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Keep on Truckin': Standing Rules After *Truck Insurance v. Kaiser Gypsum Co. Inc.*

PANELISTS

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ATTACHMENTS

1. *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 144 S. Ct. 1414 (2024)

2. Post-*Truck* Decisions

    a. *In re AIO US, Inc.*, 2025 WL 2426380 (Bankr. D. Del. Aug. 21, 2025)

    b. *Interstate Fire & Cas. Co. v. Roman Cath. Bishop of Sacramento*, 2025 WL 3035792 (E.D. Cal. Oct. 30, 2025)

    c. *In re Hopeman Bros., Inc*., 2025 WL 3688940 (Bankr. E.D. Va. Oct. 31, 2025)

    d. *In re Delaney*, 674 B.R. 70 (Bankr. D.S.C. 2025)

    e. *In re Beckerman*, 2025 WL 3282371 (Bankr. S.D.N.Y. Nov. 25, 2025)

    f. *In re Roman Cath. Church of Archdiocese of New Orleans*, 2025 WL 3545484 (Bankr. E.D. La. Dec. 9, 2025)

    g. *In re Little*, 2025 WL 3554256 (Bankr. D. Idaho Dec. 10, 2025)

3. Panelist Biographies

4. Producer Biographies

144 S.Ct. 1414
Supreme Court of the United States.

TRUCK INSURANCE EXCHANGE, Petitioner
v.
KAISER GYPSUM COMPANY, INC., et al.

No. 22-1079
|
Argued March 19, 2024
|
Decided June 6, 2024

Synopsis
Background: Chapter 11 debtors, the former manufacturers and sellers of asbestos-containing products, sought confirmation of joint plan of reorganization which, inter alia, would establish a channeling injunction and trust to resolve debtors' present and future asbestos personal-injury liabilities. Debtors' primary liability insurer objected. The United States Bankruptcy Court for the Western District of North Carolina, J. Craig Whitley, J., issued proposed findings of fact and conclusions of law, and recommended confirmation of plan. The District Court, Graham C. Mullen, Senior District Judge, adopted the findings of fact and conclusions of law, 2021 WL 3215102, and confirmed plan, 2021 WL 3239513. Insurer appealed. Debtors and their corporate parent moved to dismiss appeal. The United States Court of Appeals for the Fourth Circuit, Agee, Circuit Judge, 60 F.4th 73, affirmed. Certiorari was granted.

In a unanimous opinion, the Supreme Court, Justice Sotomayor, held that an insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may raise and be heard on any issue in a Chapter 11 case, including an objection to a proposed plan of reorganization.

Court of Appeals' judgment reversed, and case remanded.

Justice Alito took no part in the consideration or decision of the case.

Procedural Posture(s): Petition for Writ of Certiorari; On Appeal; Motion to Confirm Plan; Objection to Confirmation of Plan.

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**1417 *Syllabus* [*]

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

***268** Petitioner Truck Insurance Exchange is the primary insurer for companies that manufactured and sold products containing asbestos. Two of those companies, Kaiser Gypsum Co. and Hanson Permanente Cement (Debtors), filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. As part of the bankruptcy process, the Debtors filed a proposed reorganization plan (Plan). That Plan creates an Asbestos Personal Injury Trust (Trust) under 11 U.S.C. § 524(g), a provision that allows Chapter 11 debtors with substantial asbestos-related liability to fund a trust and channel all present and future asbestos-related claims into that trust. Truck is contractually obligated to defend each covered asbestos personal injury claim and to indemnify the Debtors for up to $500,000 per claim. For their part, the Debtors must pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending the claims. The Plan treats insured and uninsured claims differently, requiring insured claims to be filed in the tort system for the benefit of the insurance coverage, while uninsured claims are submitted directly to the Trust for resolution.

Truck sought to oppose the Plan under § 1109(b) of the Bankruptcy Code, which permits any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. Among other things, Truck argues that the Plan exposes it to millions of dollars in fraudulent claims because the Plan does not require the same disclosures and authorizations for insured and uninsured claims. Truck also asserts that the Plan impermissibly alters its rights under its insurance policies. The District Court confirmed the Plan. It concluded, among other things, that Truck had limited standing to object to the Plan because the Plan was "insurance neutral," *i.e.,* it did not increase Truck's prepetition obligations or impair its contractual rights under its insurance policies. The Fourth Circuit affirmed, agreeing that Truck was not a "party in interest" under § 1109(b) because the plan was "insurance neutral."

Held: An insurer with financial responsibility for bankruptcy claims is a "party in interest" under § 1109(b) that "may raise and may appear and be heard on any issue" in a Chapter 11 case. Pp. 1423 – 1428.

***269** (a) Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan. Pp. 1423 – 1427.

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(1) Section 1109(b)'s text is capacious. To start, it provides an illustrative but not exhaustive list of parties in interest, all of which are directly affected by a reorganization plan either because they have a financial interest in the estate's assets or because they represent parties that do. This Court has observed that Congress uses the phrase "party in interest" in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U. S. 1, 7, 120 S.Ct. 1942, 147 L.Ed.2d 1. This understanding aligns with the ordinary meaning of the terms "party" and "interest," which together refer to entities that are potentially concerned with, or affected by, a proceeding. The historical context and purpose of § 1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. That expansion of participatory rights continued with the enactment of § 1109(b). Broad participation promotes a fair and equitable reorganization process. Pp. 1423 – 1426.

(2) Applying these principles, insurers such as Truck are parties in interest. An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in myriad ways. In this case, for example, Truck will have to pay the vast majority of the Trust's liability, and § 524(g)'s channeling injunction, which stays any action against the Debtors, means that Truck would stand alone in carrying that financial burden. According to Truck, however, a plan that lacks the disclosure requirements for the insured claims risks exposing Truck to millions of dollars in fraudulent tort claims. The Government frames Truck's interest slightly differently, but the result is the same: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F. 3d 201, 204.

Providing Truck an opportunity to be heard is consistent with § 1109(b)'s purpose of promoting a fair and equitable reorganization process. Here, the Plan eliminates the Debtors ongoing liability, and claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. Pp. 1425 – 1427.

(b) The Court of Appeals looked exclusively at whether the Plan altered Truck's contract rights or its "quantum of liability." This approach, known as the "insurance neutrality" doctrine, is conceptually ***270** wrong and makes little practical sense. Conceptually, the doctrine conflates the merits of an objection with the threshold party in interest inquiry. The § 1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Practically, the doctrine is too limited in its scope. By focusing on the insurer's prepetition obligations and policy rights, the doctrine wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers and debtors. The fact that Truck's financial exposure may be directly and

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adversely affected by a plan is sufficient to give Truck a right to voice its objections. Finally, in resisting the text of § 1109(b), the Debtors emphasize the risks of allowing "peripheral parties" to derail a reorganization. This "parade of horribles" argument cannot override the statute's text, and in any event, § 1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings. In all events, the Court today does not opine on the outer bounds of § 1109. Difficult cases may require courts to evaluate whether truly peripheral parties have a sufficiently direct interest to be heard. This case is not one of them because insurers such as Truck with financial responsibility for claims are not peripheral parties. Pp. 1426 – 1428.

60 F.4th 73, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

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Opinion

Justice SOTOMAYOR delivered the opinion of the Court.

***271** ****1420** The Bankruptcy Code allows any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. 11 U.S.C. § 1109(b). The question in this case is whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under this provision.

Truck Insurance Exchange (Truck) is the primary insurer for companies that manufactured and sold products containing asbestos. Those companies filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. Truck is obligated to pay up to $500,000 per asbestos claim covered under its insurance contracts with the companies. Truck sought to object to the companies' bankruptcy reorganization plan primarily because the plan lacked disclosure requirements that Truck thought could save it from paying millions of dollars in fraudulent claims.

The Court of Appeals concluded that Truck was not a "party in interest" because the reorganization plan was "insurance neutral"; that is, the plan neither increased Truck's prepetition obligations nor impaired its rights under the insurance ***272** contracts. This Court disagrees. The insurance neutrality doctrine conflates the merits of an insurer's objection with the threshold § 1109(b) question of who qualifies as a "party in interest." Section 1109(b) asks whether the reorganization proceedings might directly affect a prospective party, not how a particular reorganization plan actually affects that party.

Truck is a "party in interest" under § 1109(b). An insurer with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a "party in interest" that can raise objections to a reorganization plan. Section 1109(b) grants insurers neither a vote nor a veto; it simply provides them a voice in the proceedings.

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I

A

Bankruptcy offers individuals and businesses in financial distress a fresh ****1421** start to reorganize, discharge their debts, and maximize the property available to creditors. "Chapter 11 of the Bankruptcy Code enables a debtor company to reorganize its business under a court-approved plan governing the distribution of assets to creditors." *U. S. Bank N. A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 389, 138 S.Ct. 960, 200 L.Ed.2d 218 (2018). This plan, which is primarily the product of negotiations between the debtor and creditors, "govern[s] the distribution of valuable assets from the debtor's estate and often keep[s] the business operating as a going concern." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455, 137 S.Ct. 973, 197 L.Ed.2d 398 (2017). Chapter 11 strikes "a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51, 128 S.Ct. 2326, 171 L.Ed.2d 203 (2008).

Section 1109(b) of the Bankruptcy Code addresses which stakeholders can participate, and to what extent, in these reorganization proceedings:

> ***273** "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 and be heard on any issue in a case under this chapter."

A "party in interest" enjoys certain rights in the proceedings, including the ability to file a Chapter 11 plan when a trustee has been appointed, 11 U.S.C. § 1121(c)(1); request the appointment or removal of a trustee, §§ 1104, 1105; challenge the good faith of persons voting to approve a plan, § 1126(e); and object to confirmation of a plan, § 1128(b).

B

This case concerns the Chapter 11 reorganization of companies facing overwhelming asbestos liability. Exposure to asbestos, a natural mineral used in industrial work, has led to devastating health consequences for millions of people. See National Cancer Institute, Asbestos Exposure and Cancer Risk (Nov. 29, 2021). Companies filing for bankruptcy because of asbestos liability face unique challenges. " '[B]ecause of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected.' " *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 598, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997). Claims therefore arrive

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on a long and unpredictable timeline. If bankruptcy proceedings resolved only existing asbestos liability, companies would face unknown future liability and claimants might be unable to recover just because their injuries had not yet manifested.

Congress responded to these challenges in § 524(g) of the Bankruptcy Code. This section allows a Chapter 11 debtor with substantial asbestos-related liability to establish and fund a trust that assumes the debtor's liability for "damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products." § 524(g)(2)(B)(i)(I). Section 524(g) then channels all present and future claims into the trust by "enjoin[ing] entities from taking legal action for ***274** the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery" for claims "to be paid in whole or in part by [the] trust." Finally, § 524(g) imposes safeguards, including the appointment of a representative to protect the interest of future claimants, § 524(g)(4)(B)(i); treatment of "present claims and future demands that involve similar claims in substantially the same manner," ****1422** § 524(g)(2)(B)(ii)(V); and approval from at least 75% of current claimants, § 524(g)(2)(B)(ii)(IV)(bb). This all "ensure[s] that health claims can be asserted only against the Trust and that [the company's] operating entities will be protected from an onslaught of crippling lawsuits that could jeopardize the entire reorganization effort." *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 640 (C.A.2 1988). It also ensures that "future claimants" are "treated identically to the present claimants." *Ibid.*

C

Kaiser Gypsum Company, Inc., and its parent company, Hanson Permanente Cement, Inc., manufactured and sold products that, at some point, contained asbestos. The companies faced tens of thousands of asbestos-related lawsuits as a result. To resolve their liabilities, both companies (Debtors) filed for Chapter 11 bankruptcy. The Bankruptcy Court in turn appointed representatives for the current and future asbestos claimants (Claimants). The Debtors eventually agreed on a proposed reorganization plan (Plan) with the Claimants, various creditors and government agencies, and all but one of their insurance providers.

The Plan creates a § 524(g) Asbestos Personal Injury Trust (Trust) that assumes the Debtors' liabilities and is funded by the Debtors and their parent company. The Plan also transfers "all of the Debtors' rights" under their insurance contracts to the Trust, including "all rights to coverage and insurance proceeds." App. to Pet. for Cert. 181a.

Truck was the Debtors' primary insurer. It issued policies that covered the Debtors from 1965 through 1983. ***275** Truck is contractually obligated to defend each covered asbestos personal injury claim and typically indemnify the Debtors for up to $500,000 per claim. The Debtors have to pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending against

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the claims. The Plan required the Bankruptcy Court to make a finding that the Debtors' conduct in the bankruptcy proceedings neither violated this assistance-and-cooperation duty nor breached any implied covenant of good faith and fair dealing (Plan Finding).

The Plan treats insured and uninsured claims differently. Insured claims are filed "in the tort system to obtain the benefit of [the] insurance coverage." *Id.,* at 241a. Truck has to defend these lawsuits, and if the claimant obtains a favorable judgment, the Trust pays the deductible and Truck pays up to $500,000 per claim. Uninsured claims, however, are submitted directly to the Trust for resolution. As part of that process, claimants have to identify "all other [related] claims" and file a release authorizing the Trust to obtain documentation from other asbestos trusts about other submitted claims. See 2 App. 428–431. These disclosure requirements are intended to reduce fraudulent and duplicative claims. [1]

1 Without these requirements, Truck contends, it can be difficult to trace an asbestos injury to a particular exposure or to identify earlier claims against other entities. Knowing a claimant's other exposures and claims helps prevent inflated recoveries. The Debtors and Claimants contend that Truck was not entitled to these disclosures before bankruptcy and could still obtain them in discovery in the tort system. That ignores the practical and legal consequences of the Debtors' bankruptcy petition. See *infra*, at 1427 – 1428. Indeed, in recent years, "nearly every Section 524(g) trust has included almost identical fraud-prevention measures to protect debtors and their insurers." Brief for Petitioner 10. In any event, these are merits arguments on which Truck is entitled to be heard.

Truck was the only party involved in the bankruptcy that did not support the Plan. **1423 It advanced three main objections. First, and most relevant here, the Plan was not "proposed *276 in good faith," 11 U.S.C. § 1129(a)(3), "because it reflected a collusive agreement between the Debtors and claimant representatives," and did not require "the same disclosures and authorizations" for insured and uninsured claims, *In re Kaiser Gypsum Co.*, 60 F.4th 73, 80 (C.A.4 2023). This "disparate treatment would expose [Truck] to millions of dollars in fraudulent tort claims." *Ibid*. Second, the Plan Finding impermissibly altered Truck's rights under its insurance policies "by relieving the Debtors of their assistance-and-cooperation obligations and by barring Truck from raising the Debtors' bankruptcy conduct as a defense in future coverage disputes." *Ibid*. Third, the Trust did not comply with various provisions of § 524(g), including the requirement to "deal equitably with claims and future demands," as required by § 524(g)(2)(B)(ii)(III).

Following the Bankruptcy Court's recommendation, the District Court confirmed the Plan. Relevant here, it concluded that "Truck has limited standing to object to the Plan solely on the grounds that the Plan is not insurance neutral." *In re Kaiser Gypsum Co.,* 2021 WL 3215102, *27 (WDNC, July 28, 2021). The court found, however, that the Plan was "insurance neutral" because it "neither increase[d] Truck's obligations nor impair[ed] its prepetition contractual rights under the

Truck Policies. The Plan simply restore[d] Truck to its position immediately prior to the Petition Date." *Id.*, at *26. The court also rejected Truck's challenge to the Plan Finding because the Plan expressly provided that the Debtors "will continue to fulfill their cooperation obligations arising under" the policies. *Id.,* at *27.

The Fourth Circuit affirmed, agreeing with the District Court that Truck was not a "party in interest" under § 1109(b) because the Plan did not "increase [Truck's] pre-petition obligations or impair [Truck's] pre-petition policy rights." 60 F.4th at 83. In other words, the Plan was "insurance neutral" because it did not "alte[r] Truck's pre-bankruptcy 'quantum of liability' " given that Truck was "not ***277** entitled" to the "fraud-prevention measures" it sought. *Id.*, at 87. The court also concluded that the Plan Finding did not alter Truck's contractual rights and that the Debtors did not "breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing." *Id.,* at 84.

This Court granted certiorari to decide whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under § 1109(b). 601 U. S. ——, 144 S.Ct. 325, 217 L.Ed.2d 154 (2023). [2]

2 The courts below also addressed whether Truck is a "party in interest" on the separate basis that it is "a creditor." 11 U.S.C. § 1109(b). Because this Court holds that Truck is a "party in interest" based on its insurer status, the Court does not address alternative arguments based on Truck's creditor status.

II

Courts must determine on a case-by-case basis whether a prospective party has a sufficient stake in reorganization proceedings to be a "party in interest." Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan.

A

Section 1109(b) permits any "party in interest" to "appear and be heard on any issue" in a Chapter 11 proceeding. ****1424** This text is capacious. To start, § 1109(b) provides an illustrative but not exhaustive list of parties in interest. See *supra*, at 1421. A common thread uniting the seven listed parties is that each may be directly affected by a reorganization plan either because they have a financial interest in the estate's assets (the debtor, creditor, and equity security holder) or because they represent parties that do (a creditors' committee, an equity security holders' committee, a

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trustee, and an indenture trustee). "The general theory behind [§ 1109(b)] is that anyone holding a direct financial stake in the outcome of the ***278** case should have an opportunity (either directly or through an appropriate representative) to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest." 7 Collier on Bankruptcy ¶1109.01 (16th ed. 2023). This understanding aligns with this Court's observation that Congress uses the phrase " 'party in interest' " in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 7, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000) (quoting 11 U.S.C. § 502(a)).

The ordinary meaning of the terms "party" and "interest" confirms this. "Party" in this context is best understood as "[a] person who constitutes or is one of those who compose ... one or [the] other of the two sides in an action or affair; one concerned in an affair; a participator; as, a *party* in interest." Webster's New International Dictionary 1784 (2d ed. 1949). "Interest" is best understood as "[c]oncern, or the state of being concerned or affected, esp[ecially] with respect to advantage, personal or general." *Id.,* at 1294. The plain meaning of the phrase thus refers to entities that are potentially concerned with or affected by a proceeding.[3] The parties in this case land on roughly this same definition. See Brief for Petitioner 26 (defining "party in interest" as anyone that may be " 'directly and adversely affected' by the reorganization" (alterations omitted)); Brief for Debtor-Side Respondents 29 ("To the extent Truck acknowledges that a 'party in interest' under Section 1109(b) is someone 'directly and adversely affected by the reorganization,' the parties are ***279** in violent agreement"); Brief for Claimant Respondents 1 (similar).[4]

3 Legal dictionaries from the time of § 1109(b)'s enactment and onward similarly define the phrase "party in interest." See Ballentine's Law Dictionary 920 (3d ed. 1969) (defining "party in interest" as a "party to an action who has an actual interest in the controversy, as distinguished from a nominal party"); cf. Black's Law Dictionary 1122 (6th ed. 1990) ("Primary meaning ascribed the term 'party in interest' in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding").

4 The phrase "party in interest" appears in other statutory contexts. The Court's analysis of the term today does not apply across all other, unrelated statutory schemes. The term's meaning elsewhere will turn on the text, structure, context, history, and purpose of those statutory provisions, just as it does here. Still, precedent confirms that this Court's interpretation of § 1109(b) is not an outlier. See, *e.g.*, *Western Pacific California R. Co. v. Southern Pacific Co.*, 284 U.S. 47, 51–52, 52 S.Ct. 56, 76 L.Ed. 160 (1931) (competitor railroad was a "party in interest" under the Transportation Act of 1920 because the challenged railroad expansion had the potential to "directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation"); *L. Singer & Sons v. Union Pacific R. Co.*, 311 U.S. 295, 304, 61 S.Ct. 254, 85 L.Ed. 198 (1940) (food vendors were not a "party in interest" under the Transportation Act of 1920 because a "person engaged in business

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within or adjacent to a public market" was only "indirectly and consequentially affected" by a railroad "seeking only to serve a competing market by means of an extension"); *Alton R. Co. v. United States*, 315 U.S. 15, 19–20, 62 S.Ct. 432, 86 L.Ed. 586 (1942) (railroad companies were "parties in interest" under the Motor Carrier Act of 1935 because they were "directly affected by competition with the motor transport industry").

**1425 The historical context and purpose of § 1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. Section 77B of the Bankruptcy Act of 1898, for example, provided debtors the right to be heard on all issues, but limited the right of creditors and stockholders to only certain issues. See 11 U.S.C. § 207 (1946 ed.). Section 206 of the Bankruptcy Act of 1938 broadened participation and provided that "[the] debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter." § 606. Although the 1938 Act allowed a "party in interest" to intervene "for cause shown," it permitted only the four named parties to intervene as of right. Still, the Advisory Committee's Note to Former Chapter X, Bkrtcy. Rule 10–210(a) (1976), which implemented § 206, noted that the section "was originally enacted to broaden the practice that had *280 developed under former § 77 .... This broader concept was to insure fair representation and to prevent excessive control over the proceedings by insider groups." 11 U.S.C. App., p. 1445 (1976 ed.).

In 1978, Congress enacted the Bankruptcy Code containing § 1109(b), which continued the expansion of participatory rights in reorganization proceedings. Congress moved from an exclusive list to the general and capacious term "party in interest," accompanied by a nonexhaustive list of parties in interest. These parties "may raise and may appear and be heard on any issue." 11 U.S.C. § 1109(b). "Section 206 ... and Chapter X Rule 10–210(a), the predecessor provisions of section 1109(b) of the Code, constituted an effort to encourage and promote greater participation in reorganization cases.... Section 1109(b) continues in this tradition and should be understood in the same way." *In re Amatex Corp.*, 755 F.2d 1034, 1042 (C.A.3 1985).

Now consider the purpose of § 1109(b). Broad participation promotes a fair and equitable reorganization process. The Bankruptcy Code seeks to prevent "the danger inherent in any reorganization plan proposed by a debtor" that "the plan will simply turn out to be too good a deal for the debtor's owners." *Bank of America Nat. Trust and Sav. Assn. v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 444, 119 S.Ct. 1411, 143 L.Ed.2d 607 (1999); see also *ibid.* (discussing Congress's concern that " 'a few insiders, whether representatives of management or major creditors, [could] use the reorganization process to gain an unfair advantage' "). Section 1109(b) addresses this concern. "[D]rafters and early commentators hoped that an expansive definition [of "party in interest" in § 1109(b)] would allow a broad range of individual and minority interests to intervene in Chapter 11 cases, and expressly warned that undue restrictions on who may be a party in interest might enable dominant interests to control the restructuring process." D. Dick, The Chapter 11 Efficiency Fallacy, 2013 B. Y. U. L. Rev. 759, 774–775 (2014). In short,

§ 1109(b) was ***281** "designed to serve ... the policies of inclusion underlying the chapter 11 process." 7 Collier on Bankruptcy ¶1109.02.

B

Applying these principles, the Court holds that insurers such as Truck with ****1426** financial responsibility for bankruptcy claims are parties in interest.

Bankruptcy reorganization proceedings can affect an insurer's interests in myriad ways. A reorganization plan can impair an insurer's contractual right to control settlement or defend claims. A plan can abrogate an insurer's right to contribution from other insurance carriers. Or, as alleged here, a plan may be collusive, in violation of the debtor's duty to cooperate and assist, and impair the insurer's financial interests by inviting fraudulent claims. The list goes on. See, *e.g.*, Brief for American Property Casualty Insurance Association et al. as *Amici Curiae* 16–17 (American Property Brief) ("For example, a plan that purports to maintain an insurer's coverage defenses could nonetheless allow claims at amounts far above their actual value and out of line with the claimants' injuries or the payment of claims for which little to no proof of injury is required"). An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in these and many other ways, making it a "party in interest" in those proceedings.

Take Truck, for example. Truck will have to pay the vast majority of the Trust's liability—up to $500,000 per claim for thousands of covered asbestos-injury claims. The proposed Plan would have Truck stand alone in carrying the financial burden, because the § 524(g) channeling injunction "permanently and forever stay[s], restrain[s] and enjoin[s]" any action against Debtors, App. to Pet. for Cert. 178a, and other "[e]ntities, other than Asbestos Insurers," *id.*, at 201a. According to Truck, however, a plan that lacks the disclosure requirements for the insured claims risks exposing Truck ***282** "to millions of dollars in fraudulent tort claims." 60 F.4th at 80. That potential financial harm —attributable to Truck's status as an insurer with financial responsibility for bankruptcy claims— gives Truck an interest in bankruptcy proceedings and whatever reorganization plan is proposed and eventually adopted.

The Government frames Truck's interest in a slightly different but substantively identical way. According to the Government, Truck is a party in interest because it "is a party to a contract with the debtor that is property of the estate and may be interpreted, assigned, or otherwise affected by the Chapter 11 proceedings." Brief for United States as *Amicus Curiae* 13. This is just another side of the same coin. Those executory contracts are the ones that give insurers an interest in the proceedings and, in this case, make Truck financially responsible for the bankruptcy claims. So, whether Truck's direct interest is framed as its executory contracts or instead its obligations

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resulting from those contracts, it cashes out in the same way: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F.3d 201, 204 (C.A.3 2011).

This opportunity to be heard is consistent with § 1109(b)'s purpose. In this case, neither the Debtors nor the Claimants have an incentive to limit the postconfirmation cost of defending or paying claims. For the Debtors, the Plan eliminates all of their ongoing liability. The Claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. This "realignment of the insured's economic incentives ... makes participation in the bankruptcy by insurers—who will ultimately be asked to foot the bill ****1427** for most or all of those claims—critical." American Property Brief 15–16.

***283** III

The Court of Appeals looked exclusively to whether the Plan altered Truck's contract rights or its "quantum of liability." Under this approach, known as the "insurance neutrality" doctrine, courts ask if the plan "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights." 60 F.4th at 83, 87. This doctrine is conceptually wrong and makes little practical sense.

Conceptually, the insurance neutrality doctrine conflates the merits of an objection with the threshold party in interest inquiry. The § 1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Indeed, § 1109(b) cannot "depend on a plan-specific rule—that standard would be unusable for the Code provisions empowering a party in interest to request acts unrelated to a specific plan or that occur before a plan is confirmed or even proposed." Reply Brief 11; see also *supra*, at 1421 (a party in interest, for example, can file a Chapter 11 plan when a trustee has been appointed or request the appointment and removal of a trustee). Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer's prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers. See *supra*, at 1425 – 1426.

In defending the decision below, the Debtors and Claimants contend that Truck faces similar exposure in the tort system before and after bankruptcy, in part because Truck was not entitled to the disclosure provisions before the bankruptcy. That may be so, but this argument suffers from the same flaw identified above—at bottom, it concerns the merits of whether the Plan should include the disclosure provisions for insured claims in accordance with §§ 524(g) and 1129. See *supra*, at

1422 – 1423 (describing Truck's objections). Whether and how the particular proposed Plan here affects Truck's ***284** prepetition and postpetition obligations and exposure is not the question. The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck (and other insurers with financial responsibility for bankruptcy claims) a right to voice its objections in reorganization proceedings. The Debtors' and Claimants' argument also ignores the practical and legal consequences of the Debtors' bankruptcy proceedings and reorganization plan. They transformed the Debtors' asbestos liabilities into bankruptcy claims that Truck will now have to indemnify through the Trust without the protections of disclosure requirements in place for uninsured claims filed directly with the Trust.

Finally, in resisting the text of § 1109(b), the Debtors emphasize the risk of allowing " 'peripheral parties' to derail a reorganization." Brief for Debtor-Side Respondents 33. To start, a "parade of horribles" argument generally cannot "surmount the plain language of the statute." *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 629, 129 S.Ct. 1896, 173 L.Ed.2d 832 (2009). Moreover, § 1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings.[5] In all events, the Court today does ****1428** not opine on the outer bounds of § 1109. Of course, a party in interest is "not intended to include literally every conceivable entity that may be involved in or affected by the chapter 11 proceedings." 7 Collier on Bankruptcy ¶1109.03. There may be difficult cases that require courts to evaluate whether truly peripheral parties have a sufficiently direct interest. This case is not one of them. Insurers such as Truck with financial responsibility for claims are not peripheral parties.

5 Bankruptcy courts also have equitable discretion to control participation in a proceeding. See, *e.g.*, 11 U.S.C. § 105(a) ("No provision of [the Code] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process").

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* * *

Section 1109(b) provides parties in interest a voice in bankruptcy proceedings. An insurer with financial responsibility for bankruptcy claims is a "party in interest" that may object to a Chapter 11 plan of reorganization.

The judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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Justice ALITO took no part in the consideration or decision of this case.

All Citations

602 U.S. 268, 144 S.Ct. 1414, 219 L.Ed.2d 41, 2024 Daily Journal D.A.R. 4907, 30 Fla. L. Weekly Fed. S 230

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2025 WL 2426380
Only the Westlaw citation is currently available.
United States Bankruptcy Court, D. Delaware.

IN RE: AIO US, INC., et al., Debtors.

Case No. 24-11836 (CTG) (Jointly Administered)
|
Signed August 21, 2025

Synopsis

Background: In jointly administered cases, debtor, a United States-based holding company that was wholly owned by a Brazilian corporation, together with some of its U.S. subsidiaries, sought confirmation of Chapter 11 plan establishing a liquidating trust to resolve unliquidated personal injury claims arising from alleged exposure to debtors' talc-containing cosmetic products. United States Trustee (UST) and various insurers objected, asserting, inter alia, that plan was not proposed in good faith, improperly altered insurers' rights, and contained an impermissible "gatekeeping" provision.

Holdings: The Bankruptcy Court, Craig T. Goldblatt, J., held that:

the plan was proposed in good faith;

liquidating trustee's duty of impartiality ran to trust's beneficiaries, not to insurers;

the plan was not required to comport with subsection of the Bankruptcy Code authorizing court to issue an injunction channeling asbestos-related claims to trust created under confirmed Chapter 11 plan;

the plan's payment of up to $850,000 in reasonable bond indenture fees was permissible; and

the plan's "gatekeeping" provision, which barred assertion of any claim that could be reasonably understood to violate plan's exculpation provision and permitted such claim to go forward only if the Court found that it was "colorable" on the merits, could not be approved over UST's objection.

Ordered accordingly.

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Procedural Posture(s): Motion to Confirm Plan; Objection to Confirmation of Plan; Motion for Stay.

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MEMORANDUM OPINION

CRAIG T. GOLDBLATT, UNITED STATES BANKRUPTCY JUDGE

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Avon Products, Inc. and various of its affiliates filed these bankruptcy cases in 2024. The debtors were once the owners of the iconic Avon cosmetics brand. They spun off their U.S. assets, however, in a 2016 transaction. During these bankruptcy cases, they sold their foreign operations to Natura, their Brazilian parent company. The debtors and Natura also resolved, after extensive litigation with the Committee, various estate claims that the debtors held against Natura. Accordingly, the debtor entities now hold only the proceeds of those sales, insurance assets, and other causes of action. The question now before this Court is whether the plan of reorganization that the debtors have proposed can be confirmed.

These bankruptcy cases were precipitated by personal injury claims asserted against the debtors by plaintiffs who allege that their diseases were caused by exposure to the debtors' talc-containing cosmetic products. The debtors proposed a plan in February of this year and this Court approved a disclosure statement in May. The U.S. Trustee and various insurers objected to confirmation of the plan. This Court conducted a confirmation hearing in July.

As described in further detail below, the Court concludes that certain provisions of the plan and confirmation order must be revised in order to permit the plan to be confirmed. Subject to those revisions, however, the plan is confirmable. *First,* the Court concludes that the plan has been proposed in good faith. The evidence suggests that the debtors undertook a process designed to treat constituencies fairly and to maximize value for the benefit of creditors, as the Bankruptcy Code contemplates. There are imperfections in the plan. For example, the provision that bars recovery from claimants whose exposure to the debtors' products did not occur in the United States or the United Kingdom looks to this Court like an improper effort by certain plaintiffs' lawyers to protect their turf. Even so, however, the totality of the evidence supports a finding that the plan has been proposed in good faith.

Second, the Court largely overrules the objections asserted by insurers that relate directly to the treatment of their insurance policies, though certain of those objections require modifications to the terms of the plan. Broadly speaking, as far as the insurers are concerned, the trust distribution procedures established in the plan should be viewed as a voluntary settlement, between the talc claimants and the debtor/trust, of talc claims. A financially distressed company can, outside of bankruptcy (and without court approval) enter into a settlement under materially similar economic terms with plaintiffs who are asserting claims against it – assigning both the claims and its insurance assets to a trust – and wind down its business. That trust can then sue the company's insurers, arguing that there is insurance coverage for the settlements the trust reached with the claimants. The insurers could respond to such a lawsuit by arguing that the trust has not complied with the various conditions to insurance coverage, and therefore the coverage is vitiated. The principal point this Court intends to make is that the respective rights of the trust (which is to be created under this plan) and the company's insurers should be essentially the same as they would be

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had this occurred out of bankruptcy. (There is an exception for the insurers' rights to challenge the assignment of the policies to the trust, which are preempted by § 1123(a)(5)(B) of the Bankruptcy Code). To be sure, this may set up a high stakes and complex dispute to be resolved in insurance coverage litigation. But that is what it is. So long as small adjustments to the plan and confirmation order are made to comport with the principle that the bankruptcy neither expands nor contracts the rights of the parties, the insurer objections to the trust distribution procedures do not provide a reason why the plan cannot be confirmed.

***3** *Third*, the insurers raise a handful of objections that are not directly related to their insurance policies. While the insurers' standing to assert these objections (particularly in view of the fact that they do not claim to be creditors here) is uncertain, the Court ultimately concludes that these objections fail on the merits. One of the 20 debtors in this case has only a single creditor that has asserted a claim, and that creditor did not vote on the plan. While there is a division of authority on the question, many courts hold, as the insurers here argue, that in such circumstances the class has not accepted the plan. Here, however, the solicitation order clearly provides that such a class will be deemed to have accepted the plan. Whether or not the inclusion of such language is appropriate, here it was entered on notice to all parties in interest and without objection. That order will therefore control. The Court also rejects the insurers' argument that the plan must comply with § 524(g) of the Bankruptcy Code and their contention that the Bankruptcy Code prohibits assigning the task of resolving unliquidated claims to a post-confirmation liquidating trust.

Fourth, the U.S. Trustee argues that the payment of indenture trustee fees under the plan is an improper end run around § 503(b) of the Bankruptcy Code, which authorizes the payment of such fees only on a showing that the indenture trustee made a "substantial contribution" to the case. The Court concludes that on the facts present here, the payment of the fees is fundamentally a question of whether the plan discriminates among similarly situated creditors. Under the Bankruptcy Code, however, unfair discrimination is an objection that can be raised only by a class of creditors that rejects the plan's treatment of their claims. Because here the payment of these fees was appropriately disclosed, and all of the creditors who might be viewed as "victims" of the discrimination voted to support the plan, this form of disparate treatment is not a basis to deny confirmation of the plan.

Finally, the plan contains a "gatekeeper" provision that bars the assertion of any claim that could be reasonably understood to violate the plan's exculpation provision. And any claim that falls within that sweep may go forward only if this Court finds that the claim is "colorable" on the merits. The Bankruptcy Code provides no authority for such an order. The gatekeeping provision must be removed.

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Factual and Procedural Background

1. The Avon business

Avon, founded in 1886, is a leading global beauty, fashion, and home related products company. [1] The corporate entities that filed these bankruptcy cases, however, have not operated or sold products in the United States since 2016, when they spun off their U.S.-based assets. [2] The debtors now before this Court are Avon's U.S. holding companies., which as of the time of the filing owned non-debtor foreign Avon subsidiaries and the majority of Avon's intellectual property assets. [3]

1 D.I. 12 ¶ 23 (first-day declaration). The Court relies on the first-day declaration only as to background matters. In connection with the elements of plan confirmation, the Court relies only on documents and testimony that were admitted into evidence during the confirmation hearing.

2 *Id.* ¶ 29.

3 *Id.*

All of the debtors' revenue was derived from foreign operations. [4] The debtors are wholly owned by Natura, a Brazilian corporation. [5] After acquiring the debtors in 2019, Natura provided substantial funding to them. [6] As of the petition date, the debtors owed Natura $1.271 billion, a substantial portion of which was secured by the debtors' assets. [7] The chart below, created by the debtors, provides a high-level summary of the company's ownership structure: [8]

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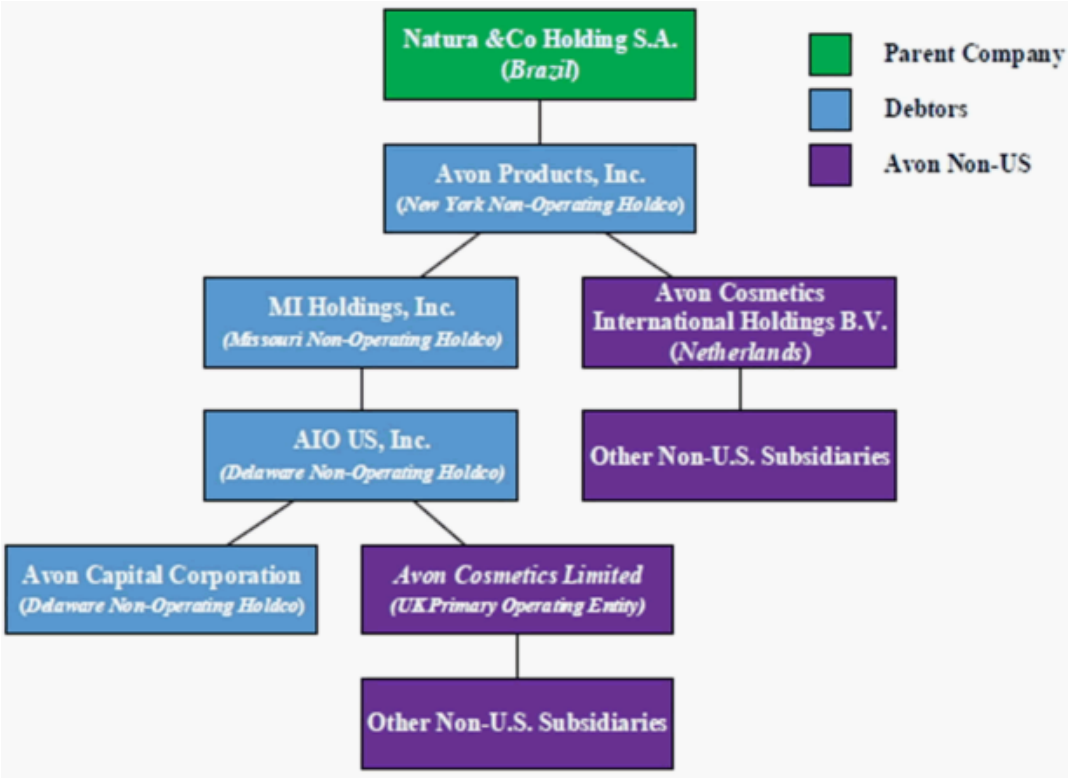

4 *Id.* ¶ 38.

5 *Id.* ¶ 39.

6 *Id.* ¶ 41.

7 D.I. 12 ¶ 48.

8 *Id.* ¶ 33. Note that this chart depicts the entities that filed at the time these cases were initiated. Sixteen additional entities later filed separate bankruptcy petitions. These cases are now jointly administered.

2. The company's talc liability

Beginning in 2010, various plaintiffs began to assert personal injury claims against the debtors on account of alleged exposure to Avon's talc-containing products. [9] Claimants alleged that Avon's talc-containing cosmetic products were contaminated with asbestos and caused mesothelioma or other diseases. [10] By 2020, debtors faced a rapid influx of talc-related lawsuits. [11] This increase in filings against Avon coincided with the bankruptcy filing of LTL, a Johnson & Johnson subsidiary, and the imposition of a stay against the assertion of talc-related claims against Johnson & Johnson. [12]

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9 July 21, 2025 Hr'g Tr. at 39.

10 D.I. 12 ¶ 78.

11 July 21, 2025 Hr'g Tr. at 40.

12 *Id.* at 110.

