IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

CENTURY INDEMNITY CO., *et al.*,
Appellants,

v. Civil No. 3:25cv378 (DJN)

HOPEMAN BROTHERS, INC., *et al.*,
Appellees.

MEMORANDUM ORDER
(Granting Motion to Dismiss Appeal)

This matter comes before the Court on Appellee Hopeman Brothers, Inc.'s ("Hopeman" or "Appellee") Corrected Motion to Dismiss Appeal of Order Appointing Future Claimants' Representative. (ECF No. 15 ("Motion").)[1] Appellants Century Indemnity Company and Westchester Fire Insurance Company (collectively, "the Chubb Insurers" or "Appellants") appeal the Bankruptcy Court's May 14, 2025 Order appointing Marla R. Eskin, Esq. as Future Claimant's Representative ("FCR") pursuant to 11 U.S.C. § 524(g)(4)(B)(i) in connection with Hopeman's proposed plan of reorganization under Chapter 11 of the Bankruptcy Code. *In re: Hopeman*, Case No. 24-32428-KLP (Bankr. E.D. Va. June 30, 2024) ("Hopeman Bankruptcy"), ECF No. 732 ("FCR Order"). The Court exercises jurisdiction pursuant to 28 U.S.C. § 158(a)(1).[2]

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[1] Pursuant to the Court's August 18, 2025 Order (ECF No. 19), the corrected version of Hopeman's Motion (ECF No. 15) constitutes the operative motion to dismiss in this matter.

[2] The Court assumes, without deciding, that the Bankruptcy Court's FCR Order constitutes a final order for purposes of this Memorandum Order.

Because Appellants lack bankruptcy appellate standing to pursue this appeal, the Court GRANTS Hopeman's Motion (ECF No. 15) and DISMISSES this appeal.

I. BACKGROUND

This action stems from Chapter 11 bankruptcy proceedings involving Hopeman Brothers, Inc., a company that provided marine joiner services for shipbuilders and that became the subject of protracted asbestos-related litigation. Hopeman Bankruptcy, ECF No. 1267 at 3–4.[3] The Bankruptcy Court, over the course of various orders and proposed findings in multiple related proceedings, has set forth at length the underlying facts of this matter. The Court assumes the reader's familiarity with these facts and refers the reader to the Bankruptcy Court's prior orders for greater detail. *See, e.g., id.*; Adv. Pro. No. 25-03020-KLP, ECF No. 101 at 3–4.

As relevant to this Motion, Hopeman and the Official Committee of Unsecured Creditors (the "Committee") previously moved the Bankruptcy Court for entry of an order appointing Marla R. Eskin, Esq., of Campbell & Levine, LLC, to serve as a legal representative protecting the rights of persons who might subsequently assert asbestos-related demands against Hopeman in accordance with 11 U.S.C. § 524(g)(4)(B)(i). Hopeman Bankruptcy, ECF No. 688. The parties moved for such an appointment in pursuit of a Chapter 11 Plan of Reorganization (the "Plan") that provides for the issuance of a channeling injunction under Section 524(g) of the Bankruptcy Code, and that requires appointment of an FCR to safeguard future claimants' interests. *Id.* ¶¶ 15–16 (citing 11 U.S.C. § 524(g)).

On May 13, 2025, the Bankruptcy Court granted the joint motion, appointing Ms. Eskin as FCR. FCR Order at 2. The Bankruptcy Court subsequently issued proposed findings of fact

[3] The Court employs the pagination assigned to court filings by the CM/ECF system.

and conclusions of law recommending that this Court confirm the Plan. Hopeman Bankruptcy, ECF No. 1267. Final approval of the Plan remains pending.

Appellants timely filed a notice of appeal from the FCR Order on May 16, 2025, *id.*, ECF No. 745, and filed their opening brief on July 16, 2025. (ECF No. 11.) Hopeman filed a Motion to Dismiss the appeal on August 4, 2025, which it amended on August 8, 2025. (ECF Nos. 13, 15.) Hopeman seeks dismissal of the appeal on procedural and standing grounds. (ECF No. 15 at 1–2.) The Court issued an Order on August 18, 2025, ruling that Hopeman's amended Motion would serve as the operative motion for purposes of this proceeding. (ECF No. 19.) Appellants opposed the Motion that same day, (ECF No. 21 ("Oppo."), and Hopeman did not reply within the time frame allotted, rendering this matter ripe for the Court's resolution.

