), ironically, bolster the Plan Proponents' position.

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[283] *In re S. Cal. Edison Co.*, Civ. A. No. 6:16-CV-57, 2018 WL 949223, at *4 (S.D. Tex. Feb. 15, 2018) (emphasis added).

[284] *Flintkote*, 486 B.R. at 132 (emphasis added).

181. Section 101(51B) of the Bankruptcy Code sets forth criteria relevant to whether a debtor constitutes a SARE by defining the term "single asset real estate" as follows:

> real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gros income of a debtor who is not a family farmer and ***on which no substantial business is being conducted by a debtor*** other than the business of operating the real property and activities incidental thereto.[285]

Chubb, in turn, points to SARE cases in which courts have held "that the phrase 'no substantial business' distinguishes between 'entrepreneurial, active labor and efforts versus merely income.'"[286] Chubb claims this "no ***substantial*** business" standard "illuminates the difference between active and passive businesses in chapter 11."[287] Chubb fails to recognize, however, that these decisions actually support the Plan Proponents' position. The SARE cases on which Chubb relies distinguish between active and passive businesses, for the purpose of whether a debtor conducts ***substantial*** business—not to distinguish between debtors who are engaging in business and those who are not. Indeed, the fact that courts distinguish between those debtors who conduct ***substantial*** business and those who do not by, among other things, assessing whether the business is active or passive, constitutes an implicit acknowledgment that debtors' who generate revenue passively do, of course, conduct business.

182. This conclusion is further reinforced by the negative implication doctrine, pursuant to which "[w]here Congress includes particular language in one section of a statute but omits in

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[285] 11 U.S.C. § 101(51B) (emphasis added).

[286] Chubb Obj. at ¶ 25 (quoting *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")).

[287] Chubb Obj. at ¶ 25 (emphasis added).

another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[288] The fact that Congress elected to restrict debtors from being eligible as SARE debtors where they conduct "substantial" business, but chose not to condition a debtor's entitlement to a discharge using a similar "substantial" qualifier on the business a debtor must engage in, as the *Coleman* court observed in the context of § 550, "merely highlights the fact that Congress knew how to include a limitation when it wanted to."[289]

183. For the reasons set forth above, the Plan Proponents respectfully submit that the Debtor also is entitled to a discharge because section 1141(d)(3)(B) is not satisfied here, and the Objecting Insurers' objection should be overruled.

(iii) The Discharge and Discharge Injunction Provisions in Section 10.2 Are Not Overly Broad

184. Travelers argues that the Plan is non-confirmable because the discharge and injunction provisions in section 10.2 are overly broad given that they apply to both the Debtor and Reorganized Debtor. Travelers contends that only a debtor is entitled to a discharge and injunctive protection under section 1141.[290] The provisions are appropriate in scope, supported by case law, and the inclusion of the Reorganized Debtor in the protections will be helpful in this case.

185. As a matter of statutory interpretation, "[section] 1141(d) creates a default rule for discharging pre-confirmation debtors, meaning it applies only when the plan and confirmation

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[288] *Keene Corp. v. U.S.*, 508 U.S. 200, 208 (1993); *see also Coleman v. Community Tr. Bank (In re Coleman)*, 426 F.3d 719, 725 (4th Cir. 2005) ("In the absence of equivalent language in § 544, the presence of the phrase 'for the benefit of the estate' in § 550 merely highlights the fact that Congress knew how to include a limitation when it wanted to.") (citing *Keene Corp.*, 508 U.S. at 208).

[289] *Coleman*, 426 F.3d at 725.

[290] Travelers Obj. at ¶ 95.

order are silent on the issue."[291] Section 1141(d), however, does not dictate the result when the plan and confirmation order specifically address the parties to be included in the discharge.[292]

186. Consistent with this statutory interpretation of 1141, it is customary to include the reorganized debtor in a discharge and injunction provision in a chapter 11 plan.[293] Admittedly, it is the chapter 11 debtor that may discharge its debts if it qualifies for a discharge pursuant to section 1141. In this case, the corporate entity will survive, and upon the Effective Date of the Plan, post-bankruptcy Hopeman is referred to as Reorganized Hopeman or the Reorganized Debtor but it is

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[291] *See Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 235 (3d Cir. 2021).