***4** The debtors have incurred roughly $225 million in defense and settlement costs since 2010. [13] As of the petition date, the debtors had obtained dismissal of 197 talc claims and settled 350 talc claims. The median value of these settlements was $99,500. [14] Between 2020 and 2024 alone, the debtors obtained dismissal of 119 talc claims and settled 310 claims. [15] They paid roughly $123.5 million in settlement costs, settling 35 talc claims for less than $10,000; 268 talc claims between $10,000 and $3 million; and 7 talc claims for amounts greater than $3 million. [16]

13 D.I. 12 ¶ 80.

14 D.I. 1402 ¶ 18.

15 Debtors' Ex. 85.

16 *Id.*

The debtors took only two talc cases to trial, suffering adverse jury verdicts in both. [17] The *Chapman* trial resulted in a jury verdict of $46 million and is currently on appeal. [18] The *Ramirez* trial resulted in a jury verdict of $24.5 million. [19] The debtors assert that they would have appealed that verdict as well, but the case is currently stayed as a result of this chapter 11 filing. [20]

17 July 21, 2025 Hr'g Tr. at 176; D.I. 1402 ¶ 19; D.I. 12 at 32.

18 July 21, 2025 Hr'g Tr. at 176; D.I. 1402 ¶ 19; D.I. 12 at 33.

19 *Id.*

20 *Id.*

As of the petition date, 386 talc-related cases were pending against Avon. [21] Also as of the petition date, debtors had outstanding liquidated talc liabilities of approximately $78.1 million – $7.6 million for cases that they had settled but had not yet paid the amounts promised in the settlements and $70.5 million on account of the two judgments entered against them. [22]

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21 D.I. 12 ¶ 79.

22 D.I. 1402 ¶ 19.

3. The bankruptcy case

Debtor API, a U.S. based holding company, and certain of its U.S. subsidiaries filed these chapter 11 cases in August 2024. [23] In October 2024, 16 additional U.S. subsidiaries filed chapter 11 cases in this Court. [24] The debtors' cases are being jointly administered. [25] Natura, which is the debtors' parent company and their prepetition secured lender, agreed to provide the debtors a $43 million DIP loan to finance these bankruptcy cases. [26]

23 D.I. 1. Avon Products, Inc. is referred to as "API."

24 D.I. 297.

25 D.I. 389 at 7.

26 D.I. 10; D.I. 64; D.I. 56 (interim DIP order); D.I. 318 (final DIP order).

The debtors had also negotiated, before the bankruptcy filing, a proposed settlement with Natura, under which Natura would provide cash and other consideration to the bankruptcy estate in exchange for a release of estate causes of action. [27] Specifically, Natura would pay the debtors $30 million in cash, exclude certain assets including insurance receivables and preference claims from its proposed asset purchase, assume all liabilities related to API's pension plan, waive roughly $530 million in secured debt, and grant a release of the debtors and their estates from certain claims that would otherwise reduce creditor recoveries. [28] The debtors asserted that this proposed settlement preserved the going concern value of the business, provided numerous benefits to the estates, and resulted in meaningful recoveries for unsecured creditors. [29] In addition, Natura agreed to serve as a stalking horse bidder to acquire substantially all of the debtors' assets. [30]

27 D.I. 65.

28 D.I. 65 at 3-4.

29 *Id.* at 4-5.

30 D.I. 64.

The Committee vigorously opposed this settlement and sale. [31] While the debtors sought a sale hearing in late October, the Court gave the Committee an additional month to take discovery,

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setting the hearing on the sale and proposed settlement for late November. The parties engaged in extensive litigation over the course of the following months, which included substantial discovery and the Committee filing a motion to dismiss the case. [32]

[31] D.I. 163, 398, 476. The Official Committee of Unsecured Creditors is referred to as the "Committee."

[32] *See* D.I. 370, 497, 500, 501.

***5** While the parties were engaged in active discovery, the debtors also ran a 13-week marketing process for the sale of substantially all of the debtors' assets. They received no additional qualifying bids and cancelled the auction. [33] The Committee, the debtors, and Natura ultimately settled on the eve of trial and proposed a global settlement that resolved both the estate claims against Natura as well as the objections to the sale.

[33] D.I. 415.

At the December 5, 2024 hearing, the parties explained the terms of the global settlement, which included that (1) Natura would provide the debtors $34 million of unencumbered cash, (2) Natura would exclude the following assets from the sale: the debtors' cash as of the closing date, liquidation insurance receivables (approximately $4.8 million), rabbi trust assets (approximately $25.5 million), preference claims and commercial tort claims, (3) Natura would assume certain pension assets and liabilities, (4) Natura would assume the attorneys' fees incurred in connection with API's prosecution of the appeal from the *Chapman* verdict and Natura may assume prosecution of the appeal, (5) Natura would waive all unsecured claims, intercompany claims, and all secured claims (except to the extent necessary to satisfy Natura's credit bid), (6) Natura would fund, in full and in cash, all outstanding DIP commitments prior to the sale closing date, and (7) all of the debtors' rights under talc insurance policies would be transferred into a trust, created by the plan, for the benefit of creditors. [34] Natura and the debtors also agreed to release each other from any and all claims, current, unknown, or future. [35]

[34] D.I. 577-1 at 20-22 of 41; D.I. 581 (order approving the settlement).

[35] D.I. 577-1 at 22-25 of 41.

Following a hearing during which the terms of orders approving the sale and settlement were discussed (which is discussed further in Part V of this Memorandum Opinion), the Court entered orders approving both the settlement and the sale of substantially all of the debtors' assets to Natura. [36]

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36 D.I. 581, 582.

4. The plan

After approval of the sale and settlement, the parties undertook negotiations toward a plan. On February 28, 2025 the debtors filed an initial chapter 11 plan of liquidation and a proposed disclosure statement. [37]

37 D.I. 812, 813. The plan was amended several times prior to the disclosure statement hearing, and again prior to the confirmation hearing. This Court will cite to the second amended plan, D.I. 1319, when referring to the plan that is before this Court for confirmation. For present purposes, however, the material terms, including the distribution structure, classification and treatment of creditors, voting procedures, and other provisions material to plan confirmation have not changed materially since the earlier version of the plan filed at D.I. 965.

The debtors' primary assets are preference and commercial tort causes of action, rights to coverage under insurance policies, and an anticipated $31 million in cash as of the effective date. [38] The plan proposes that, on the effective date, all of the debtors' assets will vest in a liquidation trust created by the plan. [39] Melanie L. Cyganowski will be appointed as liquidating trustee to administer, resolve, liquidate, and pay all claims against the debtors. [40] The trust is a mechanism for resolving only those claims presented during the life of the trust, not future arising claims. [41] The trust will be dissolved at the earlier of five years after its creation or when all trust assets have been depleted. [42]

38 D.I. 1028, § 1.1. The disclosure statement was amended several times prior to the disclosure statement hearing. Except when addressing an objection to a specific prior version of the disclosure statement, this Court will cite to relevant provisions in the approved disclosure statement, D.I. 1028, which have remained materially unchanged since the version filed at D.I. 966.

39 D.I. 1319, § 5.4.

40 *Id.*, § 5.3.

41 D.I. 1319-1, § 3.2.

42 D.I. 1319, § 5.4.

Classification and treatment of creditors under the plan

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***6** The plan establishes eight creditor classes: priority claims (class 1); secured claims (class 2); general unsecured claims (class 3); talc claims (class 4); subordinated claims (class 5); intercompany claims (class 6); intercompany interests (class 7); and parent interests (class 8). [43]

43 *Id.*, § 3.3.

Classes 1, 2, and 7 are unimpaired and deemed to accept – the debtors anticipate that class 1 and 2 claimants' rights under the plan will be unaltered and that their claims will be paid in full; class 7 intercompany interests will receive no distribution under the plan and will be reinstated solely to maintain the debtors' corporate structure and to facilitate the debtors' dissolution. [44]

44 *Id.*, §§ 4.1, 4.2, 4.7.

Classes 5 and 8 are impaired and deemed to reject – class 5 claims are subordinated claims and they will be deemed expunged, released, and extinguished as of the effective date; class 8 interests are parent (API) interests that will be cancelled and new parent interest will be issued to the liquidation trust. [45] Class 6 intercompany claims will all be either reinstated or cancelled and released at the option of the debtors or the liquidating debtors. [46] Regardless, no distributions will be made out on account of intercompany claims. [47] Intercompany claim holders are not entitled to vote on the plan, and their claims can either be treated as unimpaired, and deemed to accept, or impaired, and deemed to reject. [48]

45 *Id.*, §§ 4.5, 4.8.

46 *Id.*, § 4.6.

47 *Id.*

48 D.I. 1319, § 4.6

Class 3 and 4 creditors are the only impaired classes eligible to vote to accept or reject the plan. [49] Class 3 includes all general unsecured claims against the debtors such as the unsecured 2043 note claims, trade claims, and former employee-related claims. [50] The debtors have upwards of $49 million in outstanding liability on account of class 3 claims. [51] The bond trustee's fees and expenses relating to the 2043 notes are excluded from the class 3 claim pool and instead are proposed to be paid pursuant to an agreement between the debtors and the bond trustee as a condition precedent to confirmation of the plan. [52]

49 *Id.*, § 3.6.

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50 D.I. 1028, § 1.2.

51 *Id.*

52 D.I. 1319, §§ 12.16, 9.1.

The plan provides that class 3 creditors can either (1) recover their *pro rata* share of waterfall distributions from a general unsecured claims recovery fund (which will be funded with up to $14 million in cash) or (2) they can elect to receive treatment identical to class 4 talc claimants in accordance with trust distribution procedures, and recover their *pro rata* share of cash proceeds from insurance rights and retained causes of action.[53] The net result of this mechanism is that claimants who make the class 3 election will recover the same percentage of the liquidated value of their claims as class 4 talc claimants do. While this election might (or might not) result in greater recoveries, the payout amount and timing are uncertain.[54]

53 *Id.*, § 4.3; D.I. 1028, §§ 1, 1.5; D.I. 1319-1, § 3.2.

54 *Id.* Greater recoveries from the class 3 election depend on the liquidated claim value assigned to talc claims (the denominator) and insurance recovery and the proceeds of recoveries on estate causes of action (the numerator).

The holders of talc claims against any or all of the debtors are assigned to class 4.[55] The plan provides that talc claims that were unliquidated as of the petition date will be resolved and liquidated in accordance with trust distribution procedures.[56] Talc claims that were liquidated pre-petition, whether by settlement or pursuant to a jury verdict, will be paid as soon as practicable from the trust.[57]

55 D.I. 1319, § 4.4.

56 *Id.*

57 D.I. 1319-1, § 4.2.

***7** All other talc claims will be paid out on a first-in, first-out basis.[58] The trust will only pay talc claims if the talc exposure, from use of debtors' talc-cosmetic products, occurred in the United States or the United Kingdom.[59] Claimants' recoveries are dependent on the proceeds from insurance coverage and those from other estate causes of action. The debtors emphasized that nothing in the trust distribution procedures determines whether the insurers are obligated to pay under their policies on account of the talc claims.[60]

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58 *Id.*, § 3.1.

59 *Id.*, § 6.7.

60 *Id.*, § 2.3.

Mesothelioma talc claimants can elect to have their claims reviewed through either the expedited review or an individual review process.[61] If a mesothelioma talc claimant selects the expedited review process and provides satisfactory evidence of a mesothelioma diagnosis and regular exposure to the debtors' cosmetic talc products for at least three years, then the claimant will be offered the scheduled value ($10,000) of the claim.[62] A claimant must submit evidence of the name of the products to which the claimant was exposed, how often the claimant used the product, the time frame in which the claimant was exposed, the duration of use, and information regarding where and when the debtors' talc product(s) were purchased.[63] The trust distribution procedures also establish strict medical diagnosis criteria – the trust "must have reasonable confidence that the medical evidence provided in support of the talc claim is credible and consistent with recognized medical standards."[64]

61 *Id.*

62 *Id.*, §§ 4.3(b), 4.4(b).

63 D.I. 1319-1, § 4.3(b).

64 *Id.*, § 4.4.

If the mesothelioma talc claimant selects the individual review process, the claimant will be required to satisfy the exposure and medical diagnosis criteria described above and must also submit additional evidence to aid the liquidating trustee's specific liquidated value determination.[65] This includes information about whether the claimant used other non-debtor talc products and if the claimant had exposure to asbestos or asbestos products other than what was alleged to be present in the debtors' cosmetic talc products.[66] The liquidating trustee will consider the historical liquidated values of other similarly situated mesothelioma talc claims against the debtors in the tort system and the historical value of such claims paid out by the debtors.[67] A mesothelioma talc claimant's allowed claim under the individual review process will be capped at $3 million.[68] Subject only to the application of this cap, however, the principal requirement of the trust distribution procedures is to generate allowed claim amounts that mirror the debtors' prepetition experience in resolving talc claims.

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65 *Id.*, § 4.3(c)(1).

66 *Id.*

67 *Id.*

68 *Id.*

All other disease talc claimants will automatically proceed through the individual review process.[69] If the liquidating trustee determines that the claimant has provided satisfactory evidence of a disease diagnosis and has also established that he or she has had no exposure to asbestos or non-debtor talc products, then the claimant may receive an allowed claim of up to $6,000.[70]

69 D.I. 1028, § 1.6; D.I. 1319-1, § 4.3.

70 D.I. 1028, § 1.6; D.I. 1319-1, § 4.3(c)(2).

Claimants are not required to accept the liquidated value assigned to their claims through these processes. The trust distribution procedures provide that claimants may arbitrate any disputes arising from the liquidating trustee's determination of claim allowance or the value of their talc claims.[71] The plan does not contemplate, however, any access to a judicial process to determine the allowed amount of a talc claim. A claimant's sole recourse is to arbitration, and the task of the arbitrator will be to determine whether the trust applied the trust distribution procedures correctly.

71 D.I. 1028, § 1.6; D.I. 1319-1, § 4.5.

Distribution structure

***8** The plan provides that on the effective date, the liquidating trust will first pay in full all professional fees (including those fees and expenses of the bond trustee for the 2043 notes), administrative expense claims, secured claims, and priority claims. Remaining cash on-hand would be allocated to the operating expense reserve for the benefit of the liquidating trustee, and then to the general unsecured claims recovery fund.[72] Once all other outstanding claims and the liquidating trustee's operating expenses have been paid, post-effective date cash (insurance proceeds and any recoveries from other causes of action) will be allocated for the benefit of class 4 talc claimants and class 3 special election claimants.[73]

72 D.I. 1319, § 5.10.

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73 *Id.*, § 5.11.

Voting and solicitation procedures

Classes 3 and 4 are the only impaired classes whose members are eligible to vote to accept or reject the plan. [74] The proposed voting and solicitation procedures order temporarily allowed all class 3 and 4 claims for purposes of voting on the plan. [75] Each class 4 talc claimant was accorded one vote on the plan against debtor API only. [76] And for voting purposes only, all mesothelioma talc claims were valued at $10,000 (reflecting the scheduled expedited review value of such claims in the trust distribution procedures) while all other talc disease claims were valued at $20. [77]

74 *Id.*, § 3.6.

75 D.I. 1028, § 2.2(d).

76 *Id.*, § 2.5.

77 *Id.*, § 2.2(d)(iii).

Debtors also noted that they were aware of only one potential claim that may be against a debtor other than API – the EPA (represented by the Department of Justice, acting on behalf of the United States), which has a claim against debtor MIH. [78] This, coupled with the fact that none of the other debtors, other than API, hold any assets, led the debtors to propose that the MIH claimant receive the same treatment as creditors of API under the plan. [79] The debtors explained as much in a footnote to the disclosure statement. [80]

78 D.I. 1028, n.13. Debtor MI Holdings, Inc. is referred to as "MIH."

79 *Id.*

80 *Id.*

The plan provides that any class that, as of the commencement of the confirmation hearing, does not have at least one holder of an allowed claim in an amount greater than zero for voting purposes shall be considered "vacant" and deemed eliminated from the plan for voting purposes. [81]

81 D.I. 1319, § 3.4.

Other relevant provisions

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The plan contains standard debtor-releases, an exculpation provision, an injunction, and a "gatekeeping" provision.[82] The gatekeeping provision provides that parties may not pursue any claims that may relate to, or are reasonably likely to relate to, claims released or exculpated in the plan, without first requesting a determination from the bankruptcy court that such claim was not subject to a plan injunction and is a "colorable" claim on the merits.[83]

82 *Id.*, §§ 10.4(i), 10.6, 10.7, 10.8.

83 D.I. 1319, § 10.8.

Disclosure statement and proposed voting and solicitation procedures hearing

Various insurers objected to the disclosure statement and proposed voting and solicitation procedures.[84] The debtors resolved most of those objections and filed an amended plan, disclosure statement, and proposed solicitation procedures order reflecting the terms of those resolutions.[85] London Market Insurers, however, maintained objections to the temporary allowance of talc claims and to the confirmation timeline.[86] The debtors argued that London Market Insurers lacked standing to object to the proposed voting procedures for talc claimants.[87]

84 D.I. 1020, 1021, 1022. The insurers objected to various provisions in a prior iteration of the disclosure statement, D.I. 965.

85 D.I. 1027, 1028, 1029, 1030.

86 D.I. 1021.

87 D.I. 1031.

***9** The Court held a hearing on the debtors' motion for approval of the disclosure statement and solicitation and voting procedures on May 19, 2025. The Court approved the disclosure statement and solicitation and voting procedures subject to certain changes to the ballots to which the debtors had agreed.[88] The Court also issued an opinion that held that the London Market Insurers were parties in interest who were entitled to be heard with respect to both objections. The Court, however, overruled the objections on the merits, finding the procedures and confirmation timeline to be appropriate.[89]

88 D.I. 1047.

89 D.I. 1125.

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5. The confirmation hearing

After the May 19, 2025 hearing, certain insurers filed various motions to adjourn the confirmation hearing. They sought extensions for discovery and filed a motion to dismiss the bankruptcy case.[90] The insurers notified debtors of their intent to conduct a 30(b)(6) deposition and also proposed to introduce expert testimony at confirmation to establish that exposure to talc does not cause mesothelioma. The debtors moved *in limine* to exclude any expert testimony on this topic.[91] They argued that it was not relevant to confirmation because such testimony goes to the merits of the talc claims, and the plan does not prejudice the insurers' authority to contest, for coverage purposes, the merits or value of the talc claims.[92] The debtors also moved to quash all 30(b)(6) topics pertaining to the merits of the underlying talc claims, including historical data trends and prepetition talc verdicts and settlement histories (although the debtors had produced, in discovery, documents that contained such information).[93] The Court, during a status conference, denied the debtors' motion to quash certain topics from the 30(b)(6) deposition but granted the *in limine* motion regarding the proposed expert testimony after the debtors and the Committee represented that the intent of the plan was to leave in place all of the insurers' rights with respect to the merits of the underlying talc claims.

90 D.I. 1137, 1155, 1250, 1268, 1269, 1301, 1302.

91 D.I. 1246.

92 *Id.* at 8-9.

93 *Id.* at 5-7.

The U.S. Trustee and the insurers objected to confirmation of the plan.[94] The U.S. Trustee objected to the plan injunction and gatekeeping provision and argued that the plan provision for payment of the bond trustee's fees and expenses circumvents the requirements of § 503(b) and results in disparate treatment of creditors, rendering the plan unconfirmable.[95] Insurers objected on various grounds, arguing that the plan was not proposed in good faith, the plan did not obtain the necessary votes, the plan improperly seeks to alter insurers' rights by "allowing" talc claims and binding insurers to the trust's claim valuations, and asserting that their insurance policies are executory contracts such that the plan cannot assign rights under the insurance policies without also transferring the debtors' obligations.[96] The debtors amended the plan in response to those objections. The second modified plan was filed on July 17, 2025.[97]

94 D.I. 1232, 1233, 1235, 1238. The parties objected to a prior iteration of the plan, D.I. 1050.

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95 D.I. 1232 at 1-2.

96 D.I. 1233, 1235, 1238.

97 D.I. 1319.

The Court held the confirmation hearing on July 21 and 23, 2025. Philip Gund, the debtors' chief restructuring officer and treasurer, testified on behalf of the debtors and was subject to cross examination. All other testimony came in by declaration.[98] All opposing parties had the opportunity to present their arguments. The debtors responded to the filed objections and those raised during the hearing.

98 The Court also admitted, during the confirmation hearing, certain exhibits as well as designated deposition testimony. To the extent the Court relies on designated deposition testimony to which a party objected, the Court overrules the objection.

***10** Philip Gund testified to the debtors' intent with respect to the plan and trust distribution procedures, the negotiations underlying the plan, how the trust distribution procedures are intended to mirror the tort system for talc claims, and the debtors' history in the tort system regarding talc-related claims.[99] Gund testified that the debtors' decision to file for bankruptcy was prompted by an increase in talc filings against the estate, $1.3 billion in funded debt with little cash on-hand, growing defense costs, and concerns that recent adverse jury verdicts would affect the debtors' historical ability to reach smaller settlements.[100] He testified that the trust distribution procedures and the plan were intended to maximize the value of the estate while creating a "fair and equitable process for the resolution of unsecured creditor claims [and] talc claims."[101]

99 July 21, 2025 Hr'g Tr. at 38.

100 *Id.* at 40-42, 64.

101 *Id.* at 71.

Gund testified that the debtors maintained a spreadsheet of all talc claims against the debtors, 386 of which were outstanding as of the petition date.[102] Gund had asked the debtors to create a summary of 429 claims between 2020-2024 that had been resolved, excluding verdicts.[103] That summary showed the following:[104]

Category	Number of resolutions	Percent of resolutions by count	Percent of settlements by count	Total resolution value

Settlement amount greater than $3 million	7	1.6%	2.3%	$48,450,000
Settlement amount between $10,000 and $3 million	268	62.5%	86.5%	$74,944,000
Settlement amount less than $10,000	35	8.2%	11.3%	$79,000
Dismissed	119	27.7%	N/A	$0
Total	**429**	**100%**		**$123,473,000**

102 *Id.* at 40, 53-54.

103 *Id*. at 59.

104 *Id.* at 59-60; Debtors' Ex. 85.

Gund testified that the trust distribution procedures are intended to mimic the tort system in process and resolution. [105] The trust distribution procedures establish medical criteria consistent with those used in the tort system for the liquidating trustee to consider when evaluating claims and also provide historical settlement values with which the liquidating trustee is charged with aligning. [106]

105 July 21, 2025 Hr'g Tr. at 62, 84-85;

106 *Id.* at 114; D.I. 1319-1, § 4.3(c)(1).

Mesothelioma talc claimants can have their claims reviewed under the expedited review or individual review process. Debtors' counsel suggested that, in light of the company's tort history, most mesothelioma claimants will likely elect individual review because the scheduled value for expedited review claims is so low. [107] And while the statements of counsel are not evidence, the evidence that is in the record of the proposed result of the expedited review process and the company's settlement history (in light of ordinary common sense) seems to support that assertion.

107 July 21, 2025 Hr'g Tr. at 180-181.

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The expedited review process assigns mesothelioma talc claimants with valid claims a $10,000 value – which is the lower bound of the category in which the debtors place the majority of settlements (268) they had reached. [108] Mesothelioma talc claimants who elect the individualized review process will be able to recover up to, but no greater than, $3 million. This value reflects the higher bound of the category in which the debtors place the majority of settlements they had reached. [109] The $3 million cap was negotiated with the Committee and reflected the debtors' view that such a cap would result in significant savings in the claims resolution process. [110]

108 *See* Debtors' Ex. 85; Gund Dep. at 241-242.

109 *See* Debtors' Ex. 85; July 21, 2025 Hr'g Tr. at 67-69. This "bracketing" of claims as falling within a range of $10,000 to $3 million of course accepts the categories that the debtors chose to assign to these claims, which is (necessarily) somewhat arbitrary.

110 July 21, 2025 Hr'g Tr. at 67-69.

All other talc-disease claims will be individually reviewed by the liquidating trustee and are subject to a $6,000 cap. [111] Debtors' counsel explained that the drastic difference between the scheduled value assigned to other talc-disease claims (such as ovarian cancer claims) and mesothelioma claims reflects the difference in the strength of the evidence of causation. [112] Gund testified that the Committee had proposed to include in the trust distribution procedures the average value of mesothelioma claims, but the debtors rejected this proposition because they were concerned that "the average value would either become a target or a minimum and would, ultimately, inflate claims." [113]

111 D.I. 1319-1, § 4.3(c)(2); July 21, 2025 Hr'g Tr. at 176-177.

112 July 21, 2025 Hr'g Tr. at 176.

113 *Id*. at 132, 138-139.

***11** Gund testified that the debtors do not concede that their products contain asbestos. [114] In fact, the debtors maintained throughout, and adhere to the position, that their products were safe. [115] But despite the fact that outside of bankruptcy the debtors could respond to talc claims by arguing, for example, that exposure to the debtors' talc products does not cause mesothelioma, under the expedited review process mesothelioma claimants need only establish proof of diagnosis and exposure to an Avon talc product for three years to receive a settlement offer. [116] While in the individual review process, the liquidating trustee may consider evidence regarding whether the products at issue contained asbestos, for purposes of the expedited review process the debtors were

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effectively compromising their defense that exposure to talc does not cause mesothelioma. [117] The debtors contend that in light of the increase in claims they faced in recent years, the trust distribution procedures provide a streamlined and more efficient process for claims resolution. Coupled with the $3 million cap, the debtors contend that these procedures greatly reduce the total cost of managing their talc liability. [118]

114 *Id.* at 112-113.

115 *Id.* at 113.

116 *Id.* at 114-115.

117 *Id.* at 171-173.

118 July 21, 2025 Hr'g Tr. at 84.

Gund testified that the debtors intended both for the plan to protect the estate's right to recover on available insurance assets, and (relatedly) to protect the insurers' rights. He testified that the debtors were unwilling to agree to a plan or trust distribution procedures that inflated values for talc claims. [119] He explained that the debtors insisted on provisions expressly stating that the trust distribution procedures do not affect the insurers' rights and also added in audit provisions to protect against fraudulent or improper claims. [120] And though not in evidence, debtors' counsel also explained that the debtors would not agree to a plan provision that would grant the liquidating trustee broad authority to amend the trust distribution procedures' scheduled values and criteria without court approval. [121]

119 *Id.* at 74, 82-83.

120 *Id.* at 83.

121 *Id.* at 182-183.

Stephenie Kjontvedt's declaration regarding the tabulation of votes was also admitted into evidence. [122] Sixty-one general unsecured class 3 claimants (90.71% of the voting creditors in the class) holding $8,143,287.51 in claims (96.93% in amount) voted to accept the plan. [123] Seven class 3 claimants (10.29% of the voting creditors in the class) holding $258,000.00 (3.07% in amount) in claims voted to reject the plan. [124] Debtors' counsel also submitted a proffer of testimony with respect to the voting status of the fourteen non-bondholder creditors in class 3 – all fourteen non-bondholder creditors, totaling $4,054,287.15 in claims, voted to accept the plan, none voted to reject it. [125] Just over 90 percent of class 3 claimants elected to forgo their *pro rata* share

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of distributions from the general unsecured claims recovery fund in favor of receiving treatment identical to class 4 creditors and sharing in the pool of insurance and cause of action recovery proceeds. [126] All of the class 4 (talc) claimants (100%) who submitted ballots voted to accept the plan. [127] No class 4 claimant voted to reject the plan. [128]

122 D.I. 1221.

123 *Id.* at 4.

124 *Id.*

125 July 21, 2025 Hr'g Tr. at 120-121; D.I. 1316, n.6.

126 D.I. 1221-3.

127 D.I. 1221 at 5.

128 *Id.*

The debtors only received ballots for class 3 against debtor API and no other debtor. [129] Debtors had entered into a stipulation with the EPA, a creditor of debtor MIH, whereby the EPA agreed to have its claim against MIH be treated as a non-electing class 3 claim against debtor API. [130] The EPA did not, however, vote on the plan. [131] Class 4 votes were only solicited for debtor API in accordance with the plan and the solicitation procedures order. [132]

129 *Id.*

130 D.I. 1296.

131 July 21, 2025 Hr'g Tr. at 213; July 23, 2025 Hr'g Tr. at 16.

132 D.I. 1221 at 5.

During closing arguments, the debtors described certain changes to the plan that they agreed to make in response to the objections asserted during the hearing. The debtors agreed to remove certain conflicting provisions or phrases that might be understood to affect the insurers' rights. [133] They also agreed to remove the debtors and liquidating debtors entirely from the protection of the section 10.4 plan injunction, and agreed to revise the plan injunction to ensure that insurers' rights are not impaired by the plan injunction. [134] At the close of argument, the Court directed the debtors to file a redline on the docket showing those plan changes, which filing has been docketed at D.I. 1362. [135] The insurers were invited to file a further redline showing those changes that they

believed needed to be made for the plan to be confirmable (subject to the reservation of their rights to contend that no plan would be confirmable). Two such redlines were filed at D.I. 1386 and 1388.

133 July 23, 2025 Hr'g Tr. at 7.

134 *Id.* at 22-23.

135 The U.S. trustee objected to certain modifications to the plan injunction in § 10.4 of the plan. After conferring with the U.S. trustee, the debtors filed additional plan revisions at D.I. 1385 which resolve the U.S. trustee's objection to the § 10.4 plan injunction.

Jurisdiction

***12** When a proponent of a plan of reorganization seeks confirmation of that plan, the contested matter arises under § 1129 of the Bankruptcy Code and thus falls within the district court's subject-matter jurisdiction over matters "arising under" the Bankruptcy Code provided in 28 U.S.C. § 1334(b). That jurisdiction has been referred to this Court under 28 U.S.C. § 157(a) and the district court's February 29, 2012 standing order of reference. Plan confirmation is a core matter under 28 U.S.C. § 157(b)(2)(L).

Analysis

The debtors' confirmation brief walks through the elements that a plan proponent is required to establish to confirm a plan of reorganization, including satisfaction of the various elements of § 1129(a) of the Bankruptcy Code, and identifies the record evidence that, they contend, demonstrates the satisfaction of each of those elements. [136] Much of what the debtors say there is not contested.

136 *See* D.I. 1320.

This Memorandum Opinion will not contain specific findings and conclusions addressing each element necessary to show that the plan is confirmable. As is customary, the Court is prepared to enter a confirmation order that makes the necessary and appropriate findings, which will need to be revised by the parties to reflect the conclusions set forth herein. This Memorandum Opinion is addressed only to the objections to confirmation that were raised by one or more party in interest. [137]

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137 Certain of the objections asserted by the parties have been mooted by changes to the plan and/or confirmation order that the debtors agreed to make in light of the evidence presented at the confirmation hearing. *See* July 23, 2025 Hr'g Tr. at 7, 22-23. This Memorandum will not address those issues.

Four parties in interest asserted objections to plan confirmation – three groups of insurers and the U.S. Trustee.[138] These objections fall into five categories that the Court will address in the following order:

- *First*, the insurers argue that the plan was not proposed in good faith;
- *second*, insurers challenge certain findings and particular plan provisions on the ground that they would give the trust an improper "leg up" in subsequent insurance coverage litigation;
- *third*, the insurers assert a number of other confirmation objections that do not, on their face, relate to the treatment of their rights under their insurance policies;
- *fourth*, the U.S. Trustee argues that the plan's proposed reimbursement of the fees of the bond indenture trustee is impermissible; and
- *finally*, the U.S. Trustee contends that the "gatekeeper" provision in the proposed plan injunction is improper.[139]

138 The U.S. Trustee objection is docketed at D.I. 1232. A broad group of insurers filed a joint objection to confirmation, docketed at D.I. 1233. During the confirmation hearing, these objections were argued by counsel for two of the groups of insurers that filed these objections. The Court will generally describe those arguments as those of the "Certain Insurers." An objection filed by Hartford-related insurers (referred to, collectively, as "Hartford") was docketed at D.I. 1235. A group of Travelers'-related insurers joined in portions of the other insurer objections. D.I. 1238.

139 The U.S. Trustee's objection also originally objected to confirmation on the ground that the plan injunction was overbroad. D.I. 1232 at 9-10. The parties negotiated a consensual resolution to that objection. *See* July 21, 2025 Hr'g Tr. at 20, 250.

I. The plan was proposed in good faith.

A. The plan generally seeks to achieve ends that are within the contemplation of the bankruptcy laws.

***13** Section 1129(a)(3) of the Bankruptcy Code provides that a plan of reorganization must be "proposed in good faith and not by any means forbidden by law."[140] Courts have read this

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language to mean that both the means used and the ends sought in proposing a plan need to accord with the purposes of bankruptcy law.[141] In making this assessment, courts are to consider the entire record and reach a judgment based on the "totality of the circumstances."[142]

140 11 U.S.C. § 1129(a)(3).

141 *See In re Combustion Engineering*, 391 F.3d 190, 247 (3d Cir. 2004) ("for purposes of determining good faith under section 1129(a)(3) the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.") (cleaned up); *In re American Capital Equip.,* 688 F.3d 145, 157 (3d Cir. 2012) (same); *In re Boy Scouts of America*, 642 B.R. 504, 645 (Bankr. D. Del. 2022) (same).

142 *In re W.R. Grace & Co.*, 475 B.R. 34, 87 (Bankr. D. Del. 2012).

Statements made by counsel, of course, are not evidence. But counsel for the debtors explained that the debtors took time to study what had occurred in other mass tort bankruptcy cases. "We understand the issues that have been raised by courts, by insurers, by other creditors, other objecting parties. And we worked very hard to minimize those issues here ... [by seeking] to do things right."[143]

143 July 21, 2025 Hr'g Tr. at 145.

The evidence at the confirmation hearing is broadly consistent with that representation. There is no question that the bankruptcy was filed in good faith. As described above, the bankruptcy was precipitated by the press of talc claims against the debtors, including two large adverse judgments.[144] During the bankruptcy case, the debtors reached an arm's length settlement (after extensive litigation) with the Committee that provided for the settlement of various estate causes of action against Natura arising out of pre-petition transactions and a process for the marketing and sale of the companies' assets (principally the shares of non-debtor foreign subsidiaries), which culminated in a sale of those assets to Natura.[145]

144 *Id.* at 42 (Gund testimony that debtors filed for bankruptcy because they "had approximately $3 million in cash ... approximately $1.3 billion in funded debt ... increasing amounts of talc claims, recent verdicts, upcoming interest payments to the bondholders as a result of that, and [they weren't] able to operate.").

145 D.I. 581, 582.

The evidence also demonstrates that the plan was proposed in good faith. Gund testified that the plan's trust distribution procedures were broadly intended to create a construct under which

the trust would settle talc claims with individual talc claimants on terms that roughly mirrored the company's settlement history outside of bankruptcy. [146] He explained that as a fiduciary, the debtors believed they were obligated to seek to preserve whatever insurance was available for the benefit of the talc claimants (who made up a substantial fraction of the companies' creditor body). [147] At the same time, however, he testified that the debtors sought to do this in a way that treated the companies' insurers fairly and preserved coverage defenses that the insurers would otherwise have. [148]

146 July 21, 2025 Hr'g Tr. at 62, 68-69, 84-85.

147 *Id.* at 82-84.

148 July 21, 2025 Hr'g Tr. at 74, 82-84.

B. While the plan's treatment of claims for foreign exposures to the debtors' talc products is a factor that weighs against a finding of good faith, it is insufficient to tip the balance under the "totality of the circumstances."

***14** The insurers contend that under the plan's trust distribution procedures, foreign claims are not eligible for payment. [149] The insurers cast this objection as one under § 1129(a)(1), presumably because they contend that the provision is inconsistent with § 502(b), which provides that claims allowance should turn on whether the creditor holds a valid "right to payment" against the debtor under applicable non-bankruptcy law. [150] For reasons this Court will describe in Part II.B, the settlement mechanism set up through the trust distribution procedures does not and need not (in light of the unanimous consent of the talc claimants) precisely reflect parties' legal rights outside of bankruptcy. The Court is therefore not persuaded that the inclusion of this provision, without any objection from an affected talc claimant, raises a question about improperly altering the rules of claims allowance.

149 D.I. 1233 at 45-46.

150 *See* 11 U.S.C. § 101(5).

It does, however, bear on the question of good faith. As an initial matter, the debtors are correct in pointing out that § 6.7 of the trust distribution procedures is focused on location where the claimant alleges to have been exposed to the debtor's product, not on the claimant's nationality. [151] That provision states that "[n]otwithstanding anything to the contrary herein, the Trust shall only pay Talc Claims if there is an allegation of Debtor Talc Exposure in the United States or the United Kingdom." [152] Claimants exposed in the United States or in the United Kingdom are thus eligible to receive payment from the trust while claimants who allege that they were exposed to the debtors'

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products elsewhere are not. The debtors assert that this provision is simply based on the history of the kinds of claims that were asserted and settled before the bankruptcy filing.

151 A highly regarded former bankruptcy judge published a law review article suggesting that it may be appropriate to classify foreign creditors separately. *See* Barbara J. Houser, *Classification and Treatment of Foreign Claims in U.S. Bankruptcy Proceedings*, 36 Tex. Int'l L. J. 475, 494 (2001). While that issue is not before this Court, the Court appreciates that the factors identified in Judge Houser's article may provide a basis for separate classification. But even so, if a plan provided materially inferior treatment to that class of foreign creditors, it could be confirmed only if the disadvantaged class voted in favor of confirmation. *See* 11 U.S.C. § 1129(b); *In re Tribune Co.*, 972 F.3d 228, 232 (3d Cir. 2020). It also bears note that Judge Houser's 2001 law review article pre-dates the 2005 adoption of Chapter 15 of the Bankruptcy Code. Section 1513(b) of the Bankruptcy Code now "specifies that foreign creditors ... must receive at least the same treatment as general unsecured creditors without priority." 8 *Collier on Bankruptcy* ¶ 1513.02 (16th ed. 2025).

152 D.I. 1319-1 § 6.7.

But if the only concern were with the potential allowance of otherwise invalid foreign claims, it would be sufficient for the trust distribution procedures to focus on whether the claim was valid, without regard to where the alleged exposure occurred. And while it may well be true that claimants asserting exposure to the debtors' products from outside the United States or the United Kingdom have not sued the company before, the past is not always a perfect predictor of the future. So there surely is no basis to say that a claimant exposed in some other country might not be able to present a claim to the trust demonstrating that the claimant has a valid "right to payment" from the debtor under non-bankruptcy law, which is generally what is required to recover as a creditor in bankruptcy.

In addition to being unnecessary to serve any legitimate bankruptcy purpose, improper reasons why such a provision might be included in a trust distribution procedure come readily to mind. If, for example, the typical clients of those plaintiffs' lawyers representing committee members are individuals who have been exposed to the debtors' products in the United States or the United Kingdom, those lawyers might well draft a provision like this one to ensure that their "turf" not be invaded by others. Particularly in view of the fact that trust distribution procedures tend to make it easier and less expensive to assert claims against a trust than it was for plaintiffs to file suit against the debtors in the tort system (a feature of bankruptcy trusts discussed in Part II, below), this is certainly an approach that a committee member's attorney concerned with protecting one's own market share might take.

***15** To be clear, the record contains no evidence that demonstrates that this is the reason for the provision, and the Court makes no such finding. But the motive and opportunity for a committee

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to seek to include such a provision, and the failure of the parties to suggest a legitimate reason for the provision that is at all persuasive, might well allow one to connect the dots.

The Third Circuit has, in other mass tort bankruptcy cases, emphasized the important role of the bankruptcy court in protecting the "integrity of the bankruptcy court proceeding as a whole." [153] No part of the judicial role is more important than that. Even so, the record before this Court contains a substantial body of evidence demonstrating the debtors' good faith in proposing the plan. The debtors explained that they set out to "do things right" – and that statement that is backed up by a great deal of record evidence. It is also significant that not a single talc claimant with exposure to the debtors' products outside the United States or the United Kingdom has objected to the plan on this basis.

153 *In re Congoleum Corp.*, 426 F.3d 675, 685 (3d Cir. 2005).

For those reasons, the Court will find that the debtors have established that this plan was proposed in good faith and not by any means forbidden by law. The requirements of § 1129(a)(3) are therefore satisfied. The Court emphasizes, however, that the inclusion of a provision like this is not a good look. In the absence of prior authority addressed to the question, the Court does not believe that its inclusion overcomes the substantial body of other evidence demonstrating the debtors' good faith. But now that this marker has been placed, however, the Court would not expect in future cases to confirm a plan containing a provision like this one in the absence of a more persuasive justification for its inclusion.

II. Modest changes to the plan are required in order for the plan to respect the rights of the insurers.

The insurers also assert a number of objections to confirmation that relate directly or indirectly to the plan's treatment of their insurance policies. As a conceptual matter, it is now settled that bankruptcy law intends for the bankruptcy filing of the insured to be as "neutral" as possible to the rights and obligations of the insurer. The Third Circuit's recent *Boy Scouts* opinion makes this point clearly. [154] Section 541 of the Bankruptcy Code brings into the bankruptcy estate all of the property, including insurance policies, that belonged to the debtor immediately before the filing. [155] Those property rights, however, are defined by non-bankruptcy law. [156] And unless there is some bankruptcy-related reason that requires otherwise, the Supreme Court explained in *Butner*, "there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." [157]

154 *In re Boy Scouts of America*, 137 F.4th 126, 164 (3d Cir. 2025).

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155 11 U.S.C. § 541(a).