II. LEGAL STANDARD

When reviewing a decision of the bankruptcy court rendered in a core proceeding, "a district court functions as an appellate court and applies the standards of review generally applied in federal courts of appeal." *Paramount Home Ent. Inc. v. Cir. City Stores, Inc.*, 445 B.R. 521, 526–27 (E.D. Va. 2010) (citing *In re Webb*, 954 F.2d 1102, 1103–04 (5th Cir. 1992)). Specifically, "[t]he district court reviews the bankruptcy court's legal conclusions *de novo* and its factual findings for clear error." *Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs. U.S., LLC*, 578 B.R. 325, 328 (E.D. Va. 2017) (citing *In re Harford Sands Inc.*, 372 F.3d 637, 639 (4th Cir. 2004)).

Bankruptcy proceedings and appeals therefrom involve two distinct types of standing requirements — bankruptcy standing and bankruptcy appellate standing. *Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs. U.S., LLC*, 469 F. Supp. 3d 505, 523 (E.D. Va. 2020). Bankruptcy standing in the bankruptcy courts stems from the Bankruptcy

Code, which provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear to be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). However, standing to appeal an order from bankruptcy court to the district court — bankruptcy appellate standing — has "different, and more stringent, requirements." *Mar-Bow*, 469 F. Supp. 3d at 523.

"The test for standing to appeal a bankruptcy court's order is whether the party is a 'person aggrieved' by the order, meaning that the party is directly and adversely affected pecuniarily." *In re Bestwall LLC*, 71 F.4th 168, 177 (4th Cir. 2023), *cert. denied sub nom. Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 144 S.Ct. 2519 (2024), and *cert. denied sub nom. Esserman v. Bestwall LLC*, 144 S.Ct. 2520 (2024) (internal quotation marks and citations omitted). "[P]arties meet that standard only when a contested order diminishes their property, increases their burdens, or impairs their rights." *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 371 (3d Cir. 2022) (internal quotations and citations omitted).

Bankruptcy appellants in federal court must also satisfy the requirements of Article III standing.[4] *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 88 (4th Cir. 2023), *rev'd and remanded on other grounds sub nom. Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024)

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[4] While the Fourth Circuit has recently issued conflicting decisions on whether Article III jurisdictional constraints apply to *bankruptcy courts*, that dispute does not alter the applicability of Article III's requirements for bankruptcy appeals in *federal district court*. *Compare In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73 (4th Cir. 2023), *rev'd and remanded on other grounds sub nom., Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024) (finding that insurer could not object to the debtor's Chapter 11 plan, because it failed to establish an injury in fact and therefore did not demonstrate its standing to object under Article III), *with Kiviti v. Bhatt*, 80 F.4th 520 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519 (2024) (holding that, once a case is validly referred to a bankruptcy court under 28 U.S.C. § 157, the constraints of Article III no longer apply, but also emphasizing that "[e]very action by a *district court* is constrained by Article III" (emphasis added)).

(bankruptcy appellant "still must have Article III standing to press its objections"); *Kiviti v. Bhatt*, 80 F.4th 520, 533 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519 (2024) ("Every action by a district court is constrained by Article III, including reviewing a bankruptcy court order. So a district court has no authority to act without an existing constitutional case or controversy."); *see also Hollingsworth v. Perry*, 570 U.S. 693, 705 (2013) (Article III standing "must be met by persons seeking appellate review, just as it must be met by persons appearing in courts of first instance"). Such standing requires that the suing party "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). As the party invoking federal jurisdiction, Appellants bear the burden of properly alleging standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

III. ANALYSIS

Hopeman argues that the Chubb Insurers lack both Article III and bankruptcy appellate standing to appeal the Bankruptcy Court's entry of the FCR Order. As to Article III standing, Hopeman contends that entry of the FCR Order confers no injury on the Chubb Insurers. (Mem. Supp. ¶¶ 25–34.) Hopeman argues that, since the FCR Order only appoints the "future claimants' representative," any potential "inability to fulfill [the FCR's] duty to independently represent the interests of future claimants as a result of [a potential conflict]" affects only "the future claimants, not the Chubb Insurers." (*Id.* ¶ 33.) On this basis, Hopeman argues that the Chubb Insurers do not themselves "suffer[] any actual or imminent injury in fact from the appointment of Ms. Eskin." (*Id.*)