Section 1141(d)(1) expressly provides:

> *Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan*, the confirmation of a plan—
>
> (A) discharges the debtor from any debt that *arose before the date of such confirmation*, and any debt of a kind specified in section 502(g), 502(h), or 502(i) of this title . . . ; and
>
> (B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

11 U.S.C. § 1141(d)(1) (emphasis added). As the Third Circuit has observed, "[p]lacement of the '[e]xcept as otherwise provided' proviso at the beginning of subsection (d)(1) means the carveout applies to everything that follows. Tellingly, Congress did not place the proviso *after* a specific phrase in the subsection to invoke the 'rule of the last antecedent.'" *Id.* (citing *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (explaining this principle of statutory interpretation under which a "limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that immediately follows")).

[292] *Ellis*, 11 F.4th at 235 (noting that the Court's holding is consistent with the structure of § 1141. "Elsewhere, the section preserves broad flexibility for a plan and confirmation order to override default rules) Further, Congress knew when not to include any carveout language, as is the case with various exceptions to discharge that bind the parties no matter what the plan or confirmation order says. *See, e.g.*, 11 U.S.C. § 1141(d)(6); *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 844, 200 L. Ed. 2d 122 (2018) (reasoning that express exceptions imply there are no other exceptions).

[293] *See e.g., In re Orleans Homebuilders, Inc.*, 2017 WL 665953 at *4 (Bankr. D. Del. Feb. 17, 2017) (barring pre-petition claims against the reorganized debtors based on "[t]he plain language of the Plan and Confirmation order"); *In re Peabody Energy Corporation*, 2017 WL 4843724 at *3 (Bankr. E.D. Mo. Oct. 24, 2017) (applying relevant confirmation order language which included: "Confirmation will, as of the Effective Date, pursuant to, and solely to the full extent provided by, sections 524 and 1141 of the Bankruptcy Code, discharge the Reorganized Debtors of and from all Claims and other debts and Liabilities, in accordance with Section V.E.2 of the Plan, and no creditors shall have recourse against any Reorganized Debtor or any of their assets or property on account of such Claims and other debts and Liabilities.") (emphasis added); *In re Arch Wireless*, 332 B.R. 241, n. 6 (Bankr. D. Mass. 2005) ("[O]n the Effective Date, all Claims against, or Interests in, the Debtors and the Reorganized Debtors shall be satisfied, discharged, and released in full.") (emphasis added); *In re Lorro, Inc.*, 391 B.R. 760, 763 (Bankr. E.D. Mich. 2008).

the same corporate entity that existed prior to and during bankruptcy. Hopeman will emerge upon the Effective Date as the same Virginia corporation free of the discharged debts. Furthermore, the discharge and injunction provisions in this case are nearly identical to those included in the *Kaiser Gypsum* § 524(g) plan that was recently affirmed by the Fourth Circuit.[294]

187. Moreover, the reason for the inclusion of both the Debtor and the Reorganized Debtor in the discharge and injunction provisions is to "give the debtor a financial 'fresh start.'"[295] Thus, "with the injunction, a discharge in bankruptcy may be more effective in preventing 'abuse by harassing creditors.'"[296] It would be highly prejudicial to the Reorganized Debtor to be forced to address claims that were discharged in the bankruptcy case without the benefit of the discharge injunction. This is especially true in this case where Reorganized Hopeman will have limited resources.

188. Nothing about that relief will prejudice Travelers. If it later has a claim that was not discharged in the bankruptcy, nothing about the discharge of Reorganized Hopeman or a discharge injunction will bar that claim.

189. Accordingly, the discharge and injunction are not overly broad and Travelers' objection on this issue should be overruled.

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[294] *See Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanent Cemente, Inc*., Case No. 16-31602 (Bankr. W.D.N.C.) [Docket No. 2481], Art. IV.R.3.a (providing in the section titled "General Releases of Debtors and Reorganized Debtors" that "Debtors and Reorganized Debtors are releases from all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities . . . then existing or thereafter arising on or prior to the Effective Date"); Art. IV.R.3.d (providing in the section titled "Injunction Related to Releases" that "the Confirmation Order shall permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities released pursuant to the Plan").

[295] *See, e.g., In re Jet Florida Systems, Inc.*, 883 F.2d 970, 972 (11th Cir. 1989) (citing Jackson, The Fresh-Start Policy in Bankruptcy Law, 98 Harv.L.Rev. 1393, 1396-97 (1985)).

[296] *Id.* (quoting H.R. Rep. No. 1502, 91st Cong., 2d Sess. at 1-2 (1970) [U.S. Code Cong. & Admin. News 1970, p. 4156]).

V. CONCLUSION

For the foregoing reasons, the District Court should adopt the Bankruptcy Court's Proposed Findings, confirm the Plan with the modifications required by the Bankruptcy Court, and issue the Plan's proposed channeling injunction as contemplated by section 524(g).

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Dated: December 12, 2025
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