IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

LIBERTY MUTUAL
INSURANCE COMPANY,
Appellant,

v. Civil No. 3:25cv486 (DJN)

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

MEMORANDUM ORDER

This matter comes before the Court on appeal from the United States Bankruptcy Court for the Eastern District of Virginia. Liberty Mutual Insurance Company ("Liberty Mutual" or "Appellant") appeals an order by United States Bankruptcy Judge Keith L. Phillips disallowing and expunging a claim by Liberty Mutual in the bankruptcy proceeding of Hopeman Brothers, Inc. ("Hopeman" or "Appellee"). *In re Hopeman Brothers, Inc.*, Bankruptcy Case No. 24-32428 (KLP) (Bankr. E.D. Va. June 20, 2025) ("Hopeman Bankruptcy"), ECF No. 907 (the "Disallowance Order").) For the reasons set forth below, the Court AFFIRMS IN PART and VACATES IN PART the Bankruptcy Court's Disallowance Order and REMANDS this matter to the Bankruptcy Court for further proceedings consistent with this Order.

I. BACKGROUND

The facts concerning Hopeman's bankruptcy proceedings have been extensively set forth by the Bankruptcy Court in several previous opinions. *See, e.g., Liberty Mutual Insurance Co. v. Hopeman Brothers, Inc., et al.*, Adv. Pro. No. 25-03020 (Bankr. E.D. Va. Aug. 29, 2025), ECF

No. 79 at 2–4.[1] The Court recounts only those facts relevant to this appeal, all of which remain essentially uncontested.

Liberty Mutual served as an insurer to Hopeman, a marine joiner company, as well as to Hopeman subsidiaries throughout much of the twentieth century. (ECF No. 19 ("Lib. Mut. Opening Br.") at 15.) From the 1970s onward, Liberty Mutual's insurance policies, along with those of other insurers, were increasingly implicated by claims against Hopeman involving injuries related to asbestos exposure. (*Id.*; Hopeman Bankruptcy, ECF No. 767 at 13.) Following several earlier agreements and subsequent rounds of negotiations, Hopeman and Liberty Mutual signed three related agreements on March 21, 2003:[2] (1) the Settlement Agreement and Release (Hopeman Bankruptcy, ECF No. 877 at 57–90 (the "Settlement Agreement" or "Settlement Agr.")); (2) the Indemnification and Hold Harmless Agreement (*id.* at 12–40 (the "Indemnification Agreement" or "Indemn. Agr.")); and (3) a trust agreement (*id.* at 41–55 (the "Trust Agreement")) (collectively, the "2003 Agreements")), which created a trust (the "Trust"). The stated purpose of these agreements was to effectuate "full and final satisfaction of any and all obligations of Liberty Mutual to Hopeman arising from or relating in any way to the Liberty Mutual Policies with respect to Asbestos Related Claims." (Settlement Agr. § III.B.)

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

[2] The parties signed a "First Amendment to Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company" on March 5, 2004. (Hopeman Bankruptcy, ECF No. 877 at 109–12.) None of the changes effectuated by this amendment affect the arguments or issues in this appeal. The Court is not aware of any further amendments to any of the 2003 Agreements.

Under the 2003 Agreements, Liberty Mutual committed itself to funding the Trust with a series of substantial cash payments. (*Id.* § IV.) In exchange for these payments, Liberty Mutual received a full release from coverage obligations relating to current and potential future asbestos claims and effectuated a buyback of its pre-1989 Hopeman policies. (*Id.* §§ VII.A, VIII.) The Indemnification Agreement further mandated that the Trust would "reimburse, indemnify and hold Liberty Mutual harmless in connection with any and all Indemnified Claims." (Indemn. Agr. § III.A.1.) These "Indemnified Claims" were to include future settlements or judgments asserting that Liberty Mutual owed moneys related to asbestos-related claims involving Hopeman, as well as attorneys' fees, costs and expenses incurred in defending against such claims. (*Id.* § I.K.) According to Hopeman, the funds deposited into the Trust had been fully exhausted as early as June 2021. (Lib. Mut. Opening Br. at 18; *see also* Hopeman Bankruptcy, ECF No. 694 ¶ 23 ("There are no Settlement Funds left.").)

Hopeman filed for Chapter 11 bankruptcy in this District on June 30, 2024. (Hopeman Bankruptcy, ECF No. 1.) Shortly afterwards, the Bankruptcy Court imposed a stay through a series of interim orders that prohibited asbestos claimants from asserting claims against Liberty Mutual and other insurers. (Hopeman Bankruptcy, ECF Nos. 35, 245, 622, 900.) Following the third of these interim orders, the Bankruptcy Court approved orders partially lifting this stay and allowing certain claimants to pursue asbestos-related claims directly against Liberty Mutual. (Lib Mut. Opening Br. at 12; Hopeman Bankruptcy, ECF Nos. 733, 900.)

On November 4, 2024, Liberty Mutual filed a proof of claim against Hopeman as part of its bankruptcy proceedings, asserting a claim for legal fees incurred by Liberty Mutual as a result of its participation in the bankruptcy proceedings. (Hopeman Bankruptcy, ECF No. 877 at 114–23 ("Claim No. 10" or the "Claim").) It later amended its Claim to include additional expenses.

(*Id.* at 125–30 ("Claim No. 19" or the "Amended Claim").) Liberty Mutual's Amended Claim asserts an entitlement to damages resulting from Hopeman's purported breach of two duties under the Indemnification Agreement: (1) to defend Liberty Mutual in asbestos claim-related direct actions (the "Defense Obligation") and (2) to minimize the potential of such actions arising in the first place (the "Minimization Obligation). (*Id.* at 128–29.) In support of its Claim, Liberty Mutual alleges that Hopeman no longer provides counsel for Liberty Mutual's defense against asbestos-related direct actions and that Hopeman's involvement in the lifted stay orders and its proposed joint § 524(g) bankruptcy reorganization plan (the "Plan") actively encourages holders of asbestos claims to pursue direct actions against Liberty Mutual in violation of the Minimization Obligation. (Lib. Mut. Opening Br. at 8.)

Hopeman filed its Objection to Liberty Mutual's Claim[3] on April 30, 2025. (Hopeman Bankruptcy, ECF No. 694 ("Objection").) There, Hopeman centrally argues that Liberty Mutual's Claim lacks validity, because even if Hopeman breached any Defense or Minimization Obligations contained in the Indemnification Agreement, Liberty Mutual's only remedy consists of a request for reimbursement from the Trust, not from Hopeman. (*Id.* ¶¶ 34–37.) Hopeman also disputes the very existence of any Defense Obligation, as well as Liberty Mutual's allegation that it breached the Minimization Obligation. (*Id.* ¶ 41; Hopeman Bankruptcy, ECF No. 876 ¶¶ 18, 19.)

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[3] Hopeman filed its Objection before Liberty Mutual amended its Claim and introduced its Minimization Obligation liability theory. In its Reply, Hopeman addressed the intervening Amended Claim and further disputed the additional Minimization Obligation liability theory's viability during the June 18, 2025 Hearing before Judge Phillips. (Hopeman Bankruptcy, ECF Nos. 878 ("Reply"), 915 ("Hr'g Tr.") 56:21–57:8.) In line with the briefing in this appeal, the Court construes Hopeman's objection as applying to both Liberty Mutual's Claim and Amended Claim.

The Bankruptcy Court sustained Hopeman's Objection during a hearing on June 18, 2025. (Hopeman Bankruptcy, ECF No. 915 ("Hr'g Tr.").) United States Bankruptcy Judge Phillips addressed separately what he described as the "two components" of Liberty Mutual's claim: (1) the assertion that Hopeman "has an independent duty to offer defense under certain circumstances" pursuant to § III.B.5 of the Indemnification Agreement (and that Hopeman breached that duty); and (2) that Hopeman "has an obligation to minimize claims" pursuant to § III.C of the Indemnification Agreement and that it breached that duty as well. (*Id.* 67:9–14.)