156 *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

157 *Id.*

This neutrality principle serves an important point of bankruptcy policy. "Uniform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving a windfall merely by reason of the happenstance of bankruptcy." [158] The forum shopping point is an especially important one here.

158 *Id.* (citation and internal quotation omitted).

***16** Chapter 11 is intended to permit an otherwise viable business facing financial distress to reorganize. [159] It may also properly be used, such as in cases like this one, to maximize value by permitting a going concern sale and facilitating an appropriate resolution of estate causes of action. But the powerful tools of bankruptcy are famously subject to misuse. [160] If the estate's interest in property were greater in bankruptcy than outside of bankruptcy, a debtor might file for bankruptcy for reasons that have nothing to do with chapter 11's purpose of facilitating the reorganization of a distressed business. Rather, cases might be filed by debtors that seek a tactical advantage over another party.

159 *In re LTL Mgmt., LLC*, 64 F.4th 84, 101 (3d Cir. 2023).

160 *In re SGL Carbon Corp.*, 200 F.3d 154, 161 (3d Cir. 1999).

That would be inconsistent with bankruptcy policy, which provides that a "debtor's property does not shrink by happenstance of bankruptcy, but it does not expand, either." [161] As the Third Circuit's discussion in *Boy Scouts* reveals, the principle of *Butner* seeks to guard against the risk that parties might "forum shop" into bankruptcy for tactical purposes.

161 *Mission Product Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381, 139 S.Ct. 1652, 203 L.Ed.2d 876 (2019) (internal quotation and citation omitted) (noting that the seminal decision in *Board of Trade of Chicago v. Johnson*, 264 U.S. 1, 15, 44 S.Ct. 232, 68 L.Ed. 533 (1924) "establish[es] this principle").

A series of Third Circuit decisions, including *Combustion Engineering* and *Boy Scouts*, have sought to give effect to the *Butner* principle in the context of a mass tort bankruptcy filing by a debtor that holds insurance coverage under a standard liability policy. [162] The challenge, as the circumstances of this case demonstrate, is that basic principles of insurance and bankruptcy law

clash in a way that makes the goal of "neutrality" – while it sounds laudable and is easy enough to articulate – a very difficult one to achieve in practice.

162 *Combustion Engineering*, 391 F.3d at 218 (noting how the objective was to "not impair [the insurers'] rights or increase their burdens under the subject insurance policies"); *Boy Scouts*, 137 F.4th at 165 (relying on this discussion in *Combustion Engineering* for the proposition that "a plan cannot be confirmed when it incorporates provisions that impermissibly impair [a contractual] counterparts' rights").

The nub of the problem is that the basic insurance bargain presumes that the insured's liability will be determined in the tort system. When an insured receives a claim, the insured may tender that claim to the insurer. If the insurer accepts that the claim is covered by the policy (or is prepared to defend under a "reservation of rights"), the insurer steps in and defends the claim. And the insured is subject to a contractual obligation to cooperate in defending the claim. Collusion between the claimant and the insured will typically void the coverage.

The practice in mass-tort bankruptcy cases is difficult to square with this insurance model. To begin, a debtor with mass tort liability, like any debtor in a bankruptcy case, requires the creditors' support for its plan of reorganization to emerge from bankruptcy. And what looks to a bankruptcy lawyer like good faith negotiations between a debtor and its creditors over a plan of reorganization, including the treatment of claims held by mass tort claimants, may well look to an insurance lawyer like collusion between the insured and the claimants.

That practice is complicated further by the way in which post-confirmation bankruptcy trusts operate. As a statutory matter, a claimant who asserts a claim for wrongful death or personal injury has a right to a jury trial on allowance of that claim in bankruptcy.[163] But as a practical matter, claimants in mass tort bankruptcy cases very rarely exercise this jury-trial right. Rather, the task of liquidating the (often) thousands of unliquidated personal injury claims is left to a post-confirmation trust. While many details differ across cases, the usual practice is for the trust to make a settlement offer to a claimant based on information that the claimant provides. A claimant may decline the offer and seek a more individualized assessment from the trust. In many cases, a claimant may not resort to a jury trial until various steps in the process (often including mediation) are exhausted. These procedures are typically set forth in "trust distribution procedures." In many cases (though not in this case), these procedures will include matrices that set out presumptive claim values based on the type of disease and its severity. These trust distribution procedures are commonly approved by the bankruptcy court as part of the plan of reorganization.

163 *See* 28 U.S.C. § 157(b)(5) ("The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the

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district court in which the bankruptcy case is pending."); *id.* § 1411(a) ("Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.").

***17** As sensible as all of this may be from the perspective of creating a mechanism for liquidating thousands of tort claims so that tort victims may recover their *pro rata* share of the estate assets, this mechanism of liquidating claims is very different from the process contemplated by the debtor's insurance policies. At the end of the day, the trust – which will succeed to the debtor's rights under its insurance policies – will likely seek insurance coverage for claims that have been "allowed" under these trust distribution procedures. To be sure, the insurers will be free to argue that the trust's failure to tender claims and cooperate with the insurers in their defense operates to vitiate the insurance coverage. But in the event of litigation between the trust and the insurers, the trust will likely trumpet (to a state court judge who may be unfamiliar with the bankruptcy process) that these procedures have all been approved by a bankruptcy court who found the plan, among other things, to be "fair and equitable." Against that backdrop, there is a sense in which declaring the plan to be "neutral" with respect to insurance issues is about as effective as a court order declaring a bell to have been unrung.

Except that perhaps there is still a way to square this circle. The basic transaction involved in the creation of a post-confirmation liquidating trust is simply the creation of a trust under state law and a transaction under which the debtor's assets are transferred to the trust. As part of the transaction, the trust becomes liable for making pro rata distributions to creditors on account of claims that had run against the debtor. The trust distribution procedures are simply an agreement as among the claimants and the debtor/trust regarding the process by which claims will be liquidated and paid.

While this commonly occurs in a bankruptcy case, there is no reason why it *cannot* occur outside of bankruptcy. Indeed, a state law assignment for the benefit of creditors similarly involves impressing on the debtor's assets a trust, over which the assignee serves as trustee. State corporate law may provide other similar mechanisms by which a corporate entity can wind down its affairs in such a manner. To the extent there is a way to make the bankruptcy "neutral" with respect to insurance, the closest way this Court believes it can do so is to make clear that, as between the trust and the insurers, subject to one exception discussed below in Part II.C.1, the parties' rights vis-à-vis one another should be no different than they would be had such a transaction taken place under state law outside of bankruptcy. That is (again, subject to the one exception), this Court's order confirming the plan should not put a thumb on the scale one way or the other. The parties' rights are essentially the same as they would be had such a transaction occurred outside of bankruptcy.

Indeed, courts applying state law have confronted insurance coverage disputes that have involved insureds reaching "voluntary settlements" with an underlying claimant without having tendered the claim to the insurer or cooperating in the defense of the claim. This Court does not purport to

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opine on any such dispute. Unless and until the trust in fact seek insurance coverage for one or more claims, any such pronouncement would be premature and inappropriate. But it bears note that courts considering such matters have reached varying conclusions in varying circumstances. In some cases, courts have found that the failure to follow the procedures contemplated by the insurance policies renders insurance coverage unavailable. [164] In others, courts have found that the actions of the insured did not prejudice the insurer, and therefore that coverage remained available. [165] Perhaps, if the trust could show that its procedures for resolving claims was the same as the process to which the insurers had consented before the bankruptcy, a coverage court would similarly find that the process adopted here did not prejudice the insurers. This Court, however, is making no finding one way or the other on this issue. To the extent there is a takeaway for the benefit of a court that may subsequently be hearing an insurance coverage dispute between the trust and the insurers in this case, it is that (again, subject to the exception about assignment, discussed below in Part II.C.1) the question before that court should be viewed exactly the way it would be if the parties had engaged in a transaction that achieved the same economic result outside of bankruptcy.

164 *See, e.g.*, *Matter of State Farm Mut. Auto. Ins. Co. (Perez)*, 94 A.D.3d 1314, 1315, 942 N.Y.S.2d 688 (2012) ("Where an insurance policy expressly requires the insurer's prior consent to any settlement by the insured with a tortfeasor, failure of the insured to obtain such prior consent from the insurer constitutes a breach of a condition of the insurance contract and disqualifies the insured from availing himself of the pertinent benefits of the policy.") (internal citations and quotations omitted). *See also Appleman on Insurance Law & Practice* § 137.10[A][1] ("Policies commonly provide that the insured may not make any payment or assume any obligation in settling or compromising a claim, except at the insured's own cost, without the insurer's consent. If the insured effects a settlement with the injured person without the previous consent of the insurer as required by the policy, the insurer is thereby released, unless otherwise excused, as, for example, when the insurer withdraws or refuses to defend.")

165 *Ideal Mut. Ins. Co. v. Myers*, 789 F.2d 1196 (5th Cir. 1986) (holding that an insurer is not discharged from liability when settlement is reasonable and does not prejudice insurer).

***18** To be clear, the Court appreciates that even if insurers have every ability to assert insurance coverage defenses in precisely the way they would have in the event that a similar transaction had occurred outside of bankruptcy, they may still feel aggrieved by the process. *First*, the creation of a trust with relatively simple and inexpensive mechanisms for asserting and liquidating claims may encourage claimants who would not have chosen to sue (due to the cost, burden, and delay associated with the tort system) to assert claims against the trust. [166] In this sense, it is certainly possible that (by virtue of claims coming out of the woodwork) the insurers may end up paying more than they otherwise would have. [167] The insurers contend that this is inconsistent with the

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principle of neutrality reflected in *Butner* and the cases described above.[168] *Second*, having the trust resolve hundreds or thousands of claims, and then present all of these claims for coverage, creates something of an "all or nothing" problem for an insurer. In the typical case in which there is a dispute about whether a particular claim falls within an insurance policy's coverage, an insurer can typically make a decision about whether to provide coverage or litigate a coverage dispute with its insured in which the stakes are limited to the claim that is presented. Having the insured (which is now the trust) aggregate these claims and present them *en masse* may well affect the negotiating leverage between the parties in a way that the insurer had not contemplated in issuing the policies, and that the insurer may contend places it at a disadvantage.

166 American Bankruptcy Institute, A Practitioner's Guide to Liquidation and Litigation Trusts, Chapter 6.B. – Benefits of a Liquidation Trust (2016).

167 *See Boy Scouts*, 642 B.R. at 556 (relying on the testimony of Charles Bates to explain why tens of thousands "Proofs of Claim were filed in the case as opposed to the prepetition average of fifty per year").

168 *See* Leanard P. Goldberger, *Last Man Standing: Insurers' Participation in Plan Confirmation Process*, Am. Bankr. Inst. J. at 30-31 (Nov. 2008).

The answer to both of these objections, however, is the same one set out above. The debtors could have created a similar trust outside of bankruptcy that could have, in the same way, encouraged the assertion of claims that would not have been filed in the tort system, and aggregated many claims that would all be presented at once. Had the debtors done so and the insurers argued that the policies did not cover these "voluntary settlements," a court with jurisdiction over the insurance coverage case would resolve that dispute by applying state law and the terms of the insurance policies. So too, here. While the Court will address the parties' specific insurance-related objections in the balance of this Part II, the overarching objective is to achieve the form of "neutrality" described above.

A. The insurance contracts are not executory.

Hartford contends that its insurance policies are executory contracts.[169] If that is true, they could only be assumed and assigned to the trust if the debtors were able to provide "adequate assurance" that the trust would be able to meet the debtors' obligations under the policies.[170] Courts have uniformly rejected the contention that an insurance policy covering a period in the past, for which all premiums have been paid, is an executory contract within the meaning of § 365. Judge Kearse's decision in an appeal arising out of the *Ames Department Stores* bankruptcy case is an example. "Courts considering insurance policies in which the policy periods have expired and the initial premiums have been paid routinely find that they are not executory contracts despite continuing

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obligations on the part of the insured."[171] Literally every other case this Court has been able to identify has reached the same result.[172] In view of the consistency of this authority, this Court will follow the unbroken line of precedent and reach the same conclusion.

169 D.I. 1235 at 13-21.

170 *See* 11 U.S.C. § 365(f)(2)(B).

171 *In re Ames Department Stores*, No. 93-4014, 1995 WL 311764, at *3 (S.D.N.Y. May 18, 1995).

172 *See*, *e.g.*, *In re Federal-Mogul Global, Inc.*, 385 B.R. 560, 576 (Bankr. D. Del. 2008) ("because the premiums are paid, the policy coverage periods have expired, and the remaining obligations of the insureds are ministerial, the Asbestos Insurance Policies are non-executory contracts and therefore, do not fall under § 365 of the Bankruptcy Code."); *In re Grace Indus.,* 341 B.R. 399 (Bankr. E.D.N.Y. 2006) ("Where, as in this case, an insured debtor has paid the initial premium in full, and the policy period has expired, the insurance policy is not an executory contract, despite continuing obligations on the part of the insured."); *In re Vanderveer Estates Holding, LLC*, 328 B.R. 18 (Bankr. E.D.N.Y. 2005) (same); *In re Sudbury Inc.*, 153 B.R. 776 (Bankr. N.D. Ohio 1993) (same). *See also* Douglas N. Candeub, *When a Non-Executory Insurance Policy Is Assumed: A Case Study*, Am. Bankr. Inst. J. at 40 (March 2015) ("Bankruptcy courts consistently hold that an insurance policy for which the policy period expired prior to the insured's bankruptcy – and for which the initial premium was paid--is *not* an "executory contract" under § 365 of the Bankruptcy Code.") (emphasis in original); 3 *Collier on Bankruptcy* ¶ 365.02 (16th ed. 2025) ("An insurance policy under which the insured's bankruptcy would not relieve the insurer of its obligation, despite unpaid premiums, is not an executory contract, because the debtor's nonperformance of its premium obligations is not a breach that would excuse the insurer of its obligation to perform.").

***19** In fairness to Hartford, however, a colorable case can be made that this line of authority is less than fully satisfactory. But even if one were to play out this line of argument to its logical conclusion, it would make no difference to the outcome here. To back up to first principles, the term "executory contract" is not defined in the Bankruptcy Code. The Third Circuit, however, has followed the generally prevailing view and adopted the Countryman definition of the term.[173] Under that definition, an executory contract is one "under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other."[174]

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173 *Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989) (quoting Vern Countryman, *Executory Contracts in Bankruptcy, Part 1*, 57 Minn. L. Rev. 439, 460 (1973)).

174 *Id.*

On this understanding, contractual rights will fall into one of three categories. *First*, if the debtor has fully performed but the counterparty has not, the estate simply has an asset – the right to obtain the counterparty's performance. *Second*, if the counterparty has performed and the debtor has not, the counterparty simply holds a prepetition claim for the value of the debtor's performance. The *third* category, contracts that are materially unperformed on both sides, are within the scope of the Countryman definition of an executory contract.[175] And what is meant by "materially unperformed," in the bankruptcy context, is that one party's failure to perform will excuse the other party's performance.[176]

175 3 *Collier on Bankruptcy* ¶ 365.02[2][a].

176 *Id.* ¶ 365.02[2][b].

If one takes a careful look at the cases involving liability insurance policies covering past periods for which all premiums have been paid, courts find these policies to be non-executory for one of two reasons. *First*, some cases, such as the bankruptcy court's decision in *Federal-Mogul*, find the contracts to be non-executory because the insured's remaining obligations, such as the duty to cooperate with the insurer in connection with the defense of claims, are purely "ministerial," or "immaterial" in the Countryman sense. Hartford seeks to distinguish that line of cases, arguing that its policy is governed by New York law, and that under New York law the insured's failure to cooperate will void the coverage (that is, it will excuse the insurer's obligation to perform under the contract).

The question of whether the trust will comply with its obligations under the contract – and whether, if it does not, that failure operates to void the coverage – is the *merits* question in an insurance coverage matter that is not yet ripe and is not for this Court to decide. As described above, cases involving "voluntary settlements" by insureds depend on the particular facts and circumstances of each case and may well vary based on the governing state law. So at least in this Court's view, declaring the policies to be non-executory on the ground that the insured's obligations are all purely "ministerial" sweeps too broadly. That may or may not turn out to be right, based on the particular facts and circumstances that have not yet transpired. It does not seem, however, to be a wholly satisfactory basis on which to conclude that policies are non-executory.

The second rationale that some of the cases provide for finding the obligations to be non-executory is that the insurer does not have an unconditional *right* to obtain the insured's performance of its contractual obligations. Instead, the insured has a choice whether it wants to obtain insurance

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coverage, or not. If the insured does not want insurance coverage, it has no obligation to tender claims, cooperate in the defense, or anything else. Understood this way, the insured's obligations can be understood not as executory obligations, but simply as conditions to coverage. And as the Third Circuit explained in *Weinstein*, there "is a distinction between failure of a condition and a breach of a duty. If the remaining obligations in the contract are mere conditions, not duties, then the contract cannot be executory for purposes of § 365." [177] The Court in *Sudbury* found a liability insurance policy to be non-executory on this basis. While the insured's failure to meet the conditions of coverage might well operate to vitiate coverage, that was true only with respect to particular claims. The insured's "failure to cooperate as to any one claim would not meet the Countryman definition since it would not excuse the Insurer's performance in respect of other claims." [178]

177 *In re Weinstein Company Holdings*, 997 F.3d 497, 509 (3d Cir. 2021) (cleaned up).

178 *See Sudbury*, 153 B.R. at 779.

***20** In *Sudbury*, the question whether the contracts were executory mattered only because the insurer sought administrative claim status for retroactive premiums that might become due under the policies. [179] That question is not presented here. Rather, Hartford is presumably contending that if the policy is executory, the failure to provide adequate assurance means that the contract must be rejected and therefore (perhaps) that Hartford no longer needs to perform its contractual obligations.

179 In many cases, the question whether a contract is executory is important to the question whether pre-petition defaults must be cured to obtain the counterparty's performance. *See Weinstein,* 997 F.3d at 501 ("In practice, an executory contract can be 'assumed' and then 'assigned' to a buyer under § 365 of the Bankruptcy Code provided all existing defaults are cured. A non-executory contract, on the other hand, can be sold under § 363 to a buyer, who must satisfy post-closing obligations but need not worry about pre-closing breaches or defaults, which typically remain unsecured claims against the debtor's estate. Thus, whether a contract is classified as executory or non-executory has significant implications for its treatment in a bankruptcy sale."). That concern is absent here.

That outcome cannot be correct. Regardless of the pigeonhole in which one wants to put this problem, the central principle here derives from *Butner*. The bankruptcy filing should neither expand nor contract either party's rights. The insured still has all of the contractual obligations provided for under the contract. And if the insured can live up to those obligations (or if its failure to do so is excused under applicable non-bankruptcy law), then the insurer is likewise required to meet its obligations. Perhaps one can reach that conclusion (as *Sudbury* does) by describing the insured's obligations as "conditions to coverage" rather than "executory obligations." It is

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also conceivable that one could reach the same result by treating the contract as an executory one but finding that the insurer's ability to assert coverage defenses in the future provides it with appropriate adequate assurance of the trust's future performance. As noted above, in light of the uniformity of the caselaw finding the policies to be non-executory, this Court will follow that course. It bears note, however, that even if one were to view the contract as executory, the ultimate outcome here would be the same – the trust would get the policies subject to the same terms and conditions under which the debtors had them. In no event, however, should either party obtain a windfall by virtue of the happenstance of the bankruptcy filing.

B. The trust distribution procedures reflect a voluntary settlement between the debtors/ trust and the claimants.

The objecting insurers also raise a host of challenges to the trust distribution procedures themselves, arguing (among other things) that the procedures improperly eliminate the requirement that a claimant show causation. Under the trust distribution procedures, a claimant with mesothelioma who can show that the claimant had been exposed to the debtors' cosmetic products will be entitled to receive a settlement offer from the trust. The requirement that would otherwise apply in the tort system, that the plaintiff show that exposure to the defendant's product caused the plaintiff's injury, is essentially being compromised as part of the global resolution reflected in the trust distribution procedures.

***21** To engage this objection (and others that relate to the operation of the trust distribution procedures), one needs to step back and unpack what trust distribution procedures are, and how they fit into the processes contemplated by the Bankruptcy Code. To start with the statutory provisions, the Code contemplates two separate things: (1) the mechanism for liquidating an unliquidated claim (which the Code describes, in § 502, as claims "allowance"), and (2) the recovery that creditors in each particular class will receive on account of their allowed claim (which is described, in § 1123(a)(3), as the "treatment" provided to claims in a particular class).

The trust distribution procedures in this case, as is common in mass tort bankruptcy cases, address both the mechanism for "allowing" the unliquidated claims (the settlement process contemplated by the trust distribution procedures) and the "treatment" that allowed talc claims will receive (each claimant will receive a ratable share of insurance recoveries and the recoveries on other causes of action assigned to the trust). In this Court's view, the process of fixing the amount of the otherwise unliquidated claims is best understood as "allowance," while the distribution of the proceeds of any insurance recoveries (including the sharing with other creditors that make the election) is "treatment."[180]

180 *See Bankruptcy and Insurance Law Manual, Chapter 9: Defining "Claim": Bankruptcy Code vs. Insurance Policy* (4th ed. 2020).

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The debtors take a different view of this, describing all of the work done by the trust distribution procedures as a form of "treatment." [181] Debtors cite to the bankruptcy court opinion in *Boy Scouts* as support for that proposition. It is true that a passage in that opinion could perhaps be read, in isolation, to support that view. [182] A more careful review of the *Boy Scouts* opinion, however, reveals that the *Boy Scouts* court was sensitive to the Bankruptcy Code's distinction between "allowance" and "treatment."

181 July 21, 2025 Hr'g Tr. at 155.

182 *Boy Scouts*, 642 B.R. at 623. ("Trust distribution procedures, such as the TDP here, establish the method by which claims channeled to a trust will be resolved. While these procedures invariably differ somewhat in each case, the procedures encompass the means by which claims will be submitted, processed, liquidated and paid.... This is treatment.").

The distinction is an important one. If a class of creditors accepts a plan's proposed "treatment" of that class, the class's acceptance can bind an individual creditor in that class who opposes that treatment. But every individual claimant is entitled to the protections provided by the statutory process of determining the allowed amount of that creditor's claim. [183] Because claims allowance is not a matter on which the vote of a majority can bind a minority, the Court does not believe it correct to describe the mechanism of resolving unliquidated claims as part of a plan's "treatment" of a class of creditors.

183 *See e.g., In re Filex, Inc.,* 116 B.R. 37, 40 (Bankr. S.D.N.Y. 1990) (noting a plan was "patently unconfirmable under Chapter 11 of the Bankruptcy Code because it provide[d] that all objections or disputes as to claims w[ould] be resolved by an arbitrator in accordance with the rules of the American Arbitration Association rather than by th[e] court in accordance with 11 U.S.C. § 502."); *In re Butcher,* 459 B.R. 115, 130 (Bankr. D. Colo. 2011) (finding chapter 13 plan unconfirmable where it sought to "cut off" the Bankruptcy Code's claims allowance process and noting that the court was "unaware of arguments in the chapter 11 context that plan confirmation should cut off the orderly claim allowance process set out in the Bankruptcy Code and the Rules").

***22** The court in *Boy Scouts* reached that same conclusion. "The allowance of a claim is distinct from treatment of a claim and the class vote does not bind a dissenting creditor with respect to whether its claim is allowed." [184] The Court accordingly does not believe it correct to say that everything contained in a trust distribution procedure can fairly be described as a form of "treatment," and the Court does not read the opinion in *Boy Scouts* to so hold. In *Boy Scouts*, individual claimants had ultimate recourse to the tort system to liquidate their claims, as § 502 of the Bankruptcy Code and §§ 157(b)(5) and 1411(a) of title 28 require. To be sure, the trust distribution procedures in *Boy Scouts* required claimants to jump through various hoops (such as

engaging in mediation efforts) before doing so, but that is no different from a court's inherent authority, in a civil case, to direct parties to mediation. So long as those conditions do not unduly burden the exercise of a claimant's statutory right to the judicial process, that is a matter within a court's discretion and may appropriately be included as part of a trust distribution procedure. Whether that exercise is called "treatment" or something else is of little moment. In this Court's view, it probably is not, since the Court views the issue of "allowance" to be logically antecedent to "treatment." Nothing in this case, however, requires the Court to resolve that question. The only point that matters for current purposes is that because not *everything* in the trust distribution procedures is properly described as "treatment," the class's acceptance of the trust distribution procedures does not insulate the procedures from all judicial scrutiny.

184 *Boy Scouts*, 642 B.R. at 672.

That gives rise to another question that the *Boy Scouts* opinion engaged: "what standard" a court should apply in assessing a trust distribution procedure. [185] The *Boy Scouts* court's answer to that question may be more implicit than express. This Court reads the case to be saying, in effect, that so long as individual creditors' rights to access the claims allowance process are appropriately preserved, and the class of creditors affected by the procedures votes to accept the proposed "treatment," the Court otherwise need not say more about the trust distribution procedures beyond making those findings the Bankruptcy Code itself requires. Otherwise put, to the extent that the trust distribution procedures provide that creditors with certain types of injuries will receive settlement offers from the trust in particular amounts, in the absence of some suggestion that the plan has been proposed in bad faith, the particular amounts need not be approved by the court as "fair," "equitable," "reasonable," or otherwise.

185 *Id.* at 623.

Here, various insurers raise a host of objections to the trust distribution procedures, arguing that the settlement offers that the trust will make to claimants under those procedures are too high, and that the procedures improperly dispense with the requirement that a claimant establish causation in order to obtain an allowed claim. [186] The insurers are correct that the trust distribution procedures provide that a claimant suffering with mesothelioma will receive a settlement offer from the trust so long as the claimant demonstrates exposure to the debtors' product. [187] The claimant is not required, as a plaintiff would be in the tort system, to show that the exposure to the product is causally related to the claimant's disease.

186 D.I. 1233 at 20-21.

187 D.I. 1319-1, §§ 4.3(b), 4.4(b).

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But the insurers' challenge to this process misapprehends what the Court is doing in "approving" the trust distribution procedures. In this Court's view, this distribution procedure is no more than an agreement that binds the claimants and the trust with respect to the mechanism for determining each claimant's respective share of the trust's assets. That is all. Nothing in this process ought to affect, let alone to determine, the insurers' obligations under their policies. This is the reason the Court granted the debtors' motion *in limine* and excluded the insurer's expert who sought to testify that exposure to talc does not cause mesothelioma. While it is true that under the trust distribution procedures, the trust will make settlement offers to talc claimants diagnosed with mesothelioma without requiring proof of a causal relationship, nothing in this Court's approval of the trust distribution procedures is intended to suggest that such a claimant holds a valid "right to payment" that would be compensable outside of bankruptcy. As described above, the parties would be able to reach an identical agreement outside of bankruptcy without court approval. And as between the trust and the insurers, the fact that the Court is approving the trust distribution procedures is not intended in any way to alter the parties' rights. The insurers' rights to dispute coverage are fully preserved. To the extent an argument is made to a court hearing an insurance coverage dispute that this Court's confirmation order reflects an adjudication by this Court about the "fairness" or "reasonableness" of the procedures, this Memorandum Opinion is intended to provide a clear and blunt answer: it doesn't.

***23** In sum, then, this Court views the principles that govern approval of trust distribution procedures to be as follows:

(1) Claims "allowance" is an individual right. Every claimant is entitled to access to the tort system with respect to the allowance of their own claim. Here, the plan gives every claimant the right to an arbitration in which the arbitrator would apply the trust distribution procedures, not access to the tort system. Had any claimant objected to the plan on this basis, the Court would not be able to deprive that claimant of access to the tort system. Accordingly, a single objection from a claimant who alleged exposure to the debtors' products outside the United States or the United Kingdom would be sufficient to derail this plan. No such objection, however, was received. Because the claimants have unanimously supported the plan and no claimant has raised any objection, this procedure is acceptable.

(2) All of the process under which unliquidated claims may be liquidated through a consensual process is just that – a voluntary and consensual process between the claimants and the trust. The Court does not believe it has any meaningful role in "approving" or in superintending that process. So long as the process does not unduly burden a claimant's right to access to the tort system (which the claimants here have waived, *see* point (1), above), the various steps that the parties will take under the trust distribution procedures are no different from any other out-of-court settlement mechanism.

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(3) Section 1122 of the Bankruptcy Code imposes certain limits on how claims may be classified. Personal injury claims are all general unsecured claims. In some cases, however, trust distribution procedures create separate classes of different types of personal injury claimants and provide different treatment to those classes. This case, however, does not require the Court to address any question of "classification" as all talc claims are classified together.

(4) Within a class, all claims must receive equal "treatment," which is what the holder of a claim within a class receives on account of the claimant's allowed claim. Here, there is no dispute that this requirement is met.

(5) As described above, nothing in this process may expand or contract the rights of the insurers. Accordingly, any proposed "finding" that would tilt the playing field in a subsequent coverage dispute one way or the other should be deleted.

C. Certain of the insurers' remaining objections lack merit; others require modifications to the proposed plan and confirmation order.

While the analysis above resolves most of the objections to the trust distribution procedures, the insurers advance a number of other objections related to the treatment of their insurance policies, some of which do require modifications to the terms of the plan and/or the confirmation order. To that end, the Court notes that it does not believe it is entitled to pick up its own pen to mark up the plan so that it reads the way the Court might prefer. Section 1121 of the Bankruptcy Code identifies who may file a plan, and the bankruptcy judge is not among the listed parties. Rather, the role of the Court is set out in § 1129(a), which provides that the court "shall" confirm a plan if the statutory requirements are met. Accordingly, this Court views its role as being limited to answering the question whether the plan the debtors have proposed is confirmable. The Court may require changes to the plan only where those changes are *necessary* to render the plan confirmable.

1. Although the insurance policies are not executory, it is nevertheless the case that the debtors' rights cannot be transferred without the associated terms and conditions.

***24** The Court addressed the insurers' arguments that their policies are executory contracts subject to § 365 in Part II.A, above. The policies are not executory. That said, even without the ability to rely on § 365(f), the insurers may not enforce the anti-assignment provisions of their insurance agreements. This is the exception referenced above in the introductory paragraphs to this Part II. Section 1123(a)(5)(B) of the Bankruptcy Code provides that a plan shall "provide adequate means for the plan's implementation, such as ... transfer of all or any part of the property of the estate to one or more entities." In *Federal-Mogul*, the Third Circuit held that this provision

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preempts state law to the extent that state law would otherwise prevent a debtor-in-possession from transferring an insurance policy to a post-bankruptcy trust. [188]

188 *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 366 (3d Cir. 2012).

This is an exception to the principle described above under which the filing of the bankruptcy case neither expands nor contracts the rights of the parties to an insurance contract. Outside of bankruptcy, an insurer might (or might not) be able to enforce a contractual anti-assignment clause when an insured seeks to transfer an insurance policy to a third party such as a trust. (In certain circumstances, state law might not permit the enforcement of this kind of provision, such as where the transfer did not change the risk borne by the insurer.) [189] Under *Federal-Mogul*, however, that defense is unavailable when the transfer occurs under a plan of reorganization in a chapter 11 bankruptcy case.

189 *See, e.g.*, *Travelers Cas. & Sur. Co. v. U.S. Filter Corp.*, 895 N.E.2d 1172, 1178 (Ind. 2008); *SR Int'l Bus. Ins. Co. v. World Trade Center Props., LLC*, 375 F. Supp. 2d 238, 248-249 (S.D.N.Y. 2005).

The insurers do not take issue with that statement of the law. Their principal argument, however, is that any assignment of the insurance "rights" must bring with it the "obligations" under the insurance policies. As described above in the discussion whether the insurance policies are executory contracts, that is not quite right. When an executory contract is assumed and assigned, the assignee must of course take the rights subject to the obligations. But Part II.A explains that the insurance policies here, fully paid and expired, are not executory. Strictly speaking, the insured debtors have no remaining "obligations" under the contracts. If the trust chooses not to seek insurance coverage under one or more of the policies, the trust (as successor to the debtor) will have no obligation at all under that policy. Rather, the policies contain certain terms and conditions. Nothing in the transfer alters those terms and conditions. To the extent those terms and conditions were enforceable under non-bankruptcy law the day before the bankruptcy, they remain enforceable by the insurers against the trust. To the extent any of the plan language may be read to suggest that the insurance "rights" may be transferred without the corresponding terms and conditions, the plan and confirmation order must be revised to reflect the fact that the "rights" remain subject to those terms and conditions.

2. Claims resolved by the trust may be described as "allowed" claims; that allowance, however, reflects a voluntary settlement, not an adjudication of liability.

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The insurers object to the language in the plan that describes claims resolved by the trust in accordance with the trust distribution procedures as "allowed" claims. The insurers would instead use the terminology "resolved."

This dispute has quite a bit of history. A typical liability policy provides that the insurer becomes liable for the amount that the insured is "legally obligated to pay," or words to similar effect. Courts have struggled with how this language intersects with the bankruptcy process. In *UNR Industries*, the Seventh Circuit suggested that the confirmation of a plan of reorganization amounted to a "judgment or settlement" of the debtor's total estimated (present and future) asbestos liability, and concluded that its insurers were liable, by virtue of the order confirming the plan, for that amount. [190] In this Court's view, that statement reflects a misapprehension of federal bankruptcy law, confounding the confirmation process with the claims allowance process.

190 *In re UNR Indus. v. Continental Cas. Co.*, 942 F.2d 1101 (7th Cir. 1991).

***25** At the other extreme, certain insurers read the decision of a California appellate court in *Fuller-Austin* to hold that insurers were obligated to indemnify the post-bankruptcy trust only the cents-on-the-dollar payment that the trust actually paid to claimants, not the full amount of the allowed claims owed by the debtor to the claimants. [191] It is less than clear to this Court that the certain insurers' description of the *Fuller-Austin* holding is correct. That, however, is of little moment for current purposes. This Court's concern is with ensuring that the plan and confirmation order properly describe what is happening by virtue of *this Court's* orders. The effect of those decisions on some subsequent insurance coverage case is for a later court to decide.

191 D.I. 1233 at 29 & n. 55 (citing *Fuller-Austin Insulation Co. v. Highlands Ins. Co.*, 135 Cal.App.4th 958, 38 Cal. Rptr.3d 716, 732 (2006).

As a matter of federal bankruptcy law, nothing in the Court's confirmation order is adjudicating or resolving *any* individual talc claim, let alone the debtors' aggregate present and future talc liability. To be sure, the Bankruptcy Code envisions that it is the role of the bankruptcy court to "allow" or "disallow" creditors' claims. In this case however (as in many mass tort cases), the plan does something different from what is strictly contemplated by the Bankruptcy Code. Rather than have the bankruptcy court (or a district court following a jury trial) adjudicate claims disputes, the liquidating trust expects to settle the vast majority of those claims with the claimants. To the extent those efforts are unsuccessful, the trust distribution procedures provide that the claimant and the trust will have the claim liquidated through an arbitration. At bottom, however, the plan contemplates that the claims will be settled rather than litigated.

As far as the vocabulary goes, the Court does not think that there is anything wrong with describing the result of this settlement process as the "allowance" of a claim. So the Court will overrule the

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insurers' objection that would require the term "allowed" to be replaced with "resolved." But it is true that this "allowance" process differs from the kind of allowance contemplated by § 502 of the Bankruptcy Code in that no court is making any adjudication of liability. Rather, the claims are being "allowed" in the settled amounts because the claimants and the trust all agreed to this settlement mechanism. In approving it, this Court is saying no more than that these "allowed" amounts shall be binding on the trust and the claimants with respect to each claimant's relative share of the trust's assets. The consequence of that "allowance" on the insurers' obligations under their policies is not a matter that is properly before this Court, and the Court will not speculate as to how a court that may later be tasked with resolving such a dispute might do so.

Separately, however, the Court believes it appropriate (in response to the insurers' argument about how their liability should be limited to paying the cents on the dollar that the trust actually distributes to creditors) to address any potential confusion over *whose* liability is being resolved through the trust distribution procedures. As a formal matter, when a bankruptcy court resolves a claims allowance dispute under § 502 of the Bankruptcy Code, the question that is being adjudicated (at least in the first instance) is the liability of the prepetition debtor. [192]

192 *See* 11 U.S.C. § 101(10) (defining a "creditor" as an entity "that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor"); *id.* § 101(5) (defining "claim" as a "right to payment"); *id.* § 502(b) (explaining that when there is an objection to a "claim," the court shall "determine the amount of such claim ... as of the date of the petition, and shall allow such claim in such amount").

***26** The Bankruptcy Code contemplates that, in a chapter 11 case, the plan will provide for the payment of allowed claims. [193] As a practical matter, even outside of the context of mass tort cases, most chapter 11 debtors now confirm plans before all the asserted claims are fully reconciled. Accordingly, the work of resolving claims allowance disputes and making distributions to creditors on account of their claims commonly falls to a post-confirmation trust. (Certain insurers' objection to the creation of such a trust in this case is addressed below in Part III.B.) The point, for current purposes, is that the liability that is determined in a claims allowance dispute is the liability of the debtor, not the trust. And to the extent the "treatment" a class of creditors will receive under a plan is a *pro rata* distribution out of a certain pool of assets, the plan imposes on the trust the legal obligation to make those distributions to creditors.

193 11 U.S.C. § 1123(a)(3) ("a plan shall ... specify the treatment of any class of claims or interests that is impaired under the plan").

The same is true under the trust distribution procedures in this case. The liability that is being settled is the liability of the prepetition debtors. And the trust's obligation to pay is limited to paying creditors their *pro rata* share of the proceeds of any insurance recoveries. In this sense, it might be

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implicit in *Federal-Mogul* that the "transfer" of the insurance policies to the trust is not literally a "transfer" of the "policies" such that the trust replaces the debtors as the insured. Rather, to capture the intent of *Federal-Mogul* of ensuring that the trust has the same rights that the debtors had to recover on the debtors' policies for the benefit of creditors, it may be more accurate to say that the trust succeeds to the debtors' rights to enforce the policies – which policies still insure the debtors' liability. For this reason, while this Court does not purport to resolve any question of insurance coverage, the Court does believe it appropriate to clarify that it does not see how *this Court's* order would mean that the insurers' obligations would be limited to the cents on the dollar payment the trust is obligated to pay claimants. The principle that the bankruptcy filing should not operate as a windfall must apply equally in both directions.

3. The plan and confirmation order should be silent about the preclusive effect of this Court's actions.

The debtors and the insurers have each suggested their own language for § 5.4 of the plan regarding the preclusive effect of the confirmation order in a subsequent insurance coverage dispute. As this Court sees it, however, the more appropriate course is for the plan and confirmation order to be silent about the preclusive effect of the Court's order. In this Memorandum Opinion, the Court is undertaking to describe as clearly and carefully as it can the matters that it is deciding, and those that remain undecided. It ought to be clear enough, for example, that by granting the debtor's motion *in limine* and declining to consider evidence purporting to show that exposure to talc products is not causally related to incidence of mesothelioma, that this Court has not "actually decided" any issue of causation, let alone that any such finding would be necessary to this Court's judgment in confirming the plan.

It is generally settled law, however, that the preclusive effect of a court's judgment is properly decided by the subsequent court, not the rendering court. "A court usually does not get to dictate the preclusion consequences of its own judgment."[194] "Disputes about the effect of a decision in one case on the prosecution of another are for the judge presiding in the second case. In the law of preclusion the second court normally determines the effects of the first judge's order."[195] This Court believes that the best practice is to follow that admonition. Accordingly, the plan and confirmation order ought to be silent about the preclusive effect of this Court's confirmation order. This Court would certainly entertain a subsequent motion or other appropriate proceeding to enforce the plan, confirmation order, or the injunctions entered thereunder.[196] But unless and until a dispute arises about the effect of this Court's ruling that is properly brought before this Court to decide, the effect of this Court's judgment in some subsequent proceeding will be left to the court hearing that proceeding.

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194 *Smith v. Bayer Corp.*, 564 U.S. 299, 307, 131 S.Ct. 2368, 180 L.Ed.2d 341 (2011) (quoting Wright, Miller & Cooper, 18 *Fed. Prac. & Proc.* § 4405 (2d ed. 2002)) (internal quotations omitted).

195 *Pettibone Corp. v. Easley,* 935 F.2d 120, 123-124 (7th Cir. 1991).

196 *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 151, 129 S.Ct. 2195, 174 L.Ed.2d 99 (2009) ("[T]he Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders. What is more, when the Bankruptcy Court issued the 1986 Orders it explicitly retained jurisdiction to enforce its injunctions.") (internal citation omitted).