More broadly, Hopeman asserts that the potential injury that Appellants fear — a flawed supplemental discharge injunction as a result of the Court's inappropriate ratification of the Plan

— is an issue that ought to be "determined in conjunction with the bankruptcy court's consideration of confirmation of the plan," and thus, the Chubb Insurers should present any objections to the Plan's ratification through an appeal to an order that ratifies the Plan, rather than the instant FCR Order. (*Id.* ¶ 31.) In addition, Hopeman contends that Appellants' feared injury stands premised on a "hypothetical collateral attack" on the § 524(g) channeling injunction, provided that Appellants even agree to a settlement with Hopeman. (*Id.* ¶ 28.) In that sense, Hopeman challenges Appellants' premise that the *Plan* causes them a concrete, particularized and imminent injury, instead characterizing any such injury as "conjectural and hypothetical," and thus insufficient for Article III standing. (*Id.*)

As to bankruptcy appellate standing, Hopeman argues that Appellants fail to constitute "persons aggrieved" by the FCR Order and therefore lack standing to appeal it. Hopeman argues that, because the FCR serves as "the legal representative charged with guarding the rights of future claimants," Appellants, as insurers, "are not the FCR's constituents" and "nothing about the appointment of the FCR affects the Chubb Insurers' rights." (*Id.* ¶ 39.) Appellants' rights would only be affected "through confirmation of the [P]lan, which has not yet occurred, [rather than] through the appointment of the FCR." (*Id.*) Hopeman also relies on the Third Circuit's opinion in *In re Imerys Talc America, Inc*, 38 F.4th 361, 371 (3d Cir. 2022). There, that court found that an insurance company seeking to appeal an order appointing an FCR based on a purported conflict lacked bankruptcy appellate standing, in part because the company was not a directly-involved party within the underlying bankruptcy proceeding. (Mem. Supp. ¶ 36 (citing *Imerys*, 38 F.4th at 371–72).)

Appellants, in turn, assert that they possess both Article III and bankruptcy appellate standing to challenge the FCR Order. As to Article III standing, the Chubb Insurers point to

different theories of injury that purportedly support their constitutional standing in this appeal. First and foremost, Appellants allege that the FCR Order harms their pecuniary interests. (Oppo. at 10.) Their standing argument proceeds along the following lines. Hopeman's proposed Section 524(g) Plan breaches the terms of the Chubb Insurers' Settlement with Hopeman and permits the newly-created trust (and at least some individual holders of asbestos claims against Hopeman) to pursue asbestos claims against Appellants. (*Id.* at 11–12.) As such, the Plan "significantly harms the Chubb Insurers' contractual rights and pecuniary interests." (*Id.* at 10.) The FCR Order would not "be necessary or required" without the Plan and was filed "as part-and-parcel of" the Plan, while the Plan "is expressly conditioned on entry of the FCR Order." (*Id.* at 10, 12.) Since the FCR Order was "filed alongside the Plan" and is "necessary for confirmation of the Plan," Appellants contend that the FCR Order and its appointment of Ms. Eskin causes them the "type of actual or imminent invasion of a legally protected interest sufficient to establish the Chubb Insurers' standing to appeal the FCR Order." (*Id.* at 13 (internal quotation marks omitted).) Stated more simply, since the Plan would injure Appellants, and since there would be no Plan without the FCR Order, Appellants argue that the FCR Order causes their injury, which grants them standing to challenge it.

As to bankruptcy appellate standing, Appellants devote all but seven lines of their argument to the claim that bankruptcy appellate standing, as a doctrine, has been rendered "constitutionally suspect" and therefore "cannot apply" to this matter, citing the Supreme Court's 2014 decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), for support. (*Id.* at 13–14.) In their brief response to Hopeman's substantive arguments, Appellants argue that the "persons aggrieved" standard is "easily met" here, based on the same essential argument as with Article III standing: since the FCR Order "would not be necessary or

required but for the filing of the Plan," and since "confirmation of the Plan is expressly conditioned on the FCR Order," the Chubb Insurers "are 'persons aggrieved' by the FCR Order." (*Id.* at 14–15 (internal quotations omitted).)