As to component (1), Judge Phillips found that § III.B.5 of the Indemnification Agreement did not create an "independent obligation" for Hopeman to defend Liberty Mutual, and that even if it did, "the damages are limited to the Trust funds" and that therefore, Liberty Mutual could not recover against Hopeman. (*Id.* 67:15–68:10.)[4] As to component (2), Judge Phillips reiterated that, throughout the Indemnification Agreement, "the only remedy that I see . . . limits . . . recovery to the Trust in connection with Indemnification Claims." (*Id.* 68:14–16.) Judge Phillips proceeded to consider whether a breach of Hopeman's Minimization Obligation "results in something other than an Indemnification Claim," thereby potentially allowing Liberty Mutual to recover from Hopeman, rather than the Trust. (*Id.* 68:17–19.) He ultimately concluded that Liberty Mutual was limited to recovering from the Trust only, even if Hopeman breached the Minimization Obligation, because "the only damages that would be incurred [by such a breach] . . . would be the fees and expenses incurred in connection with having to defend claims that result from that . . . breach of that duty to minimize." (*Id.* 68:19–24.) Since such fees and expenses qualify as "Indemnified Claims" under the Agreement, and since the Agreement

[4] References in the Hearing Transcript to provisions of the Indemnification Agreement have been edited by the Court to harmonize with the text of the Agreement.

limits recovery of such claims to the Trust, rather than Hopeman, Liberty Mutual again stood blocked from any recovery against Hopeman. (*Id.* 68:25–69:2.) Thus, considering Liberty Mutual's failure to state a valid claim for recovery against Hopeman under either rationale, Judge Phillips sustained Hopeman's Objection as to Liberty Mutual's Amended Claim, (*id.* 69:3–7), and entered its Disallowance Order to that effect on June 23, 2025. (Hopeman Bankruptcy, ECF No. 907.)

On June 24, 2025, Liberty Mutual filed a notice of appeal from the Bankruptcy Court's Disallowance Order. (*Id.*, ECF No. 918.) Liberty Mutual filed its redacted Opening Brief in this Court on September 5, 2025. (ECF No. 13.) Hopeman filed its redacted Appellee's Brief on October 6, 2026 (ECF No. 24 ("Hopeman Br.")), and Liberty Mutual replied on October 20, 2025. (ECF No. 27 ("Lib. Mut. Reply Br.").) The Court granted the parties' various motions to seal portions of their briefs (ECF Nos. 18, 26, 34) and docketed unredacted versions of the briefs under seal. (ECF Nos. 19, 20, 30.) Having determined that oral argument is unnecessary to resolve the issues presented by the parties, the Court deems this matter ripe for disposition at this time.

II. STANDARD OF REVIEW

This Court has jurisdiction to hear this appeal under 28 U.S.C. § 158(a). "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 Serv. US, LLC, 578 B.R. 325, 328 (E.D. Va. 2017) (citing *In re Harford Sands Inc.*, 372 F.3d 637, 639 (4th Cir. 2004)).

Determinations by the Bankruptcy Court that rely on the interpretation of contracts constitute legal conclusions subject to *de novo* review on appeal. *See Hendricks v. Central Reserve Life Ins. Co.*, 39 F.3d 507, 512 (4th Cir. 1994) ("[C]ontract interpretation is a question of law. Where a case turns simply upon a reading of the document itself, there is no reason to believe that a [lower] court is an any better position to decide the issue than is an appellate court").

The parties agree that Virginia law governs the agreements in question. (Hr'g Tr. 43:10–12.) Under Virginia law, "settlement agreements are treated as contracts subject to the general principles of contract interpretation." *Byrum v. Bear Inv. Co.*, 936 F.2d 173, 175 (4th Cir. 1991) (citation omitted). Courts applying Virginia law adhere to the "plain meaning" rule in interpreting and enforcing such contracts. *LeClair v. Tavenner*, 128 F.4th 257, 262 (4th Cir. 2025) (internal quotation omitted). "If the contract is complete on its face and plain and unambiguous in its terms, we do not search for its meaning beyond the instrument itself." *24th Senatorial Dist. Republican Comm. v. Alcorn*, 820 F.3d 624, 631 (4th Cir. 2016) (cleaned up) (internal quotation omitted).

To interpret a contract, a court "must construe [it] as it is written." *Palmer & Palmer Co., LLC v. Waterfront Marine Constr., Inc.*, 662 S.E.2d 77, 80 (Va. 2008). That construction necessarily begins with "the provision's text." *LeClair*, 128 F.4th at 264. The "[w]ords that the parties used are normally given their usual, ordinary, and popular meaning." *PMA Cap. Ins. Co. v. U.S. Airways, Inc.*, 626 S.E.2d 369, 372 (Va. 2006) (internal quotation omitted). Significantly, "[n]o word or clause in the contract will be treated as meaningless if a reasonable meaning can

be given to it, and there is a presumption that the parties have not used words needlessly." *Id.* at 372–73 (internal quotation omitted).

To determine whether a contract's language is ambiguous, Virginia courts "look at the words in issue within the four corners of the [contract] itself." *Eure v. Norfolk Shipbldg. & Drydock Corp., Inc.*, 561 S.E.2d 663, 668 (Va. 2002). A contract term qualifies as ambiguous when it can reasonably carry "two or more meanings, [be] understood in more than one way, or [refer] to two or more things at the same time." *Aetna Cas. & Sur. Co. v. Fireguard Corp.*, 455 S.E.2d 229, 232 (Va. 1995). However, "[a] contract is not ambiguous merely because the parties disagree as to the meaning of the terms used." *TM Delmarva Power, L.L.C. v. NCP of Va., L.L.C.*, 557 S.E.2d 199, 200 (Va. 2002).

III. ANALYSIS

Liberty Mutual raises two central objections to the Bankruptcy Court's decision to disallow and expunge its Claim against Hopeman.[5] First, Liberty Mutual asserts that Judge Phillips erred in finding that Hopeman possesses no "independent obligation to defend Liberty Mutual against direct action [a]sbestos [c]laims." (Lib. Mut. Opening Br. at 7.) Rather, Liberty Mutual maintains that the "unambiguous language of the Indemnification Agreement obligates Hopeman — not just the Trust — to defend Liberty Mutual" against such claims. (*Id.* at 20.) In support of this reading, Liberty Mutual cites Hopeman's past actions in continuing to defend

[5] Liberty Mutual asserts that the Bankruptcy Court committed a third error in failing to conclude that Hopeman's alleged "failure to comply with the Defense Obligation and Minimization Obligation constitutes an ongoing, purposeful breach of contract." (Lib. Mut. Opening Br. at 21.) However, Judge Phillips did not reach the issue of breach, instead finding only that no independent Defense Obligation existed under the Agreements, and that even if one did, any remedy for breach would be limited to recovery from the Trust, rather than from Hopeman. (Hr'g Tr. 68:8–10.) As such, the Court disregards Liberty Mutual's appeal of a conclusion concerning breach, since the Bankruptcy Court never rendered one.

Liberty Mutual even after the Trust's funds had run out, which purportedly "support[] Liberty Mutual's understanding of the parties' intent." (*Id.*) Second, Liberty Mutual asserts that the Bankruptcy Court wrongly found that no independent remedy exists for a breach of either the purported Defense Obligation or the Minimization Obligation. (*Id.* at 21.) Liberty Mutual argues that the Bankruptcy Court's interpretation "misses the entire point of the Indemnification Agreement," asserting that the relevant provision of the Agreement, § III.A.3, "was not intended to limit Liberty Mutual's remedy for breach of contract," but rather, was intended only to apply "when Hopeman [was] complying with its obligations." (*Id.* at 27.) As such, and given that Hopeman has failed to provide a defense for Liberty Mutual and has violated its Minimization Obligation by "facilitat[ing] the commencement and prosecution of [a]sbestos [c]laims" against it, Liberty Mutual asks this Court to vacate the Bankruptcy Court's decision and to hold that Liberty Mutual has asserted a valid claim against Hopeman for damages resulting from these breaches. (*Id.* at 7, 30.)

Hopeman, in turn, asks the Court to affirm the Bankruptcy Court's Disallowance Order. In support, Hopeman asserts that the language of the 2003 Agreements "plainly supports Hopeman's position that it has no independent obligation to defend Liberty when Hopeman is not being defended by counsel in the same litigation." (Hopeman Br. at 8.) Further, even if such a duty existed, Hopeman argues that the Indemnification Agreement "plainly provide[s] that Liberty Mutual's remedy, if any, for any breach of the 2003 Agreements lies exclusively against the Settlement Funds, if any, in the Trust," and that "[a]ny such breach would not give rise to a claim against Hopeman in this case in favor of Liberty." (*Id.* at 8, 27.) Further, Hopeman cites § III.A.3 of the Indemnification Agreement, which sets forth that "in no event shall Hopeman [. . .] have any obligation to reimburse or indemnify Liberty Mutual with respect to Indemnified

Claims or otherwise." (*Id.* at 14.) Hopeman argues that its reading of the purported Defense Obligation "makes logical sense," since under Liberty Mutual's interpretation, "Hopeman would be taking on liabilities it never had to Liberty Mutual," turning "[t]he insured" into "the insurer." (*Id.* at 30.) As to the Minimization Obligation, while Hopeman "disputes Liberty's contention that [] it is doing anything in violation of its settlement obligations," it asserts that "Liberty's sole remedy for any such breach comes back to the same remedy provision available to it under the 2003 Agreements, which is exclusively an Indemnified Claim against the Trust." (*Id.* at 31–32.)