4. The liquidating trustee need not be "neutral."

***27** Certain objecting insurers take issue with the appointment of Melanie Cyganowski, a former bankruptcy judge, as the liquidating trustee, claiming that as a result of her previous engagements on behalf of talc claimants, she will not be impartial. [197] This argument reflects a misapprehension of the role of the liquidating trustee. The trustee of a post-confirmation trust, like the trustee of any trust, owes a fiduciary duty to the beneficiaries of the trust, which includes taking appropriate steps to maximize the corpus of the trust. [198] A trustee has a duty to "administer the trust in a manner that is impartial with respect to the various beneficiaries of the trust." [199] But that duty of "impartiality" does not extend to entities, like the insurers, against which the trust may hold causes of action. To the contrary, the job of the trustee is to recover as much as the trustee can for the trust's beneficiaries.

197 July 21, 2025 Hr'g Tr. at 291.

198 *See Restatement of the Law – Trusts (Third)* § 77 ("The trustee has a duty to administer the trust as a prudent person would, in light of the purposes, terms, and other circumstances of the trust.").

199 *Id.* § 77.

In fairness to the insurers, the task of resolving claims disputes is, before confirmation (and in most cases, even after confirmation) the role of the bankruptcy judge. The plan here operates differently. With the consent of every claimant, the task of seeking to settle claims disputes has been assigned to the liquidating trustee, subject to the right to arbitrate if settlement efforts are unsuccessful. Regardless, to the extent insurers contend that their insurance policies do not obligate them to pay the claims as resolved by the liquidating trustee, their rights to make that argument in any court of competent jurisdiction are fully preserved.

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The key point for current purposes, however, is that while the liquidating trustee is duty bound to be fair and impartial in the trust's dealings with the beneficiaries, these duties do not extend to entities against which the trust holds causes of action, like the insurers.[200] Perhaps the claimants are hoping, through the appointment of a former bankruptcy judge as the trustee, that a state court handling a coverage dispute might believe that the trust's litigation positions should be given some deference on the ground that the trust is some sort of adjunct of this Court. If so, that effort ought to prove unsuccessful. With respect to efforts to obtain insurance coverage, the trust is situated no differently from any other litigant. The trustee's duty is to do her best to maximize claimant recoveries, much like the directors of a corporate entity owe duties to maximize shareholder value. The trust should be treated like any other litigant and is entitled to no special deference. For that reason, the insurers' objection to the appointment of Cyganowski as liquidating trustee (whose qualifications are not otherwise disputed) is overruled.

200 The Court is aware that the bankruptcy court reached a somewhat different conclusion in *In re Diocese of Camden, New Jersey*, 653 B.R. 309, 356-357 (Bankr. D. N.J. 2023). While the Court agrees with the statement in *Diocese of Camden* that a bankruptcy court should not confirm a plan that "is so biased as to strip the Insurers of rights necessary to ensure the Plan is equitable," *id.* at 356, it respectfully disagrees with the suggestion that the trustee of a post-confirmation trust has a duty of impartiality that runs to entities other than the beneficiaries of the trust.

5. The "sharing" provisions are permissible.

As described above, the plan contains a mechanism whereby non-talc unsecured creditors (in class 3) may make an election that would entitle them to receive the same percentage recovery on their allowed claims as the recovery that is ultimately obtained for the (class 4) talc claimants. The mechanic of this election requires that certain proceeds recovered by the liquidating trust on account of the insurance policies and retained causes of action be allocated to the "Special Electing GUC Recovery Fund," from which these claimants will receive their distribution.[201]

201 D.I. 1319 § 4.3; D.I. 1028, §§ 1, 1.5; D.I. 1319-1, § 3.2.

***28** During closing argument, the insurers objected to this diversion of the proceeds of their insurance policies.[202] The debtors offer two responses to this concern. *First*, they suggest that under *Moore v. Bay*, the liquidating trust is free to distribute any assets that the estate recovers to all creditors.[203] This Court did the best it could to grapple with the *Moore v. Bay* opinion in its recent decision in *ONH*.[204] Whatever one thinks of *Moore v. Bay*, it is limited to the proceeds of avoidance actions. That much is clear from the fact that the decision is now codified in § 550(a)

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of the Bankruptcy Code. The rights under the debtors' insurance policies, however, come into the bankruptcy estate under § 541.[205] So *Moore v. Bay* has no application here.

202 July 21, 2025 Hr'g Tr. at 280.

203 July 23, 2025 Hr'g Tr. at 17. *See Moore v. Bay*, 284 U.S. 4, 52 S.Ct. 3, 76 L.Ed. 133 (1931).

204 *In re ONH AFC CS Investors, LLC*, 671 B.R. 680 (Bankr. D. Del. 2025).

205 Susan N. K. Gummow, *Bankruptcy and Insurance Law Manual*, at 87 (3d ed. 2016).

Moreover, third-party insurance policies are different from policies that cover damage to the debtor's own assets, in that outside of bankruptcy there are circumstances (typically, after a claimant obtains a judgment against the insured) in which claimants have direct rights to recover against an insurer whose policy responds to *that claimant's* claim.[206] In *Travelers*, the Supreme Court described this type of action as a "true 'direct action' suit," – one in which the claimant is exercising rights under state law, as a form of a traditional creditors' remedy, similar to the right to levy any asset to satisfy a judgment. Here, a claimant who holds a judgment is entitled to satisfy that judgment by seeking to recover on the insurance assets directly from the insurer. This non-bankruptcy law interest in the debtor's insurance assets may well be sufficient to give that claimant an interest in specific and traceable proceeds that is loosely analogous to a secured creditor's interest in its collateral (though the Court need not decide the issue here).[207] The Court is therefore not persuaded that the proceeds of liability insurance policies are wholly unencumbered estate assets that should be distributed ratably to general creditors in accordance with their statutory priority.[208]

206 *Id.* at 89.

207 *Travelers*, 557 U.S. at 143 n.2, 129 S.Ct. 2195. *See also In re Caribbean Petrol. Corp.*, 580 Fed. App'x 82, 86 (3d Cir. 2014) (addressing, but rejecting in light of plan language at issue, argument that direct action statute "removes [insurance] proceeds from the bankruptcy estate, places them into a separate fund, and renders them unavailable for distribution to other general unsecured creditors under the Plan until the interests of Tort Claim holders have been satisfied").

208 Taken to its logical conclusion, the implications of this position would be that those tort claimants whose claims are covered by insurance would be entitled to those proceeds, to the exclusion of claimants whose claims are not covered. As is common in mass tort bankruptcy cases, however, the plan here provides (without objection from any party in interest) for the ratable sharing of all insurance proceeds among the talc claimants. D.I. 1319-1, §§ 2.3, 3.2.

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The debtors' *second* argument is more persuasive. They argue that this sharing mechanic was clearly set forth in the disclosure statement and was agreed to by 100 percent of the talc claimants. Even accepting that the proceeds of insurance are an asset in which the talc claimants have an interest, there is nothing in the Bankruptcy Code that prohibits them from consenting to the sharing with other unsecured creditors in the manner provided for in the plan.[209] And the limits on "gifting" established by the absolute priority rule and the Third Circuit's decision in *Armstrong* have no application in the absence of an objecting class of creditors, which is absent here.[210] The Court accordingly rejects the argument that the sharing of insurance proceeds with the electing general unsecured creditors renders the plan unconfirmable.

209 *See generally In re ICL Holding Co., Inc.*, 802 F.3d 547, 555-556 (3d Cir. 2015).

210 *See Armstrong World Indus.*, 432 F.3d 507, 513 (3d Cir. 2005).

6. The Court will not waive the rules providing for a stay of the effectiveness of the confirmation order if any party represents that it intends to seek a stay pending appeal.

***29** Bankruptcy Rules 3020(e) and 6004(h) provide that orders confirming a plan and providing for the sale of assets are automatically stayed for 14 days unless the court orders otherwise. The debtors have asked this Court to waive that stay.

Those rules operate primarily as a courtesy to the district court. In the event that a party seeks a stay pending appeal of this Court's confirmation order, these rules are intended to provide the district court (assuming a motion for a stay pending appeal is filed promptly) some time to consider the merits of the motion for a stay pending appeal before a plan is consummated. For that reason, this Court would only be prepared waive that period if no party in interest intended to seek a stay pending appeal.

Accordingly, if any party represents to the Court that it intends to seek a stay pending appeal, this Court will not shorten the 14-day period contemplated by the rules for the district to decide whether to grant a stay pending appeal (or, if necessary, an administrative stay while it considers the request for a stay pending appeal). In the absence of a party making such a representation, however, the Court would be prepared to waive the operation of these rules as the debtors have requested.

The Court notes that the confirmation order also contains language addressing whether and when an appeal from the Court's order would be equitably moot. The doctrine of equitable mootness, however, is purely an appellate doctrine. This Court does not believe it appropriate for the bankruptcy court to address that issue one way or the other.

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The Court hopes and believes that the discussion in Part II.C of this Memorandum Opinion will provide the parties with meaningful guidance on the various language issues reflected in the redlines of the plan, trust distribution procedures, and confirmation order.[211] The parties are directed to meet and confer, with the benefit of this guidance, to see if they might be able to work through language that comports with this Court's rulings. To the extent that a dispute remains that requires this Court's resolution, the parties should reach out to chambers, and the Court will promptly schedule a status conference (by Zoom) to resolve any such dispute.

211 D.I. 1362, 1386, 1388.

III. The insurers' remaining objections to confirmation are overruled.

The insurers also raise a handful of confirmation objections that are not about insurance issues. If these objections were meritorious, the question whether the Court should deny confirmation based on these objections would be complex. On the one hand, *Truck Insurance* held that insurers are parties in interest with standing to object to confirmation.[212] And *Lexmark* dismisses "prudential standing" which had otherwise been the "standing" bar to a plaintiff suing to enforce the rights of third parties.[213] *Lexmark* holds that what had been described as prudential standing should properly be understood as a merits point – a statutory cause of action does not extend to permitting a plaintiff to sue on account of an injury to a third party.

212 *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024). This Court previously held that the rationale of *Truck Insurance* meant that the insurers had standing to object to confirmation but left open the question whether there were limits to the range of issues that might properly be raised. *See* D.I. 1125 at 18-21.

213 *Lexmark Intern. v. Static Control Components, Inc.*, 572 U.S. 118, 128, 134 S.Ct. 1377, 188 L.Ed.2d 392 (2014).

***30** So how does the *Truck Insurance* principle apply, in light of *Lexmark*, when an objector is raising a confirmation issue that is not about *that* party's rights? On the one hand, a case can be made that the statutory protection does not extend to that party (meaning, in effect, that the objector is not a "party-in-interest" for that purpose). The Third Circuit's opinion in *PWS* (which predated both *Truck Insurance* and *Lexmark*) could be read to support that view, though that opinion is careful to note that it is addressing only the "narrower" "person aggrieved" standard that governs bankruptcy appeals, not the statutory term "party in interest."[214] On the other, one could also conclude that because the proponent of a plan bears the burden of demonstrating the elements required for confirmation, a party with standing to object to confirmation (which the insurers have)

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can simply insist that the proponent meet its burden. As interesting as that question may be, the Court need not resolve it here, as the various objections the insurers seek to assert all fail on the merits.

214 *In re PWS Holding Corp.*, 228 F.3d 224, 249 (3d Cir. 2000) ("The chance that the other creditors would have acted differently is simply too speculative to be a basis for third party standing here."). *See also Kane v. Johns-Manville Corp.*, 843 F.2d 636, 643 (2d Cir. 1988) ("Third-party standing is of special concern in the bankruptcy context where, as here, one constituency before the court seeks to disturb a plan of reorganization based on the rights of third parties who apparently favor the plan."); *In re James Wilson Assoc.*, 965 F.2d 160, 169 (7th Cir. 1992) (Section 1109(b) was not "intended to waive other limitations on standing, such as that the claimant be within the class of intended beneficiaries of the statute that he is relying on for his claim, although a literal reading of section 1109(b) would support such an interpretation. We think all the section means is that anyone who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains.").

A. The objections based on the vote are without merit.

The plan before the Court is filed on behalf of 20 separate corporate entities, each of which filed its own bankruptcy case in this Court, which cases are being jointly administered.[215] *Tribune* holds that such a plan needs to meet the requirements for confirmation for each of the individual debtors.[216] This Court agrees. Section 1121 provides that the "debtor may file a plan ... at any time in a voluntary case," and goes on to explain the circumstances in which another party in interest may file a plan.[217] After all, during the exclusive period, only *the debtor*, not a corporate parent or affiliate, may file a plan for that corporate entity. So it must follow as a matter of logic from the command of § 1121 that the 20 debtors in this bankruptcy case filed 20 plans. As a matter of convenience, those plans are contained in a single document that may be described colloquially as "the plan." As a statutory matter, however, they can only be understood as 20 plans, each of which must meet the requirements for confirmation.[218]

215 D.I. 389 at 7.

216 *In re Tribune Co.*, 464 B.R. 126, 183 (Bankr. D. Del. 2011) (subsequent history, which does not bear on the discussion at issue, omitted). *See also In re JER/Jameson Mezz Borrower II LLC,* 461 B.R. 293, 302 (Bankr. D. Del. 2011).

217 11 U.S.C. § 1121.

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218 The Ninth Circuit reached the opposite conclusion in *In re Transwest Resort Props.*, 881 F.3d 724, 729-730 (9th Cir. 2018). Its reasoning is that the language of § 1129(a)(10) requires that an impaired accepting class have accepted "the plan," and thus concludes that "plain language" of the statute requires acceptance on a "per plan" not "per debtor" basis. The problem with that analysis is that it simply assumes the conclusion that the single document is one plan rather than multiple plans. The opinion never seeks to square that reading with the words of § 1121.

***31** Here, the voting declaration (which was admitted into evidence) states that the only votes cast were with respect to API. [219] On this basis, certain insurers argue that the plans for the other 19 debtors fail to meet the requirements of § 1129(a)(10). [220] The debtors correctly respond, however, that 18 of those 19 debtors have no impaired classes of creditors. [221] Because § 1129(a)(10) applies only "[i]f a class of claims is impaired under the plan," the subsection is inapplicable to the 18 debtors that do not have any impaired class. [222]

219 Debtors' Ex. 25 at 5.

220 D.I. 1233 at 61-67.

221 D.I. 1320 (relying on § 3.4 of the plan, which eliminates classes for which no creditor asserts a claim).

222 11 U.S.C. § 1129(a)(10).

That leaves only one debtor, MIH, which has a voting class – one that contains a single creditor, the United States, which elected not to vote on the plan. [223] Debtors rely on the Tenth Circuit's decision in *In re Ruti-Sweetwater* that holds that a creditor's failure to vote "constituted an acceptance of the Plan." [224] As *Collier* explains, that case "has been followed by some courts and rejected by others. The latter cases appear to reason that the failure or inability of a creditor to vote on a plan is not the equivalent of acceptance of the plan." [225] The bankruptcy court in *Vita*, for example, joined what it described as a "clear majority of courts" in holding that "an impaired class that fails to vote to reject a Chapter 11 plan is not deemed to have accepted the plan." [226]

223 D.I. 1296; July 23, 2025 Hr'g Tr. at 16.

224 836 F.2d 1263, 1266 (10th Cir. 1988).

225 7 *Collier on Bankruptcy* ¶ 1126.04 (16th ed. 2025) (footnotes omitted).

226 *In re Vita Corp.*, 358 B.R. 749 (Bkrtcy.C.D. Ill. 2007).

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The courts in both *Adelphia* and *Tribune*, however, concluded that where the rule that a non-voting class is deemed to have accepted is "explicit and well-advertised" to creditors, the court may enforce that rule.[227] While this Court might state the point slightly differently, the Court generally agrees with the basic analysis of those decisions. In this Court's view, the critical point is not that the principle was announced by the debtor and "well advertised" to the creditors. Rather, the point is that the rule was approved by the court itself after notice to the creditors. After all, if the *Vita* decision is correct and a class without votes is not an accepting class, then it is hard to see what authority the debtor would have simply to announce a different rule – even if it says so explicitly and clearly. The Court is more persuaded, however, by the fact that here this rule was not announced unilaterally by the debtor but was instead included in the solicitation procedures that were approved by the Court, without objection, on notice to all parties in interest.

227 *See Tribune*, 464 B.R. at 183-84; *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 260 (Bankr. S.D.N.Y. 2007).

Paragraph 44 of the Solicitation Order that this Court entered in May provides that "[a]ny Class that contains Claims entitled to vote but for which no valid votes are returned shall be deemed to have accepted the Proposed Plan."[228] This provision was clearly disclosed in the debtors' solicitation motion.[229] And while various of the insurers asserted objections to the debtors' proposed solicitation procedures, none of those objections raised any question about this provision.[230] That amounts to consent. As this Court explained elsewhere,

> The reason debtors file motions for courts to approve their solicitation procedures is so that, before the estate incurs the expense of distributing the disclosure statement and plan ballot to creditors, all parties in interest have a chance to weigh in on the propriety of the proposed procedures, and the Court can resolve any dispute about them. Once a court has considered the motion and decided that the procedures are appropriate, that decision should not generally be subject to a subsequent challenge.[231]

228 D.I. 1047 ¶ 44.

229 D.I. 814 at 44.

230 D.I. 1020, 1021, 1022.

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231 *See generally In re Smallhold*, 665 B.R. 704, 715 (Bankr. D. Del. 2024).

***32** That is the case here, and provides sufficient reason to overrule, on the merits, the insurers' objection to the voting.

B. The plan need not comport with § 524(g).

The insurers argue that the plan improperly creates an asbestos trust addressing future claims without complying with § 524(g). [232] For this reason, the insurers contend, the plan fails to comport with the Bankruptcy Code and thus cannot be confirmed on account of § 1129(a)(1). [233]

232 D.I. 1233 at 58-60.

233 *See* 11 U.S.C. § 1129(a)(1) (plan must comply "with the applicable provisions of this title.").

Congress enacted § 524(g) of the Bankruptcy Code to address the due process concerns associated with discharging a claim held by someone who may have been exposed to an asbestos-containing product but had not yet suffered from any disease as of the time of the debtor's bankruptcy. That section provides that future-arising claims may be "channeled" to a trust, but only upon the satisfaction of strict requirements designed to ensure that the plan treat the future-arising claimants fairly, despite their practical inability to participate in the bankruptcy case. [234] This provision was necessitated by the fact that if those who will become sick in the future do not hold "claims" that are subject to being discharged in the bankruptcy case, those claimants would be able to assert those claims against the reorganized debtor. In that event, the reorganization of a distressed company with asbestos liability would be effectively impossible. That result was viewed as worse for all involved.

234 *See generally Combustion Engineering*, 391 F.3d at 234 & n. 45.

That concern is absent here. These debtors are liquidating rather than reorganizing. As a result, they are not eligible to be discharged under § 1141(d) of the Bankruptcy Code, let alone to receive the "supplemental discharge" contemplated by § 524(g). While the insurers and the Office of the U.S. Trustee raised concerns that the plan's injunction, as drafted, effectively operated as a discharge in disguise, the Court understands that the parties have consensually resolved those objections. [235]

235 *See* D.I. 1232 at 9-10; D.I. 1233 at 6-9; July 21, 2025 Hr'g Tr. at 20-23, 250.

The insurers' remaining point is that this plan effectively *will* deal with future-arising claims because the trust distribution procedures provide a broad definition of talc claims. As a result, the insurers contend that a claimant who is diagnosed with mesothelioma after the petition date but

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while the trust is still in existence is likely to receive a settlement offer from the trust.[236] The insurers argue that this is only permissible in a § 524(g) case. But that is incorrect.

236 D.I. 1233 at 58-60.

Because this case does *not* involve a § 524(g) trust, the trust created by this plan ought to deal with "claims" in essentially the same way that a chapter 7 trustee would. As unfair as it may seem to a future-arising claimant, a chapter 7 trustee would distribute the debtor's assets to those creditors who presented "claims" while the trustee still had assets to distribute. Those who presented claims after the bankruptcy estate was fully administered would be unable to recover out of the estate's assets.

***33** But what about a claimant that appeared after the bar date, but while the chapter 7 trustee still had assets to distribute, because the claimant did not develop a disease until after the bar date had passed? There is little doubt that the recent diagnosis of an asbestos-related disease would satisfy the "excusable neglect" standard.[237] So the failure to file a proof of claim by the bar date would not preclude that creditor from recovering.

237 *See Pioneer Inv. Servs. Co. v. Brunswick Assocs., L.P.*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) (describing "intervening circumstances beyond the party's control" as satisfying the excusable neglect standard). The Court recognizes that because § 726(a)(3) provides for the payment of a "proof of claim which is tardily filed" in chapter 7 cases, although at a lower priority than timely filed claims, the "excusable neglect" standard may operate differently in the chapter 7 context.

And what about the insurers' argument that such a creditor does not hold a "claim" under § 101(5) of the Bankruptcy Code that would entitle that claimant to recover out of the bankruptcy estate? The answer to that objection is provided by the Third Circuit's decision in *Grossman's*, which suggests that such a creditor does indeed hold a "claim" in bankruptcy.

The question in *Grossman's* arose in the context of determining whether a creditor's claim had been discharged. But the statutory term "claim" has the same meaning in the context of the discharge as it does in deciding who may receive a distribution. In *In re Grossman's*, the *en banc* Third Circuit held that the scope of the term "claim" in § 101(5) of the Bankruptcy Code is fact specific. "In determining whether an asbestos claim has been discharged, the court may wish to consider, inter alia, the circumstances of the initial exposure to asbestos, whether and/or when the claimants were aware of their vulnerability to asbestos, whether the notice of the claims bar date came to their attention, whether the claimants were known or unknown creditors, whether the claimants had a colorable claim at the time of the bar date, and other circumstances specific to the parties."[238]

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238 *In re Grossman's*, 607 F.3d 114, 127 (3d Cir. 2010) (*en banc*).

Similar to those courts that have adopted the "prepetition relationship" test, the point is that if the claimant would have had absolutely no reason to know to file a proof of claim in the debtor's bankruptcy case – such as the passenger who would in the future fly on an airplane that contained a defective engine manufactured by the debtor – then concerns about due process counsel strongly against reading § 101(5) of the Bankruptcy Code to provide that such a claim has been discharged. [239]

239 *See generally Epstein v. Official Committee of Unsecured Creditors of Estate of Piper Aircraft Corp.*, 58 F.3d 1573, 1578 (11th Cir. 1995) ("There is no preconfirmation exposure to a specific identifiable defective product or any other preconfirmation relationship between Piper and the broadly defined class of Future Claimants. As there is no preconfirmation connection established between Piper and the Future Claimants, the Future Claimants do not hold a § 101(5) claim arising out of Piper's prepetition design, manufacture, sale, and distribution of allegedly defective aircraft.").

Avon's cosmetic products, however, are quite unlike the aircraft engine. Those who used the products would likely have had the kind of "prepetition relationship" with Avon that would lead their "claims" to fall within § 101(5) in those jurisdictions that have adopted the prepetition relationship test. And their claims would likewise appear to satisfy the Third Circuit's definition of "claims" adopted in *Grossman's*. To be sure, a rule under which a creditor's claim is discharged in a bankruptcy case that occurs before the claimant is diagnosed with a disease may be viewed as a harsh one. But because Avon's customers knew that they had used Avon's products, the application of the *Grossman's* test would suggest that even those claimants might well hold "claims" under § 101(5) that would be entitled to payment in (and, if the debtor were entitled to a discharge, be discharged by) the Avon bankruptcy case. Nothing in the insurers' objection provides reason to believe that the definition of "claim" adopted under the plan would provide for the recognition of a "claim" that would fall outside the Bankruptcy Code's definition under applicable law.

C. The debtors are not required to liquidate all claims before confirmation.

***34** Certain insurers also asserted, during closing argument (though the point does not appear to have been advanced in their confirmation objections) that the plan improperly establishes a post-confirmation trust to address claims and distribute the proceeds of insurance to creditors. They argue that § 1123(b)(3) contemplates the possibility that a post-bankruptcy entity (such as a post-confirmation trust) might be charged with the task of the "settlement or adjustment of any claim or interest belonging to the estate." [240] But there is no statutory authority, they argue, for a post-confirmation trust to play a role in resolving claims *against* the estate.

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240 *See* July 21, 2025 Hr'g Tr. at 350-351 (citing 11 U.S.C. § 1123(b)(3)(B)).

Perhaps a case can be made that the Bankruptcy Code, as originally enacted in 1978, contemplated that the claims allowance process would be complete before plan confirmation. Even if that is correct, the 1994 enactment of § 524(g) certainly provided for claims to be "channeled," after confirmation, to a post-confirmation trust, that would undertake to ensure that present and future-arising claims would receive substantially similar treatment.

More fundamentally, however, as the chapter 11 process has grown increasingly expensive, it has become commonplace for post-petition entities, such as a post-confirmation liquidating trust, to take on responsibilities that the Bankruptcy Code assigned to the "trustee," but that cannot as a practical matter be completed before confirmation. It is now unexceptional for a bankruptcy court to confirm a chapter 11 plan that leaves the liquidation of estate assets (not just the causes of action contemplated by § 1123(b)(3)(B)), and the resolution of claims against the estate, to a post-confirmation trust.[241] To be sure, there are circumstances in which, when a post-confirmation trust is addressing matters that the Code envisioned being performed by the trustee (including a debtor-in-possession) before a plan was confirmed, some confusion may arise over whether the operative legal rules are those provided by the Bankruptcy Code or by the confirmed plan.

241 Counsel for the certain insurers was, perhaps to his credit (and perhaps not), wholly undaunted by the fact that the implication of his argument would fundamentally disrupt modern chapter 11 practice:

> [THE COURT]: [T]here is, now, a lot of water over the dam, and the notion that we confirm a plan when the major transactions have been completed, and the mop-up work, including the mop-up work with respect to unliquidated claims is handled on a trust on a post-petition basis is now ... what happens in 98 percent of the cases.
>
> So, is your argument that that's all wrong, and I need to decree that that shall never happen again?
>
> [COUNSEL]: Yes.

Id. at 352.

Whatever imperfections may exist in the modern practice, this Court does not believe that these innovations are precluded by the Bankruptcy Code. Section 1123(b)(6) provides, of course, that a plan may "include any appropriate provision not inconsistent with the application of this title."[242] The Supreme Court in *Purdue Pharma* explained the limits of the kind of provision that this may include. Such a provision must "concern *the debtor*—its rights and responsibilities, and its relationship with its creditors."[243] Accordingly, it cannot include a "radically different power to discharge the debts of a nondebtor without the consent of affected nondebtor claimants."[244] But giving a post-confirmation trust the authority to resolve claims against the estate and distribute the proceeds of estate causes of action is nothing like the third-party release invalidated in *Purdue*

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Pharma. This type of provision fits squarely within the catch-all of § 1123(b)(6). [245] This objection is therefore overruled.

242 11 U.S.C. § 1123(b)(6).

243 *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 218, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024) (emphasis in original).

244 *Id.* (internal citation omitted).

245 *But see Diocese of Camden, New Jersey*, 653 B.R. at 336 ("section 1123(b)(3) applies only to actions 'belonging' to the estate, and not to actions 'against' the estate").

IV. The plan's payment of bond trustee fees is permissible.

***35** Section 12.16 of the plan provides for the payment of reasonable fees and expenses for the indenture trustee for the Unsecured 2043 Notes, up to a cap "as previously agreed to in writing between the Debtors and the Bond Trustee." [246] In a brief submitted by the bond trustee and in testimony that the debtors elicited at the confirmation hearing, the parties disclosed that this agreed cap was $850,000. [247]

246 D.I. 1048 § 12.16.

247 D.I. 1316 at 3; July 21, 2025 Hr'g Tr. at 86.

The U.S. Trustee objects to the payment of this amount, arguing that providing for the payment of these fees in the plan is, in effect, an end run around the demanding standard for a substantial contribution claim under § 503(b) of the Bankruptcy Code. [248]

248 D.I. 1232 at 10-14.

The Court disagrees with that argument on the merits. The Court notes, however, that to the extent the bond trustee or the debtors are contending that the U.S. Trustee lacks standing to raise this objection because it lacks an economic stake in the matter, the Court rejects that argument. Congress devised a system under which the U.S. Trustee would play an independent role in ensuring compliance with the Bankruptcy Code. To that end, § 307 of the Bankruptcy Code grants the U.S. Trustee standing to be heard on any issue in a bankruptcy case. [249] As explained below, the Court concludes that on the merits, the U.S. Trustee's argument is unsuccessful. But that the issues are being raised by a party that lacks an economic stake in the resolution should be understood as a feature, not a bug.

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249 11 U.S.C. § 307 ("The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.").

As this Court sees the issue, the applicable analysis may well be different outside the plan context than it is when the payment is contemplated under a plan. The issue arises from the fact that in a typical bond indenture, there is not a direct contractual relationship between the borrower and the underlying noteholder. Rather, the borrower's relationship is with the indenture trustee, which typically handles the enforcement of rights under the indenture, and in turn has contractual obligations to the noteholders. Accordingly, the indenture trustee's right to recover legal fees (which is typically provided for under the indenture) is a general unsecured claim, no different in character from the rights of the underlying noteholders (in an unsecured bond issuance). At times, the bond trustee may well pay a constructive role in forging consensus among the noteholders and facilitating the reorganization. The issue that arises is the legal standard to apply when the trustee seeks to receive compensation out of the estate for the fees it has incurred.

The answer to that question is easy when the debtor opposes paying those fees. The standard is "substantial contribution," as set out in § 503(b) of the Bankruptcy Code. Section 503(b) expressly contemplates that reasonable fees may be paid when the indenture trustee makes a "substantial contribution" to the case. That standard, however, is a demanding one. It does not permit granting the trustee an allowed administrative claim (even if the fees are reasonable) to pay costs that the trustee would in any event bear to protect the interests of the bondholders. [250]

250 *See Lebron v. Mechem Financial Inc.,* 27 F.3d 937, 943-944 (3d Cir. 1994).

***36** Where the debtor agrees that the bankruptcy estate should pay the fees, either under a plan or by separate motion, the analysis becomes slightly more complex, as the thoughtful decisions in *Adelphia* and *Mallinckrodt* demonstrate. [251] In both of those cases, the courts allowed for the payment of reasonable fees. As this Court understands those opinions, the courts essentially treated the request as (and this is this Court's own take on these opinions – the decisions do not say this in so many words) a consensual resolution of a § 503(b) request, to which the U.S. Trustee was objecting. In both cases, the courts took a careful look at the question of the contributions made by the indenture trustee and the reasonableness of the fees. The courts credited the debtor's judgment that the fees warranted administrative claim status. Neither court, however, treated the debtor's judgment as the beginning and end of the analysis. Both carefully examined the merits of the request and reached the independent judgment that the indenture trustee's contribution was indeed a substantial one.

251 *See In re Adelphia Commc'ns Corp.*, 441 B.R. 6, 12-19 (Bankr. S.D.N.Y. 2010); *In re Mallinckrodt*, 639 B.R. 837, 906-907 (Bankr. D. Del. 2022).

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That analysis is certainly a sensible one in the contexts in which those cases arose, which is different from the context of the current dispute. In *Adelphia*, the issue arose on a motion filed after confirmation.[252] In *Mallinckrodt*, the payment was to be made under a plan, but certain classes of creditors had voted to (or were deemed to) reject the plan.[253] In this regard, the issue in *Adelphia* and *Mallinckrodt* is similar to the one raised before this Court in *Yellow*, when the debtors sought to settle prepetition claims that certain creditors had asserted, while other parties in interest had pending objections to allowance of those claims.[254] Without definitively resolving the standard that the court would apply to review the proposed settlements, this Court concluded that, at the very least, it was required to pay due respect to the objecting party's statutory right to object to the claims as a party in interest. There, that meant that the proposed settlements would be measured by a standard that was more rigorous than the most deferential form of business judgment standard that might otherwise apply to a motion under Rule 9019.[255] In reviewing the *Adelphia* and *Mallinckrodt* decisions, where the U.S. Trustee (as a party-in-interest) had objected to the payment of the fees, those courts appear to be engaging in a similar analysis.

252 *Adelphia*, 441 B.R. at 8-9.

253 *Mallinckrodt*, 639 B.R. at 896.

254 *In re Yellow Corp.*, 670 B.R. 397 (Bankr. D. Del. 2025).

255 *Id.* at 411.

It is certainly possible that the fees in this case could be approved by application of that same standard, as the record here does demonstrate that the bond trustee played an important role in facilitating a consensual resolution of potential disputes between commercial creditors and the talc claimants.[256] The Court concludes, however, that in view of the language and structure of the Bankruptcy Code, the circumstances of this case make it somewhat easier than the cases presented in *Mallinckrodt* or *Adelphia*.

256 While the statements of counsel are not evidence, counsel for the bond trustee set out during closing argument the nature of the contributions. *See* July 23, 2025 Hr'g Tr. at 53-55.

The reason for that is that the Bankruptcy Code's prohibition on discriminatory treatment of similarly situated creditors, as the Third Circuit explained in *Tribune*, is a statutory protection for a class of creditors that rejects the plan's treatment of their claims.[257] The right to "equal treatment" across different classes is not one that may be enforced at the behest of an individual creditor or party-in-interest, so long as the *class* of affected creditors votes to accept the plan's treatment of their claims by the requisite majorities.

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257 *In re Tribune*, 972 F.3d at 237-239.

Here, the economic substance of the payment of the bond trustee's fees in 100-cent dollars is that the bond trustee was receiving a greater percentage payment on its unsecured claims than were the trade creditors who were placed in class 3 along with the indenture trustee. While the bond trustee is the only party with a direct contractual relationship with the debtor, it is not uncommon for (and the plan here allowed) individual bondholders to be permitted individually to vote the debt that they hold. As a formal legal matter, however, the claim arising out of the bond issuance (including the bond trustee's claim to fees) is a general unsecured claim entitled to the same treatment as other general unsecured creditors. Here, by providing the bondholders the same treatment afforded to other class 3 holders (on account of their claims for principal and interest under the bonds) – but paying the bond trustee's claim for fees in full – one might say that the plan provides the obligations under the bond indenture (viewed in the aggregate) with different and better treatment than that provided to other class 3 creditors.

***37** The Bankruptcy Code, however, requires that all claims within a class receive the same treatment – a requirement that an individual creditor within that class may enforce.[258] But the payment of the bond trustee's fees was appropriately disclosed in the disclosure statement and no party in interest took issue with the bondholders being placed in the same class as the other commercial creditors. In addition, during the confirmation hearing, the debtors proffered (without objection) the testimony of the balloting agent that all 14 of the non-bondholder claimants in class 3 voted to accept the plan.[259] Accordingly, because the economic substance of the objection is that the payment of the bond trustee fees provides unequal treatment to the claims arising under the bond indenture, and because all affected creditors have consented to this disparate treatment – a result the Bankruptcy Code expressly contemplates in its classification and voting scheme – the Court concludes that the payment of up to $850,000 in reasonable fees to the bond trustee comports with the Bankruptcy Code.

258 11 U.S.C. § 1123(a)(4) ("[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall ... provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest").

259 July 21, 2025 Hr'g Tr. at 120-121.

V. The gatekeeping provision cannot be approved over the U.S. Trustee's objection.

The final issue to address is the U.S. Trustee's objection to the so-called gatekeeping provision contained in the plan. The parties have resolved the dispute raised by the U.S. Trustee over the scope of the releases and exculpations provided for in the plan. The breadth of the injunction

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against the assertion of claims that may be covered by those releases and exculpations, however, remains disputed.

The provision in question is § 10.8 of the plan. It provides that:

> No Person may commence or pursue a Cause of Action of any kind against the Debtors, the Liquidating Debtors, the Exculpated Parties, or the Released Parties that could reasonably be characterized as a Cause of Action that will be or is extinguished, exculpated, or released by the Plan or otherwise will be or is subject to the Plan without the Bankruptcy Court first determining, after notice and a hearing, that such Cause of Action (a) represents a colorable claim against a Debtor, Liquidating Debtor, Exculpated Party, or Released Party and (b) has not been extinguished, exculpated, or released by the Plan or otherwise will be or is subject to the Plan. [260]

260 D.I. 1319 § 10.8.

This type of "gatekeeping" provision – one that enjoins not only the assertion of claims that are released or exculpated under the plan, but also prohibits the assertion of claims that live in the same neighborhood as claims that are released or exculpated under the plan (here, a claim that "could reasonably be characterized" as a released or exculpated claim) – has been the subject of some recent controversy.

The Fifth Circuit recently clarified its position on the issue in its decision in *Highland Capital*. [261] Relying on the *Barton* doctrine, under which bankruptcy trustees may not be sued outside of bankruptcy court without the bankruptcy court's permission, that court had previously found that bankruptcy courts may enter gatekeeping orders in limited circumstances. [262] *Highland Capital* asserts that Fifth Circuit precedent had never authorized the use of a "gatekeeping" provision that extends beyond "the trustee or other bankruptcy-court-appointed officers[s] for acts done in the actor's official capacity." [263] The court in *Highland Capital* accordingly concluded that the gatekeeping order entered by the bankruptcy court in that case must be narrowed so that it extended only to estate fiduciaries, and covered only acts taken in their fiduciary capacity. [264]

261 *See In re Highland Capital Mgmt., L.P.*, 132 F.4th 353 (5th Cir. 2025).

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262 *See Villegas v. Schmidt*, 788 F.3d 156, 158-159 (5th Cir. 2015) (citing *Barton v. Barbour*, 104 U.S. 126, 26 L.Ed. 672 (1881)).

263 *Highland Capital*, 132 F.4th at 359 (internal quotation and citation omitted). In fairness, however, a case could have been made that the prior Fifth Circuit precedent on this point was less clear than the *Highland Capital* court let on.

264 *Id.* at 360.

***38** Even as narrowed, however, this Court does not believe there is a basis for imposing a "gatekeeping" role. To be sure, it is settled law that estate fiduciaries may be exculpated from the assertion of claims that arise out of their exercise of their fiduciary duties.[265] And it is customary and unobjectionable to back that exculpation by an injunction against the assertion of an exculpated claim. The Court does not understand the authority, however, for extending the injunction *past* the scope of the exculpation and other appropriate releases of estate claims themselves, to apply to claims that "could reasonably be characterized" as such a claim. More puzzling still, the "gatekeeping" injunction arrogates to this Court not only the authority to determine whether such a claim falls within the plan's injunction but also requires a finding by this Court that the underlying claim (over which the Court may or may not have subject-matter jurisdiction) is a "colorable" claim on the merits.

265 *In re PWS Holding Corp.*, 228 F.3d at 246; *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081-1085 (9th Cir. 2020).

Notwithstanding *Highland Capital* and the related Fifth Circuit authority (or the transcripts from oral rulings of bankruptcy courts in other jurisdictions), this Court does not believe that either the Bankruptcy Code or the *Barton* doctrine provides any substantive authority for the bankruptcy court to do anything like this. The parties have not identified any Third Circuit authority for such an injunction, and this Court is aware of none. The court put the point clearly in *Gulf Coast Health Care*. As here, the debtors there "had requested that [the court] retain sole and exclusive authority to determine whether a claim or cause of action against a released party arises from or is related to a debtor-released claim or a third-party released claim and, in doing so, authorize such party to bring the claim against the relevant release[d] party."[266] The court rejected that request. "I will sustain the U.S. Trustee's objection on this point. I see no reason to retain exclusive jurisdiction for a determination that has been requested of me. The ... plan says what it says, and other courts should be entitled to exercise their authority to interpret it."[267]

266 *In re Gulf Coast Health Care, LLC*, Bankr. D. Del. No. 21-11336 (KBO); May 4, 2022 Hr'g Tr. at 30.

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267 *Id.*

This Court accordingly asked counsel for the debtors, during closing argument, whether any judge on this Court had ever granted an injunction with the kind of "gatekeeping" provision sought here. Counsel's response to that question was a polite and appropriate way of saying "yes, Your Honor, it was you, dummy."[268] And in fairness, there is some merit to counsel's point.

268 *See* July 23, 2025 Hr'g Tr. at 21-22 (in response to question whether "folks were aware of any case in this jurisdiction ... in which any court has ever approved such a provision," counsel responded "I had time to think about it. The answer is I think Your Honor approved a very similar provision in December").