Even assuming that Appellants possess Article III standing,[5] the Court finds that Appellants lack bankruptcy appellate standing to bring this appeal, warranting dismissal.

The Court begins by rejecting Appellants' threshold claim that, despite longstanding case law in this Court and the absence of any case expressly overruling the bankruptcy appellate "persons aggrieved" standard in the Fourth Circuit, that standard simply "cannot apply" here. (Oppo. at 14.) Contrary to Appellants' assertion, the Fourth Circuit recently characterized the question of "whether bankruptcy appellate standing survives the Supreme Court's decision in *Lexmark*" not as definitively decided in Appellants' favor, but rather as "an open question." *Kiviti*, 80 F.4th at 534. At least one Fourth Circuit opinion post-dating *Lexmark* has assumed its continued viability. *In re Bestwall*, 71 F.4th at 177–78. The Court notes the Fourth Circuit's recent reiteration that "[w]e do not lightly presume that the law of the circuit has been overturned

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[5] The Court retains significant doubts as to whether Appellants successfully meet their burden to establish constitutional standing to challenge the FCR Order, specifically as to the requirements of traceability and redressability. *Spokeo*, 578 U.S. at 338. Assuming without deciding that confirmation of the Section 524(g) Plan imposes concrete, particularized and imminent harm on the Chubb Insurers, that harm concededly results *from the Plan*, not the FCR Order. As the Fourth Circuit has clarified, traceability requires a showing that the injury in question was likely "caused by the conduct complained of." *Doe v. Va. Dep't of State Police*, 713 F.3d 745, 755 (4th Cir. 2013). Given that no direct injury flows from entry of the FCR Order, and for the reasons discussed in the context of the Court's bankruptcy appellate standing analysis, the Court doubts that Appellants succeed in establishing traceability for Article III purposes. The Court also questions whether Appellants can establish redressability where, as here, the most likely result of an order vacating the FCR Order would be the Bankruptcy Court's entry of *another* FCR Order, thereby preserving the Plan's potential viability and failing to redress Appellants' purported Plan-induced injuries. However, since Appellants' failure to establish bankruptcy appellate standing independently warrants dismissal, the Court need not definitively address these issues at this time.

or rendered no longer tenable," *Carrera v. E.M.D. Sales Inc.*, 75 F.4th 345, 352 (4th Cir. 2023) (internal quotation omitted), *rev'd and remanded on other grounds*, 604 U.S. 45 (2025), and *vacated,* No. 21-1897, 2025 WL 2218876 (4th Cir. Feb. 20, 2025), and that "[a] Supreme Court decision overrules or abrogates our prior precedent only if our precedent is impossible to reconcile with a subsequent Supreme Court decision." *Short v. Harman*, 87 F.4th 593, 605 (4th Cir. 2023) (internal quotations omitted). By contrast, "[i]f it is possible for us to read our precedent harmoniously with Supreme Court precedent, we must do so." *Id.* (internal quotations omitted.) Sister circuits have provided precisely such harmonious readings of the "persons aggrieved" standard and *Lexmark*, based on several different rationales. *See, e.g., Matter of Highland Cap. Mgmt., L.P.*, 74 F.4th 361, 369 (5th Cir. 2023) ("*Lexmark* does not expressly reach prudential concerns in bankruptcy appeals and brought no change relevant here."); *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 n.3 (11th Cir. 2014) ("*Lexmark* counsels that the person aggrieved standard does not speak to a court's subject-matter jurisdiction. Rather, it tells us which parties may appeal from a bankruptcy court order."); *Matter of Petrone*, 754 F. App'x 590, 591 (9th Cir. 2019) (characterizing the "person-aggrieved test" as "identif[ying] appellants whose interests fall within the zone of interests protected by the law invoked, here, the Bankruptcy Code," and therefore finding it "[c]onsistent with the Supreme Court's decision in *Lexmark*") (internal citations omitted). For all of these reasons, and in the absence of a decision clearly overruling the Fourth Circuit's extensive body of case law embracing the "persons aggrieved" standard, the Court finds that this standard continues to govern standing for bankruptcy appeals, including in this case, and rejects Appellants' arguments to the contrary.