Liberty Mutual's Claim, as amended,[6] seeks payment from Hopeman for two sets of legal expenses: (1) those incurred as a result of its counsel "actively participat[ing] in the [Hopeman] Bankruptcy" and (2) those incurred in "defending against direct action [a]sbestos [c]laims." (Lib. Mut. Opening Br. at 12.) It asserts that these expenses constitute damages under two separate breach-of-contract theories: (i) Hopeman's purported breach of its "Defense Obligation" to defend Liberty Mutual against direct actions under § III.B.5 of the Indemnification Agreement, and (ii) Hopeman's purported breach of its "Minimization Obligation" regarding the future asbestos-related claims against Liberty Mutual under § III.C. (Hopeman Bankruptcy, ECF No. 877 at 128–29.) As discussed above, the Bankruptcy Court rejected both theories as a basis for a claim against Hopeman. The Court proceeds to review the merits of each theory as to both categories of legal expenses requested by Liberty Mutual.

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[6] Liberty Mutual's original Claim asserted as its only theory of recovery Hopeman's purported Defense Obligation, based on language in § III.B.5 of the Indemnification Agreement. (Hopeman Bankruptcy, ECF No. 877 at 122–23.) In its Amended Claim, Hopeman invokes both § III.B.5 and Hopeman's Minimization Obligation, contained in § III.C of the Indemnification Agreement, as bases for its recovery. (*Id.* at 128–29.) The Court considers the Amended Claim as the operative claim in this matter and therefore analyzes Liberty Mutual's claim under both theories.

A. Defense Obligation

Liberty Mutual first argues that Hopeman violated its "Defense Obligation" pursuant to Section III.B.5 of the Indemnification Agreement. In its Amended Claim, Liberty Mutual argues that, in return for Liberty Mutual's funding of the Trust,

> Hopeman agreed that "in states permitting direct actions against insurers, where Liberty Mutual is named only in its capacity as insurer of Hopeman and there are no independent allegations against Liberty Mutual, that it will not request separate counsel to defend Liberty Mutual's interest. ***In such circumstances Hopeman agrees that its counsel will defend Liberty Mutual at no cost to Liberty Mutual."*** [. . .] As a result of the Defense Obligation, Hopeman is liable to Liberty Mutual under the 2003 Agreements for all past and future costs incurred by Liberty Mutual in connection with the Liberty Policies and/or related claims asserted by direct action claimants.

(Hopeman Bankruptcy, ECF No. 877 at 128–29 (emphasis in original).) While Liberty Mutual correctly quotes the bulk of the relevant provision, it distorts its framing. Section III.B.5 of the Indemnification Agreement reads in full, unaltered form as follows:

> Liberty Mutual agrees that in states permitting direct actions against insurers, where Liberty Mutual is named only in its capacity as insurer of Hopeman and there are no independent allegations against Liberty Mutual, that it will not request separate counsel to defend Liberty Mutual's interest. In such circumstances Hopeman agrees that its counsel will defend Liberty Mutual at no cost to Liberty Mutual.

(Indemn. Agr. § III.B.5.) This provision constitutes the fifth and final subsection of Section B, entitled "Defense of Liberty Mutual." (*Id.* at 10.) The preceding provisions of Section B set forth the following duties and obligations. First, Hopeman retains the "right to select counsel to represent Liberty Mutual's interests" for any claim or action involving an Indemnified Claim, with Liberty Mutual's consent. (*Id.* § III.B.1.) In addition, Liberty Mutual retains the right to "control the defense of the Indemnified Claims," but must obtain Hopeman's consent before settling or admitting liability. (*Id.* § III.B.3.) Finally, Hopeman retains the "right . . . to seek to substitute itself for Liberty Mutual" or "intervene . . . as the real party in interest" in such cases,

though Liberty Mutual retains the right "to continue its participation in the defense" of any such claim. (*Id.* § III.B.4.)[7]

Upon review of the text of § III.B.5 and the context of the preceding provisions in the Indemnification Agreement, the Court finds that Liberty Mutual's argument that it can recover expenses from Hopeman for breaching a purported "Defense Obligation" lacks merit for three reasons. First, Liberty Mutual cannot recover any costs that it has incurred for its participation in the Hopeman Bankruptcy under Hopeman's purported violation of § III.B.5, because such costs plainly fall outside of that provision's scope. Next, the Court finds that Liberty Mutual cannot recover for any costs incurred in defending against direct action asbestos claims, because the Indemnification Agreement's text limits Hopeman's Defense Obligation to cases where Hopeman has already retained counsel and is directly involved in the litigation, which is not the case here. Finally, the Court agrees with the Bankruptcy Court's conclusion that, even if the Indemnification Agreement did create a Defense Obligation covering the direct actions at issue here, the only damages that could result from a breach of that Obligation would be legal fees incurred in defending against Indemnified Claims, reimbursement of which is expressly limited to the Trust. Thus, as to both categories of requested damages, Liberty Mutual lacks a valid basis to assert a claim against Hopeman or its property pursuant to § III.B.5, warranting expungement of its bankruptcy claim to the extent that it relies on this "Defense Obligation."

As a threshold matter, the Court finds that the costs that Liberty Mutual incurred as a result of its participation in the Hopeman Bankruptcy fall outside the scope of § III.B.5 and

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[7] In a provision not relevant here, § III.B.2 of the Indemnification Agreement clarifies that Liberty Mutual has no entitlement to any funds from the Trust for expenses related to in-house employees working on the defense of Indemnified Claims or for overhead or administrative expenses related to the same. (Indemn. Agr. § III.B.2.)

therefore remain uncovered by any Defense Obligation purportedly included in that provision. Section III.B.5's text expressly limits Hopeman's obligation to provide its counsel to Liberty Mutual to only those cases that are brought "in states permitting direct actions against insurers," and "where Liberty Mutual is named only in its capacity as insurer of Hopeman and there are no independent allegations against Liberty Mutual." (Indemn. Agr. § III.B.5.) Hopeman's bankruptcy proceedings neither name Liberty Mutual as a defendant nor constitute a direct action against Liberty Mutual, and they take place in Virginia, a state that generally does not permit direct action claims. *See Richmond, F. & P. R. Co. v. Hughes-Keegan, Inc.*, 152 S.E.2d 28, 33–34 (Va. 1967) ("[U]nder Virginia law, an injured person must reduce his claim to judgment against the tort-feasor before bringing action against the company that issued a liability policy to the tort-feasor.") As such, Hopeman's bankruptcy proceedings in Virginia do not present the "circumstances" under which Hopeman would be obliged to provide its counsel to Liberty Mutual pursuant to § III.B.5. Section III.B.5 thus does not provide a basis for Liberty Mutual to recover its legal fees related to its counsel's participation in Hopeman's bankruptcy proceedings.

To assess whether Hopeman's alleged "Defense Obligation" applies to Liberty Mutual's second category of expenses — costs incurred while defending itself against certain direct action asbestos claims currently pending in state courts outside of Virginia — the Court begins by considering the contractual text. Looking to the provision at issue, the Court finds that the text of § III.B.5 does not require Hopeman to defend Liberty Mutual in all direct action asbestos claims implicating Liberty Mutual as its insurer, contrary to Liberty Mutual's expansive interpretation. Instead, this provision merely sets forth a limited obligation for Hopeman to provide its counsel's services to Liberty Mutual in actions already involving both parties and where Hopeman has already retained counsel.

The text provides several indicia that mandate this narrower reading. First, the Court notes that in the Indemnification Agreement, Liberty Mutual agreed "not [to] request separate counsel to defend Liberty Mutual's interest" in such direct claim actions. (Indemn. Agr. § III.B.5.) Merriam Webster defines the verb "request" as "to ask as a favor or privilege." *Request*, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/request [https://perma.cc/926H-XF92]. The use of the word "request" in § III.B.5 implies that in relevant cases where the provision applies, Liberty Mutual would not otherwise be free to hire its own counsel, but instead must seek some "favor or privilege" from another party — presumably Hopeman — to do so. The presence of the word "request" in the § III.B.5 thus strongly suggests that Liberty Mutual's obligation not to request separate counsel and Hopeman's accompanying obligation to provide its counsel to Liberty Mutual in such cases applies only within certain limited contexts, such as in cases where Hopeman exercises some degree of control over Liberty Mutual's decision-making autonomy by virtue of its direct involvement in a case.