In connection with the debtors' settlement with Natura, the debtors sought an order that included a gatekeeping provision. The issue there was that the settlement resolved estate causes of action. And the concern was over how to handle the possibility that Natura might face a claim for successor liability, as to which it can certainly be argued that such a claim actually belonged to the bankruptcy estate and was resolved in the settlement. In response to the U.S. Trustee's objection to the proposed gatekeeper provision, this Court expressed reservations that are broadly in line with the views set forth above. "The notion that if there's a real argument that something is an estate cause of action I retain jurisdiction to decide that question doesn't offend me. The notion, however, that no one gets to bring a claim that's actually an individual claim before coming to me and saying pretty please I'm not really sure I have authority to do."[269]

269 Dec. 4, 2024 Hr'g Tr. at 45 (cleaned up).

***39** Despite expressing those concerns, the Court went on to add that while "I am a stay-in-your-lane kind of judge and don't think I ought to be enjoining things that could properly be brought in another court, I am not concerned with the proposition that I could enter an order that says 'to the extent there is a good faith dispute about whether an action is subject to the release contained herein such actions ought to be brought before me.' "[270] Consistent with those comments, the parties went on to submit, and this Court entered, an order stating that "no Person or Entity may commence or pursue a Cause of Action of any kind against the Debtors or Natura Releasees, as applicable, that could reasonably be characterized as a Cause of Action subject to Section 4 of the Settlement Agreement or the releases provided in this Order without the Court first determining, after notice and a hearing, that such Cause of Action is not released by Section 4 of the Settlement Agreement."[271]

270 *Id.* at 51.

271 D.I. 581 ¶ 12.

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With the benefit of hindsight, the Court has three reactions to the discussion at the December 2024 hearing and the language of the subsequent order. *First*, it notes that the order that the Court entered then is meaningfully narrower than what is proposed now. The settlement order limited the scope of the "gatekeeping" provision to deciding whether an asserted claim was barred by the settlement. The proposed confirmation order takes an aggressive step beyond that and would require the Court to make a finding that the underlying claim was "colorable" on the merits before it may proceed.

Second, the Court's decision in that circumstance was undoubtedly motivated by the substantial ambiguity raised by the vexing question of determining what type of claim is an "estate" claim that is resolved when the debtor grants a release, as opposed to those claims that are held and may be asserted against third parties by individual creditors. This Court wrestled with that issue (in light of the Third Circuit's decision in *Emoral*) in its decisions in *TPC* and *First Guaranty Mortgage*.[272] This Court's decision to retain jurisdiction over such disputes in the settlement order in this case may well be explained by the Court's concern about imposing on another court the burden of having to make sense of the sometimes ambiguous effect of this Court's settlement order.

272 *See generally In re Emoral, Inc.,* 740 F.3d 875 (3d Cir. 2014); *In re TPC Group Inc.*, No. 22-10493, 2023 WL 2168045 (Bankr. D. Del. Feb. 22, 2023); *In re First Guaranty Mortgage Corp.*, No. 22-10584, 2023 WL 8940688 (Bankr. D. Del. Dec. 27, 2023). This issue was also addressed more recently by a judge on this Court in *In re Aliera Companies, Inc.*, No. 21-11548 (TMH), 2025 WL 2091090 (Bankr. D. Del. July 24, 2025).

Finally, however, notwithstanding the prior point, the Court now believes that the approach taken by the court in *Gulf Coast Health Care* is the better one. To be sure, this Court retains jurisdiction to resolve a dispute about the meaning of its order.[273] And if a dispute were to arise in the future about whether a claim asserted in another court were actually enjoined by virtue of this Court's confirmation order, this Court would undoubtedly be willing to address the matter through a declaratory judgment action, rather than requiring another court to guess as to the meaning of this Court's order. That said, and despite the Court having done so in the settlement order in this case, the Court now believes that the better view is that it ought not assert *exclusive* jurisdiction over that issue. As the court said in *Gulf Coast Health Care*, to the extent another court were otherwise inclined to resolve a dispute over the meaning of this Court's order, the Court does not believe that it can or should enter an injunction that would preclude that.

273 *Travelers Indemnity*, 557 U.S. at 151, 129 S.Ct. 2195.

The settlement order, of course, is now a final and non-appealable order. It says what it says, and the Court stands prepared to enforce it. With the benefit of hindsight, however, this Court does not believe that the entry of such a gatekeeping provision is authorized by law. In order for the Court to confirm the plan, this provision will need to be modified.

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Conclusion

***40** For the foregoing reasons, the Court concludes that various revisions to the plan and/or confirmation order need to be made before the Court may enter them. Subject to those revisions, however (none of which the Court views as a material change requiring re-solicitation), the Court finds that the plan may be confirmed. The parties are thus directed (as described above, at the end of Part II) to meet and confer with respect to a revised form of plan and confirmation order.

All Citations

--- B.R. ----, 2025 WL 2426380

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2025 WL 3035792
United States District Court, E.D. California.

INTERSTATE FIRE & CASUALTY COMPANY
and National Surety Corporation, et al., Appellants,
v.
The ROMAN CATHOLIC BISHOP OF SACRAMENTO, Appellee.

Nos. 2:25-cv-02262 WBS (lead case), 2:25-cv-02288 WBS
|
Signed October 29, 2025
|
Filed October 30, 2025

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MEMORANDUM AND ORDER RE: APPELLEE'S MOTION TO DISMISS APPEAL

WILLIAM B. SHUBB, UNITED STATES DISTRICT JUDGE

***1** Interstate Fire & Casualty Company and National Surety Corporation and Certain Underwriters at Lloyd's, London and Certain London Market Insurance Companies (collectively, "appellants") have separately appealed the Bankruptcy Court's order granting relief from an automatic stay allowing several state court actions to proceed against appellee Roman Catholic

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Bishop of Sacramento. (Docket No. 1.) Appellee brought motions to dismiss both appeals (Docket No. 26), which appellants opposed (Docket No. 28; Certain Underwriters at Lloyd's v. The Roman Catholic Bishop of Sacramento, No. 2:25-cv-02288 WBS, ECF No. 18 (E.D. Cal. Oct. 3, 2025).) The cases were then consolidated (Docket No. 31), and appellee filed its reply shortly after. (Docket No. 34.)

I. Factual and Procedural Background

In 2019, the California legislature enacted AB 218, which, in part, revived previously time-barred claims involving childhood sexual abuse. (See Docket No. 28 at 5-6.) More than 250 individuals thereafter filed such claims against appellee. (Id.) Appellee filed its bankruptcy petition on April 1, 2024, and a committee of unsecured creditors (the "Committee") -- comprised of nine survivors of sexual abuse with claims against appellee -- was appointed on April 12, 2024. (Docket No. 26 at 5-6.)

The Bankruptcy Court held a "case conference for the presentation of survivor impact statements" on March 31, 2025; no insurer was permitted to attend. (Docket No. 28 at 6-7.) Faced with a torrent of impending tort litigation, appellee then sought to extend the bankruptcy's automatic stay, imposed by 11 U.S.C. § 362, to all pending abuse claims, including those brought against its affiliates. (Id.) The Committee and other abuse survivors objected, and an agreement was reached in the form of a stipulation which enjoined "nearly all the State Court Actions but modified the automatic stay such that up to six cases could proceed to trial in state court." (Docket No. 26 at 7.) Appellee and the Committee ultimately agreed to grant four actions relief from the stay (the "Released State Court Actions"), and the Bankruptcy Court entered an Order approving the stipulation on July 25, 2025. (Id.)

This appeal stems from the Bankruptcy Court's Order approving the stipulation. (See Docket No. 1.) Appellee argues appellants are not "persons aggrieved" by the Order and therefore lack standing. (See Docket No. 26.) The only issue before the court on this appeal then is whether the appellants have standing for bankruptcy appellate purposes to pursue this appeal.

II. Legal Standard

"All circuits, including this one, limit standing to appeal a bankruptcy court order to persons aggrieved by the order." Matter of Point Center Financial, Inc., 890 F. 3d 1188, 1191 (9th Cir. 2018) (citation modified) (collecting cases). A "person aggrieved" is defined as "someone who is directly and adversely affected pecuniarily by a bankruptcy court's order." Id. "An order that diminishes one's property, increases one's burdens, or detrimentally affects one's rights has a direct and adverse pecuniary effect for bankruptcy standing purposes." Id. (citing Duckor Spradling & Metzger v. Baum Tr. (In re P.R.T.C., Inc.), 177 F. 3d 774, 777 (9th Cir. 1999)). The "persons aggrieved"

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standard is prudential, and its chief purpose is facilitating "efficient judicial administration." Matter of Fondiller, 707 F. 2d 441, 443 (9th Cir. 1983). [1]

1 In its motions to dismiss, appellee states that it "takes no position on whether Appellants have Article III standing to appeal." (Docket No. 26 at 9 n.13; Certain Underwriters, No. 2:25-cv-02288 WBS, ECF No. 18 at 9-10 n.12.) Appellants discuss Article III in passing, but their primary arguments concern the "persons aggrieved" standard. (See Docket No. 28; Certain Underwriters at Lloyd's, No. 2:25-cv-02288 WBS, ECF No. 18 (E.D. Cal. Oct. 3, 2025).) The propriety of applying "persons aggrieved" rather than Article III in a bankruptcy appeal presents an interesting question, but it need not be decided here, because analysis under the former resolves the issue of the latter.

***2** Appellants argue the "persons aggrieved" standard is inapplicable, citing Lexmark Int., Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014), for the proposition that prudential standing has been abrogated entirely, and Truck Ins. Exch. v. Kaiser Gypsum Co., Inc. 602 U.S. 268 (2024) for the proposition that one need only be a "party in interest" to have bankruptcy appellate standing.

Appellants' reading of Lexmark is overbroad. The Supreme Court's analysis of prudential standing in Lexmark distinguished conventionally recognized limits of prudential standing from the statutorily based "zone of interests" test, the latter of which concerns whether a party "has a cause of action under a statute, applying traditional principles of statutory interpretation." Lexmark, 572 U.S. at 1381 (citation modified). At no point in Lexmark did the Court suggest prudential standing was irrelevant generally. Id. at 1381-82 ("It is misleading to label this a 'prudential standing' question." (emphasis added)).

Neither is Kaiser Gypsum helpful to appellants. (See Docket No. 28 at 12.) The discussion of "parties in interest" in that case concerned another statute -- 11 U.S.C. § 1109(b) -- regarding participation in Chapter 11 bankruptcy proceedings. Kaiser Gypsum accordingly does not speak to the "persons aggrieved" standard at issue here. 602 U.S. at 271.

The "persons aggrieved" standard governing bankruptcy appellate standing therefore applies, so it must be determined whether appellants are "aggrieved" by the Bankruptcy Court's Order.

III. Discussion

A. "Persons Aggrieved" Standing

Appellee argues that appellants are not aggrieved by the Order because (1) "Appellants assert they have no present obligation to defend or indemnify [appellee]," and (2) "the automatic stay is not designed to protect the financial interests of insurance companies" and thus lifting the stay does

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not affect appellants' rights or make them financially worse off than they were before. (Docket No. 26 at 12.)

Appellants respond that the Order "permits (and arguably encourages) the attachment and enforcement of liens" on their policies, that it "damages [appellants'] rights" in that restricting judgment liens to insurance proceeds eliminates appellee's economic motivation to bring a vigorous defense, and that by disallowing modification or vacatur, the Order "calls into question [appellants'] ability to undertake certain actions that they otherwise would," e.g., conduct investigations into settlement demands, participate in the defense of a Released State Court Action, or contest a lien. (Docket No. 28 at 17-19.)

The court finds that appellants are sufficiently aggrieved by the Bankruptcy Court's Order to establish appellate standing. The decision of the Bankruptcy Judge to approve the stipulation exposes appellants to increased liability by its very nature, because it creates a new set of risks -- and thereby pecuniary effects -- stemming from impending litigation. Moreover, the language of the Order is far from "insurance neutral"; it guarantees that should judgment liens result from the Released State Court Actions, those liens can only be executed against appellants. (Docket No. 1 at 15-16); see In re Thorpe Insulation Co., 677 F. 3d 869, 885 (9th Cir. 2012) ("A plan is not insurance neutral when it may have a substantial economic impact on insurers."). It is hard to imagine a more evident or direct diminution of property than a stipulation providing that one's assets are the sole recourse for judgment enforcement.

***3** Appellee's argument that the stay is not "designed to protect" the financial rights of insurers is unavailing. Its cited authority does support the notion that automatic stays are "intended solely to benefit the debtor estate," but that characterization applies where "the trustee does not seek to enforce the protections of the automatic stay," and a creditor instead attempts to enforce the stay in the debtor's place. In re Pecan Groves of Arizona, 951 F. 2d 242, 245 (9th Cir. 1991).

That is not the case here. Appellants are not creditors seeking to stand in the shoes of a debtor to challenge a stay violation; they are, rather, asserting independent financial rights expressly contemplated in the Bankruptcy Court's Order. Cf. id. at 245 (noting the relevant question was "whether a creditor can attack violations of the automatic stay" (emphasis added)); Matter of Petrone, 754 Fed. App'x 590, 591 (9th Cir. 2019) (confirming that defining a stay as "intended to protect solely the interests of debtors and their estates" is relevant when creditors seek to enforce violations of the stay).

Appellee's argument that "Appellants believe they have no immediate obligations in connection with the underlying claims" is also fruitless. (Docket No. 26 at 13.) Appellee provides no authority stating that a party's purported subjective understanding of their obligations is determinative of whether they do, in fact, have obligations affected by a Bankruptcy Court's order. The Order in

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this case has an objective impact on appellants regardless of what they may have at one time acknowledged. See In re Thorpe Insulation Co., 677 F. 3d at 887 (harm to appellants found because "the plan affects Appellants' contractual rights, affects their financial interests, and has the possibility of affecting their litigation rights in court"); cf. California Dep't of Toxic Substances Control v. Jim Dobbas, Inc., 54 F. 4th 1078, 1091-92 (9th Cir. 2022) (holding that an insurer seeking to defend an insured who will not or cannot defend itself "has a protectable interest for purposes of Rule 24(a)(2), no matter what position, if any, the insurer has taken as to coverage").

The Bankruptcy Court's Order thus impacts appellants because it imminently and detrimentally affects both their litigation rights and their financial interests. The pecuniary effect of the Order -- the exposure to liability it creates -- is neither speculative nor anticipatory. Cf. In re Thorpe Insulation, 677 F. 3d at 887 (finding sufficient injury in fact in the Chapter 11 context because the potential liabilities of insurance companies were increased).

Because the Bankruptcy Court's Order diminishes appellants property and detrimentally affects their rights, appellants are "persons aggrieved" for purposes of bankruptcy appellate standing.

B. Equitable Considerations

In light of equitable issues raised during oral argument, the court makes two further observations which counsel in favor of finding standing.

First, under conventional principles of appellate procedure, it is "well settled" that "only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment." Marino v. Ortiz, 484 U.S. 301, 304 (1988) (citing U.S. ex rel. State of Louisiana v. Boarman, 244 U.S. 397, 402 (1917)); see also Washoe Tribe of Nevada & California v. Greenley, 674 F. 2d 816, 818 (9th Cir. 1982) ("The general rule is that one who was not a party of record before the trial court may not appeal that court's judgment."). However, appellants were participants in the decision now on appeal: they timely filed objections to the stipulation, which the Bankruptcy Judge approved after a hearing during which appellants' arguments were rejected. (See Docket No. 28, at 10-11.) They were thus parties to the proceeding below, and their extensive participation supports their entitlement to be heard in an appeal on its outcome. See In re Commercial Western Finance Corp., 761 F. 2d 1329, 1335 (9th Cir. 1985) ("[A]ttendance and objection should usually be prerequisites to fulfilling the 'person aggrieved' standard.") (collecting cases).

***4** Second, appellee has not demonstrated -- either in its briefing or at oral argument -- that finding standing for appellants would unduly delay or prejudice its case. Courts have long treated delay and prejudice as equitable considerations in determining whether to allow access to appellate review in varied procedural settings. Cf. Curtiss-Wright Corp. v. General Electric Co., 446 U.S. 1, 8 (1980) (finding fitness for appeal under "no just reason for delay" standard requires balancing judicial economy and equities); Wood v. GCC Bend, LLC, 422 F. 3d 873, 878 (9th Cir. 2005) ("It is left to

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the sound judicial discretion of the district court to determine the appropriate time when each final decision ... is ready for appeal. This discretion is to be exercised in the interest of sound judicial administration." (internal citations and quotation marks omitted)).

Though the circumstances of this appeal are somewhat atypical, general principles of equity and economy do not weigh heavily against a finding of standing. Cf. In re Crystal Properties, Ltd., L.P., 268 F. 3d 743, 755-56 (9th Cir. 2001) ("When reviewing a bankruptcy court's decision ... a district court functions as [an] appellate court and applies the standard of review generally applied in federal court appeals." (internal citations and quotation marks omitted)) (collecting cases). Under the schedule to be set by this court it is not anticipated that the appeal will delay the bankruptcy proceedings in any significant way, and considerations of fairness dictate that appellants be afforded an opportunity to be heard.

IT IS THEREFORE ORDERED that appellee's motion to dismiss (Docket No. 26) be, and the same hereby is, DENIED. Pursuant to the discussion at the hearing on this motion, the briefing schedules for this appeal (Docket Nos. 32-33) will be continued, and within seven (7) days of this Order the parties shall submit a stipulation setting forth the new agreed-upon briefing schedule. If the parties do not propose a stipulation by that date, the court will issue a briefing schedule.

All Citations

Slip Copy, 2025 WL 3035792, 75 Bankr.Ct.Dec. 31

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2025 WL 3688940
Only the Westlaw citation is currently available.
United States Bankruptcy Court, E.D. Virginia,
Richmond Division.

IN RE: HOPEMAN BROTHERS, INC., Debtor.

Case No. 24-32428-KLP
|
Signed October 31, 2025

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CONFIRMATION OF THE MODIFIED AMENDED PLAN OF REORGANIZATION OF HOPEMAN BROTHERS, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND APPROVING ADEQUACY OF THE DISCLOSURE STATEMENT

Keith L. Phillips, UNITED STATES BANKRUPTCY JUDGE

***1** This matter comes before the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, (this "Bankruptcy Court" or the "Court") upon the *Disclosure Statement with Respect to the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 767] (the "Disclosure Statement") and the *Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. under Chapter 11 of the Bankruptcy Code*, dated August 21, 2025 [ECF No. 1141], as may be amended, modified, or supplemented from time to time, including but not limited to as modified by the *Second Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1185] (the "Plan") jointly proposed by Hopeman Brothers, Inc. ("Hopeman" or the "Debtor"), the debtor and debtor-in-possession in the above-captioned Chapter 11 case, and the Official Committee of Unsecured Creditors (the "Committee," and collectively with Hopeman, the "Plan Proponents"). [1]

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[1] Capitalized words not defined herein shall have the meanings set forth in the Plan.

The Bankruptcy Court has reviewed the Plan and the Disclosure Statement, as well as the other pleadings before the Bankruptcy Court in connection with the confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. The Plan contains terms pursuant to section 524 of Title 11 of the United States Code (the "Bankruptcy Code"), as more fully described herein. Section 524(g)(3)(A) of the Bankruptcy Code requires the district court that has jurisdiction over the reorganization case, not the bankruptcy court, issue or affirm an order confirming a 524(g) plan of reorganization.

The Bankruptcy Court has carefully reviewed the arguments of counsel and evidence admitted at the Combined Hearing (as defined herein) to consider confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. After due deliberation of the pleadings filed in this case, including but not limited to the Plan Proponents' memorandum of law in support of confirmation of the Plan and reply to the Plan Objections [ECF No. 1076] (the "Confirmation Brief"), the Plan Proponents' supplemental memorandum of law in support of confirmation of the Plan and reply to the Plan Objections to address the best interests test set forth in 11 U.S.C. § 1129(a)(7) [ECF No. 1119], and the various competing proposed findings of fact and conclusions of law, this Bankruptcy Court recommends entry of an Order by the United States District Court for the Eastern District of Virginia (the "District Court") confirming the Plan and approving the adequacy of the Disclosure Statement subject to the modifications set forth herein. The Bankruptcy Court makes the following findings of fact and conclusions of law in connection with its recommendation. [2]

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

I. PROPOSED FINDINGS OF FACT

A. History of Hopeman Prior to Bankruptcy [3]

[3] Except as otherwise noted, the facts contained in this section I are provided in section IV of the Disclosure Statement, which was affirmed as true and accurate by Christopher Lascell, the Debtor's president and designee, during his testimony at the Combined Hearing, Combined Hr'g Tr. Day 1 14:3-14, ECF No. 1174 at 14. References to "Combined Hr'g Tr. Day 1" refer to the transcript of the hearing that took place before the Court on August 25, 2025, *see* Aug. 25, 2025, Tr., ECF No. 1174, *as redacted* ECF No. 1260; and "Combined Hr'g Tr. Day 2" refer to the transcript of the hearing that took place before the Court on August 26, 2025, *see* Aug. 26, 2025, Tr., ECF No. 1175*, as redacted*, ECF No. 1261.

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***2** Beginning with its incorporation in 1930, for over fifty years, Hopeman engaged in the exclusive business of marine joiner work, i.e., the assemblage, furnishing, and installation of bulkhead panels, ceilings and other interior components of ships. Specifically, Hopeman was a joiner subcontractor that would acquire materials from manufacturers, make modifications to those products to meet shipbuilder specifications, and deliver the resulting "joiner packages" to various shipyards for installation by either Hopeman or shipyard employees. Hopeman provided these joiner packages and/or related services for over 3,000 ships in at least 49 shipyards in over 19 states, including Virginia. Hopeman did not at any time own or operate any shipyard and did not own ships for which it provided joiner packages and/or services.

In response to a tragic maritime fire, in 1939, the U.S. Government began requiring the use of non-combustible, asbestos-containing materials in ship construction. To comply with these regulations for its subcontracting work, Hopeman purchased certain asbestos-containing panels. At times, the installation of the panels required cutting and drilling at the shipyard and/or aboard the ship being constructed. In or around 1975, Hopeman began using a patented asbestos-free panel. Hopeman believes it fully transitioned from asbestos-containing panels to the asbestos-free panels in 1977.

During the 1980s, Hopeman shifted its business away from ship joining and into manufacturing checkout counters used in commercial retail stores. In 2002, Hopeman spun off its cabinet-making business. In 2003, Hopeman sold substantially all of its remaining shipbuilding-related assets to an unrelated party, US Joiner LLC. Hopeman's asbestos liabilities were excluded and not assumed by US Joiner LLC in the sale and, as such, remained the obligations of Hopeman post-sale closing. [4] After the sale, aside from its remaining cash and business records, Hopeman's only other assets are its interests in the substantial remaining limits of its liability insurance policies. Combined Hr'g Tr. Day 1 at 17:23- 18:3, ECF No. 1174 at 17-18.

[4] Following the 2003 asset sale, David M. Lascell became the sole officer and majority owner of Hopeman, overseeing the administration and resolution of the Asbestos Claims. After David Lascell's death in 2016, Christopher Lascell, Daniel Lascell, and Carrie Lascell Brown (collectively, the "Board Members") acquired their father's shares, as well as the minority shares, in Hopeman. Since that time, the Board Members have been the 100% equity holders in Hopeman and have served as Hopeman's Board Members and officers. The Board Members had no involvement in Hopeman's business operations prior to the 2003 asset sale.

Hopeman's only material unpaid liabilities are claims alleging personal injury as a result of alleged exposure to asbestos fibers contained in marine interior materials included within the joiner packages provided by Hopeman ("Asbestos Claims"), most of which currently are unresolved. The Asbestos Claims asserted against Hopeman typically involve allegations of the manifestation of one or more of four general types of asbestos-related diseases: (i) mesothelioma; (ii) lung cancer;

(iii) cancers other than lung cancer, such as esophageal cancer or colon cancer; and (iv) asbestosis, or a disease that was not articulated on the face of the pleading or claim.

Hopeman received its first Asbestos Claim in 1979. Since then, claimants have asserted more than 126,000 Asbestos Claims against Hopeman. The Plan Proponents cannot, with any certainty, determine how many individuals who were exposed to asbestos attributable to Hopeman will go on to actually manifest an asbestos-related disease, how many more Asbestos Claims will be asserted in the future, the value of such claims, nor when such claims will stop being asserted. Combined Hr'g Tr. Day 1 at 140:11-23, ECF No. 1174 at 140.

***3** After the closing of the 2003 asset sale, Hopeman has continued to exist in order to defend and, as appropriate, settle Asbestos Claims. Many claims were addressed through an agreed out-of-court claims processes pursuant to administrative agreements Hopeman entered into with various personal injury law firms. A claimant would provide documentation of an asbestos-related disease and exposure to asbestos through Hopeman's business operations. Upon confirmation that the claim was valid, Hopeman's third-party prepetition claims administrator, Special Claims Services, Inc., would pay a set amount prescribed in an applicable administrative agreement for the substantiated disease level or otherwise negotiate a settlement amount. If the parties were unable to reach a settlement through the administrative process, or often as an alternative to the out-of-court process, claimants would sue Hopeman in federal or state court. Typically, Hopeman would be one of many defendants, including other parties that provided products or services in the construction or repair of ships, manufacturers and sellers of products, shipyards, and ship owners, among others, and at times, former directors and officers of Hopeman.[5] As of the Petition Date, over 2,700 Asbestos Claims against Hopeman remained unresolved in either the administrative process or in litigation. The Debtor is not currently aware of any active claims that would not be covered by Hopeman's liability insurance.

[5] The former directors and officers of Hopeman who have been named in asbestos-related lawsuits have indemnification rights against Hopeman, and Hopeman traditionally has paid the defense costs associated with defending the claims asserted against such directors and officers, subject to reimbursement for a portion of those defense costs by Insurers.

Prior to the Petition Date, Hopeman primarily funded its defense and resolution of the Asbestos Claims by drawing upon available coverage from its liability insurance program and with cash on hand. Hopeman's asbestos-related liability insurance program consists of primary-layer insurance policies and multilayer excess general liability insurance policies issued by various insurers (collectively, the "Insurers"), the last coverage period for which ended December 31, 1984. The primary-layer policies Hopeman purchased from 1937 through 1984 were all issued by Liberty Mutual Insurance Company ("Liberty Mutual"). The excess insurance policies in the program were issued by Liberty Mutual and various other Insurers from 1965 through 1984.

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Historically, pursuant to Hopeman's various Asbestos Insurance Policies[6], solvent Insurers, within their applicable policy limits, would reimburse Hopeman for portions of its defense costs (including claims administration costs) and for portions of the liability payments it made to resolve Asbestos Claims. Given the complexity of Hopeman's insurance coverage, Hopeman entered into various agreements with certain Insurers in an attempt to streamline coverage issues. In June 1985, Hopeman and certain of its Insurers, as well as other asbestos claim defendants and their respective insurers, entered into the "Wellington Agreement." Pursuant to the Wellington Agreement, participating Insurers' obligations for Asbestos Claims, including for payment of defense costs and indemnification of liability payments incurred by Hopeman, were spread pro rata across all insurance policies from a claimant's date of first exposure across a "coverage block," which eventually extended to 1984.

6 The term "Asbestos Insurance Policies" is broadly defined to include the insurance policies identified on Exhibit H of the Plan, as well as any other insurance policy of Hopeman, whether known or unknown, that provides or potentially provides coverage for any Channeled Asbestos Claim. Plan § 1.12, ECF No. 1185 at 9.

Several Insurers who were not signatories to the Wellington Agreement entered into bilateral insurance settlement agreements, called "coverage-in-place" agreements, (the "Asbestos CIP Agreements"[7]) with Hopeman. Pursuant to each Asbestos CIP Agreement, the applicable insurance policy remained in place, obligating the Insurer to pay portions of Hopeman's defense costs and liability indemnification amounts for Asbestos Claims on terms identical to or substantially similar to those in the Wellington Agreement.

7 *See* Plan § 1.7, ECF No. 1185 at 9. The term "Asbestos CIP Agreement" "includes (i) the Century 2009 Agreement, and (ii) the Wellington Agreement, but (iii) does not include any Designated Insurance Agreement." *Id.*

***4** Certain other Insurers entered into settlement agreements with Hopeman that fully and finally settled the outstanding insurance coverage through a "buy-back" of the outstanding coverage in exchange for a lump-sum payment, rather than through the Wellington Agreement or an Asbestos CIP Agreement. For example, on March 21, 2003, Hopeman and Liberty Mutual resolved certain disputes between them as to the insurance coverage provided by Liberty Mutual for Asbestos Claims by entering into (i) the *Settlement Agreement and Release Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company* and (ii) the *Indemnification and Hold Harmless Agreement Between Hopeman Brothers, Inc. and Liberty Mutual Insurance Company* (together, the "2003 Agreements"). The 2003 Agreements settled certain disputes between Hopeman and Liberty Mutual that arose under previous agreements concerning the Liberty Mutual policies, including compromising and settling all coverage issues, both present and future, between Hopeman and

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Liberty Mutual related to the Liberty Mutual policies. As a result of the 2003 Agreements, Hopeman released its rights under all the primary and excess insurance it purchased from Liberty Mutual. [8]

[8] As more fully discussed herein, certain holders of Asbestos Claims assert that Hopeman's release of Liberty Mutual does not affect rights and interests such holders have in the Liberty Mutual policies.

Hopeman has spent much more to pay claims and fund defense costs in connection with the Asbestos Claims than the amounts reimbursed by the Insurers. For example, in 2023 alone, Hopeman spent over $12 million in combined claim payments and defense costs, while being reimbursed less than $7 million of this amount by Insurers. In other words, in 2023, Hopeman used its own cash to pay approximately 35.12% of claim payments and 57.33% of defense costs, resulting in an annual cash burn of over $5.5 million.

After years of such shortfalls, Hopeman's cash reserves had dwindled. Decl. of Christopher Lascell in Supp. of Ch. 11 Pet. & First Day Pleadings of Hopeman Bros., Inc. ¶ 37, ECF No. 8 at 13 (the "Lascell First Day Declaration"); Combined Hr'g Tr. Day 1 at 136:4-9, ECF No. 1174 at 136. If allowed to continue at its historical pace, Hopeman would have depleted its remaining cash within 12 months of the Petition Date. Lascell First Day Decl. ¶ 37, ECF No. 8 at 13. As a result, Hopeman determined that it was in its best interest, as well as in the best interest of holders of Asbestos Claims, to file this Chapter 11 case, to establish an efficient and fair process to utilize the Debtor's remaining cash and its insurance policies to address the Asbestos Claims. *Id.*; Combined Hr'g Tr. Day 1 at 20:18-21:6, ECF No. 1174 at 20-21.

Prior to filing for bankruptcy, Hopeman engaged in extensive negotiations with the Century Indemnity Company, in its capacity as the successor to CCI Insurance Company, as successor to Insurance Company of North America ("Century") and Westchester Fire Insurance Company ("Westchester" and together with Century, "Chubb") concerning the Debtor's unexhausted insurance coverage under the policies issued by Chubb. Lascell First Day Decl. ¶ 38, ECF No. 8 at 13-14. At that time, Hopeman believed that Chubb had the greatest share of defense and indemnity coverage contribution obligations owed to Hopeman pursuant to current Asbestos CIP Agreements and, as such, had the most exposure of Hopeman's remaining Insurers. *Id.* As a result of those discussions, Chubb offered to "buy-back" their policies in for $31.5 million (generally, the "Chubb Settlement"). *Id.*

B. Events Occurring in the Bankruptcy Case

On June 30, 2024 (the "Petition Date"), Hopeman filed its voluntary petition under Chapter 11 of the Bankruptcy Code, thereby commencing this bankruptcy case (the "Bankruptcy Case"). After the Petition Date, Hopeman promptly sought this Court's approval of the Chubb Insurer

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Settlement, as well as a second insurance settlement, the "Certain Settling Insurers Settlement." Mot. of the Debtor for Entry of an Order (I) Approving the Settlement Agreement & Release Between the Debtor & the Chubb Insurers; (II) Approving the Assumption of the Settlement Agreement & Release Between the Debtor & the Chubb Insurers; (III) Approving the Sale of Certain Ins. Policies; (IV) Issuing an Inj. Pursuant to the Sale of Certain Ins. Policies; & (V) Granting Related Relief, ECF No. 9 (the "Chubb Settlement Motion"); Mot. of the Debtor for Entry of an Order (I) Approving the Settlement Agreement & Release Between the Debtor & Certain Settling Insurers; (II) Approving the Sale of Certain Ins. Policies; (IV) Issuing an Inj. Pursuant to the Sale of Certain Ins. Policies; & (V) Granting Related Relief, ECF No. 53 (the "Certain Settling Insurers Settlement Motion" and, together with the Chubb Settlement Motion, the "Insurer Settlement Motions"). Collectively, the settlements contemplated by the two Insurer Settlement Motions would have generated nearly $50 million in cash through the resolution and buy-back of Hopeman's unexhausted insurance coverage. Hopeman intended to use these settlement proceeds to fund a proposed Chapter 11 plan of liquidation. *See* Plan of Liquidation of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 56 (the "Original Plan"). The Original Plan contemplated the creation of a liquidation trust, funded by the insurance settlement proceeds and other assets of the Debtors. Original Plan pp. iii-iv, ECF No. 56 at 3-4. The liquidation trust would then address the remaining Asbestos Claims. *Id.*

***5** On July 22, 2024, the Office of the United States Trustee appointed the Committee, composed of five asbestos tort claimants in their individual capacities. Appointment of Unsecured Creditors Comm., ECF No. 69. Initially, the Committee contested the Insurer Settlement Motions and the Original Plan. Following months of discovery and negotiations, Hopeman and the Committee executed a settlement term sheet, effective as of November 29, 2024 (the "November 29 Term Sheet") and filed with the Bankruptcy Court, through which, among other things, (a) Hopeman agreed to adjourn the hearing on the Chubb Insurer Settlement Motion; (b) Hopeman and the Committee agreed to participate in judicial mediation concerning the Chubb Insurer Settlement Motion; and (c) the Committee agreed not to oppose approval of the Certain Settling Insurers Settlement Motion. Agreed Order Continuing Hr'g & Deadlines Solely as to Chubb Insurers Settlement Mot. Ex. 1, ECF No. 437 at 8-14. The November 29 Term Sheet also provided that Hopeman and the Committee agreed to negotiate in good faith over the terms of a Chapter 11 plan that would propose to create a trust pursuant to section 524(g) of the Bankruptcy Code. *Id.*

On December 19, 2024, this Court entered its *Order (1) Approving the Settlement Agreement and Release Between the Debtor and the Certain Settling Insurers; (II) Approving the Sale of Certain Insurance Policies; (III) Issuing an Injunction Pursuant to the Sale of Certain Insurance Policies; and (IV) Granting Related Relief* [ECF No. 442] (the "Resolute Order"), thereby approving the Certain Settling Insurer Settlement Motion and overruling four objections to that settlement.[9] By July 10, 2025, all funds owed to the Debtor pursuant to the Resolute Order had been paid and

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the Certain Settling Insurers Settlement closed. Combined Hr'g Tr. Day 1 at 22:7-22, ECF No. 1174 at 22.

9 Subsequently, two parties—Huntington Ingalls Industries, Inc. ("HII") and claimants represented by Roussel & Clement (the "Roussel Claimants")—appealed the Resolute Order. Notice of Appeal, ECF No. 454; Notice of Appeal, ECF No. 475. Separate settlements were reached with HII and the Roussel Claimants that ultimately led to the voluntary dismissal of their respective appeals. *See* Order (Acknowledging Stipulation of Dismissal with Prejudice), *Huntington Ingalls Indus., Inc., v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00005-DJN (E.D. Va. Mar. 12, 2025), ECF No. 14; Order (Acknowledging Stipulation of Dismissal with Prejudice), *Huntington Ingalls Indus., Inc., v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00005-DJN (E.D. Va. May 15, 2025), ECF No. 19.

On December 20, 2024, the Bankruptcy Court entered its *Order Authorizing Mediation of Chubb Insurers Settlement Motion* [ECF No. 443] (the "Mediation Order"), which, among other things, (i) appointed the Honorable Kevin R. Huennekens (the "Judicial Mediator") as the mediator and (ii) directed Hopeman, the Committee, and Chubb to mediate (the "Mediation") the relief sought in the Chubb Settlement Motion. Mediation Order ¶¶ 2-3, ECF No. 443 at 1-2. The Mediation Order also authorized other parties to participate in the Mediation with either the consent of the Debtor and the Committee or with the Judicial Mediator's authorization. *Id.* ¶ 3, ECF No. 443 at 2. Hopeman and the Committee consented to a request from HII to participate in the Mediation. Combined Hr'g Tr. Day 1 at 24:1-4, ECF No. 1174 at 24. Hopeman commenced the Mediation in the hopes of reaching a resolution with the Committee and other parties that would allow the Debtor to continue to prosecute the Chubb Settlement Motion, but such a resolution was not reached. *Id.* at 138:14-139:13, ECF No. 1174 at 138-39.

While the Mediation did not resolve the Chubb Settlement Motion, Hopeman, the Committee, and HII were able to reach a settlement (the "524(g) Settlement"). *Id.* at 24:1-8, ECF No. 1174 at 24. The 524(g) Settlement was negotiated amongst the Debtor, Committee, and HII at arm's-length and the entirety of the negotiations were conducted under the supervision of the Judicial Mediator. *Id.* at 29:25-34:11, ECF No. 1174 at 29-34. On March 7, 2025, the Debtors filed a term sheet evidencing the basic terms of the 524(g) Settlement. Mot. for Expedited Status Conference Ex. B, ECF No. 609 at 15-34.

***6** The 524(g) Settlement contemplated a joint plan proposed by Hopeman and the Committee, centered around the establishment of a trust (the "Asbestos Trust") under section 524(g) of the Bankruptcy Code and the imposition of an injunction (the "Asbestos Permanent Channeling Injunction") that will channel the present and future Asbestos Claims (the "Channeled Asbestos Claims") to the Asbestos Trust. Under the 524 Settlement and the Plan, Hopeman will transfer its remaining insurance coverage and cash to the Asbestos Trust. The Asbestos Trust will assume liability for the Channeled Asbestos Claims and use the assets conveyed to the Asbestos Trust to

resolve the Channeled Asbestos Claims and to compensate eligible holders of the Asbestos Claims in a fair and efficient manner. In addition to possible recovery from the Asbestos Trust, the Plan does not impair the rights of any holder of a Channeled Asbestos Claim to seek recovery from certain Insurers in the tort system.

In accordance with the 524(g) Settlement, on April 29, 2025, the Debtor and the Committee, in their capacity as the Plan Proponents, filed the Plan and the Disclosure Statement. In connection with the Plan and the Disclosure Statement, upon request of the Plan Proponents, on May 14, 2025, the Bankruptcy Court appointed Marla Rosoff Eskin of Campbell & Levine, LLC as the legal representative (the "FCR") to protect the rights of future claimants in accordance with section 524(g)(4)(B)(i) of the Bankruptcy Code.[10] Additionally, on the Plan Proponents' motion, on May 21, 2025, this Court entered an order [ECF No. 782] (the "Solicitation Procedures Order") (a) conditionally approving the Disclosure Statement as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (b) approving various procedures for solicitation, including the materials and notices to be distributed; (c) authorizing Hopeman to solicit votes on the Plan, and (d) scheduling a hearing to consider Confirmation of the Plan and final approval of the adequacy of the Disclosure Statement. The Solicitation Procedures Order was not appealed and is a final order.

10 After the Bankruptcy Court entered the *Order Appointing Future Claimants' Representative* [ECF No. 732] (the "FCR Appointment Order"), over their objection, Chubb appealed that order to the District Court. Notice of Appeal, ECF No. 745. Chubb's appeal of the FCR Appointment Order remains pending. *Century Indem. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00378-DJN (E.D. Va.).

Verita Global ("Verita"), the Bankruptcy Court-appointed claims and noticing agent, served notice of the Combined Hearing and solicitation materials in accordance with the terms of the Solicitation Procedures Order. *See* Certificate of Serv., ECF No. 864. In addition, pursuant to the Solicitation Procedures Order, the Debtor caused the notice (the "Publication Notice") of the Combined Hearing to be published (a) in the *Richmond-Times Dispatch* and the national edition of *USA Today* on May 29, 2025, and (b) in *The Times-Picayune/The New Orleans Advocate* on May 30, 2025. *See* Aff. of Publ'n of the Notice of Combined Hr'g for Approval of Disclosure Statement & Confirmation of Plan, ECF No. 844. The Publication Notice provided the date of the Combined Hearing, the deadline to object to the Plan, and how interested parties could obtain updates regarding and copies of documents relating to the Plan, *id.*, all as required by the Solicitation Procedures Order.

Paragraph 6 of the Solicitation Procedures Order also required the Debtor to file its plan supplement no later than June 6, 2025. *See* ECF No. 782 at 3-4. In accordance therewith, on June 6, 2025, the Debtor filed its *Notice of Filing of Plan Supplement Related to Amended Plan*

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of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code [ECF No. 853] (the "Initial Plan Supplement"), which included, among other things: (i) the Asbestos Trust Agreement; (ii) the Asbestos Trust Distribution Procedures; (iii) organization documents for Reorganized Hopeman; (iv) the Restructuring Transaction; and (v) the Revised Reorganized Hopeman Projections (with corresponding redline). [11] Initial Plan Suppl. Exs. A through I-1, ECF No. 853 at 5-239.