Having established the continued viability of the "persons aggrieved" standard, the Court finds that Appellants fail to meet that standard with regard to the FCR Order at issue here. As already discussed, only those persons who are "directly and adversely affected pecuniarily" by an order of the bankruptcy court have standing to appeal such an order. *In re Bestwall*, 71 F.4th at 177. Appellants fail to establish that they stand so affected by the entry of the FCR Order. To the extent that Ms. Eskin was improperly appointed as the Future Claimants' Representative, such impropriety "directly and adversely" affects only future claimants, not Appellants. Appellants' highly attenuated argument that such impropriety *could* form the basis for a future collateral attack on the Section 524(g) Plan's channeling injunction *if* Appellants agree to a settlement with Hopeman misses the mark, since such injury stands far too speculative to qualify as causing a "direct[] and adverse[]" pecuniary effect. *Id.*; *see also In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325–26 (11th Cir. 2014) (finding that "a party is not aggrieved, for the purposes of appealing from a bankruptcy court order, when the only interest allegedly harmed by that order is the interest in avoiding liability from an adversary proceeding.")

Appellants' main argument — that confirmation of the Plan is "expressly conditioned on the FCR Order," and that therefore, the Order's entry directly and adversely affects their pecuniary interests — fails to alter that conclusion. (Oppo. at 15.) While Appellee does not dispute that approval of the Section 524(g) Plan may directly and adversely affect Appellants, entry of the FCR Order does not contribute to that injury, since entry of the FCR Order does not impact the Court's *approval* of the Plan. As such, the FCR Order's entry fails to "directly" affect Appellants in any way at all.

And even if the Court were to accept Appellants' attenuated causation argument, under which the satisfaction of any condition for approval of a Section 524(g) Plan would, without

more, "directly and adversely" affect any party impacted by the Plan more broadly, the Court disagrees that entry of *this* FCR Order impacts Appellants in such a manner. Appellants do not dispute that the most likely outcome of an order vacating the Bankruptcy Court's FCR Order would be approval of a *different* FCR by the Bankruptcy Court, paving the path for the same outcome — approval of the Plan — and the same subsequent injury to Appellants. Where the Plan is the actual and direct source of Appellants' injury, that Plan ought to be the focus of Appellants' appeal, not an FCR Order that fails to affect their rights in any direct way. Thus, the Court rejects Appellants' argument that the Bankruptcy Court's entry of the FCR Order directly and adversely affects their pecuniary interests and finds that Appellants lack standing to appeal that Order.

The Court finds support for its position in a similar case from the Central District of California. *Chicago Ins. Co. v. Thorpe Insulation Co.*, 2008 WL 11338766, at *3 (C.D. Cal. July 14, 2008). There, the district court found that several insurance companies appealing the entry of an FCR Order in an asbestos bankruptcy proceeding lacked bankruptcy appellate standing to challenge that order. *Id.* at *1, 3. Where appellants "do not contend the FCR will render the plan of reorganization itself unfair, but instead claim that any appearance of impropriety on the part of the FCR *may* give future claimants ground to challenge a plan of reorganization that benefits [a]ppellants," the court found such an injury "far too attenuated and hypothetical to constitute injury-in-fact, let alone the direct and adverse harm sufficient for standing in a bankruptcy appeal." *Id.* at *3–4. Nor did the appellants "identif[y any] concrete interest affected by the bankruptcy court's choice of standard for appointing an FCR." *Id.* at *4. Based in part on these findings, the court found that appellants lacked standing to pursue an appeal of the FCR Order. *Id.* at *5.

As in California, so in Virginia. Appellants do not, and cannot, contend that the FCR's appointment directly and adversely impacts them pecuniarily. Their only argument to that effect is that the FCR Order injures them, because the FCR Order's entry enables approval of the Plan. Such injury is inherently indirect and thus "too attenuated" to constitute "the direct and adverse harm sufficient for standing in a bankruptcy appeal." *Id.*

IV. CONCLUSION

For the reasons set forth above, the Court hereby GRANTS Appellee's Motion to Dismiss (ECF No. 15). The Court DISMISSES this appeal with prejudice.

Let the Clerk file a copy of this Order electronically and notify all counsel of record, as well as United States Bankruptcy Judge Keith L. Phillips.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Alexandria, Virginia
Dated: January 12, 2026

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