The provision's subsequent specification that under the requisite circumstances, "Hopeman agrees that *its* counsel will defend Liberty Mutual at no cost," corroborates the Court's limited reading of any "Defense Obligation" stemming from this provision. (Indemn. Agr. § III.B.5.) Inclusion of the phrase "its counsel" implies a situation where Hopeman *has already retained counsel in a given action* and subsequently allows its counsel to *also* defend Liberty Mutual. This reading conforms with the provision's preceding sentence, wherein Liberty Mutual commits itself to "not request[ing] *separate* counsel" — again suggesting a situation where Hopeman both (1) remains actively involved in a matter and (2) has already retained counsel for that matter. (*Id.*)

Read together, the text of these two sentences suggests that § III.B.5 seeks to address the specific circumstance where Liberty Mutual stands subject to suit and where Hopeman has already retained counsel in the same matter. Such a reading aligns with the provision's aim of avoiding duplicative legal expenses and unnecessary depletion of Trust funds. Rather than forcing the Trust to pay for two sets of lawyers, this provision ensured that Liberty Mutual would refrain from "request[ing] separate counsel" in cases where Hopeman would have "*its* counsel . . .defend Liberty Mutual at no cost." (*Id.*) By contrast, Liberty Mutual's interpretation, which suggests a categorical obligation for Hopeman to provide its insurer with counsel in all asbestos-related direct actions into perpetuity, reads the word "its" out of the provision and renders the provision's references to Liberty Mutual's "separate" counsel and its obligation not to "request" such separate representation entirely meaningless. Such a selective reading of the contractual language stands at odds with Virginia law's admonition that "[n]o word or clause in the contract [shall] be treated as meaningless if a reasonable meaning can be given to it" and the law's "presumption that the parties have not used words needlessly." *PMA Cap. Ins. Co.*, 626 S.E.2d at 372–73. The Court refuses the invitation to transform § III.B.5 into an expansive "Defense Obligation" that requires Hopeman to defend Liberty Mutual in all direct-action cases on the basis of such a flawed reading.

Reading § III.B.5 in context with the remaining provisions of § III.B further confirms the specific, limited scope of Hopeman's "Defense Obligation" under the Indemnification Agreement. As described above, Sections III.B.1, 3 and 4 address various aspects of Liberty Mutual and Hopeman's rights and obligations in actions involving both parties, providing a governing framework for the coordination and interaction between the two entities. In such coordinated actions, Hopeman retains the right to pick Liberty Mutual's counsel and intervene in

suits where it was not already named, (Indemn. Agr. §§ III.B.1, 4), while Liberty Mutual retains the right to control its own defense. (*Id.* § III.B.3.) Though § III.B.5 concerns direct actions against Liberty Mutual in its capacity as insurer of Hopeman, that provision's presence in a portion of the Indemnification Agreement focused primarily on coordination between the two parties in joint actions further supports a reading that any obligation for Hopeman to provide counsel to Liberty Mutual stands limited to cases where Hopeman already participates in the matter and has retained counsel of its own. This context and the overall sweep of § III.B thus further elucidate what the text of Section III.B.5 already demonstrates: Hopeman's agreement "that its counsel will defend Liberty Mutual" stands confined to cases where Hopeman has already retained counsel, and where the two parties are actively coordinating defense obligations with one another.

Applying this reading of § III.B.5 to the case at hand, the Court finds that Hopeman's limited obligation to provide "its counsel" to "defend Liberty Mutual" in cases where the two parties coordinate defense obligations does not extend to the pending direct actions underpinning Liberty Mutual's Claim. As a bankrupt entity in bankruptcy proceedings, Hopeman is not currently subject to civil suits and thus does not retain "its" counsel for purposes of defending against asbestos-related claims in state court. Nor do any of the briefs suggest that the two parties are currently coordinating defense obligations or that Liberty Mutual has "requested" counsel separate from Hopeman's (or felt any obligation to do so) in the direct actions at issue. The Court therefore finds that Liberty Mutual's direct actions fall outside of the set of circumstances contemplated by § III.B.5 of the Indemnification Agreement under which Hopeman would be obligated to provide "its" counsel to Liberty Mutual. Section III.B.5's "Defense Obligation" — to the extent that it deserves such a name — thus does not provide a

valid theory of liability for Liberty Mutual to pursue a claim against Hopeman for litigation expenses incurred in defending itself against currently pending direct actions.

Further, the Court agrees with the Bankruptcy Court's conclusion that, even if § III.B.5 created an obligation for Hopeman to defend Liberty Mutual in the direct actions at issue here, and assuming *arguendo* that Hopeman breached this obligation, Liberty Mutual's only remedy under the Indemnification Agreement for such a breach would be a claim against the Trust, not Hopeman, rendering its Claim invalid. The relevant provisions of the Agreement mandate this conclusion. Section I.K of the Indemnification Agreement provides an expansive definition of the term "Indemnified Claim," which includes, as relevant here, "settlements or judgments incurred after the Effective Date with respect to any Claims or actions . . . against Liberty Mutual, *whether by way of direct action or otherwise*, which assert that Liberty Mutual owes any obligation for any Asbestos Related Claims arising out of Hopeman's asbestos-related products, services, or activities, or under the Pre-January 1, 1989 Liberty Mutual Policies" as well as "reasonable counsel fees, costs and expenses incurred in defending Liberty Mutual with respect to" such matters. (Indemn. Agr. § I.K (emphasis added).) The Indemnification Agreement also specifies that Liberty Mutual's "right of indemnification and reimbursement for Indemnified Claims shall come *solely from the Trust*, and . . . in no event shall Hopeman . . . have any obligation to reimburse or indemnify Liberty Mutual with respect to Indemnified Claims or otherwise." (*Id.* § III.A.3 (emphasis added).) Stated more simply: if Liberty Mutual seeks funds to cover an "Indemnified Claim," it can only obtain such reimbursement from the Trust, not from Hopeman. Finally, the Indemnification Agreement specifies that if the Trust's funds run out, "the unreimbursed or unpaid amounts [of any Indemnified Claims] shall be carried by the Trust as a balance due Liberty Mutual, and reimbursement or payment shall be made at such time

thereafter, if ever, as Trust funds are replenished." (*Id.* § III.A.4.) Notably, the Agreement does not once suggest that Hopeman assumes reimbursement responsibilities if the Trust runs out of money.

Here, Liberty Mutual seeks to recoup expenses that it incurred in monitoring Hopeman's bankruptcy proceedings and defending against direct action claims in other courts. As already discussed, § III.B.5 covers only direct actions in other states, not the costs of monitoring bankruptcy proceedings in Virginia. Thus, Liberty Mutual's only potential claim under § III.B.5 would be for its expenses defending direct action claims related to Hopeman-linked asbestos exposure in courts outside of Virginia. However, such expenses fall squarely within the Indemnification Agreement's definition of "Indemnified Claim," which includes "reasonable counsel fees, costs and expenses incurred in defending Liberty Mutual with respect to" any claims or actions "against Liberty Mutual, *whether by way of a direct action or otherwise.*" (*Id.* § I.K (emphasis added).) And as Indemnified Claims, Liberty Mutual's legal expenses for direct action cases stand subject to § III.A.3, which limits liability for such claims to the Trust and expressly releases Hopeman from "any obligation to reimburse or indemnify Liberty Mutual" with respect to such claims, even upon the Trust's insolvency. (*Id.* § III.A.3.) Under the plain language of the Indemnification Agreement and its various relevant provisions, Liberty Mutual thus stands foreclosed from seeking reimbursement from Hopeman for any costs expended in defending against direct actions, rendering its Claim similarly invalid on these grounds.

Liberty Mutual attempts to argue otherwise, pointing to the absence of the term "Indemnified Claim" from § III.B.5. (*See* Lib. Mut. Opening Br. ¶ 11 (distinguishing Section III.B.5 of the Indemnification Agreement from the remainder of Section III.B).) This absence stands in contrast to other provisions in § III.B, which expressly and repeatedly reference

Indemnified Claims. (*See, e.g.*, Indemn. Agr. § III.B.3 (using term "Indemnified Claim" three times).) Based in part on the absence of these words from Section III.B.5, Liberty Mutual argues that Hopeman's "Defense Obligation [which] stems from Section III.B.5 . . . is not limited by Section III.A.3," which protects Hopeman from any obligation to reimburse or indemnify Liberty Mutual for Indemnified Claims. (Lib. Mut. Reply Brief at 8.) That argument, in turn, rests on Liberty Mutual's assertion that the direct action claims for which it seeks reimbursement do not constitute "Indemnified Claims" subject to the exclusive remedy of reimbursement from the Trust. In Liberty Mutual's view, "direct action Asbestos Claims ***can*** be Indemnified Claims, ***if*** money remains in the Trust to indemnify Liberty Mutual." (Lib. Mut. Opening Br. at 23 (emphasis in original).) Conversely, if no funds remain in the Trust, Liberty Mutual "would not be able to seek indemnification from the Trust for the direct action Asbestos Claim(s) at issue," presumably rendering such requests no longer "Indemnified Claims" and exposing Hopeman to liability under Section III.A.3. (*Id.*)