11 On August 21, 2025, the Plan Proponents filed the *Notice of Filing of Second Amended Plan Supplement Related to Modified Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1143] (the "Amended Plan Supplement" and, together with the Initial Plan Supplement, the "Plan Supplement"), which included, inter alia the Second Revised Asbestos Trust Agreement and the Second Revised Asbestos Trust Distribution Procedures.

***7** Voting creditors then had until June 12, 2025, to accept or reject the Plan. Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4. As more fully reflected in the *Declaration of Jeffrey R. Miller with Respect to the Tabulation of Votes on the Amended Plan of Reorganization of Hopeman Brothers, Inc. Under Chapter 11 of the Bankruptcy Code* [ECF No. 1077] (the "Voting Certification"), creditors who were entitled to vote upon the Plan overwhelmingly voted in favor of the Plan. The Plan contains two voting classes: Class 3 Claimants and Class 4 Claimants. Plan §§ 4.3(c); 4.4(c), ECF No. 1185 at 24, 25. The only voting creditor in Class 3 voted in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Of the 2,416 returned ballots from holders of Class 4 Channeled Asbestos Claims, 2,409 creditors holding Claims in the amount of $2,409.00 (for voting purposes only) voted in favor of the Plan. *Id.* In other words, 99.71% in number of creditors and 99.71% in amount of claims in Class 4 Channeled Asbestos Claims voted in favor of the Plan. *Id.*

The deadline for parties-in-interest to object to either the adequacy of the Disclosure Statement and/or confirmation of the Plan was June 23, 2025. Solicitation Procs. Order ¶ 6, ECF No. 782 at 4. The only objections to the Plan were filed by certain of the Debtor's Insurers (the "Objecting Insurers"): Chubb, [12] Liberty Mutual, [13] Travelers Indemnity Company, Travelers Casualty and Surety Company, St. Paul Fire and Marine Insurance Company (Travelers Indemnity Company, Travelers Casualty and Surety Company, collectively, "Travelers"). [14] Generally speaking, the Objecting Insurers are dissatisfied with the Debtor's pivot from a liquidation trust to the 524(g) Settlement embodied in the Plan.

12 Chubb Insurers' Obj. to (1) Final Approval of Disclosure Statement & (2) Confirmation of Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 958 (the "Chubb Plan Objection").

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13 Liberty Mut. Ins. Co.'s Obj. to the Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 953 (the "Liberty Mutual Plan Objection").
While the Court concludes below that Liberty Mutual lacks standing to object to the Plan, the Court nonetheless addresses the Liberty Mutual Plan Objection herein and finds that, even if Liberty Mutual had standing, its objections to the Plan fail.

14 Objs. of the Travelers Indem. Co., Travelers Cas. & Sur. Co., & St. Paul Fire & Marine Ins. Co. to (I) Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code & (II) the Disclosure Statement with Respect to the Am. Plan of Reorg. of Hopeman Bros., Inc., ECF No. 944 (the "Travelers Plan Objection" and, collectively with the Chubb Plan Objection and the Liberty Mutual Objection, the "Plan Objections").
Hartford Accident and Indemnity Company and First State Insurance Company also objected to the Plan [ECF Nos. 942, 965] but subsequently settled and withdrew their objections

Although the 524(g) Settlement was originally publicly noticed on March 7, 2025 (after the Plan Proponents disclosed their intention to negotiate such a plan in the November 29 Term Sheet), the Objecting Insurers did not take action in the Bankruptcy Case for almost two months. Since their delayed start, the Objecting Insurers have been exceedingly active.

Chubb filed a complaint against the Debtor, seeking a declaratory judgment that the Debtor had breached the pre-Petition Date, unapproved, unassumed Chubb Insurance Settlement and either allowing Chubb an administrative expense claim or ordering specific performance. Compl., *Century Indem. Co. v. Hopeman Bros., Inc.*, Adv. Pro. No. 25-03015 (Bankr. E.D. Va. Apr. 21, 2025), ECF No. 1. The Bankruptcy Court dismissed Chubb's complaint for failure to state a claim upon which relief could be granted, *see* Fed. R. Civ. P. 12(b)(6); Fed. R. Bankr. P. 7012, ordering Chubb to instead seek such relief through the normal bankruptcy claims process. Order Granting Debtor's Mot. to Dismiss Compl., *Century Indem. Co. v. Hopeman Bros., Inc.*, Adv. Pro. No. 25-03015 (Bankr. E.D. Va. Apr. 21, 2025), ECF No. 28. The dismissal order is now a final order. Chubb has taken no further action to pursue any alleged pre-Petition Date breach of contract claim arising out of or related to the Chubb Insurance Settlement.

***8** Liberty Mutual filed a proof of claim (the "Liberty Mutual POC"), which asserted a "partially contingent and unliquidated" unsecured claim in the amount of $317,254.89 based upon alleged indemnity obligations purportedly arising under the 2003 Agreements. The Debtor objected to the Liberty Mutual POC on the grounds that Liberty Mutual had no recourse against the Debtor. Obj. of Hopeman Bros., Inc. to Claim No. 10 of Liberty Mut. Ins. Co., ECF Nos. 693, 694. The Bankruptcy Court agreed with the Debtor and, on June 23, 2025, disallowed and expunged the Liberty Mutual POC. Order Disallowing & Expunging Claim of Liberty Mut. Ins. Co., ECF No. 907 (the "Liberty Mutual Claim Objection Order"). Liberty Mutual appealed the Liberty Mutual Claim Objection Order, which appeal remains pending. *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00486-DJN (E.D. Va.). [15]

15 Liberty Mutual also filed a motion for temporary allowance of the Liberty Mutual POC, ECF No. 851, but declined to go forward on the motion at the Combined Hearing, *see* ECF No. 1162.

At the end of May 2025, Liberty Mutual filed an adversary proceeding against the Debtor, the Committee, the FCR, HII, and a number of holders of Asbestos Claims, seeking a declaratory judgment that it has no further obligation to any person on account of the Asbestos Claims, having fully satisfied and exhausted any insurance obligations that existed or ever could exist under any insurance policies issued or allegedly issued by Liberty Mutual to Hopeman by virtue of the 2003 Agreements. Sealed First Am. Compl. for Decl. J., *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Adv. Proc. No. 25-03020-KLP (Bankr. E.D. Va. Jun. 16, 2025), ECF No. 17. This Court has recommended that the District Court withdraw the reference in this matter, which remains pending

Finally, in early June 2025, Travelers filed a notice of appearance in the bankruptcy case, ECF No. 841, and immediately served discovery upon the Debtor, the FCR, and the Committee in connection with the Plan, ECF Nos. 845-848. It is unclear to the Bankruptcy Court why Travelers waited almost a year after the Petition Date and three months after disclosure of the 524(g) Settlement to appear in the Bankruptcy Case.

On August 25, 2025, and August 26, 2025, the Bankruptcy Court conducted a two-day evidentiary contested hearing (the "Combined Hearing") to determine whether to approve the Disclosure Statement on a final basis and to confirm the Plan over the objections of the Objecting Insurers. At the conclusion of the Combined Hearing, the Bankruptcy Court permitted any party-in-interest to submit additional or revised proposed findings of fact and conclusions of law. Each of the Objecting Insurers filed competing statements. [16] The Debtor filed amended proposed findings and conclusions to address the evidence admitted at the Combined Hearing. [17] The Debtor also filed the Second Modified Plan, documenting the agreed-upon modifications placed on the record at the Combined Hearing. [18]

16 Proposed Findings of Fact & Conclusions of Law Denying Confirmation of the Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 1184 at Ex. A (the "Liberty Mutual PFFCL"); Travelers' Proposed Findings of Fact & Conclusions of Law Regarding Denial of Confirmation of the Mod. Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code, ECF No. 1188; Chubb Insurers' Proposed Findings of Fact & Conclusions of Law (I) Denying the Adequacy of the Disclosure Statement; & (II) Denying Confirmation of the Debtor's Proposed Am. Plan, ECF No. 1189 at Ex. A (the "Chubb PFFCL").

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17 Am. Proposed Findings of Fact & Conclusions of Law Regarding Confirmation of the Am. Plan of Reorg. of Hopeman Bros., Inc. Under Ch. 11 of the Bankruptcy Code & Approving Adequacy of the Disclosure Statement, ECF No. 1187 at Ex. A.

18 The Court specifically finds and holds that the modifications to the Plan fully comply with all applicable provisions of the Bankruptcy Code and Rules and either do not materially or adversely affect or change the treatment of any Claim or Equity Interest in the Debtor or have been consented to by any holder of an affected Claim or Equity Interest.

II. PROPOSED CONCLUSIONS OF LAW

***9** Subject to the requirements of section 524(g), the Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Hopeman was and is qualified to be a debtor under section 109 of the Bankruptcy Code. Venue of this Bankruptcy Case in the Eastern District of Virginia is proper under 28 U.S.C. § 1408.

A. As a Preliminary Matter, Liberty Mutual Lacks Standing to Object to either the Disclosure Statement or the Plan.

Although the Bankruptcy Court will address Liberty Mutual's objections on the merits, the Court agrees with the Plan Proponents that Liberty Mutual lacks standing to object to the Disclosure Statement and the Plan. In a Chapter 11 case, "[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 and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). Under this statute, Liberty Mutual has standing to object to the Disclosure Statement and Plan only if Liberty Mutual is a creditor or if Liberty Mutual qualifies as some other "party in interest." Liberty Mutual is neither.

Liberty Mutual is not a creditor of the Debtor. The term "creditor" is defined in the Bankruptcy Code to mean an entity that has a claim against the debtor or against the estate. 11 U.S.C. § 101(10). As described herein *supra*, the Bankruptcy Court disallowed and expunged the Liberty Mutual POC. Liberty Claim Obj. Order, ECF No. 907. Although Liberty Mutual appealed the Liberty Claim Objection Order, *Liberty Mut. Ins. Co. v. Hopeman Bros., Inc.*, Case No. 3:25-cv-00486-DJN (E.D. Va.), Liberty Mutual has not sought nor obtained a stay pending appeal. Without a stay, the order is effective and, as such, Liberty Mutual has no claim against either the Debtor or the Hopeman estate.

In the recent *Truck Insurance Exchange v. Kaiser Gypsum Co., Inc.* case, the Supreme Court explained when an insurer is considered a party-in-interest for purposes of section 1109(b), giving it standing to object to an insurance-neutral plan. 602 U.S. 268 (2024). In *Truck Insurance*, the

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Supreme Court rejected the argument that an insurance-neutral plan deprives an insurer of standing under all circumstances: "Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer's prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers." *Id.* at 283, 144 S.Ct. 1414. In finding that Truck Insurance has standing, the Supreme Court focused on the fact the insurer had "financial responsibility for *bankruptcy claims*." *Id.* at 281, 144 S.Ct. 1414 (emphasis added).

The Northern District of New York recently interpreted *Truck Insurance* to require actual financial responsibility to confer standing upon an insurer. *In re Roman Cath. Diocese of Albany*, No. 23-10244, 2025 WL 2536165, 2025 Bankr. LEXIS 2185 (Bankr. N.D.N.Y. Sep. 3, 2025). In the *Albany Diocese* case, the objecting insurance companies had disclaimed liability for bankruptcy claims, much like Liberty Mutual in the case at bar. The bankruptcy court rejected the insurers' argument that they had standing to object to claims, holding

> ***10** it is difficult to understand how the Insurers create the thread that the Insurers have standing when they have nothing at stake, they have no skin in the game. Such a stance by the Insurers would seemingly be paradoxical: insurance companies could claim standing because they are likely to contribute to the bankruptcy distribution while simultaneously claiming they are under no obligation to make said contribution.

Id. at *6, 2025 Bankr. LEXIS 2185 at *18 (alterations and internal quotation marks removed). To have standing to object, the bankruptcy court required the insurers have either "an affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors." *Id.* at *6, 2025 Bankr. LEXIS 2185, at *19.

The Plan Proponents have been unequivocable. Hopeman does not have any rights or coverage in any Asbestos Insurance Policies issued by Liberty Mutual. Plan § 6.2, ECF No. 1185 at 28; Combined Hr'g Tr. Day 1 72:19-74:24, 131:19-34:14, ECF No. 1174 at 72-74, 131-34. There are no rights or obligations that Hopeman could alter or impose on Liberty Mutual by the Plan or otherwise. Similarly, the Plan does not seek to impose any financial responsibility upon Liberty Mutual for *bankruptcy* claims, as required by *Truck Insurance*. *See* 602 U.S. at 281, 144 S.Ct. 1414 (emphasis added). The Plan only clarifies that to the extent a person may have a claim against Liberty Mutual directly arising under non-bankruptcy law, that claim is unaffected by the Plan. *See, e.g.*, Plan, § 8.13(d), ECF No. 1185 at 37 ("Channeled Asbestos Claimants may, only to the extent permitted or provided under applicable nonbankruptcy law, bring such Insurance Policy Actions against a Non-Settling Asbestos Insurer ...."). The Plan neither enhances nor diminishes those

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rights, *see, e.g.*, *id.* § 6.2, ECF No. 1185 at 27 (expressly preserving "all parties' respective rights, duties, defenses, obligations and liabilities" in the Asbestos Insurance Policies and the Asbestos CIP Agreements); nor does the Plan impair or otherwise alter any defenses Liberty Mutual may have to such claimants' claims, *id.* § 8.18, ECF No. 1185 at 40 (preserving each Non-Settling Asbestos Insurers' "claims, defenses, rights, or causes of action that it has or may have under or in connection with any of its Asbestos Insurance Policies or any of its Asbestos CIP Agreements").

The Bankruptcy Court also finds that identifying Liberty Mutual as a named "Non-Settling Asbestos Insurer" does not render them a party-in-interest with standing to object to the Plan. As more fully discussed *infra*, the actions that Liberty Mutual has initiated or otherwise taken in this Bankruptcy Case have created confusion or a misunderstanding of the effect that this Bankruptcy Case may have on non-bankruptcy claims asserted against Liberty Mutual by third-parties. The inclusion of Liberty Mutual as a Non-Settling Asbestos Insurer is necessary to make clear that this Bankruptcy Case does impact any rights claimants may have against Liberty Mutual directly under applicable non-bankruptcy law. Similarly, Liberty Mutual's rights, claims, and defenses it may assert in these direct action claims are all unimpacted by the Plan. While such language may seem superfluous, the Bankruptcy Court views it is as an appropriate clarification given the positions that Liberty Mutual has taken (and the Bankruptcy Court has rejected) during the pendency of this Bankruptcy Case.

***11** In the absence of any financial responsibility for bankruptcy claims – either through affirmative commitment to provide plan funding or official recognition of a legal obligation to creditors, Liberty Mutual is not a party-in-interest under *Truck Insurance* and does not have standing to object to the Plan and Disclosure Statement. *See In re Roman Cath. Diocese of Albany*, 2025 WL 2536165, at *6, 2025 Bankr. LEXIS 2185, at *18-19. Liberty Mutual is neither a creditor of the Debtor that has any rights or claims against the Debtor nor an insurer against which the Debtor asserts rights or claims. Nothing in the Plan alters Liberty Mutual's liability or the rights of the holders of Channeled Asbestos Claimants against Liberty Mutual, or vice versa. Accordingly, Liberty Mutual lacks standing to object to the Disclosure Statement and Plan.

B. The Bankruptcy Court Approves the Disclosure Statement on a Final Basis. [19]

19 The District Court must consider whether to confirm a plan proposed under section 524(g) of the Bankruptcy Code. There is no similar requirement for the approval of a disclosure statement related to a 524(g) plan. However, to the extent that this Bankruptcy Court must issue proposed findings of fact and conclusions of law in connection with final approval of the Disclosure Statement, for the reasons stated herein, the Bankruptcy Court recommends the District Court approve the Disclosure Statement on a final basis.

The primary purpose of a disclosure statement is to provide sufficient information for creditors and interest holders to make an informed decision regarding whether to vote for the plan. *See, e.g.*,

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Nelson v. Dalkon Shield Claimants Trust (*In re A.H. Robins Co., Inc.*), 216 B.R. 175, 180 (E.D. Va. 1997), *aff'd* 163 F.3d 598 (4th Cir. 1998); *In re Mohammad*, 596 B.R. 34, 39 (Bankr. E.D. Va. 2019), *subsequently aff'd sub nom. Mohammad v. Fitzgerald*, 790 Fed. App'x. 534 (4th Cir. 2020). To that end, section 1125 of the Bankruptcy Code requires a disclosure statement to contain "adequate information." 11 U.S.C. § 1125(b). "Adequate information" as used in the section 1125 means

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records ... that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan ....

11 U.S.C. § 1125(a)(1). A disclosure statement does not need to include "information about any other possible or proposed plan." *Id.* When evaluating whether a disclosure statement contains adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." *Id.* When making this determination, which is made on a case-by-case basis, courts typically look for disclosures related to a variety of topics. Such topics may include, among others:

> (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectibility of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

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***12** *In re Metrocraft Publ'g Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984). In addition to the foregoing, Bankruptcy Rule 3016 requires that when a plan "provides for an injunction against conduct not otherwise enjoined by the Code, the plan and disclosure statement must: (1) describe in specific and conspicuous language (bold, italic, or underlined text) all acts to be enjoined; and (2) identify the entities that would be subject to the injunction." Fed. R. Bankr. P. 3016(c).

Here, the Disclosure Statement contains information concerning: (i) the nature and history of Hopeman's business and liabilities; (ii) events leading up to this Bankruptcy Case; (iii) the terms of the Plan, including the treatment of holders of claims and equity interests under the Plan; (iv) the terms of the Asbestos Trust; (v) financial information and projections for the Reorganized Hopeman; (vi) an overview of the requirements for confirmation of the Plan; (vii) effect of confirmation of the Plan, including the channeling of the Asbestos Claims to the Asbestos Trust; (viii) a discussion of risk factors affecting the implementation of the Plan; (ix) certain federal income tax consequences of the Plan; and (x) solicitation of holders of General Unsecured Claims and Asbestos Claims. The Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code because it contains information that is reasonably practicable to permit a hypothetical creditor to make an informed judgment about the Plan. The Disclosure Statement further provides sufficient notice of the injunction, exculpation, and release provisions in the Plan, including the Asbestos Permanent Channeling Injunction as required by Bankruptcy Rule 3016(c). Article VIII of the Disclosure Statement describes the entities and the acts subject to the injunction under the Plan in specific and conspicuous language, making it clear to anyone who reads it.

As a co-Plan Proponent, the Committee had the opportunity to review and comment upon the Disclosure Statement prior to its filing. The FCR also had the opportunity to review and comment on the Disclosure Statement prior to its preliminary approval and the solicitation of the Plan. Neither the representative of current holders of Asbestos Claims nor the representative of future holders of Asbestos Claims had any objection to the Disclosure Statement.

Chubb objected to final approval of the Disclosure Statement, alleging it does not provide adequate information about the Litigation Trustee's compensation. First, Chubb questioned the timing and means by which the Litigation Trustee's Compensation was disclosed. Chubb faults the Plan Proponents for disclosing the compensation structure in the Amended Trust Agreement filed with the Bankruptcy Court after the Solicitation Packages were transmitted. Chubb Plan Obj. ¶ 104, ECF No. 958 at 57. However, this was exactly the timing and method of disclosure contemplated by the Solicitation Procedures Order. *See* Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4 (approving the "dates and deadlines ... with respect to the Disclosure Statement, solicitation of votes to accept the Plan, voting on the Plan, and confirming the Plan," including a June 6, 2025, deadline to file the Plan Supplement); Initial Plan Suppl. Ex. A, ECF No. 853 at 5-55 (containing Amended Trust Agreement and filed on June 6, 2025). No party-in-interest – including Chubb – objected to or

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appealed the Solicitation Procedures Order, including on the grounds that solicitation should be delayed pending full disclosure of the Litigation Trustee's compensation.

***13** Moreover, the Solicitation Procedures Order established a June 6, 2025, disclosure deadline based on a contemplated confirmation hearing on June 23. Solicitation Procs. Order ¶ 6, ECF No. 782 at 3-4. The Combined Hearing was continued and subsequently held on August 25, allowing parties-in-interest two more months to consider those disclosures. *See* Notice of Adjournment of Combined Hr'g, ECF No. 972. No beneficiary of the proposed Asbestos Trust objected to the Plan because of any delayed notice of the Litigation Trustee's compensation either before or after voting in favor of the plan.

In addition to unfounded timing concerns, Chubb complains that the Disclosure Statement fails to disclose that the fees of the Litigation Trustee will significantly diminish the returns to be recovered by holders of Insured Asbestos Claims. *See* Chubb Plan Obj. ¶ 102, ECF No.958 at 56. The Bankruptcy Court agrees with the Debtor that this is a misreading of the Plan's provisions and that there is no failure of disclosure on this point. The Disclosure Statement provides that the Litigation Trustee will only be entitled to compensation in actions involving the Asbestos Trust, *see* Am. Plan Suppl. Ex. A § 4.5(b), ECF No. 1143 at 28 (the "Asbestos Trust Agreement") ("The Litigation Trustee shall be entitled to 33.3% of all funds recovered in litigation in favor of the Asbestos Trust as the Litigation Trustee's compensation"), with such compensation to be paid as an expense of the Asbestos Trust. Plan § 8.3(n), ECF No. 1185 at 33. The Litigation Trustee would not be entitled to compensation in other circumstances, such as when a Channeled Asbestos Claimant obtains a judgment on their tort claim through the court system, Disclosure Statement § 8.12(a), ECF No. 690 at 95 (expressly permitting a Channeled Asbestos Claimant to "initiate, commence, continue or prosecute an action against Reorganized Hopeman ... and ... any Non-Settling Asbestos Insurer for Wayne, in a court of competent jurisdiction to obtain the benefit of Asbestos Insurance Coverage"), and then seeks to recover such amounts from the applicable Non-Settling Asbestos Insurers, *id.* § 8.13(c), ECF No. 690 at 96. A plain reading of those provisions shows that, for such recoveries, there will be no compensation payable to the Litigation Trustee because the Litigation Trustee will not be involved in such an action.

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

Finally, although Chubb appears to concede that the Debtor complied with the Solicitation Procedures Order, Chubb urges this Court to find such compliance insufficient because "[t]he

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Plan Supplement was not provided to all of the creditors that received Solicitation Packages; rather, it was served only on the Rule 2002 service list." Chubb Plan Obj. ¶ 104, ECF No. 958 at 57. The Bankruptcy Court finds this contention to be without merit.[20] The Debtor performed in accordance with the Solicitation Procedures Order, which is a final, unappealable order. Moreover, the Bankruptcy Court finds that the Debtor provided actual notice of the forthcoming plan supplement and the mechanism by which any party-in-interest could obtain a copy. Certificate of Serv., ECF No. 864; Solicitation Procs. Order ¶ 20, ECF No. 782 at 8. The Debtor served the Solicitation Packages, Certificate of Serv. ¶¶ 7-9, ECF No. 864 at 2-3, which included a copy of the Solicitation Procedures Order disclosing that the Debtor would file a Plan Supplement and the deadline for such filing, *id.* ¶ 4(b), ECF No. 864 at 2; Solicitation Procs. Order Ex. 4, ECF No. 782 at 8. Furthermore, that notice apprised parties-in-interest, including holders of Claims in the Voting Classes, that they could—and how to—obtain copies of filings in this Chapter 11 Case free of charge on Verita's website. Solicitation Procs. Order Ex. 4, ECF No. 782 at 77. That notice was more than sufficient in these circumstances.

20 The Bankruptcy Court agrees with the Debtor that *Braun v. Am.-CV Station Grp., Inc.* (*In re Am.-CV Station Grp., Inc.*), 56 F.4th 1302 (11th Cir. 2023) is inapplicable. This is not the instance of an undisclosed last-minute modification that contradicted prior express representations. *See id.* at 1305, 1313. While the exact amount of the Litigation Trustee Compensation may have been unknown, the Disclosure Statement was clear – the Litigation Trustee would be paid a certain fee in certain circumstances and the details surrounding such a fee would be provided in the Plan Supplement.

***14** Accordingly, Chubb's objections to the Disclosure Statement are without merit. The Disclosure Statement contains adequate information for the parties entitled to vote on the Plan to make an informed decision. Service of the Disclosure Statement was accomplished in accordance with this Solicitation Procedures Order. Under the facts and circumstances of this case, the Bankruptcy Court finds that the Disclosure Statement contains adequate information as required by section 1125 of the Bankruptcy Code and as such, is approved on a final basis. Alternatively, the Bankruptcy Court recommends that the District Court approve the Disclosure Statement on a final basis.

C. The Bankruptcy Court Recommends Finding the Plan Complied with the Requirements of Section 1129 of the Bankruptcy Code

To confirm the Plan, the Court must find that the Plan complies with each of the requirements of section 1129(a) of the Bankruptcy Code. The Bankruptcy Court recommends the following proposed findings and conclusions of law in support of confirmation of the Plan as modified herein.

1. Section 1129(a)(1): The Plan complies with applicable provisions of the Bankruptcy Code.

Section 1129(a)(1) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[t]he plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 270-73 (Bankr. S.D. Ohio 1996) (examining each requirement of Chapter 11 to demonstrate that section 1129(a)(1) was satisfied); *In re Toy & Sports Warehouse, Inc.*, 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984) ("[I]n order for a plan of reorganization to pass muster ... it must comply with all the requirements of Chapter 11."). The primary focus of this requirement is to ensure that the Plan complies with sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan, respectively. *See* S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5913; H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5962, 6368; *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988) (holding that legislative history indicates that section 1129(a)(1) was intended to require compliance with sections 1122 and 1123).

The Bankruptcy Court recommends finding that the Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(l) of the Bankruptcy Code, including sections 1122 and 1123.

a. Sections 1122 and 1123(a)(1)-(4): Classification and Treatment of Claims and Interests.

This Court finds that the Plan meets the classification requirements of sections 1122(a) and 1123(a)(1)-(4) of the Bankruptcy Code. Section 1122 of the Bankruptcy Code provides that the claims or interests within a given class must be "substantially similar" to the other claims or interests in that class:

> (a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.
>
> (b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122. Although section 1122(a) of the Bankruptcy Code prohibits the inclusion of dissimilar claims in the same class, it does not require the placement of all similar claims in

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one class. *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1061 (3d Cir. 1987) ("[W]e agree with the general view which permits the grouping of similar claims in different classes." (first citing *Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc.* (*In re U.S. Truck Co., Inc.*), 800 F.2d 581, 587 (6th Cir. 1986); then citing *Brinkley v. Chase Manhattan Mortg. & Realty Tr.* (*In re LeBlanc*), 622 F.2d 872, 879 (5th Cir. 1980); then citing *Barnes v. Whelan* (*In re Barnes*), 689 F.2d 193, 200 (D.C. Cir. 1982))); *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together." (citing *In re AG Consultants Grain Div., Inc.*, 77 B.R. 665, 674 (Bankr. N.D. Ind. 1987))).

***15** "[T]he focus of the classification is the legal character of the claim as it relates to the assets of the debtor ... not the nature of other claims or interests a creditor might have." *In re AOV Indus., Inc.*, 792 F.2d 1140, 1150-51 (D.C. Cir. 1986) (first citing *J. P. Morgan & Co. v. Mo. Pac. R.R. Co.*, 85 F.2d 351, 352 (8th Cir. 1936); then quoting *In re Martin's Point Ltd. P'ship*, 12 B.R. 721, 727 (Bankr. N.D. Ga. 1981)). The existence of alternative payment sources "does not change the nature of a claim vis-a-vis the bankrupt estate and, therefore, is irrelevant to a determination of whether claims are 'substantially similar' for classification purposes." *Id.* (citation omitted).

Article III of the Plan classifies Claims and Interests into five separate Classes: Priority Non-Tax Claims (Class 1), Secured Claims (Class 2), General Unsecured Claims (Class 3), Channeled Asbestos Claims (Class 4), and Equity Interests (Class 5). The number of Classes reflects the diverse characteristics of those Claims and Interests, and the legal rights under the Bankruptcy Code of each of the holders of Claims or Interests within a particular Class are substantially similar to other holders of Claims or Interests within that Class. Due to their entitlement to priority status under section 507 of the Bankruptcy Code, Priority Non-Tax Claims have been separately classified in Class 1. Secured Claims have been separately classified in Class 2 based on their secured status. Channeled Asbestos Claims have been separately classified in Class 4 due to the distinctive bases for such Claims and because such claims will receive unique treatment permitted by section 524(g) of the Bankruptcy Code. Class 3 General Unsecured Claims, while also Impaired, are separately classified given the distinctive differences in the underlying bases for such Claims, as contrasted with Class 4 Channeled Asbestos Claims. Class 3 General Unsecured Claims also are separately classified from Class 4 Channeled Asbestos Claims because they are not subject to the provisions authorized by section 524(g) of the Bankruptcy Code, which applies to the Class 4 Channeled Asbestos Claims. Finally, the Interests in the Debtor have been separately classified, as Class 5 Equity Interests, to reflect their status as Interests.

The inclusion of both Insured Asbestos Claims and Uninsured Asbestos Claims in Class 4 Channeled Asbestos Claims is not improper. Both Insured Asbestos Claims and Uninsured Asbestos Claim have rights against the Debtor's estate arising out of Asbestos Claims and, as such,

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share similar legal character vis a vis the Debtor. *See In re AOV Indus., Inc.*, 792 F.2d at 1150-51 (citations omitted). The existence of recourse against the Insurers – or any other recovery source – is immaterial for purposes of classification under the Plan. *See id.*

This Court also finds that the Plan complies with sections 1123(a)(1)-(4) of the Bankruptcy Code. In accordance with section 1123(a)(l) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified. Article III of the Plan identifies and describes each Class of Claims or Interests that is not impaired under the Plan, as required by section 1123(a)(2). Article III of the Plan indicates that Classes 1 and 2 are unimpaired.

In accordance with section 1123(a)(3), Article III of the Plan specifies the treatment of each Class of Claims or Interests that is impaired under the Plan. Sections 4.3 and 4.4 of the Plan state that Class 3 (General Unsecured Claims) and Class 4 (Channeled Asbestos Claims) are impaired and provide for the treatment of those classes.

***16** Section 1123(a)(4) provides that a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). No holder of an Asbestos Claim objected to the classification of claims under the Plan. Nevertheless, Chubb and Travelers both argue that the Plan violates section 1123(a)(4) because it fails to provide the same treatment to all holders of Class 4 Channeled Asbestos Claims. Specifically, Chubb contends that not all Channeled Asbestos Claims are subject to the same process because Uninsured Asbestos Claims are paid directly by the Asbestos Trust while Insured Asbestos Claims are resolved in the tort system. Chubb Plan Obj. ¶ 90(a), ECF No. 958 at 49. Furthermore, with respect to Insured Asbestos Claims, Chubb complains of disparate treatment as holders of Insured Asbestos Claims with direct-action rights may sue and recover from Non-Settling Asbestos Insurers directly while those without such rights must engage in a two-step litigation process. *Id.* The Bankruptcy Court recommends that these objections be overruled because they are without merit.

" '[N]either the Code nor the legislative history precisely defines the standards of equal treatment,' " but "courts have interpreted the 'same treatment' requirement to mean that all claimants in a class must have 'the same opportunity' for recovery." *In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) (first quoting *In re AOV Indus., Inc.*, 792 F.2d at 1152; then quoting *Ad Hoc Comm. of Pers. Inj. Asbestos Claimants v. Dana Corp.* (*In re Dana Corp.*), 412 B.R. 53, 62 (S.D.N.Y. 2008)). Indeed, "[s]ection 1123(a)(4) does not require precise equality, only approximate equality." *In re Quigley Co., Inc.*, 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007) (first citing *In re Dow Corning Corp.*, 255 B.R. 445, 497 (E.D. Mich. 2000), *aff'd in part and remanded in part*, 280 F.3d 648 (6th Cir. 2002); then citing *In re Resorts Int'l, Inc.*, 145 B.R. 412, 447 (Bankr. D.N.J. 1990)) ([Section 1123(a)(4)] "is not to be interpreted as requiring precise equality of treatment, but rather, some approximate measure since there is no statutory obligation upon plan proponents to quantify

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exactly what each class member is relinquishing by a release."); *see also In re LATAM Airlines Grp. S.A.*, No. 20-11254-JLG, 2022 WL 2206829, at *35, 2022 Bankr. LEXIS 1725, at *107-08 (Bankr. S.D.N.Y. June 18, 2022) ("[B]y its terms, [section 1123(a)(4)] does not mandate that members of the same class receive the same treatment on account of their claims." (citing *In re Quigley*, 377 B.R. at 116)); *In re Mesa Air Grp., Inc.,* No. 10-10018 MG, 2011 WL 320466, at *7, 2011 Bankr. LEXIS 3855, at *19 (Bankr. S.D.N.Y. Jan. 20, 2011) ("Without question, the 'same treatment' standard of section 1123(a)(4) does not require that all claimants within a class receive the same amount of money." (quoting *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992))). Ultimately, "[w]hat matters, then, is not that claimants recover the same amount but that they have equal opportunity to recover on their claims." *In re W.R. Grace & Co.*, 729 F.3d at 327. And the Bankruptcy Court has discretion in determining whether this standard is met. *In re Multiut Corp.*, 449 B.R. 323, 335 (Bankr. N.D. Ill. 2011) ("[B]ankruptcy courts have some discretion in deciding whether class members are receiving the same treatment.").

"Certain procedural differences, such as a 'delay in receipt of distributions' for some claims, 'do[ ] not alone constitute unequal treatment.' " *In re W.R. Grace & Co.*, 729 F.3d at 327 (brackets in original) (quoting *Enron Corp. v. The New Power Co.* (*In re New Power Co.*), 438 F.3d 1113, 1122-23 (11th Cir. 2006)). "In fact, § 524(g) 'clearly envisions that asbestos claims will be paid periodically as they accrue and as they are allowed,' since it requires courts to ensure that there will be sufficient funds available for both future demands and present claims to receive similar treatment." *Id.* (quoting *In re W. Asbestos Co.*, 313 B.R. 832, 842-43 (Bankr. N.D. Cal. 2003)). Accordingly, "differences in the timing of distributions and other procedural variations that have a legitimate basis do not generally violate § 1123(a)(4) unless they produce a substantive difference in a claimant's opportunity to recover." *Id.* at 327, 330 ("[T]he District Court rightly determined that the Joint Plan satisfies the equal treatment provisions of § 1123(a)(4) and § 524(g). Although there may, at the margins, be some differences in recovery for direct and indirect claims, those differences do not amount to disparate treatment of creditors."); *see also In re Dow Corning*, 255 B.R. at 497-98 (affirming bankruptcy court's finding that § 1123(a)(4) was satisfied when each tort claimant's primary treatment was to enter a litigation facility notwithstanding claimants' subsequent choice of litigating his or her disputed and unliquidated claims or settling, that is, agreeing to less favorable treatment).

***17** First, the Bankruptcy Court agrees with the Debtor that the Plan itself – which is the relevant inquiry for purposes of section 1123(a)(4) – does not provide a different process for the holders of Insured Asbestos Claims to liquidate and recover their claims. Rather, the Plan leaves undisturbed any state law rights that the holders of Channeled Asbestos Claims may have outside of this Bankruptcy Case. Each holder of a Channeled Asbestos Claim may resort to the tort system to pursue their claim to the extent they have that right under applicable non-bankruptcy law. To the extent any Channeled Asbestos Claimants find that they hold an Uninsured Asbestos Claim, they can pursue a claim against the Asbestos Trust in accordance with the Asbestos Trust Distribution

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Procedures. *See* Am. Plan Suppl. Ex. B, ECF No. 1143 at 107-41 (the "Asbestos Trust Distribution Procedures"). All holders of Channeled Asbestos Claims have those same avenues of recovery under the Plan. The possibility of different recoveries for class members is a result of non-bankruptcy law, not the Plan.

Second, although the Bankruptcy Court failed to receive any evidence regarding the delay a dual system may cause, the Bankruptcy Court agrees with the Debtor that any potential delay in recovery does not violate section 1123(a)(4). Any delay in recovery, if such a delay exists, would not affect Channeled Asbestos Claimants' substantive rights, and "[i]t would be wholly unreasonable to require asbestos victims ... to continue to wait indefinitely" until all Channeled Asbestos Claims are liquidated and at the distribution stage. *In re W.R. Grace & Co.*, 729 F.3d at 328-29. Indeed, there undoubtedly is a "rational basis" for placing all unliquidated personal injury claims in the same class, notwithstanding the fact that certain claimants have a procedural right to sue the debtor's insurers directly. That procedural right does not change the character of the claims. *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504, 634 (Bankr. D. Del. 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023), *aff'd in part, rev'd in part, dismissed in part sub nom. In re Boy Scouts of Am.*, 137 F.4th 126 (3d Cir. 2025); *see also In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. at 161-63*, aff'd in part, rev'd in part on other grounds, dismissed in part on other grounds sub nom. In re Boy Scouts of Am.*, 137 F.4th 126 (3d Cir. 2025) ("[T]he Bankruptcy Court correctly concluded that Lujan Claimants' direct action rights do not warrant separate classification because those rights are procedural in nature and do not give the Lujan Claimants extra substantive rights [over claimants who cannot sue the insurers directly].").

Finally, this structure of holders of Insured Asbestos Claims seeking payment for their claims from Non-Settling Asbestos Insurers while holders of Uninsured Asbestos Claims proceed against the Asbestos Trust mirrors the structure included in the *Kaiser Gypsum* 524(g) plan that was recently affirmed by the Fourth Circuit. *Hanson Permanente Cement, Inc. v. Kaiser Gypsum Co.* (*In re Kaiser Gypsum Co.*), 135 F.4th 185, 190-91 (4th Cir. 2025). The *Kaiser Gypsum* plan similarly provided that

> holders of insured asbestos personal injury claims—i.e., claims that fall within the scope of the Truck policy—would continue to assert actions against the reorganized Debtors, in name only, in the tort system.... Holders of uninsured asbestos personal injury claims—i.e., claims that fall outside the scope of the Truck policy—would submit their claims directly to the Trust for resolution through an administrative process.

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Id. Although the *Kaiser Gypsum* plan contemplated dual tracks for holders of asbestos claims, the plan also placed holders of insured and uninsured asbestos personal injury claims in the same class for voting and treatment purposes. *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW), 2021 WL 3215102, at *10, 2021 U.S. Dist. LEXIS 146354, at *28-30 (W.D.N.C. July 27, 2021) (subsequent history omitted). The district court found that this plan structure satisfied section 1123(a)(4). *Id.*

***18** Chubb urges this Court to follow *In re City Homes III LLC*, 564 B.R. 827 (Bankr. D. Md. 2017). That case is easily distinguishable as a non-asbestos liquidation case. Even if the decision were applicable, it would not mandate denial of confirmation. The original unconfirmed plan in *City Homes* permitted insured lead paint claimants to bring suit in the tort system, for a potentially full recovery, while uninsured claimants were limited to their pro rata share of a finite $300,000 trust. *Id.* at 861-62, 868. The bankruptcy court confirmed a subsequent plan that continued to place insured claims and uninsured claims in the same class, but increased trust funding. *See* Order Confirming Third Am. Ch. 11 Plan Jointly Proposed by the Debtors & the Official Comm. of Unsecured Creditors, *In re City Homes III LLC*, Case No. 13-25370-RAG (Bankr. D. Md. Apr. 13, 2017), ECF No. 849. Because satisfying section 1123(a)(4) is mandatory to confirm any Chapter 11 plan, the *City Homes* court implicitly found that classifying insured and uninsured claims together was appropriate. Taken to its' logical conclusion, the *City Homes* decision supports a finding that the Plan complies with section 1123(a)(4).

For the reasons discussed *supra* in connection with final approval of the Disclosure Statement, this Bankruptcy Court also rejects Chubb's contention that the Litigation Trustee's Compensation will somehow result in disparate treatment for Channeled Asbestos Claims. Holders of Insured Asbestos Claims generally may pursue their own claims in the tort system against Reorganized Hopeman and, if they have direct-action rights under applicable non-bankruptcy law, against Non-Settling Insurers. Those claimants will compensate their own lawyers based on their engagement agreements. The Litigation Trustee will not be imposing a fee for that work, which the Litigation Trustee is not undertaking. In the event the Litigation Trustee institutes litigation and recovers monies for the Asbestos Trust from a Non-Settling Asbestos Insurer or reaches an Asbestos Insurance Settlement with the Court's approval under section 524(g), then the Litigation Trustee's Compensation may be payable out of those recoveries for his work on those matters. The fact that the Litigation Trustee is to be paid for his work on behalf of the Asbestos Trust does not make Class 4 members' treatment disparate. All class members whose compensable claims become Uninsured Asbestos Claims will have the same avenues for recovery by being payable by the Asbestos Trust, in accordance with the Trust Distribution Procedures, out of funds available to the Trust. Any inequality in the value of Channeled Asbestos Claims is not dictated by any differing treatment provided to the holders of Class 4 Channeled Asbestos Claims under the Plan but merely by applicable non-bankruptcy law.

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Travelers, for its part, argues that the Plan violates section 1123(a)(4) because "Uninsured Asbestos Claims are limited to only compensatory damages and cannot recover punitive or exemplary damages ... [but] there is no similar limitation on Insured Asbestos Claims." Travelers Plan Obj. ¶ 104, ECF No. 949 at 61. This objection fails for three reasons.

First, section 1123(a)(4)'s requirements need not be satisfied where "the holder of a particular claim or interest agrees to less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Here, no holder of a Channeled Asbestos Claim has objected to the Plan. The only holders of Channeled Asbestos Claims that did not vote to accept the Plan – the Roussel Claimants – are not believed to hold Uninsured Asbestos Claims. As a result, section 1123(a)(4)'s requirements are satisfied.

Second, section 7.2 of the Asbestos Trust Distribution Procedures, which provides that "[p]unitive or exemplary damages ... shall not be considered or paid by the Asbestos Trust on any Uninsured Claim," Asbestos Tr. Distrib. Procs. § 7.2, ECF No. 1143 at 139, is substantively identical to the analogous provision in the *Kaiser Gypsum* trust distribution procedures. Third Am. Joint Plan of Reorg. of Kaiser Gypsum Co., Inc. & Hanson Permanente Cement, Inc. Ex. I.A.19 at § 7.2, *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481 at 181 ("Punitive or exemplary damages, *i.e.*, damages other than compensatory damages, shall not be considered or paid by the Asbestos Trust on any Asbestos Claim, notwithstanding their availability, or award, in the tort system."). Thus, this provision is acceptable to the Fourth Circuit.

***19** Third, it is entirely consistent with the purpose of asbestos trusts that Uninsured Asbestos Claims satisfied through the Asbestos Trust Distribution Procedures would be limited to compensatory damages. The function of these trusts is to compensate injured individuals, not to punish alleged bad actors. Setting aside the procedural impossibilities of providing for the award of punitive or exemplary damages through the Asbestos Trust Distribution Procedures, such awards would jeopardize the Asbestos Trust's goal of protecting the interests of future claimants by disproportionately diminishing the corpus of the trust to the detriment of all Channeled Asbestos Claimants.

Much like *Kaiser Gypsum*, the Plan treats insured and uninsured claims alike. Channeled Asbestos Claimants can pursue whatever claims they may have in the tort system to the extent available to them under applicable non-bankruptcy law, *see* Third Am. Joint Plan of Reorg. of Kaiser Gypsum Co., Inc. & Hanson Permanente Cement, Inc. § 4.O, *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW (Bankr. W.D.N.C. Sept. 24, 2020), ECF No. 2481 at 47, but if a claim is presented to the Asbestos Trust because the holder of that claim is determined to hold an Uninsured Asbestos Claim, the Asbestos Trust will only allow for payment of compensatory damages, not any punitive damages, *see id.* Ex. I.A.19 at § 7.2, ECF No. 2481 at 181. The Plan is designed to treat all Channeled Asbestos Claims similarly without disturbing any non-bankruptcy rights such holders

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may have to seek additional sources of recovery. For these reasons, the Bankruptcy Court finds Chubb's and Travelers' objections are without merit. Therefore, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

b. Section 1123(a)(5): Adequate Means for the Plan's Implementation.

Article VIII and various other provisions of the Plan provide adequate means for the Plan's implementation in accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code. Subsection (a)(5) provides a non-exhaustive list of transactions that may constitute adequate means for implementation of a plan. *In re Fed.-Mogul Glob.*, 684 F.3d 355, 368 (3d Cir. 2012) (quoting *Collier on Bankruptcy* ¶ 1123.01[5] (Richard Levin & Henry J. Sommer eds.,16th ed.)).

One means of plan implementation is the "transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan." 11 U.S.C. § 1123(a)(5)(B). The Plan provides for the vesting of all property, subject to the Asbestos Trust Contribution, of the Debtor's Estate and any property acquired by the Debtor or Reorganized Hopeman under the Plan in Reorganized Hopeman, Plan § 9.2, ECF No. 1185 at 42, including the transfer of and preservation of rights of action by the Reorganized Hopeman, *id.* § 9.3, ECF No. 1185 at 43. The Plan also provides for the creation and transfer of certain assets to and the vesting of assets in the Asbestos Trust. *Id.* §§ 8.2(a), 8.3, ECF No. 1185 at 29-34.

Another means of plan implementation is "the distribution of all or any part of the property of the estate among those having an interest in such property of the estate." 11 U.S.C. § 1123(a)(5)(D). Article V of the Plan explains what distributions will be made, to whom such distributions will be made, and the methods for delivering such distributions. Section 8.5 of the Plan contemplates how those distributions will be funded. *Id.* § 8.5, ECF No. 1185 at 34.

Section 1123(a)(5) is not exclusive, and other actions may constitute adequate means for plan implementation. In this case, the Plan also provides for (a) the Debtor's continued corporate existence by consummation of the Restructuring Transactions, *id.* § 8.10, ECF No. 1185 at 35; (b) the adoption of Reorganized Hopeman's corporate governance documents, *id.* §§ 8.2(b)(i), 8.4, ECF No. 1185 at 30, 34, and the identification of the initial directors and officers of Reorganized Hopeman, *id.* §§ 8.2(b)(ii), 8.7, ECF No. 1185 at 30, 34; (c) the appointment of the Asbestos Trustees, the Delaware Trustee, the FCR, and the Trust Advisory Committee (the "TAC"), *id.* §§ 8.3(d)-(g), ECF No. 1185 at 31-32; (d) the authorization to execute various documents and to implement various transactions to effectuate the Plan, *id.* § 8.9, ECF No. 1185 at 35; (e) the exemption from certain transfer taxes, *id.* § 13.7, ECF No. 1185 at 60; (f) the various discharges, releases, injunctions, and exculpations set forth in Article X of the Plan; and (g) the treatment of all executory contracts and unexpired leases to which the Debtor is a party as detailed in Article

VI of the Plan. When considering the foregoing, the Plan fully complies with the requirements of section 1123(a)(5).

c. Section 1123(a)(6): Prohibition Against the Issuance of Nonvoting Equity Securities and Adequate Provisions for Voting Power of Classes of Securities.

***20** Section 1123(a)(6) of the Bankruptcy Code requires that a debtor's corporate documents prohibit the issuance of nonvoting equity securities. Section 8.4 of the Plan provides that the Amended Certificate of Incorporation and Amended By-Laws will prohibit the issuance of nonvoting equity securities to the extent required under section 1123(a)(6). As such, section 1123(a)(6) is satisfied.

d. Section 1123(a)(7): Selection of Directors and Officers in a Manner Consistent with the Interests of Creditors and Equity Security Holders and Public Policy.

The Plan complies with section 1123(a)(7) and ensures that the selection of the officers and directors of Reorganized Hopeman is consistent with the interests of creditors and equity security holders and with public policy. In analyzing a plan's provisions with respect to the selection of officers and directors, a court is to consider "the shareholders' interest in participating in the corporation, the desire to preserve the debtor's reorganization, and the overall fairness of the provisions." *Acequia, Inc. v. Clinton* (*In re Acequia, Inc.*), 787 F.2d 1352, 1362 (9th Cir. 1986). This provision is supplemented by section 1129(a)(5) of the Bankruptcy Code, as more fully discussed *infra*, which directs courts to scrutinize the methods by which the reorganized corporation's management is to be chosen in order to provide adequate representation of those whose investments are involved in the reorganization—i.e., creditors and equity holders. *See Collier on Bankruptcy* ¶ 1123.01[7] (Richard Levin & Henry J. Sommer eds.,16th ed.); *see also In re Acequia*, 787 F.2d at 1361-62.

e. Section 1123(b): Discretionary Provisions.

Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization but are not required. For example, a plan may impair or leave unimpaired any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases. 11 U.S.C. § 1123(b)(l)-(2). A plan also may provide for: (a) "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate;" or (b) "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate

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appointed for such purpose, of any such claim or interest." *Id.* § 1123(b)(3)(A)-(B). Finally, a plan may "modify the rights of holders of ... unsecured claims, or leave unaffected the rights of holders of any class of claims" and may "include any other appropriate provision not inconsistent with the applicable provisions of [title 11]." *Id.* § 1123(b)(5)-(6).

As described above, the Plan provides for the impairment of Classes 3, 4, and 5, while leaving all other Classes of Claims and Interests unimpaired. The Plan thus modifies the rights of the holders of certain Claims and leaves the rights of others unaffected. Plan art. III, ECF No. 1185 at 23-24. In particular, Channeled Asbestos Claims will be channeled to the Asbestos Trust for resolution as set forth in Article VIII of the Plan, the Asbestos Trust Agreement and the related Asbestos Trust Distribution Procedures. *Id.* § 8.3, ECF No. 1185 at 30-34. The Plan also provides for (a) the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases to which Hopeman is a party, *id.* art. VI, ECF No. 1185 at 27-28, and (b) the retention and enforcement of certain claims by the Debtor, *id.* § 9.3., ECF No. 1185 at 42.

***21** Finally, in accordance with section 1123(b)(6), the Plan includes numerous other provisions necessary for its implementation that are consistent with the Bankruptcy Code, including: (a) Article VIII of the Plan providing for (i) the creation of the Asbestos Trust and (ii) the appointment of the Asbestos Trustee; (b) Article V of the Plan governing Distributions on account of Allowed Claims; (c) Article VII of the Plan establishing procedures for resolving Disputed Claims and making Distributions on account of such Disputed Claims once resolved; (d) Article X of the Plan regarding the discharge of Claims and injunctions against certain actions; and (e) Article XII of the Plan regarding retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date. Accordingly, the Plan fully complies with section 1123(b) of the Bankruptcy Code.

Notwithstanding the Bankruptcy Court's finding above, certain discretionary provisions included in the Plan merit additional analysis. As more fully discussed *infra*, certain of these discretionary provisions are acceptable without modification. However, the Plan's discretionary provisions regarding the Asbestos Insurance Policies and Asbestos CIP Agreements must be modified to be confirmable.

i. The Plan's discretionary provision regarding the assumption or rejection of executory contracts under the Plan should be approved.

Article VI of the Plan provides for the rejection of all Executory Contracts to which Hopeman is a party. Plan § 6.1, ECF No. 1185 at 27. The Debtor has the discretion to assume or reject any executory contract in the exercise of its sound business judgment. *In re Alpha Nat. Res., Inc.*, 555 B.R. 520, 529-30 (Bankr. E.D. Va. 2016), *aff'd*, 237 F. Supp. 3d 369 (E.D. Va. 2017), *aff'd*, 712 Fed. App'x 256 (4th Cir. 2018). "A court should not second-guess a debtor's business judgment

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concerning the assumption or rejection of an executory contract or unexpired lease unless there is a showing of bad faith or gross abuse of discretion." *Id.* at 530.

The Debtor takes the position, and the Court agrees, that the Asbestos Insurance Policies, Asbestos CIP Agreements, Non-Asbestos Insurance Policies,[21] and Designated Insurance Agreements,[22] including the Travelers 2005 Agreement, are not Executory Contracts. Given that the policies are not executory, there is nothing to assume or reject. *Westchester Surplus Lines Ins. Co. v. Surfside Resort & Suites, Inc.* (*In re Surfside Resort & Suites, Inc.*), 344 B.R. 179, 187 (Bankr. M.D. Fla. 2006) ("[T]he Policy fails to satisfy the Countryman definition of an executory contract.... Therefore, the benefit of assuming or rejecting the Policy is inapposite.").

21 "Non-Asbestos Insurance Policy means any insurance policy that provides coverage to Hopeman that is not an Asbestos Insurance Policy." Plan § 1.82, ECF No. 1185 at 18. Section 6.1 of the Plan governs the rejection of contracts. Plan § 6.1, ECF No. 1185 at 27.

22 The Plan defines Designated Insurance Agreement as

> any prepetition settlement agreement or any prepetition coverage-in-place agreement (including any related indemnity obligations thereunder) between Hopeman and one or more Asbestos Insurers (a) that does not currently provide rights in favor of Hopeman to continuing coverage or to payment of insurance proceeds or (b) as to, or on account of, which the Debtor did not receive any payment of insurance proceeds within the period of one year immediately preceding the Petition Date. For the avoidance of doubt, the term "Designated Insurance Agreement" (i) includes the Travelers 2005 Agreement, but (ii) does not include an Asbestos CIP Agreement.

Plan § 1.51, ECF No. 1185 at 14.

The Fourth Circuit uses the Countryman definition of executory contracts: a "contract is executory if the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete the performance would constitute a material breach excusing the performance of the other." *In re RoomStore, Inc.*, 473 B.R. 107, 110-11 (Bankr. E.D. Va. 2012) (quoting Vern Countryman, *Executory Contracts in Bankruptcy: Part I*, 57 Minn. L. Rev. 439, 460 (1973)); *see also Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc.* (*In re Richmond Metal Finishers, Inc.*), 756 F.2d 1043, 1045 (4th Cir. 1985). "Under the Countryman definition courts have recognized that where one of the parties to the insurance policy has fulfilled the central agreement to such contract, such as the obligation of the insured to pay the premium in exchange for the insurer's defense and payment of indemnity claims against the insured, the contract is no longer executory." *In re Fed.-Mogul Glob., Inc.*, 385 B.R. 560, 575 (Bankr. D. Del. 2008) (first citing *In re Surfside Resort & Suites, Inc.*, 344 B.R. at 187; then citing *In re CVA Gen. Contractors, Inc.*, 267 B.R. 773, 779 (Bankr. W.D. Tex. 2001); then citing *In re Firearms Imp. & Exp. Corp.*, 131 B.R. 1009, 1013 (Bankr. S.D. Fla. 1991)). "The payment of policy premiums prior to the petition date constitutes substantial compliance with the policy and renders the contracts non-

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executory in nature." *Id.* Additionally, an insurance policy no longer is executory after the last effective date of the policy has passed. *Id.* at 574; *see also Daileader v. Certain Underwriters at Lloyd's London*, 670 F. Supp. 3d 12, 47 (S.D.N.Y. 2023) (collecting cases) ("Insurance policies do not constitute executory contracts where the premiums have been paid in full and the coverage period has expired prepetition."). In such an instance, the terms and conditions of the insurance policy remain enforceable, but the policy is no longer executory. *In re Fed.-Mogul Glob., Inc.*, 385 B.R. at 574.

***22** Applying the Countryman definition, the Asbestos Insurance Policies, Asbestos CIP Agreements, Non-Asbestos Insurance Policies, and Designated Insurance Agreements, including the Travelers 2005 Agreement, are not executory contracts and, as such, are not capable of assumption or rejection. For each such insurance policy, the Debtor fully paid the premiums under the policies prior to the Petition Date, and their coverage periods expired prior to the Petition Date. Therefore, these policies are not Executory Contracts. Because the identified policies are no longer executory, they are not capable of assumption or rejection. Although there is no evidence of any existing executory contracts, to the extent any executory contracts exist, there has been no showing of bad faith or gross abuse of discretion associated with the Debtor's intentions. *In re Alpha Nat. Res., Inc.*, 555 B.R. at 529-30. Accordingly, the Plan properly provides for the rejection of such contracts.

ii. The Plan's discretionary provision regarding the Asbestos Trust's access to certain documents should be approved.

The Plan provides that, on the Effective Date, the Debtor shall transfer to Reorganized Hopeman all the Debtor's books and records necessary for the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with sections 8.3 and 8.16 of the Plan, the Asbestos Trust Agreement, and the Asbestos Trust Distribution Procedures. Plan § 8.3(l), ECF No. 1185 at 33. The Plan further expressly provides that "privileges belonging to Hopeman on the Petition Date in such books and records shall belong to Reorganized Hopeman as of the Effective Date, and the Asbestos Trust's access to such books and records shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records." *Id.* Chubb and Travelers object to the Plan on the grounds that this arrangement will result in privilege waivers despite the express language of this section. *See*, *e.g.*, Travelers Plan Obj., ¶ 95, ECF No. 944 at 57; Chubb Plan Obj. ¶¶ 126-28, ECF No. 958 at 69-71.

Chubb and Travelers apparently do not take any issue with the transfer of the Debtor's books and records to Reorganized Hopeman. The Bankruptcy Court finds such an arrangement proper and consistent with the terms of the Plan. Section 9.2 of the Plan provides that "the property of the Estate of Hopeman ... shall vest in Reorganized Hopeman on the Effective Date." Plan § 9.2, ECF

No. 1185 at 42. The Debtor's books and records, as well as any privileges associated with such books and records, are property of the Hopeman Estate that will be transferred to Reorganized Hopeman under the Plan.

However, the Bankruptcy Court does not agree with the Plan Proponents' reasoning that the Asbestos Trust should have unfettered access to the Debtor's books and records or why such unlimited access would not unduly risk a finding by another tribunal that the privilege has been lost or waived. Under the Plan, the only assets to be conveyed to the Asbestos Trust are (a) the Asbestos Trust Contribution; (b) the Asbestos Insurance Rights; (c) all other assets, rights (including Causes of Action), and benefits assigned, transferred or conveyed to the Asbestos Trust in connection with the Plan or any Plan Documents; and (d) all proceeds of the foregoing." Plan § 1.22, ECF No. 1185 at 11. The Debtor's books and records are not being transferred to the Asbestos Trust.

The Plan Proponents assert that the Asbestos Trust will retain and assert any interest and privileges in the books and records as the Asbestos Trust is the Debtor's successor in interest with respect to the Debtor's asbestos personal injury liabilities, Plan § 8.3(a), ECF No. 1185 at 30. The Plan Proponents do not provide – and the Bankruptcy Court is unfamiliar with – any reason why access to and privileges associated with the books and records would somehow transfer with liabilities to the Asbestos Trust instead of or in addition to being part of the Debtor's assets transferred to Reorganized Hopeman under the Plan.

***23** In the absence of further support for why the Asbestos Trust should have unfettered access to the Debtor's existing books and records, the Bankruptcy Court believes the limitation proposed by Travelers is appropriate – that the Asbestos Trust's access should be limited "only to the extent it is defending or processing an Uninsured Asbestos Claim." Travelers Plan Obj. ¶ 95, ECF No. 994 at 57. Such limited access would be consistent with the Debtor's pleadings, which suggest that the Asbestos Trust needs "access to the Debtor's books and records to enable the Asbestos Trust to investigate and resolve Channeled Asbestos Claims in accordance with the Plan." Debtor's Am. PFFCL ¶ 153, ECF No. 1187 at 75. In such a scenario, the common interest work-product doctrines would remain viable, preserving any privilege associated with the books and records. The Bankruptcy Court believes this limitation would ensure that any privilege is not waived and would help to prevent any unnecessary risk that a subsequent court find that coverage can be denied due to an alleged failure to cooperate.

In so holding, this Bankruptcy Court does not accept the Objecting Insurers' insinuation that members of the TAC or the FCR may improperly use the privileged information contained in the Debtor's books and records to somehow advantage individual holders of Asbestos Claims. As more fully explained in section II.B.3.b *infra*, the TAC owes a fiduciary duty to holders of current Channeled Asbestos Claims, Asbestos Tr. Agreement § 5.2, ECF No. 1143 at 34, and the FCR owes a fiduciary duty only to holders of future Channeled Asbestos Claims, *id.* § 6.1, ECF No.

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1143 at 40. The Bankruptcy Court has no reason to believe that the TAC and the FCR will fail to uphold their fiduciary duties. However, because the FCR and the TAC each represent only certain constituencies of the Asbestos Trust, the Bankruptcy Court is not persuaded that the FCR and the TAC would necessarily be covered by the common interest doctrine – at least not based on the record currently before the Court. Thus, limiting the Asbestos Trust's access is appropriate.

Accordingly, subject to the modification provided herein, the Bankruptcy Court finds that it is appropriate for the Confirmation Order to include language holding that the Asbestos Trust's limited access to the Debtor's books and records for the purposes of defending or processing an Uninsured Asbestos Claim will not result in the destruction or waiver of any privileges or protections applicable thereto. The transfer of the books and records along with any attendant privileges will have no effect on the ability of third parties, such as holders of Asbestos Personal Injury Claims or the Debtors' insurers, to pursue and obtain information stored in Hopeman's books and records (including electronic records) through discovery to the full extent permitted by applicable law.

iii. The Plan's discretionary provisions regarding settlements and releases should be approved.

Article X of the Plan includes the settlement of certain estate claims and the releases. Plan §§ 10.4-10.9, ECF No. 1185 at 46-48. In compliance with existing case law, *see, e.g.*, *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024); *Patterson v. Mahwah Bergen Retail Grp., Inc.*, 636 B.R. 641 (E.D. Va. 2022), holders of non-asbestos claims could opt in to, rather than opt out of, the releases under the Plan. [23] Plan § 1.100, ECF No. 1185 at 19 (defining "Releasing Party" to mean holders who affirmatively opted in to the releases by checking a box on a form they returned to Verita); *see also* May 22, 2025, Hr'g Tr. 8:16-10:9, ECF No. 789 at 8-10. The scope of the exculpation provision is sufficiently narrowly tailored to comply with applicable law. *Compare* Plan § 10.4, ECF No. 1185 at 46, *with Patterson*, 636 B.R. at 701-02; *see also* May 22, 2025, Hr'g Tr. 10:13-11:3, ECF No. 789 at 10-11.

23 As recognized in *Harrington v. Purdue Pharma*, injunctions against third parties are expressly permitted in "asbestos-related bankruptcies—and only for such bankruptcies" 603 U.S. 204, 222, 144 S.Ct. 2071, 219 L.Ed.2d 721. In other words, *Purdue* and *Patterson* are not implicated in connection with injunctions and releases by holders of Asbestos Claims.

***24** The uncontroverted evidence presented at the Combined Hearing established that the provisions of Article X of the Plan, including the releases of non-Debtor parties pursuant to the general releases in Section 10.6, are (a) integral to the terms, conditions and settlements contained in the Plan, (b) appropriate in connection with Hopeman's reorganization and (c) supported by

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reasonable consideration. *See, e.g.*, Combined Hr'g Tr. Day 1 44:24-46:14, ECF No. 1174 at 44-46. Pursuant to section 1123(b) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the Distributions and other benefits provided under the Plan, the provisions in Article X of the Plan, including the settlement of certain estate claims set forth in section 10.9 and the releases set forth in sections 10.5 10.6, and 10.7, constitute a good-faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Channeled Asbestos Claim, or Interest or any distribution to be made pursuant to the Plan on account of any Allowed Claim, Channeled Asbestos Claim, or Interest. When considering all of the facts and circumstances, the settlements and releases contained in Article X of the Plan are fair, equitable and in the best interests of the Estates.

iv. The Plan's discretionary provisions regarding the Insurers' rights under the Asbestos Insurance Agreements and the Asbestos CIP Agreements require modification.

The Plan provides for the transfer of the Asbestos Insurance Rights to the Asbestos Trust on the Effective Date, Plan § 8.3(b), ECF No. 1185 at 31, while leaving the ministerial obligations under the Asbestos Insurance Policies (e.g., providing notice and cooperation) with Reorganized Hopeman, *id.* § 8.18, ECF No. 1185 at 41 ("[T]he Asbestos Insurance Cooperation Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust."). Chubb and Travelers argue that separating the insurance rights from the obligations harms them and violates the principle of *cum onere*, under which the burdens of an assigned contract must accompany the contract's benefits. Chubb Plan Obj. ¶¶ 124-25, ECF No. 958 at 67-69; Travelers Plan Obj. ¶¶ 24-31, ECF No. 944 at 21-26.

The Bankruptcy Court agrees with the Plan Proponents that the *cum onere* principle is inapplicable here. Generally, under the *cum onere* principle, "[w]hen an executory contract or lease is assumed, it must be assumed *cum onere*, with all of its benefits and burdens." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 49 (Bankr. M.D.N.C. 2003) (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531-32, 104 S.Ct. 1188, 79 L.Ed.2d 482 (1984)). As discussed *supra*, the Asbestos Insurance Agreements and the Asbestos CIP Agreements are not executory contracts and, therefore, are not subject to assumption.

Instead, the Asbestos Insurance Agreements and the Asbestos CIP Agreements are property of the Debtor's bankruptcy estate which may be properly transferred through a confirmed plan. 11 U.S.C. § 1123(a)(5)(B) ("Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall ... provide adequate means for the plan's implementation, such as ... the transfer of all or any part of the property of the estate to one or more entities."). [24] However, the Plan's contemplated transfer of the Asbestos Insurance Rights to the Asbestos Trust does not affect any attendant terms and conditions.

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> To the extent those terms and conditions were enforceable under non-bankruptcy law the day before the bankruptcy, they remain enforceable by the insurers against the trust. To the extent any of the plan language may be read to suggest that the insurance "rights" may be transferred without the corresponding terms and conditions, the plan and confirmation order must be revised to reflect the fact that the "rights" remain subject to those terms and conditions.

In re AIO US, Inc., Case No. 24-11836 (CTG), —— B.R. ——, ——, 2025 WL 2426380, at *24, 2025 Bankr. LEXIS 2012, at *70 (Bankr. D. Del. Aug. 21, 2025). While the Bankruptcy Court agrees with the Plan Proponents that the Plan does not extinguish the Debtor's obligations under the Asbestos Insurance Policies, *see, e.g.*, Plan § 8.18, ECF No. 1185 at 41 (providing, inter alia, that the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies are subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to comply with the Asbestos Insurance Cooperation Obligations), any order confirming the Plan should make clear that the Asbestos Insurance Rights are being transferred to the Asbestos Trust subject to any existing terms and conditions. [25]

24 This section permits the transfer of a debtor's insurance policies to a trust notwithstanding any anti-assignment provisions contained in the policies themselves. *See, e.g.*, *In re Fed.-Mogul Glob. Inc.*, 684 F.3d at 382.

25 Travelers argues that the term "Asbestos Insurance Cooperation Obligations" does not cover all obligations that are attendant to the Asbestos Insurance Agreements. Travelers Plan Obj. ¶ 34, ECF No. 944 at 27-28. Simply because the Plan has tasked Reorganized Hopeman as the agent responsible for compliance with the Asbestos Insurance Cooperation Obligations does not in any way eliminate or reduce any terms and conditions attendant to the Asbestos Insurance Agreements to the extent that the Asbestos Trust seeks to exercise its Asbestos Insurance Rights.

***25** Liberty Mutual also objects to the Plan's language concerning the transfer of the Asbestos Insurance Rights, but on different grounds. Liberty Mutual complains that the Plan improperly purports to transfer the Debtor's Asbestos Insurance Rights vis-à-vis Liberty Mutual, where no such rights exist. The Debtors cannot transfer what they do not have. *In re Boy Scouts of Am.*, 137 F.4th at 164–65 ("[A] debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy.") As a matter of law, if the Debtor does not have any rights, no transfer is effectuated. But issues regarding the nature of the Debtor's Asbestos Insurance Rights are more appropriately addressed in the context of a future coverage dispute.

Consistent therewith, although the Plan may provide for the transfer of the Asbestos Insurance Rights pursuant to section 1123 of the Bankruptcy Code, the Bankruptcy Court also agrees with the Objecting Insurers that it would be improper for either the Plan or the Confirmation Order to include any findings regarding the effect of such transfer, as such language may impermissibly affect the rights and defenses of the insurers.

Though they are not executory contracts, the Asbestos Insurance Agreements and the Asbestos CIP Agreements are property of the Debtor's bankruptcy estate. *See* 11 U.S.C. § 541(a)(1) (Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case."). A bankruptcy filing should neither augment nor shrink the nature of property of the estate. *See, e.g.*, *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381, 139 S.Ct. 1652, 203 L.Ed.2d 876 (2019) ("The estate cannot possess anything more than the debtor itself did outside bankruptcy." (citation omitted)). Applying this general principle, a plan should "neither increase[ ] [the insurer's] prepetition obligations nor impair[ ] its rights under the insurance contracts." *Truck Ins. Exch.*, 602 U.S. at 271-72, 144 S.Ct. 1414 (dicta); *see also In re Boy Scouts of Am.*, 137 F.4th at 164-65 ("[A] debtor may not sell property of the estate, such as insurance policies, with greater or fewer rights or obligations than it possessed outside of bankruptcy, and a plan cannot be confirmed when it incorporates provisions that impermissibly impair counterparts' rights."); *In re AIO US, Inc.*, ––B.R. at ––––, 2025 WL 2426380, at *17, 2025 Bankr. LEXIS 2012, at *4 ("[An] order confirming the plan should not put a thumb on the scale one way or the other. The parties' rights are essentially the same as they would be had such a transaction occurred outside of bankruptcy.") In other words, a plan is insurance neutral if "all contractual rights and coverage defenses [are] fully preserved." *In re Flintkote Co.*, 486 B.R. 99, 117 (Bankr. D. Del. 2012), *aff'd*, 526 B.R. 515 (D. Del. 2014); *see also Truck Ins. Exch.*, 602 U.S. at 271-72, 144 S.Ct. 1414.

The Plan Proponents assert that the Plan is insurance-neutral and does not affect Insurers' rights under their policies. To support this assertion, the Plan Proponents point to sections 6.2 and 8.18 of the Plan, which provide:

> **6.2. Asbestos Insurance Agreements**.... [F]or the avoidance of doubt, except as expressly provided in Section 8.18 and Section 11.1(g) herein, none of the Asbestos Insurance Policies or the Asbestos CIP Agreements is being rejected, altered, or otherwise modified pursuant to this Plan, the other Plan Documents, or the Confirmation Order, or any findings of fact or conclusions of law with respect to confirmation of the Plan and all parties' respective rights, duties, defenses, obligations, and liabilities thereunder are hereby preserved, except as such rights, duties, defenses, obligations, and liabilities may be affected by Section 8.18 or Section 11.1(g) or to the extent of an Asbestos Insurance Policy or Asbestos CIP Agreement that is the subject of and only to the extent contemplated by and provided for in an Asbestos Insurance Settlement and only to the extent approved by an order of the Bankruptcy Court or the District

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Court.... In addition, nothing in this Plan, any Plan Supplement, or any other document related to or made as an exhibit to the Plan is intended to or shall limit the right of any Asbestos Insurer or Non-Asbestos Insurer to assert any insurance coverage defense available under the applicable Asbestos Insurance Policy to any Channeled Asbestos Claim, or the applicable NonAsbestos Insurance Policy to any non-Channeled Asbestos Claim, as appropriate, asserted against Hopeman or administered by the Asbestos Trust.

26** **

8.18. Insurance Neutrality. Nothing in the Plan, the other Plan Documents, the Confirmation Order, any finding of fact or conclusion of law with respect to confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order (i) shall preclude any Non-Settling Asbestos Insurer from asserting in any proceeding any and all claims, defenses, rights, or causes of action that it has or may have under or in connection with any of its Asbestos Insurance Policies or any of its Asbestos CIP Agreements; or (ii) shall be deemed to waive any claims, defenses, rights, or causes of action that any Non-Settling Asbestos Insurer has or may have under the provisions terms, conditions, defenses, or exclusions contained in its Asbestos Insurance Policies and its Asbestos CIP Agreements, including any and all such claims, defenses, rights, or causes of action based upon or arising out of the Channeled Asbestos Claims that are liquidated, resolved, discharged, channeled, or paid in connection with the Plan; provided, however, that (a) the transfer of rights in and under the Asbestos Insurance Rights to the Asbestos Trust is valid and enforceable and transfers such rights under the Asbestos Insurance Rights as Hopeman or Reorganized Hopeman may have, and that such transfer shall not affect the liability of any insurer, and (b) the discharge and release of Hopeman and Reorganized Hopeman from all Claims and the injunctive protection provided to Hopeman, Reorganized Hopeman, and the Protected Parties with respect to Claims as provided herein shall not affect the liability of any insurer, except to the extent that any such insurer is a Settled Asbestos Insurer. Notwithstanding anything in this Section 8.18 to the contrary, nothing in this Section 8.18 shall affect or limit, or be construed as affecting or limiting, (1) the binding effect of the Plan and the Confirmation Order on Hopeman, Reorganized Hopeman, the Asbestos Trust, or the beneficiaries of the Asbestos Trust or (2) the protection afforded to any Settled Asbestos Insurer by the Asbestos Permanent Channeling Injunction. Further, nothing in this Section 8.18 is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any insurer with respect to any issue that is actually litigated by such insurer as part of its objections to confirmation of the Plan. Except as otherwise provided in this Section 8.18, including, without limitation, the foregoing (a) regarding the transfer of the Asbestos Insurance Rights to the Asbestos Trust and the foregoing (b) regarding the discharge of Hopeman and Reorganized Hopeman, the Asbestos Insurance Rights held by the Asbestos Trust and any claims made against the Asbestos Insurance Policies on account of such rights will be subject to any coverage defenses a Non-Settling Asbestos Insurer may raise as a result of Reorganized Hopeman's failure, if any, to comply with the

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> Asbestos Insurance Cooperation Obligations. For the avoidance of doubt, notwithstanding that the Asbestos Insurance Cooperation Obligations will remain with Reorganized Hopeman while the Asbestos Insurance Rights will be transferred to the Asbestos Trust, the Asbestos Trust's rights in and claims against the Asbestos Insurance Policies or Asbestos CIP Agreements shall be subject to any coverage defenses that any Non-Settling Asbestos Insurer may have as a result of Reorganized Hopeman's failure, if any, to perform the Asbestos Insurance Cooperation Obligations.

***27** Plan §§ 6.2, 8.18, ECF No. 1185 at 27-28, 40-41 (sections 6.2 and 8.18, collectively, the "Insurance-Neutrality Provisions"). Comparing the Insurance-Neutrality Provisions to plans found by other courts to be insurance neutral, the Plan Proponents assert that this Plan is also insurance neutral. Debtor's Am. PFFCL ¶¶ 190 & n.138, ECF No. 1187 at 94-95. All evidence adduced at the Combined Hearing suggests that the Plan Proponents intend for the Plan to be insurance neutral. *See, e.g.*, Travelers Ex. W 156:4-9, ECF No. 1182-1 at 26; Combined Hr'g Tr. Day 1 141:2-8, 161:4-6, ECF No. 1174 at 141, 161; *see also* Disclosure Statement § VI.C(a)(v), ECF No. 767 at 21 ("The Debtor contends the Plan is 'insurance neutral' and does not impose any burdens or duties on the [ ] Insurers that they do not already have under the policies."); Confirmation Br. ¶¶ 268, ECF No. 1076 at 133-34.

The issue is not whether the Plan Proponents intend for the Plan to be insurance neutral; that is unquestionably their intent. Nor is the issue whether the Plan should contain the language that the Objecting Insurers prefer. *In re Boy Scouts of Am.*, 137 F.4th at 166 (declining to "rewrite the Plan and fasten suspenders to this already well-secured belt" where insurers requested additional language be included in the plan and confirmation order). Instead, "[t]he operative question is whether the Plan impermissibly impairs the rights of the Chubb Insurers or Travelers." Confirmation Br. ¶ 269, ECF No. 1076 at 134.

In determining whether the Plan impermissibly modifies the rights of Insurers, the Bankruptcy Court finds Judge Goldblatt's recent decision in *AIO* to be instructive. *In re AIO US, Inc.*, —— B.R. ——, 2025 WL 2426380, 2025 Bankr. LEXIS 2012. In *AIO*, the debtor sought to resolve its tort liability through a trust.[26] Various insurers objected on the grounds that the proposed trust mechanism impermissibly altered their rights and defenses. Judge Goldblatt disagreed, holding instead that the proposed distributions were a voluntary arrangement between the claimants and the debtor for the resolution of tort claims. The consensual selection of a particular mechanism to resolve tort liability should not "affect, let alone ... determine, the insurers' obligations under their policies." *Id.* at ——, 2025 WL 2426380, at *22, 2025 Bankr. LEXIS 2012, at *64. "Accordingly, any proposed 'finding' that would tilt the playing field in a subsequent coverage dispute one way or the other should be deleted." *Id.* at ——, 2025 WL 2426380, at *23, 2025 Bankr. LEXIS 2012, at *67.

26 *AIO* is not squarely on point as it did not involve a plan pursuant to section 524(g). However, the analysis regarding insurance neutrality is unaffected by whether a plan seeks a supplemental discharge under section 524(g).

The Debtor seeks to distinguish *AIO* on the grounds that most Channeled Asbestos Claims will be resolved in the tort system, as originally contemplated by the underlying Asbestos Insurance Agreements and Asbestos CIP Agreements, rather than being liquidated by a trust as in *AIO*. Debtor's Am. PFFCL ¶ 191, ECF No. 1187 at 95-96. While it is true that the structure contemplated by the Plan leaves the "basic insurance bargain" intact, *id.* (quoting *In re AIO US, Inc.*, —— B.R. at ——, 2025 WL 2426380, at *16, 2025 Bankr. LEXIS 2012, *44), the Court must examine the Insurance Neutrality Provisions to ensure that the Plan truly is a passthrough.

Travelers objects to language in the Plan that may be interpreted as a declaration of the effect of the Plan on the Objecting Insurers' rights and defenses under the Insurance Policies. Applying the rationale of *AIO*, the Bankruptcy Court finds that these objections are well-founded. While the Plan may permissibly transfer the Asbestos Insurance Rights, the Bankruptcy Court agrees that it would be improper at this stage to determine the impact of such a transfer upon the insurers and/or the effect of the bankruptcy case and the actions taken in connection therewith.[27] To truly be insurance neutral, the Plan should not impair any available rights or defenses in connection with the insurance policies, save for the voidability of anti-assignment provisions. To the extent there is a future dispute over the effect of the Plan, those issues should be more properly resolved in the context of a future coverage dispute. *In re Boy Scouts of Am. & Del. BSA, LLC*, 650 B.R. at 147 (providing that any issues regarding the debtor or trustee's cooperation obligations should more properly be addressed as a defense to coverage).

27 The Plan includes an express factual finding that the Debtor has not violated any Asbestos Insurance Cooperation Obligations, including any express or implied covenant of good faith and fair dealing. Plan § 11.1(g)(xxvii), ECF No. 1185 at 53. The Court must find – and the Bankruptcy Court has found – that the Debtor has filed the Bankruptcy Case in good faith and has proposed this Plan in good faith. However, such a finding does not necessarily mean that the Debtor has complied with its Asbestos Insurance Cooperation Obligations. To the extent a disagreement exists, such issue should be preserved for future adjudication in a coverage dispute.

***28** This rationale also applies as to the preclusive effect of any order confirming the Plan. The Bankruptcy Court agrees that issues of preclusion and estoppel are more properly to be determined by a future court. *In re Boy Scouts of Am. & Delaware BSA, LLC*, 642 B.R. at 631 ("[T]he res judicata or collateral estoppel effect of any Order I issue confirming the Plan is for a future court to decide in the context of specific litigation."); *In re AIO US, Inc.*, —— B.R. at ——, 2025 WL 2426380, at *26, 2025 Bankr. LEXIS 2012, *77 ("It is generally settled law ... that the preclusive

effect of a court's judgment is properly decided by the subsequent court, not the rendering court. A court usually does not get to dictate the preclusion consequences of its own judgment.").

In a similar vein, Liberty Mutual objects to the Asbestos Trust's ability to intervene in Insurance Policy Actions. Plan § 8.13(c)(v), ECF No. 1185 at 37 (The Asbestos Trust "may ... intervene in any Insurance Policy Action at any time."). The inclusion of this provision should serve to merely protect any right that the Asbestos Trust may have, subject to compliance with the proper procedural mechanism for intervention. *See Moglia v. Keith (In re Manchester, Inc.)*, No. 08-30703-BJH-11, 2009 WL 2243592, at *3, 2009 Bankr. LEXIS 2003, *7 (Bankr. N.D. Tex. July 16, 2009) ("[D]id the Plan 'expressly retain the right to pursue such actions' and was the reservation of the claims 'specific and unequivocal?' If so, the Litigation Trustee has standing to pursue the claims." (quoting *Dynasty Oil & Gas, LLC v. Citizens Bank* (*In re United Operating, LLC*), 540 F.3d 351, 355 (5th Cir. 2008)). Similarly, any party in such an Insurance Policy Action should retain the right to object to the Asbestos Trust's motion to intervene. To the extent that the Plan language extends beyond the foregoing, it should be modified.