Liberty Mutual's argument contradicts the text of the Indemnification Agreement and attempts to read language into the Agreement that is not there. Nothing in the Agreement suggests, let alone mandates, that the *nature* of a claim governed by the Indemnification Agreement hinges on whether the Trust remains funded. Indeed, § III.B.4 expressly contemplates a scenario where the Trust lacks funds "to reimburse or pay Liberty for any Indemnified Claim amounts at the time such amounts are incurred." (Indemn. Agr. § III.B.4.) That provision goes on to clarify that, even upon insolvency, the Trust "shall not be relieved from the obligation to pay or reimburse Liberty Mutual for such *Indemnified Claim* amounts." (*Id.* (emphasis added).) Notably, the provision expressly refers to such claims as "Indemnified Claim amounts," even though such expenses would necessarily be incurred while the Trust

lacked funds. Liberty Mutual's argument that the Trust's depletion causes subsequent expenses to no longer qualify as "Indemnified Claims" thus stands directly belied by the text of the Agreement itself. Nor does the absence of the term "Indemnified Claims" from § III.B.5 provide any support to Liberty Mutual's assertion that the direct action claims discussed in that subsection do not constitute Indemnified Claims. The definition of Indemnified Claims in § I.K clearly and expressly includes claims or actions "by way of direct action." (*Id.* § I.K.) Liberty Mutual's contorted reading of the Agreement fails to alter that picture. In sum, since Liberty Mutual's requested funds constitute Indemnified Claims, and since the Indemnification Agreement unambiguously provides for reimbursement of such claims only from the Trust (and not from Hopeman), Liberty Mutual fails to assert a valid claim against Hopeman or its property for such funds, irrespective of whether the Trust currently contains funds or not.[8]

Accordingly, and for all of these reasons, the Court finds that § III.B.5 of the Indemnification Agreement and its purported "Defense Obligation" does not empower Liberty Mutual to recover any costs incurred in conjunction with direct actions involving Hopeman-related asbestos claims or any costs associated with monitoring Hopeman's bankruptcy proceedings. Hopeman's Amended Claim therefore lacks validity to the extent that it relies on § III.B.5 as its basis.

B. Minimization Obligation under Section III.C

Liberty Mutual invokes Section III.C of the Indemnification Agreement as an alternate basis for its Claim. Under that provision, Liberty Mutual argues that:

> Hopeman is required to take "all reasonable actions necessary to minimize" the assertion of Asbestos-Related Claims, or any other Indemnified Claim, against Liberty Mutual (the "**Minimization Obligation**"). *Id.* at § III.C. Hopeman has

[8] Since the Court finds the relevant provisions unambiguous, it need not consider Liberty Mutual's additional arguments concerning the parties' course of performance.

> breached that obligation not only by failing to minimize the assertion of Asbestos-Related Claims against Liberty, but by expressly supporting such claims. As a result of Hopeman's breaches of the Defense Obligation and the Minimization Obligation, Hopeman is liable to Liberty Mutual in a partially liquidated amount of no less than $354,754.89.

(Hopeman Bankruptcy, ECF No. 877 at 129 (emphasis in original).) Section III.C sets forth the following obligations for both parties relating to potential future claims:

> Each Party agrees that it will take all reasonable actions necessary to minimize the possibility of cross-claims or other claims, actions or proceedings against Liberty Mutual relating to the Indemnified Claims by any other Person, including, but not limited to, any insurer of Hopeman.

(Indemn. Agr. § III.C.) Liberty Mutual alleges that Hopeman has breached this Minimization Obligation in several ways. As a general matter, Liberty Mutual asserts that Hopeman's actions in developing its bankruptcy reorganization plan violate this obligation, because that plan authorizes asbestos claimants to pursue certain insurers, including Liberty Mutual, in the tort system, thereby "invit[ing] the [a]sbestos [c]laimants to seek recovery from Liberty Mutual (who is forced to defend against those claims)." (Lib. Mut. Opening Br. at 13.) In addition, Liberty Mutual points to Hopeman "obtain[ing] the Bankruptcy Court's approval of two orders that partially lifted the automatic stay to allow direct action [a]sbestos [c]laimants to pursue alleged [a]sbestos [c]laims against Liberty Mutual," which it characterizes as "a willful and continuous breach" of its Minimization Obligation. (*Id.* at 12.)

As before, Liberty Mutual seeks reimbursement for two categories of legal expenses: costs incurred in (1) defending itself against ongoing direct actions and (2) monitoring and intervening in Hopeman's bankruptcy proceedings. (*Id.*) As to Liberty Mutual's costs incurred by defending itself against direct actions, the Court agrees with the Bankruptcy Court that Liberty Mutual lacks a valid claim against Hopeman under its Minimization Obligation, since expenses incurred in direct action suits constitute Indemnified Claims, which Hopeman is

shielded from paying under § III.A.3 of the Indemnification Agreement. However, as explained more fully below, the Court disagrees with the Bankruptcy Court's conclusion that § III.A.3 also categorically precludes Liberty Mutual from recovering costs that it has incurred from its counsel's participation in Hopeman's bankruptcy proceedings, because such costs do not constitute Indemnified Claims and the Indemnification Agreement does not otherwise shield Hopeman from liability for a breach of § III.C's Minimization Obligation. In light of this conclusion, and given that the Bankruptcy Court limited its inquiry solely to the availability of remedies,[9] the Court remands this matter to the Bankruptcy Court for further proceedings, including adducing evidence and making findings as to whether Hopeman's actions in developing its reorganization plan and supporting the Bankruptcy Court's issuance of orders partially lifting litigation stays breached its Minimization Obligation under § III.C of the Indemnification Agreement.

1. Liberty Mutual May Not Recover For Its Direct Action Defense Costs.

The Court begins by reviewing the backdrop to Liberty Mutual's minimization claim. As a threshold matter, the Court notes that the parties do not dispute the existence of the Minimization Obligation and its requirement that Hopeman "take all reasonable actions necessary" to minimize the possibility of claims related to Indemnified Claims against Liberty Mutual. (Indemn. Agr. § III.C.) Rather, the parties disagree about (1) whether Hopeman

[9] Without analyzing whether Hopeman had breached the Minimization Obligation, the Bankruptcy Court concluded that Liberty Mutual lacked a remedy for breach of any provision of the Indemnification Agreement beyond recovery from the Trust, thereby dooming its Claim. (*See* Hr'g Tr. 68:11–16 ("The minimization claim, the duty to minimize, I would ordinarily need to hear evidence, I believe, in order to determine whether or not such a claim exists. However, I have to agree with [counsel for Hopeman] that the only remedy that I see is [§] III.A.3, which limits, again, recovery to the Trust in connection with Indemnification Claims.").)

breached the Minimization Obligation and (2) what (if any) remedies stand available to Liberty Mutual if the Court finds that such a breach occurred.

The Court first rejects Liberty Mutual's Claim as it relates to direct action defense costs resulting from Hopeman's alleged breach of the Minimization Obligation for the same reasons that it rejected the same claim under the Defense Obligation. As already discussed, expenses incurred from direct action suits fall within the Indemnification Agreement's express definition of an "Indemnified Claim" and thus stand subject to § III.A.3's limitation of recovery for such claims from the Trust, and not from Hopeman. *See supra* Section III.A. Thus, even if the Court were to find that Hopeman breached its Minimization Obligation and that these defense-related expenses flowed directly from such a breach, the Court agrees with the Bankruptcy Court that Liberty Mutual cannot recover these expenses from Hopeman, dooming this portion of its Claim.

2. Hopeman Is Not Categorically Shielded From Liability For Bankruptcy Costs Under the Minimization Obligation.

Liberty Mutual's claim for damages stemming from its bankruptcy monitoring expenses warrants a different analysis, however. Unlike Liberty Mutual's direct action defense costs, these expenses do not relate to "[c]laims or actions . . . *against Liberty Mutual*" or claims "seeking to impose an obligation against Liberty Mutual." (Indemn. Agr. § I.K.) They therefore fall outside of the Agreement's definition of "Indemnified Claims"[10] and are not covered by § III.A.3's directive that "Liberty's right of indemnification and reimbursement for *Indemnified Claims* shall come solely from the Trust." (*Id.* § III.A.3 (emphasis added).) The Bankruptcy

[10] Hopeman concedes as much in its Objection to Liberty Mutual's claim. (*See* Objection ¶ 50 ("[T]he type of fees and expenses in the Claim filed by Liberty Mutual do not fit within the definition of "Indemnified Claim" if they were incurred, as suspected, by Liberty Mutual to have its counsel monitor this bankruptcy case.").)

Court thus erred in its broad assessment that "there would be no claims other than an indemnification claim for . . . breach [of the Minimization Obligation]" and in basing its expungement of Liberty Mutual's Claim — to the extent that it related to Liberty Mutual's bankruptcy monitoring costs — on that rationale. (Hr'g Tr. 68:20–21.)

The Court must therefore proceed to assess whether any of the Indemnification Agreement's other provisions preclude Liberty Mutual's Claim for breach of the Minimization Agreement, particularly as to the costs that it incurred in connection with Hopeman's bankruptcy proceedings.

a. The Parties' Arguments

To that end, the Court begins by surveying Hopeman's remaining arguments on this issue, along with Liberty Mutual's responses, before assessing the relative merits of these positions. The Court construes[11] Hopeman's filings to assert three primary arguments for why it should not be found liable to Liberty Mutual for damages resulting from any alleged breaches of the Minimization Obligation.[12] Aside from its primary argument — already rejected by the Court — that the only available claim for breach of contract is an Indemnified Claim reimbursable only by the Trust, Hopeman also cites to the second half of § III.A.3 of the

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[11] The parties' briefing of issues concerning the Minimization Obligation are not a model of clarity, in part due to the parties' focus on the Bankruptcy Court's erroneous findings as to the Minimization Obligation writ large. Having reviewed the full appellate record, including the parties' submissions in the Bankruptcy Court, the Court assembles what it believes to be the universe of arguments submitted by the parties on this issue and performs its *de novo* review of the contractual provisions with these arguments in mind.

[12] Separately from its arguments concerning the lack of available remedies, Hopeman also disputes that it breached the Minimization Obligation or any other obligation under the 2003 Agreements. (Hopeman Br. at 31.) Since the Bankruptcy Court did not adduce any evidence concerning Hopeman's potential breach, the Court lacks a sufficient record to assess Hopeman's factual arguments and remands this matter to the Bankruptcy Court for further findings on this issue.

Indemnification Agreement, which sets forth that "in no event shall Hopeman . . . have any obligation to reimburse or indemnify Liberty Mutual with respect to Indemnified Claims *or otherwise*." (Indemn. Agr. § III.A.3 (emphasis added); Hopeman Bankruptcy, ECF No. 878 ¶ 20).) Under that language, Hopeman argues that it remains absolved of any liability to Liberty Mutual, even for non-Indemnified Claims, and irrespective of the Trust's capacity to pay. (Hopeman Bankruptcy, ECF No. 878 ¶ 20.) In addition, Hopeman invokes the absence of any other express remedial provision in the Indemnification Agreement to argue that Liberty Mutual's sole avenue for reimbursement for *any* breach under the Agreement consists of a claim against the Trust, pursuant to § III.A.3. (*Id.* ¶¶ 9, 20.) To that end, it characterizes Liberty Mutual's request for reimbursement from *Hopeman* as a "new remedy that did not exist under the agreement prepetition." (*Id.* ¶ 21.)

In response, Liberty Mutual argues that "Section III.A.3 was not intended to limit Liberty Mutual's remedy for breach of contract to reimbursement from the Trust." (Lib. Mut. Opening Br. at 27.) In support, it cites case law establishing that in order to make a remedial provision exclusive, the drafters of a contract must clearly specify their intent to do so, which the parties did not do in § III.A.3 or the rest of the Indemnification Agreement. (*See id.* (pointing out that Section III.A.3 does not contain the word "remedy," let alone "exclusive remedy").) Additionally, Liberty Mutual argues that § III.A.3 of the Indemnification Agreement serves only to limit Liberty Mutual's recovery to the Trust when Hopeman is *complying* with its obligations, not in situations of breach, when its recovery does not stand similarly limited. (*Id.*)

b. The Court's Analysis

The Court proceeds to analyze whether (1) § III.A.3's language shields Hopeman from any obligation to Liberty Mutual concerning its bankruptcy monitoring expenses, even if

Hopeman breached the Minimization Obligation, and (2) whether § III.A.3's provision limiting Liberty Mutual's recovery to reimbursement from the Trust constitutes the exclusive remedy for *any* breach of the Indemnification Agreement, irrespective of its textual limitation to "Indemnified Claims." For the reasons set forth below, the Court rejects both arguments and finds that § III.A.3 does not categorically bar Liberty Mutual from recovering its bankruptcy monitoring costs from Hopeman under a breach-of-contract theory related to the Minimization Obligation.

i. The Scope of § III.A.3 and the Meaning of "Or Otherwise"

First, the Court turns to the meaning of the phrase "or otherwise" in § III.A.3, which Hopeman argues absolves it from all liability for non-indemnified claims. As already noted, § III.A.3 of the Indemnification Agreement provides that "in no event shall Hopeman . . . have any obligation to reimburse or indemnify Liberty Mutual with respect to Indemnified Claims *or otherwise*." (Indemn. Agr. § III.A.3 (emphasis added).) Assuming for purposes of the Court's analysis that Liberty Mutual seeks "reimburse[ment] or indemnif[ication]" from Hopeman, and having already determined that bankruptcy monitoring costs do not constitute Indemnified Claims, the question thus becomes whether the catchall phrase "or otherwise" encompasses Liberty Mutual's damages claim for bankruptcy monitoring expenses related to a breach of the Indemnification Agreement's Minimization Obligation (thereby precluding Hopeman's liability) or whether such non-indemnified claims fall beyond the scope of this catchall phrase.

As Justice Barrett explained in her recent dissent in *Fischer v. United States*, the term "'[o]therwise' means 'in a different manner,' 'by other means,' or 'in other respects.'" 603 U.S. 480, 507 (2024) (Barrett, J., dissenting) (quoting 10 Oxford English Dictionary, at 984; Webster's Third New International Dictionary 1598 (2002)). In the context of the instant

provision, the third of these definitions, "in other respects," fits most logically within the provision's ambit. Inserting this definition into § III.A.3 of the Indemnification Agreement suggests that, pursuant to this provision, Hopeman has no obligation to reimburse or indemnify Liberty Mutual "with respect to Indemnified Claims" or *in other respects*. (Indemn. Agr. § III.A.3.) However, this dictionary definition does not, standing alone, resolve whether Hopeman stands absolved from any obligation to reimburse or indemnify Liberty Mutual in *all* other respects, or merely in some.

To resolve this ambiguity, the Court turns to traditional tools of statutory construction, specifically the *ejusdem generis* canon of construction and the principles animating its use.[13] *See Heartland Constr., Inc. v. Travelers Cas. and Surety Co. of Am.*, 2022 WL 4016884, at *5 n.3 (E.D. Va. Aug. 30, 2022) ("Virginia principles of contract interpretation are also governed by the doctrine of *ejusdem generis*"). Under that canon, when courts are confronted with ambiguous provisions "where general words follow specific words . . . the general words are usually construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Yates v. United States*, 574 U.S. 528, 545 (2015) (cleaned up); *see id.* at 551 (Alito, J., concurring) (the *ejusdem generis* canon accords with the principle that "known unknowns should be similar to known knowns") (internal quotation marks omitted); *Fischer*, 603 U.S. at 487 ("One way to discern the reach of an 'otherwise' clause is to look for guidance from whatever examples come before it."). The Supreme Court explained the rationale animating this canon as follows: if a provision's authors had wanted its "general words" to be read in an

[13] Although courts commonly apply the *ejusdem generis* canon to provisions where a catchall term follows a set of specific terms or phrases, its animating principle — the avoidance of statutory or contractual constructions that create redundancy by allowing a general term to swallow more specific language in a provision — applies with equal force where, as here, only one specific term precedes the catchall phrase.

expansive way, untethered from the specific examples preceding the catchall phrase, "it is hard to see why [the authors] would have needed to include the examples at all." *Yates*, 574 U.S. at 545–46 (quoting *Begay v. United States*, 553 U.S. 137, 142–43 (2008)); *see also CSX Transp., Inc. v. Ala. Dept. of Revenue*, 562 U.S. 277, 295 (2011) ("We typically use *ejusdem generis* to ensure that a general word will not render specific words meaningless."); *Fischer*, 603 U.S. at 488 (application of the *ejusdem generis* principle "ensures . . . that none of [a sentence's] specific parts are made redundant by a clause literally broad enough to include them"). In rejecting an "unbounded" reading of the catchall phrase at issue in *Yates*, the Supreme Court highlighted that under a contrary approach, "Congress would have had no reason to refer specifically" to the other items listed in the statute, rendering these specific provisions "misleading surplusage," an approach rejected by the Court. 574 U.S. at 546.

Mindful of the Supreme Court's admonition to avoid reading "misleading surplusage" into the Indemnification Agreement's text, the Court turns to the provision at issue, § III.A.3. As explained, that provision contains two components: a waiver of Hopeman's liability as to a specific class of claims ("with respect to Indemnified Claims") followed by a disclaimer of Hopeman's liability as to a more general class of claims ("or otherwise"). (Indemn. Agr. § III.A.3.) In arguing that the phrase "or otherwise" shields Hopeman from all liability for breaches of the Indemnification Agreement, Hopeman essentially asks the Court to read "or otherwise" to encompass any and all non-indemnified claims that Liberty Mutual could raise — that is, the full universe of claims beyond "Indemnified Claims."

The Court rejects such an absolutist reading. Under Hopeman's interpretation, § III.A.3's preceding reference to "Indemnified Claims" would be utterly redundant — the provision could just as well have read "in no event shall Hopeman . . . have any obligation to reimburse or

indemnify Liberty Mutual," full stop. As such, Hopeman's suggested reading not only fails to comport with common sense, but it also directly contravenes the Court's duty to avoid "render[ing] specific words meaningless" or redundant when interpreting a contract. *CSX Transp., Inc.*, 562 U.S. at 295.

Rather than follow Hopeman's unbounded approach, the Court seeks to identify an appropriate limiting principle to establish what type of non-indemnified claims that Hopeman stands shielded from under § III.A.3. To do so, the Court must "determine how the residual clause is linked to its surrounding words" by "giv[ing] effect, if possible, to every clause and word" of the Indemnification Agreement. *Fischer*, 603 U.S. at 486. The Court also looks to the broader context of § III.A and the Indemnification Agreement as a whole for clues. *Cf. Pulsifer v. United States*, 601 U.S. 124, 133 (2024) (choosing between two readings "by reviewing text in context").

Looking first to § III.A.3, the provision at issue, the Court acknowledges two competing considerations. On the one hand, the Court notes that the remainder of § III.A.3 repeatedly references only "Indemnified Claims" and does not appear to contemplate any other type of claim by Liberty Mutual. The same is true for § III.A as a whole, which includes in its section heading the word "Indemnification". (*See* Indemn. Agr. § III.A.1 (discussing Trust's obligation to reimburse and indemnify Liberty Mutual "in connection with any and all *Indemnified Claims*"); §§ III.A.4, 5 (discussing scenario where the Trust holds inadequate funds to reimburse Liberty Mutual "for any *Indemnified Claim* amounts") (all emphases added).) Section III.A's uniform focus on Indemnified Claims suggests that the meaning of any catchall phrase used in connection with that term should be narrowly circumscribed to the Indemnified Claims context, following Justice Alito's reminder that "known unknowns should be similar to known knowns."

Yates, 574 U.S. at 551 (Alito, J., concurring). At the same time, the Court recognizes the drafters' choice *not* to use the phrase "or otherwise" (or any other catchall phrases) in any other part of this section suggests that its use in § III.A.3 bears significance. Stated differently: since the drafters referred specifically to Indemnified Claims throughout § III.A, and since they largely refrained from using catchall phrases throughout the rest of the section, the fact that they added "or otherwise" in § III.A.3 suggests that they made this addition for a reason and that it must mean *something*.

Recognizing these competing perspectives and remaining mindful of the Supreme Court's concerns about meaningless surplusage and the broader context of the Agreement and its purpose, the Court finds that the most appropriate construction of "or otherwise" in § III.A.3 extends Hopeman's liability shield to cover any and all claims that Liberty Mutual may assert against it related to Indemnified Claims, such as asbestos liability claims and related insurance coverage disputes, but does not extend that protection to other disputes, including any breaches of the Indemnification Agreement itself.[14] In arriving at this construction, the Court considers several factors.

First, the Court attributes significant weight to the Agreement's backdrop and its stated purpose, as set forth in the Agreement's "Recitals" section. (Indemn. Agr. § II.) As manifested there, the parties drafted the 2003 Agreements against the backdrop of two earlier sets of

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[14] The Court's finding does not alter its earlier conclusion that, even if Hopeman were under an obligation to fund Liberty Mutual's defense against direct action claims under § III.B.5 (which it is not), Liberty Mutual would lack a remedy to recover such funds. As explained above, by definition, any such claim would necessarily constitute an Indemnified Claim, reimbursement of which stands expressly reserved to the Trust, and from which Hopeman expressly exempted itself under § III.A.3. Rather, the Court reiterates that its conclusion here applies to breaches of the Agreement that result in damages claims *not* involving Indemnified Claims, like Liberty Mutual's instant claim for bankruptcy monitoring expenses.

agreements that "sought to provide for, among other things, the resolution of certain coverage and other disputes regarding *insurance coverage for Asbestos Related Claims*" and to "resolve certain disputes . . . concerning *insurance coverage for Asbestos Related Claims*," respectively. (*Id.* (all emphases added).) At the time that the parties signed the 2003 Agreements, Hopeman had also initiated an alternative dispute resolution proceeding seeking "resolution of . . . disputes concerning or related to *coverage for Asbestos Related Claims*." (*Id.* (emphasis added).) Finally, the parties emphasized that in drafting the Indemnification Agreement, they "determined to compromise and settle fully and finally all disputes and coverage issues that now exist or might exist in the future between them concerning or related to *insurance coverage for Asbestos Related Claims* . . . [and] any type of *insurance coverage under [earlier] Liberty Mutual Policies*." (*Id.* at 8 (all emphasis added); *see also* Settlement Agreement § II (describing Indemnification Agreement as "governing Liberty Mutual's entitlement to be reimbursed, indemnified and held harmless by the Trust for all claims or actions . . . that allege that Liberty Mutual owes any obligation under or arising out of the Liberty Mutual Policies for the Liberty Mutual Released Claims").) The Court finds that the Indemnification Agreement's repeated references to (1) asbestos-related claims and (2) disputes surrounding insurance coverage unambiguously establish that the Agreement's intended scope and reach stands limited to these two types of disputes, and that the parties did not intend the Agreement to address any other potential areas of dispute. This scope, in turn, supports a reading of the phrase "or otherwise" that conforms to these areas of dispute, rather than one that extends Hopeman's liability shield to any and all conflicts between the parties.

Second, the Court also lends significant weight to its understanding of the purpose of the provision at issue, § III.A.3. *See* A. Scalia & B. Garner, Reading Law 208 (2012) ("evident

purpose" helps define scope of catchall provision). Viewed within the context of § III.A as a whole, the Court finds § III.A.3 to be animated by the goal of clarifying how the Trust would function, in practice, as a reimbursement mechanism for future liabilities incurred by Liberty Mutual. As such, § III.A.3 sets forth the following basic precepts: money in the Trust "shall be used to pay" Liberty Mutual for its indemnified claims, and Liberty Mutual "shall forward to Hopeman" invoices to facilitate such payment. (Indemn. Agr. § III.A.3.) In reiterating the basic understanding that underpins this reimbursement mechanism, the provision proceeds to clarify that any "right of indemnification and reimbursement for Indemnified Claims" on Liberty Mutual's part stands limited to the Trust, and that Hopeman itself bears no obligation to reimburse or indemnify Liberty Mutual directly. (*Id.*) Based on the text and context of this provision, the Court finds it evident that § III.A.3 seeks, first and foremost, to clarify and facilitate the reimbursement mechanism for Indemnified Claims, not to provide parameters for resolving any and all disputes between the parties in connection with the Indemnification Agreement. As such, a less expansive reading of "or otherwise" in § III.A.3 also aligns with the circumscribed purpose of the provision within which it appears.

At the same time, the Court notes the Agreement's limited use of catchall phrases, especially in § III.A, and the drafters' seemingly deliberate decision to insert "or otherwise" into the provision at issue. As already mentioned, the fact that § III.A's five provisions consistently reference only Indemnified Claims, with the one exception being § III.A.3's "or otherwise" clause, suggests that the drafters deliberately chose to extend Hopeman's liability shield beyond Indemnified Claims to a broader category of potential liabilities. The Court also notes the comprehensive nature of "or otherwise" as a catchall phrase; instead of excluding merely "other claims" or "other disputed amounts related to insurance coverage," for example, the drafters

opted for a term that, on its face, suggests a limitless scope. As such, the Court remains mindful that it must not unduly constrain the drafters' language where they intended the Agreement to resolve all issues within its scope — those related to future asbestos claims and insurance coverage-related disputes between the parties — and where the parties deliberately chose expansive language in pursuit of this goal.

In seeking to square the Indemnification Agreement's circumscribed purpose with the catchall phrase's broad scope and guided by the Supreme Court's admonitions against reading redundancies into the Agreement's text, the Court thus arrives at a reading of "or otherwise" that retains a broad reach for that term — covering all substantive aspects of the parties' Agreement — but that respects both the Agreement's limited scope and the need to avoid "misleading surplusage." For all of these reasons, the Court finds that, to the extent that Liberty Mutual seeks funds from Hopeman in conjunction with asbestos-related claims or disputes between the two parties concerning insurance coverage, such claims constitute requests "with respect to Indemnified Claims or otherwise" and cannot be recovered from Hopeman under § III.A.3. But to the extent that Liberty Mutual brings non-indemnified claims against Hopeman on other grounds, such as breach of the Indemnification Agreement's provisions, these claims exceed the scope of § III.A.3's liability shield and may be asserted against Hopeman.

The Court notes that its reading is also informed by significant concerns about the effect of Hopeman's preferred reading on Liberty Mutual's access to any remedies in the event of a willful breach of the 2003 Settlement Agreements. Under Hopeman's reading, Hopeman essentially granted itself an unlimited waiver of liability, permitting it to breach the Indemnification Agreement's provisions at will without ever suffering any financial consequences for doing so. Such a reading — "excusing all damages for any type of breach —

would come close to (if not reach) the pit of voidness," with one party "in effect promis[ing] nothing although the other party would supposedly be bound." *C.J. Betters Corp. v. United States*, 25 Cl. Ct. 674, 676 (1992) (quoting *Benjamin v. United States,* 172 Ct. Cl. 118, 138 (1965)). Such an illusory bargain runs contrary to the parties' evident intent to be bound by the Agreement and to fully and finally resolve their existing and future disputes. The Court refuses to adopt a reading of the Agreement that so clearly undermines that intent.

Applying this construction of § III.A.3 to Liberty Mutual's claim for bankruptcy monitoring expenses that resulted from Hopeman's alleged breach of its Minimization Obligation, the Court finds that § III.A.3's liability shield does not preclude Liberty Mutual's recovery for this portion of its Claim. As a claim for damages from an alleged breach of Hopeman's duty to minimize future claims, a duty that Hopeman does not dispute, Liberty Mutual's demand stands unrelated to any asbestos claims by third-party litigants or any expenses incurred in defending against such claims. Nor does Liberty Mutual's breach-of-contract claim concern its past insurance obligations to Hopeman. As such, Liberty Mutual's claim for bankruptcy monitoring costs — which concerns only an alleged breach of the Indemnification Agreement — falls outside of the potential areas of dispute which the Indemnification Agreement was drafted to address and against which the Agreement specifically sought to shield Hopeman from direct liability. Hopeman's liability for such a claim therefore remains uncovered by the liability shield in § III.A.3 and Liberty Mutual may assert such a claim for damages if it establishes that Hopeman has breached the Indemnification Agreement.

ii. Section III.A.3 as Exclusive Remedy for All Breaches Under the Indemnification Agreement

The Court briefly considers Hopeman's alternative argument: that notwithstanding the provision's application only to Indemnified Claims or claims related to Indemnified Claims,

§ III.A.3's directive that "Liberty's right of indemnification and reimbursement for Indemnified Claims shall come solely from the Trust" constitutes an exclusive remedy for *all* breaches under the Indemnification Agreement, including breaches of the Indemnification Agreement itself.[15] In assessing the question of whether a contractual remedy should be considered exclusive, this Court has previously summarized prevailing Virginia law as follows:

> Under Virginia law, when parties specify that a particular remedy is available in the event of a breach, the "remedy provided will be exclusive of other possible remedies *only where the language employed in the contract clearly shows an intent that the remedy be exclusive." Bender-Miller Co., v. Thomwood Farms, Inc.*, 211 Va. 585, 588, 179 S.E.2d 636 (1971) (considering a repair or replace remedy) (emphasis added); *see also Atlas Machine & Iron Works, Inc. v. Bethlehem Steel Corp.*, 986 F.2d 709, 712–13 (4th Cir. 1993) (considering a foreclosure remedy and following *Bender-Miller*). The court in *Bender-Miller* focused its attention on whether (i) the contract "specifically state[s]" that the remedy is exclusive, or (ii) "contain[s] any words necessarily implying a duty" to demand the named remedy before pursuing other remedies. *Bender–Miller*, 211 Va. at 588, 179 S.E.2d 636. Finding no specific language indicating that the remedies were limited to repair or replacement, and noting that the phrase "as may be directed by the Architect" was permissive, the Supreme Court of Virginia rejected the argument that the remedy was exclusive. *Id.*

Safeway Inc. v. CESC Plaza Ltd. P'ship, 261 F. Supp. 2d 439, 444 n.1 (E.D. Va. 2003) (Ellis, J.).

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[15] While Hopeman's Brief does not expressly make this argument in response to Liberty Mutual's allegations that it has breached its Minimization Obligation, it references the unavailability of any alternate remedy for breach of the Indemnification Agreement several times in its argument concerning the Defense Obligation. (*See, e.g.,* Hopeman Br. at 30 ("[E]ven if Hopeman breached or breaches that obligation (it has not), Liberty Mutual's sole source of recovery would be the Settlement Funds, as provided in section III.A.3"); *id.* at 27 ("[T]he Indemnification Agreement made explicitly clear that Liberty has no right to recover from Hopeman directly for any breach by Hopeman.").) In addition, during the Bankruptcy Court's June 18, 2025 hearing concerning Hopeman's Objection to Liberty Mutual's Claim, Hopeman's counsel made this argument more directly concerning the Minimization Obligation. (*See* Hr'g Tr. 56:24–57:1 ("There is no remedy here in this contract for any violation of [Section III.]C except to take you back to the Indemnified Claim."); 37:9–10 ("Their sole remedy was to get to claw back funds from the settlement."); 38:2–3 ("The remedy from the face of the document says it's limited to the Trust."); 55:4–7 (same).)

In light of these established principles, the Court finds that recovery from the Trust fails to constitute an exclusive remedy for breaches of the Indemnification Agreement. Nowhere in § III.A.3 does the text "specifically state" that this provision constitutes an exclusive remedy for breach of any provision of the Agreement. *Bender-Miller*, 179 S.E.2d at 639. To the contrary, the language in that clause expressly references only "Liberty's right of indemnification and reimbursement *for Indemnified Claims*," without reference to any breaches of the Agreement. (Indemn. Agr. § III.A.3.) Thus, to the extent that this provision serves to provide a remedy for any breaches of the 2003 Settlement Agreements, that remedy applies only to breaches involving Indemnified Claims. *See Remy Holdings Int'l, LLC v. Fisher Auto Parts, Inc*, 90 F.4th 217, 233 n.12 (4th Cir. 2024) (citing *Bender-Miller* to reject argument for waiver of the right to claim a breach of contract where "nothing suggests [that the remedy provided] was an exclusive remedy."). Furthermore, reading § III.A.3 to apply to all breaches involving other kinds of claims under the 2003 Settlement Agreements essentially reads the provision's express limitation to "Indemnified Claims" out of the provision entirely, rendering that term mere surplusage and running contrary to established principles of contract construction under Virginia law. For all of these reasons, the Court summarily rejects Hopeman's argument that the remedy limiting Liberty Mutual's reimbursement of Indemnification Claims to the funds in the Trust set forth in § III.A.3 constitutes an exclusive remedy for purposes of all breaches of the Indemnification Agreement.

Nor does the absence of any other express remedial provision in the Agreement undermine this finding. As the Supreme Court has clarified, "the failure to specify remedies in the contract is no reason to find that the parties intended no remedy at all." *United States v. Winstar Corp.*, 518 U.S. 839, 869 n.15 (1996). Such a finding would run contrary to the basic principle that remedies for breach of contract are "intended to put the injured party in the same

position in which it would have been had the contract been performed." *Bolton v. McKinney*, 855 S.E.2d 853, 856 (Va. 2021); *see also McDaniel v. Daves*, 123 S.E. 663 (Va. 1924) (specifying that the general purpose of the law in fixing damages "is, and should be, to give compensation; that is, to put the plaintiff in as good position as he would have been in had the defendant kept his contract.") (quoting Williston on Contracts, § 1338). The Court declines Hopeman's invitation to further engage with this meritless line of argument.

For all of these reasons, the Court disagrees with Hopeman's assertion that Liberty Mutual stands without a remedy against Hopeman for breach of its Minimization Obligation, and that its Claim against Hopeman therefore necessarily fails, regardless of whether Hopeman actually breached any provision of the Indemnification Agreement. Rather, the Court finds that, if Hopeman breached the Indemnification Agreement and the ensuing damages claim does not constitute an Indemnified Claim covered by § III.A.3, Liberty Mutual may assert such a claim against Hopeman and its property in bankruptcy proceedings.

IV. CONCLUSION

For the reasons set forth above, the Court hereby GRANTS IN PART and DENIES IN PART Liberty Mutual's appeal. The Court AFFIRMS IN PART and VACATES IN PART the Bankruptcy Court's Disallowance Order (Hopeman Bankruptcy, ECF No. 907). To the extent that Liberty Mutual's Amended Claim seeks to recover expenses incurred as a result of defending itself against direct action claims, the Bankruptcy Court's ruling is AFFIRMED and all such portions of Liberty Mutual's Amended Claim shall remain disallowed. To the extent that Liberty Mutual's Amended Claim seeks to recover expenses incurred in monitoring Hopeman's bankruptcy proceedings as a result of Hopeman's alleged breach of its Minimization Obligation under § III.C of the Indemnification Agreement, the Bankruptcy Court's ruling is VACATED and this matter is REMANDED to the Bankruptcy Court for further proceedings consistent with this opinion, including adducing evidence to determine whether Hopeman breached the parties' Minimization Obligation.

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

Richmond, Virginia
Dated: March 18, 2026