For the avoidance of doubt, the Plan may provide for the transfer of the Asbestos Insurance Rights to the Asbestos Trust, provided that the rights are accompanied by all terms and conditions. For this Plan to be confirmable as an insurance-neutral plan, it must truly provide for the passthrough of any rights, duties, and defenses that all persons may have with respect to the Asbestos Insurance Agreements and the Asbestos CIP Agreements. Any coverage disputes should be more properly brought in connection with future proceedings and the effect of the entry of any order confirming the Plan should be determined by the court overseeing the proceeding.

f. Section 1123(d): Cure of Defaults.

The Plan provides that, to the extent necessary, the Bankruptcy Court shall determine the amount of any payments necessary to cure any defaults under any assumed Executory Contracts as of the Confirmation Date in accordance with the underlying agreements and applicable non-bankruptcy law. Plan §§ 6.1-6.2, ECF No. 1185 at 27-28. Accordingly, the Plan fully complies with the requirements of section 1123(d) of the Bankruptcy Code.

2. Section 1129(a)(2): The Plan complies with all applicable provisions of the Bankruptcy Code.

Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply with applicable provisions of the Bankruptcy Code. The legislative history to section 1129(a)(2) indicates that the principal purpose of this section is to ensure compliance with the disclosure and

solicitation requirements set forth in section 1125 of the Bankruptcy Code. S. Rep. No. 95-989, at 126 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5912 ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *see also In re Lapworth*, Case No. 97-34529-DWS, 1998 WL 767456, at *3, 1998 Bankr. LEXIS 1383, at *10 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of [section] 1129(a)(2) specifically identifies compliance with the disclosure requirements of [section] 1125 as a requirement of [section] 1129(a)(2)."); *Official Comm. of Unsecured Creditors v. Michelson* (*In re Michelson*), 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992); *In re Texaco Inc.*, 84 B.R. 893, 906-07 (Bankr. S.D.N.Y. 1988).

***29** Section 1125(b) prohibits the solicitation of acceptances or rejections of a plan of reorganization from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved ... by the court as containing adequate information." This Bankruptcy Court entered the Solicitation Procedures Order, which, among other things, conditionally approved the Disclosure Statement as containing adequate information within the meaning of section 1125 of the Bankruptcy Code. Solicitation Procs. Order ¶ 4, ECF No. 782 at 3. In addition, the Court considered and, in the Solicitation Procedures Order, approved (a) the Solicitation Packages and the Non-Voting Package, (b) the timing and method of delivery of the Solicitation Packages and the Non-Voting Package, (c) the Solicitation Procedures, and (d) the timing and method of publication the Combined Hearing Notice. *Id.* ¶¶ 6-19, ECF No. 782 at 3-8.

After the Bankruptcy Court conditionally approved the Disclosure Statement and approved the solicitation procedures, the Debtor transmitted the Solicitation Packages and the Non-Voting Packages to the holders of Claims in the Voting Classes and the holders of Claims and/or Interests in the Non-Voting Classes, respectively. Certificate of Serv., ECF No. 864. The Solicitation Packages distributed to the holders of Claims in the Voting Classes contained: (a) the Solicitation Procedures Order, (b) the Disclosure Statement, (c) the Plan, along with the Plan's exhibits, (d) the Combined Hearing Notice, (e) a copy of the appropriate Ballot and voting instructions, and (f) a pre-addressed, postage pre-paid return envelope. *Id.* ¶ 4, ECF No. 864 at 1-2. The Non-Voting Packages distributed to holders of Claims and/or Interests in the Non-Voting Classes contained: (a) the Non-Voting Status Notice, and (b) the Combined Hearing Notice. *Id.* ¶ 5, ECF No. 864 at 2. The Solicitation Packages and the Non-Voting Packages were distributed promptly after the entry of the Solicitation Procedures Order and in accordance with the Bankruptcy Court's instructions. *Id.*

In addition, the Debtor caused the Combined Hearing Notice to be published in certain newspapers and magazines, as authorized by the Solicitation Procedures Order. Publ'n Notice, ECF No. 844; Voting Certification ¶ 9, ECF No. 1077 at 2. As attested to in the Voting Certification, after the Solicitation Packages and the Non-Voting Packages were distributed, and after publication of the

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Combined Hearing Notice, the returned Ballots of parties entitled to vote on the Plan were tabulated in accordance with the Solicitation Procedures. Voting Certification ¶¶ 10-11, ECF No. 1077 at 2-3. Classes 3 and 4, the only Classes entitled to vote, voted overwhelmingly to accept the Plan. *Id.* ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Thus, the Debtor has complied with the applicable provisions of the Bankruptcy Code, including section 1125 of the Bankruptcy Code, and Bankruptcy Rules 3017 and 3018. Accordingly, the Plan meets the requirements of section 1129(a)(2) of the Bankruptcy Code.

While there may be some dispute over the Plan Proponents' good faith in negotiating and proposing the Plan, as more fully analyzed in the next section, there is no dispute that Votes were solicited in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Solicitation Procedures Order. Based on the Voting Certification, the Bankruptcy Court finds that the Plan Proponents, and each of their respective directors, officers, employees, agents and professionals, acting in such capacity, have acted in "good faith," within the meaning of section 1125(e) of the Bankruptcy Code.

3. Section 1129(a)(3): The Plan Proponents proposed the Plan in good faith.

Section 1129(a)(3) requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Although "good faith" is not defined by the Bankruptcy Code, the Fourth Circuit recently interpreted the good faith standard. The Fourth Circuit recognized that "a number of ... circuits have held that a plan is proposed in good faith where it 'fairly achieve[s] a result consistent with the objectives and purposes of the Bankruptcy Code.' " *In re Kaiser Gypsum Co.*, 135 F.4th at 193 (quoting *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 158 (3d Cir. 2012)). "The two 'recognized' objectives of the Code, in turn, are 'preserving going concerns and maximizing property available to satisfy creditors.' " *Id.* at 194 (quoting *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453, 119 S.Ct. 1411, 143 L.Ed.2d 607 (1999)). While the Fourth Circuit was not willing to "go so far as to say compliance with the objectives of the Code conclusively establishes good faith," the Fourth Circuit did hold that "it provides strong evidence of that standard being met." *Id.* A court must also "consider the totality of the circumstances" in determining whether a plan has been proposed in good faith. *Id.*; *see also McCormick v. Banc One Leasing Corp.* (*In re McCormick*), 49 F.3d 1524, 1526 (11th Cir. 1995) ("The focus of a court's inquiry is the plan itself, and courts must look to the totality of the circumstances surrounding the plan ... keeping in mind the purpose of the Bankruptcy Code is to give debtors a reasonable opportunity to make a fresh start." (internal citations omitted)).

***30** The Bankruptcy Court finds that the Plan was filed in good faith in satisfaction of section 1129(a)(3). The Plan is the product of extensive arms'-length negotiations – overseen by the Judicial Mediator, a distinguished bankruptcy judge – among Hopeman, the Committee, HII, and

the FCR. The Plan serves valid bankruptcy objectives by preserving and maximizing the value of the Debtor's assets (its insurance policies) for the benefit of its creditors (the holders of Asbestos Claims). *See In re Kaiser Gypsum*, 135 F.4th at 195 (noting that plan was proposed in good faith where it "was the 'product of extensive arms'-length negotiations ... and maximize[d] the value of assets available to satisfy claims." (quoting *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602-JCW, 2021 WL 3215102, at *13, 2021 U.S. Dist. LEXIS 146354, at *38-39 (W.D.N.C. July 28, 2021), *aff'd*, 60 F.4th 73 (4th Cir. 2023), *rev'd and remanded sub nom. Truck Ins. Exch.*, 602 U.S. 268, 144 S.Ct. 1414, 219 L.Ed.2d 41, and *aff'd*, 135 F.4th 185 (4th Cir. 2025)). That the Plan maximizes the value of assets is demonstrated by the fact that creditor recoveries are greater than could be realized if Hopeman were to liquidate. Combined Hr'g Tr. Day 1 36:14-16, 41:12-42:2, 181:6-186:6, ECF No. 1174 at 36, 41-42, 181-186; Disclosure Statement Ex. B, ECF No. 767 at 213-17 (the "Liquidation Analysis"); *see also In re Kaiser Gypsum Co., Inc.*, 2021 WL 3215102, at *13, 2021 U.S. Dist. LEXIS 146354, at *39.

The unrefuted testimony from Mr. Lascell supports a finding that the Plan satisfies the goals the Debtor had in filing this bankruptcy case – to provide a fair process for addressing unresolved Asbestos Claims, and to provide a means to try to maximize the return for creditors while also allowing the current owners of Hopeman to step aside and transfer the responsibilities to Trust fiduciaries. Combined Hr'g Tr. Day 1 at 38:18-39:9, ECF No. 1174 at 38-39. Indeed, both Mr. Lascell and Mr. Van Epps testified that the Plan represents the best opportunity for Hopeman and its creditors to exit this bankruptcy case. *Id.* 45:24-46:8; 145:8-146:7, ECF No. 1174 at 45-46, 145-46. Mr. Lascell testified that he believed the Plan has overwhelming creditor support. *Id.* 46:4-8, ECF No. 1174 at 46, which it clearly does as over 99% of holders of Asbestos Claims entitled to vote on the Plan did vote in favor of the Plan, Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. The record also supports that no holder of an Asbestos Claim has objected to the Plan.

The Plan is the result of active and extensive negotiations between the Debtor and various of its creditor constituencies. When the Debtor initially filed this case, the Debtor believed it had the framework for a confirmable plan – the Original Plan. Combined Hr'g Tr. Day 1 at 145:12-23, ECF No. 1174 at 145. However, it quickly became clear that the Original Plan was not confirmable due to the lack of support from its creditors and the Committee. *Id.* As described above and in the Disclosure Statement, the Debtor engaged in arms'-length negotiations with many parties-in-interest over the course of this Chapter 11 Case, including the Objecting Insurers. The Debtor provided substantial information to all constituencies and, thereafter, reached agreements with the Committee, the FCR, the Certain Settling Insurers, HII, and certain other parties-in-interest. that will be implemented through the Plan. *Id.* at 29:12–34:14, ECF No. 1174 at 29-34. The Debtor's good faith in proposing the Plan is evidenced by these negotiations, the consensual settlements reached with certain stakeholders, and the overwhelming support for the Plan by the Voting Classes. *See* Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5; *see also In re Eagle-Picher Indus., Inc.*, 203 B.R. at 274 (finding that a plan of reorganization was proposed in good faith

when, among other things, it was based on extensive arms'-length negotiations among the plan proponents and other parties-in-interest). The Debtor's decision to explore its alternatives to the Original Plan, including what ultimately became the Plan, neither undercuts nor negates the good-faith actions of the Plan Proponents.

***31** In the face of these compelling facts, some of the Objecting Insurers, nevertheless, contend that the Plan was not proposed in good faith. They argue, without sufficient factual support, that the Plan was the product of collusion, not merely the product of arms'-length negotiation. Specifically, Chubb and Liberty Mutual contend that (i) the Plan is merely the result of Hopeman's capitulation to the Committee and the holders of Asbestos Claims; and (ii) governance of Reorganized Hopeman by the same individual who will serve as the Litigation Trustee creates a fundamental conflict of interest. Chubb Plan Obj. ¶¶ 134-145, ECF No. 958 at 73-81; Liberty Mut. Plan Obj. ¶¶ 58-72, ECF No. 953 at 36-44. For the reasons explained herein, the Bankruptcy Court finds that their objections lack merit.

a. The Pivot to the Plan Is Not Evidence of Collusion.

Both Chubb and Liberty Mutual argue that the Plan is not proposed in good faith because it is the product of collusion amongst the Plan Proponents and the holders of Asbestos Claims to leverage recoveries out of the Non-Settling Asbestos Insurers. The Objecting Insurers offer no evidence to support these claims. Instead, Chubb and Liberty Mutual argue that the Debtor's agreement to pivot away from the Original Plan is – by itself – sufficient evidence that the Debtor merely and improperly acceded to the Committee's wishes.

For the reasons discussed *supra*, the evidence adduced at the Combined Hearing establishes that the Debtor attempted to pursue the Original Plan, including but not limited to seeking judicial mediation to develop a path forward to confirmation. The Court rejects the suggestion that the Debtor acted in bad faith because it engaged with its creditors and took stock of its available liquidity (both for purposes of being able to confirm a plan and regarding the impact excessive administrative expenses would have on creditor recoveries), all in consultation with the Judicial Mediator. That is precisely what a Debtor is charged with doing in these circumstances. Indeed, the Fourth Circuit rejected a similar argument in *Kaiser Gypsum*, specifically holding that "a desire to maximize the relevant asset[, such as insurance coverage,] does not constitute bad faith. To the contrary—bankruptcy courts routinely allow claimants to pursue insured claims through the tort system." *In re Kaiser Gypsum Co.*, 135 F.4th at 195. Much like the *Kaiser Gypsum* case, while Hopeman could have continued to pursue confirmation of the Original Plan, "there is nothing in the Bankruptcy Code that legally require[d] them to do so. Likewise, there is nothing in the record to suggest that their decision in this regard was rooted in anything remotely resembling bad faith. Quite the opposite—the record reflects that their decision was driven by pragmatic concerns and an

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understanding that they were clearly entitled to the full scope of coverage ....” *Id.* at 196 (affirming district court's finding of good faith).

Hopeman established sufficient evidence of good faith in formulating the Plan. The only evidence before this Court supports a finding that there was no collusion. Mr. Lascell testified that there was no collusion in formulating the Plan, which was the product of hard-fought negotiations with the Committee. Combined Hr'g Tr. Day 1 30:19-31:8, 31:12-32:2, ECF No. 1174 at 30-31, 31-32. Such evidence is sufficient to establish good faith; and, contrary to Chubb's and Liberty Mutual's assertion, the Plan Proponents need not have divulged specific details regarding the conduct of the Judicial Mediation:

> Subjective intent, to the extent that it is one factor in determining that a Plan is not being used for purposes contrary to the Code's objectives, is routinely established by circumstantial evidence. A negative inference should not be drawn against [the debtor] merely because it chose to protect the privacy of attorney-client communications. For a variety of privilege and evidentiary reasons, divining the subjective intent of a corporate actor through the testimony of the negotiators and other key people will often prove problematic and less than enlightening. In any event, it would be an extraordinary circumstance where an objectively fair plan must be set aside because of mere suspicions concerning the subjective intent of the parties.

***32** *In re WR Grace & Co.*, 729 F.3d 332, 348 (3d Cir. 2013).

In the rare cases where courts have found bad faith based on collusion, there has been direct evidence of such collusion presented to the Court. *See id.* (3d Cir. 2013) (first citing *In re ACandS, Inc.*, 311 B.R. 36 (Bankr. D. Del. 2004); then citing *In re Am. Capital Equip., LLC*, 688 F.3d 145; then citing *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 244 (3d Cir. 2004), *as amended* (Feb. 23, 2005)). For example, in *In re ACandS, Inc.*, the bankruptcy court found that the debtor had not proposed the plan in good faith where the Court received into evidence correspondence among asbestos counsel establishing that

> the plan was largely drafted by and for the benefit of the prepetition committee. It was the prepetition committee that drafted (or more likely directed debtor's counsel in drafting) the prepetition trust, and apparently chose the trustee for the trust; it was the prepetition committee that decided how the security agreement would be crafted and how many classes of security interests would be formed;

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> and it was the prepetition committee that decided who was going to get what. ACandS was there to do their bidding, having been thrown overboard by Irex to keep what was left of that company afloat. Given the unbridled dominance of the committee in the debtor's affairs and actions during the prepetition period, its continued influence flowing from its majority status on the postpetition creditors committee, and the obvious self-dealing that resulted from control of the debtor, it is impossible to conclude that the plan was consistent with the objectives and purposes of the Bankruptcy Code.

311 B.R. at 43. Unlike *ACandS*, the Objecting Insurers produced no evidence of collusion. Instead, the Objecting Insurers offer only conjectures concerning the pivot from the Original Plan to the current Plan.

The Objecting Insurers attempted to justify their failure to adduce specific evidence as directly attributable to the Plan Proponents' assertion of a mediation privilege. The Mediation Order provided that no party may use any communications made or provided in connection with the Mediation in any proceeding, including this Chapter 11 case. Mediation Order ¶ 8, ECF No. 443 at 2-3. Such a provision is standard in mediation proceedings and intended to encourage parties to negotiate freely and without fear that settlement discussions will be divulged if litigation continues. That being said, Chubb, Liberty Mutual, or any other party-in-interest could have sought relief from the Mediation Order to collect and introduce evidence of collusion – they did not do so. *See* Fed. R. Bankr. P. 9024; Fed. R. Civ. P. 60(b)(3) (authorizing relief from a final order due to misconduct by an opposing party, among other reasons).

Furthermore, the record supports that the Debtor did in fact provide extensive discovery to Chubb and Liberty Mutual regarding the negotiations in the mediation that resulted in the 524(g) Settlement. *See* Chubb Ex. 8; Combined Hr'g Tr. Day 1 at 279:5-20 (admitting Chubb Exhibit 8 into evidence); Combined Hr'g Tr. Day 2 172:6–173:18, ECF No. 1175 at 172-73 (discussing Chubb Exhibit 8 and the discovery provided by Hopeman regarding the mediation negotiations). After production, Hopeman clawed back the produced material as potentially violative of the Mediation Order. Chubb Ex. 8. Again, the Objecting Insurers could have sought relief from the Mediation Order to introduce any evidence of collusion that they received through that production. They did not do so.

***33** Additionally, Chubb alleges that the Plan was not proposed in good faith because Chubb was improperly excluded from the Judicial Mediation. Such an assertion mistakes the very nature of mediation. Mediation is a voluntary process whereby parties explore the possibility of consensual resolutions. The authorization to conduct mediation does not preclude parties from engaging in other settlement discussions or discussions with other parties. *Cf.* Local Bankruptcy

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Rule 9019-1(A) (authorizing mediation as permitted under the rule as one available alternative dispute resolution process). Nothing prevented the Objecting Insurers from engaging in settlement discussions with other case constituents.

All parties-in-interest were on notice since the filing of the November 29 Term Sheet, that the Committee and the Debtor would pursue the possibility of a 524(g) plan. All parties-in-interest were aware of the 524(g) Settlement when it was publicly filed with the Court on March 7, 2025. *See* ECF No. 609. There is no evidence that the Objecting Insurers engaged in any good faith discussions with the Plan Proponents since the 524(g) Settlement was announced. Much like the Third Circuit, this Court "reject[s the] implication that [the debtor's] failure to negotiate directly with [the interested party] undercut the overall Plan's fundamental fairness, particularly when [the interested party] declined to provide comments on drafts of the Plan when they were circulated during the negotiation process." *See In re W.R. Grace & Co.*, 729 F.3d at 347. In other words, "a creditor's disagreement about the handling of its claim does not necessarily evince bad faith by the Plan's proponents." *Id*.

As described *supra*, the evidence shows that the Debtor filed this Bankruptcy Case to establish a fair and efficient process through which its remaining cash and insurance policies would be used to resolve the thousands of asbestos-related claims asserted against it. Although the Original Plan contemplated a process that included the Insurer Settlement Motions, the Debtor simply were unable to obtain sufficient creditor support to confirm the Original Plan. Following hard-fought, arms'-length, good-faith negotiations, the Debtor and the Committee agreed to the 524(g) Settlement that memorialized the Debtor's intention to pivot away from the Original Plan to pursue confirmation of what, ultimately, became the Plan.

Separately, Liberty Mutual contends that the Plan is not proposed in good faith because it improperly targets Liberty Mutual by naming Liberty Mutual as a "Non-Settling Asbestos Insurer." Liberty Mut. Plan Obj. ¶ 5, ECF No. 953 at 9. This argument ignores both the facts and the direct actions Liberty Mutual has taken to affirmatively place itself at the center of this Bankruptcy Case. The unrefuted testimony is that even after Liberty Mutual and the Debtor entered into the 2003 Agreements, holders of Asbestos Claims and others continued to sue Liberty Mutual in Louisiana. Combined Hr'g Tr. Day 1 133:17-134:14, ECF No. 1174 at 133- 34. After Liberty Mutual took the position that it was absolved of any liability for Asbestos Claims pursuant to the 2003 Agreements, certain creditors requested that the Plan Proponents include language in the Plan to clarify whether the Plan would affect their ability to pursue Liberty Mutual, as they had done prior to the bankruptcy filing. Combined Hr'g Tr. Day 1 82:20-83:14, ECF No. 1174 at 82-83. This clarification was particularly necessary as the issue had been muddied by Liberty Mutual, which filed an adversary proceeding seeking a declaratory judgment that the 2003 Agreements effectively eliminated any liability Liberty Mutual had or could have with respect to Asbestos Claims. These revisions to the Plan were necessary to clarify that the Plan does not affect any rights, claims, or

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defenses that any non-debtor may have against Liberty Mutual outside of bankruptcy. Similarly, if Liberty Mutual has a defense to those claims, Liberty Mutual can assert such a defense – nothing in the Plan changes that. The Plan does not create an entitlement for asbestos claimants to sue Liberty Mutual or eliminate Liberty Mutual's defense to asbestos claimants pursuing Liberty Mutual if one exists. Again, while Hopeman could have put forward a different plan or included different language in this Plan, "there is nothing in the Bankruptcy Code that legally require[d] them to do so." *In re Kaiser Gypsum Co.*, 135 F.4th at 195 (recognizing that while objecting insurer had an equitable argument that certain permissible language should have been included, the exclusion of such language did not preclude a good faith finding). In light of the foregoing, this Bankruptcy Court finds there is no evidence of collusion, no improper targeting of Liberty Mutual, and more than sufficient evidence that the Plan was filed in good faith.

b. The Governance Authorized by the Plan Is Permissible.

***34** In addition to their arguments concerning collusion, Chubb and Liberty Mutual both contend that the Plan was not proposed in good faith because the governance structure contemplated by the Plan is irreparably tainted by various conflicts of interest. Chubb Plan Obj. ¶¶ 140-45, ECF No. 958 at 78-81; Liberty Mut. Plan Obj. ¶¶ 63-72, ECF No. 953 at 39-44. The Bankruptcy Court agrees with the Plan Proponents that the conflicts of interest of which Chubb and Liberty Mutual complain simply do not exist based upon a plain reading of the relevant provisions of the Asbestos Trust Agreement and Asbestos Trust Distribution Procedures.

The Plan contemplates the creation of an Asbestos Trust:

> Subject to the provisions of the Plan, the purpose of the Asbestos Trust is to assume liability and responsibility for all Channeled Asbestos Claims, and, among other things to: (a) direct the processing, liquidation and payment of Channeled Asbestos Claims in accordance with the Plan, the TDP, and the Confirmation Order, including allowing claimants with Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system; (b) preserve, hold, manage, and maximize the assets of the Asbestos Trust for use in paying and satisfying Channeled Asbestos Claims; and (c) qualify at all times as a qualified settlement fund. The Asbestos Trust is to use the Asbestos Trust's assets and income to pay the holders of Channeled Asbestos Claims in accordance with this Trust Agreement and the TDP in such a way that such holders of Channeled Asbestos Claims are treated fairly, equitably, and reasonably in light of the finite assets available to satisfy such claims, and to otherwise comply in all

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> respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

Asbestos Tr. Agreement § 1.2, ECF No. 1143 at 11. The Asbestos Trust, in turn, will be "administered, maintained, and operated at all times through [the Asbestos Trust Distribution Procedures] that provide reasonable assurance that the Asbestos Trust will satisfy all Channeled Asbestos Claims," *id.*, ECF No. 1143 at 10, and such distribution procedures expressly denote their purpose as being "designed to provide fair, equitable and substantially similar treatment for all Channeled Asbestos Claims that may presently exist or may may arise in the future," Asbestos Tr. Distrib. Procs. § 1.1, ECF No. 1143 at 110. In other words, the purpose of the Asbestos Trust is to treat all holders of Channeled Asbestos Claims fairly, equitably and reasonably in accordance with the Asbestos Trust Agreement, the Asbestos Trust Distribution Procedures, and applicable law.

The Asbestos Trust will be led by two trustees: the Administrative Trustee and the Litigation Trustee (collectively, the "Trustees"). The Administrative Trustee is charged with all duties and obligations related to the Asbestos Trust except for those related to litigation. Asbestos Tr. Agreement § 4.1, ECF No. 1143 at 25. For Asbestos Trust litigation matters only, the Litigation Trustee is responsible. *Id.* In the exercise of its fiduciary duties, the Administrative Trustee is required to consult with the TAC and the FCR. Asbestos Tr. Distrib. Procs. § 3.1, ECF No. 1143 at 112-13. The Administrative Trustee is required to only obtain the consent of the TAC and the FCR in certain enumerated circumstances. *Id.* § 2.2(f), ECF No. 1143 at 19-20. In these limited instances where consent is required, the TAC and the FCR must consider such a request "in good faith and in a timely fashion" and are prohibited from unreasonably withholding consent. *Id.* §§ 5.7(a), 5.7(b) 6.6(a), 6.6(b), ECF No. 1143 at 38-40, 44-45 (setting forth the processes for consultation with and obtaining consent of the TAC and the FCR, respectively). Furthermore, if either the TAC or the FCR decide to withhold consent, they are required to "explain in detail its objections to the proposed action." *Id.* §§ 5.7(b)(ii), 6.6(b)(ii), ECF No. 1143 at 39-40, 45. In the event of a dispute between the Trustees, the TAC, and the FCR, the Asbestos Trust Agreement sets forth an appropriate procedure for ensuring such conflicts are resolved with the oversight of an impartial decisionmaker while preserving the parties' rights to seek review of such third-party decisionmaker's decision with the Bankruptcy Court de novo. *Id.* § 7.13, ECF No. 1143 at 52-53.

***35** Both Trustees owe fiduciary duties to the Asbestos Trust, Asbestos Tr. Agreement § 2.1, ECF No. 1143 at 13, and are prohibited from acting as attorneys to a Channeled Asbestos Claimant, *id.* § 4.9, ECF No. 1143 at 31. In contrast, the TAC owes a fiduciary duty only to all holders of present Channeled Asbestos Claims. *Id.* § 5.2, ECF No. 1143 at 34. The FCR owes a fiduciary duty only to holders of future Channeled Asbestos Claims. *Id.* § 6.1, ECF No. 1143 at 40.

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Subject to one exception more fully explained below, this framework includes adequate mechanisms designed to avoid conflicts amongst the various fiduciaries and to protect the interests of all Channeled Asbestos Claimants (both the holders of present Channeled Asbestos Claims and future Demands). In addition, while the Trustees must, in certain instances, consult with the TAC and the FCR, the Asbestos Trust Agreement only requires the Trustees to obtain their consent on items necessary to protect the divergent interests of their constituencies. This does not create a conflict; rather, it creates rights in favor of each of these fiduciaries to serve their respective constituencies.

Liberty Mutual objects to the proposed members of the TAC on the grounds that they will breach their fiduciary duty "because they have a vested interest in funding payments to their own clients ... to the detriment of others." Liberty Mut. Plan Obj. ¶ 65, ECF No. 953 at 40. The Bankruptcy Court agrees with the Debtor that this objection is without merit – the members of the TAC owe a fiduciary duty to all holders of current asbestos claims. There is no legal or factual basis to support a determination at this stage that members of the TAC will breach their fiduciary duties.[28] The Bankruptcy Court also finds that Liberty Mutual's concerns regarding the TAC's ability to veto actions the Litigation Trustee wishes to take when such actions may be detrimental to the member's clients to be unfounded. *See* Liberty Mut. PFFCL ¶ 83, ECF No. 1184 at 23. Not only does that presume that the TAC members will breach their fiduciary duties to all holders of current claims by improperly restricting the Litigation Trustee, but the Asbestos Trust Agreement has protections to remedy an improper veto.. Asbestos Tr. Agreement § 7.13, ECF No. 1143 at 52-53. If the TAC improperly withholds consent, the Trustees may seek to override their veto through alternative dispute resolution or by returning to the Bankruptcy Court.

28 In support of their objection, Liberty Mutual points to an email from one of the proposed members of the TAC, as purported evidence that such member is incapable of fulfilling his fiduciary duty to holders of present Asbestos Claims. The Bankruptcy Court agrees with the Plan Proponents – at the time the email was sent, this person was not acting as a member of a committee, but instead, was representing an individual creditor. The email was consistent with the duties he had at the time of the email (which duties were solely to his clients) and is not indicative in the slightest of whether that person will adhere to his fiduciary duties as a member of the TAC.

This argument also ignores the bankruptcy reality of creditors' committees like the one appointed in this Bankruptcy Case. Official committees of unsecured creditors are composed of individual creditors who are charged with the fiduciary duty to act on behalf of all unsecured creditors – not just to pursue their own self-interest.

***36** However, the Court shares Liberty Mutual's and Chubb's concerns regarding section 4.9 of the Asbestos Trust Agreement, which permits the Litigation Trustee to also serve as a director and officer of the Reorganized Debtor. *Id.* § 4.9, ECF No. 1143 at 31. The Objecting Insurers assert

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that such a dual role will result in "an irreconcilable conflict" caused by the Litigation Trustee's alleged "incentive to sabotage Reorganized Hopeman's defense that is created by his contingency fee compensation in his role as Litigation Trustee."[29] Chubb Plan Obj. ¶ 144, ECF No. 958 at 80-81; *see also* Liberty Mut. Plan Obj. ¶ 71, ECF No. 953 at 44.

29 Chubb Plan Obj. ¶ 144, ECF No. 958 at 80-81; *see also* Liberty Mut. Plan Obj., ¶ 71. The Litigation Trustee is entitled to compensation in the amount of 1/3 of all fees recovered in litigation in favor of the Asbestos Trust. Asbestos Tr. Agreement § 4.5(b), ECF No. 1143 at 28.

Much for the same reasons that this Bankruptcy Court was disinclined to find that members of the TAC would breach their fiduciary duties to future claim holders, the Court is not willing to find that the Litigation Trustee would breach his duties owed to the Asbestos Trust or that the sole officer and director of the Reorganized Debtor would breach his duties owed to the Reorganized Debtor. The Bankruptcy Court did not hear sufficient evidence to indicate one way or another whether this dual role creates impermissible conflicts of interest.

Indeed, the evidence adduced at the Combined Hearing and throughout the pendency of this Bankruptcy Case is that the Debtor, the Reorganized Debtor, the Asbestos Trust, and holders of present and future Asbestos Claims all have a vested interest in ensuring that no action is taken that jeopardizes the Asbestos Insurance Policies through which the vast majority of the Channeled Asbestos Claims, if meritorious and entitled to payment, will be satisfied. And it is that concern which gives the Bankruptcy Court pause. The Plan Proponents did not offer evidence why it was necessary or appropriate for the Litigation Trustee to also serve as a director and officer of the Reorganized Debtor. While it is not the role of a court to override the reasonable exercise of a debtor's business judgment, this Bankruptcy Court has concerns about whether such a dual role may create an unnecessary risk of appearing to violate the Asbestos Insurance Cooperation Obligations, arguably giving rise to coverage defenses.[30] Perhaps the Plan Proponents will be able to provide more information concerning the exercise of the Debtor's business judgment in the creation of this dual role in the proceedings before the District Court. But without such information, the Bankruptcy Court recommends that the second sentence of section 4.9 of the Asbestos Trust Agreement be struck. Subject to this modification, the Bankruptcy Court recommends overruling the pending objections and concluding that the Plan Proponents proposed the Plan in good faith in accordance with section 1129(a)(3).

30 To be clear, the Bankruptcy Court does not find an inherent conflict of interest created by the dual position, as alleged by the Objecting Creditors. *See, e.g.*, Chubb PFFCL ¶¶ 115-18, ECF No. 1189 at 44-45. The Bankruptcy Court does agree with the Plan Proponents that both positions share the same basic goal of maximizing insurance coverage. Moreover, the officer and director of reorganized Hopeman owes a fiduciary duty to its shareholder, the

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Asbestos Trust. *See* *Schnelling v. Crawford* (*In re James River Coal Co.*), 360 B.R. 139, 170 (Bankr. E.D. Va. 2007) (first citing Va. Code § 13.1–690; then citing *Byelick v. Vivadelli*, 79 F.Supp.2d 610, 623 (E.D. Va.1999). While it may be hard to imagine a situation where their fiduciary duties diverge, the Plan Proponents have not explained to the satisfaction of the Bankruptcy Court why it is a reasonable exercise of the Debtor's business judgment that these positions should be held by one individual as opposed to two.

4. Section 1129(a)(4): The Court approves certain payments provided under the Plan as reasonable.

***37** In accordance with section 1129(a)(4), all fees to which parties may be entitled in connection with the Chapter 11 Case, including Professionals' Fee Claims, [31] are subject to the approval of the Bankruptcy Court. Plan § 2.2, ECF No. 1185 at 23. Although the Bankruptcy Court has authorized the interim payment of the fees and expenses incurred by Professionals [32] in connection with the Chapter 11 Case, Order (I) Establishing Procs. for Interim Comp. & Reimbursement of Expenses of Pros. & (II) Granting Related Relief, ECF No. 162, all such fees and expenses remain subject to final review for reasonableness by the Bankruptcy Court, Plan § 2.2, ECF No. 1185 at 23. Finally, the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. Plan § 12.1(g), ECF No. 1185 at 55. Accordingly, the Plan fully complies with the requirements of section 1129(a)(4).

31 "Professional Fee Claim means any Claim of a (a) Professional for allowance of compensation and/or reimbursement of costs and expenses, and (b) member of the Committee for reimbursement of costs and expenses, in each case incurred in the Chapter 11 Case on or before the Effective Date." Plan § 1.96, ECF No. 1185 at 18-19.

32 The term "Professional" means "any person retained or to be compensated pursuant to section 327, 328, 330, 363, 503(b), or 1103 of the Bankruptcy Code." Plan § 1.95, ECF No. 1185 at 18.

5. Section 1129(a)(5): The Plan sufficiently discloses the identity of proposed management and the compensation of insiders, and the management proposed is consistent with the interests of creditors and public policy.

Section 1129(a)(5)(A) has two requirements for a plan to be confirmable. [33] First, the plan proponent must disclose the names and affiliations of the proposed officers and directors of Reorganized Hopeman. 11 U.S.C. § 1129(a)(5)(A)(i). [34] While the term "affiliations" is not

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defined as used in this subsection, a leading treatise has explained that "[t]he affiliations should be those of interest to creditors and interest holders under the 'adequate information' standard of section 1125 (since such affiliations, if so qualifying, will have to be disclosed in any event)." *Collier on Bankruptcy* ¶ 1129.02 (Richard Levin & Henry J. Sommer eds.,16th ed.). Second, the appointment of any proposed officer or director must be consistent with the interests of creditors and with public policy. *Id.*§ 1129(a)(5)(A)(ii).

33 Section 1129(a)(5)(B) provides additional disclosure requirements for insiders. 11 U.S.C. § 1129(a)(5)(B). As no insiders will serve as officers or directors of Reorganized Hopeman, section 1129(a)(5)(B) is inapplicable.

34 Section 1129(a)(5) does not apply to the Trustees, the TAC, and the FCR. *In re Eagle-Picher Indus.*, 203 B.R. at 267. Although not required by section 1129(a)(5), the Plan Supplement further discloses the identities of the Trustees, the TAC, and the FCR. Am. Plan Suppl. Ex. A, ECF No. 1143 at 54-55.

Here, the Plan Supplement identifies Mr. Richardson as the individual proposed to serve as Reorganized Hopeman's sole officer and director. Initial Plan Suppl. Ex. D, ECF No. 853 at 193. The Plan Supplement also discloses Mr. Richardson's affiliation with Wyche, P.A., his employer. *Id.* (listing Mr. Richardson's address at Wyche, P.A.'s Columbia, South Carolina office and providing his Wyche, P.A. email).

Chubb was provided with the opportunity to conduct discovery regarding Mr. Richardson's affiliations. Chubb Plan Obj. ¶ 144 & n.288, ECF No. 958 at 80-81. As reflected in the Chubb Objection, through this discovery, the Plan Proponents disclosed that Mr. Richardson is currently co-counsel and part of a fee-sharing arrangement with the Committee's co-chair, Mr. Branham – who will also serve as a member of the TAC – in an asbestos-related lawsuit. *Id.* Chubb contends this connection violates section 1129(a)(5). Chubb PFFCL. ¶ 117, ECF No. 1189 at 44-45. However, such a contention ignores the plain language of section 1129(a)(5).

***38** The Bankruptcy Code has extensive provisions regarding the engagement of professionals. Section 327 requires any proposed professional to be "disinterested" as such a term is defined in section 101(14)(C) of the Bankruptcy Code. That definition focuses on the "direct and indirect relationship[s]," "connection[s]," and "interest[s]" of such a professional. *Id.* § 101(14)(C). Similarly, Rule 2016(a) of the Federal Rules of Bankruptcy Procedure requires a proposed professional to disclose their "connections" with the debtor, creditors, parties-in-interest, the foregoing's professionals, the United States Trustee, and any employee of the United States Trustee. Fed. R. Bankr. P. 2016(a)(2)(F), (a)(3). If either standard applied, Chubb would be correct and such connections would need to be disclosed.

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However, section 1129(a)(5) does not require either "disinterestedness" or disclosure of the more attenuated "connections." Instead, Congress chose to limit the disclosures required by section 1129(a)(5) solely to affiliations. Mr. Richardson is affiliated with the Wyche, P.A., firm. That affiliation has been disclosed. Therefore, the Plan satisfies the requirements of section 1129(a)(5)(A)(i), and Chubb's objection on that point should be overruled.

The Court further finds that the selection of the proposed officer and director is consistent with the interests of creditors and public policy as required by section 1129(a)(5)(A)(ii). The Debtor disclosed Mr. Richardson's proposed role in the Initial Plan Supplement, Initial Plan Suppl. Ex. D, ECF No. 853 at 193 (filed on June 6, 2025), allowing any creditor the opportunity to object to such selection prior to the Combined Hearing, Solicitation Procs. Order ¶ 6, ECF No. 782 at 4 (setting a June 23, 2025, deadline to object to either the adequacy of the Disclosure Statement and/or confirmation of the Plan). No holder of an Asbestos Claim filed an objection. While there is scant case law on the subject, "the public policy requirement would enable it to disapprove plans in which demonstrated incompetence or malevolence is a hallmark of the proposed management." *Collier on Bankruptcy* ¶ 1129.02 The Bankruptcy Court has no such concerns and, as such, section 1129(a)(5)(A)(ii) is satisfied.

6. Section 1129(a)(6): Inapplicable.

Section 1129(a)(6) is not applicable because the Debtor's current business does not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after Confirmation. Combined Hr'g Tr. Day 1 37:25-38:3, ECF No. 1174 at 37-38.

7. Section 1129(a)(7): Best Interests of Holders of Claims and Interests.

In order for a plan to meet the requirements of section 1129(a)(7) of the Bankruptcy Code, each holder in an impaired class must either accept the plan or "will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title." 11 U.S.C. § 1129(a)(7)(A). To put it plainly, the best interests test, as it is colloquially known, requires that each holder of an impaired claim or interest either accepts the plan or will receive as much as such holder would have received in a Chapter 7 liquidation, based on a liquidation analysis. "The 'best interests' test applies to individual creditors holding impaired claims, even if the class as a whole votes to accept the plan." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. at 441 n.13.

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The Plan Proponents bear the burden of proving by a preponderance of the evidence that the Plan complies with the best interests test under § 1129(a)(7), with the Court required to make an "independent" finding on that issue based on the evidence adduced by the Plan Proponents rather than on non-evidentiary assumptions and conclusory assertions, *see In re Smith*, 357 B.R. 60, 67 (Bankr. M.D.N.C. 2006), "but it is not an exact science," *In re Multiut Corp.*, 449 B.R. at 344.

> ***39** [T]he process entails a considerable degree of speculation. Thus, the court need only make a well-reasoned estimate of the liquidation value that is supported by the evidence on the record. It is not necessary to itemize or specifically determine precise values during this estimation procedure. Requiring such precision would be entirely unrealistic because exact values could only be found if the debtor actually underwent Chapter 7 liquidation.

In re W.R. Grace & Co., 475 B.R. 34, 142 (D. Del. 2012) (internal citations omitted).

In this case, the Plan was almost universally accepted by the two voting classes: Class 3 and Class 4. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5; Plan §§ 4.3(c); 4.4(c), ECF No. 1185 at 24, 25. However, 7 out of 2,416 holders of Class 4 Channeled Asbestos Claims did not vote in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Even though these creditors did not object to the plan, because these creditors did not vote to accept the Plan, the Court must determine whether the Plan is in their best interests. *See 203 N. Lasalle St. P'ship*, 526 U.S. at 441 n.13, 119 S.Ct. 1411.

In connection with the Disclosure Statement, the Plan Proponents provided the Liquidation Analysis, ECF No. 767 at 213-17, which compares the projected distribution to creditors and equity under the Plan with a hypothetical liquidation under Chapter 7 of the Bankruptcy Code, [35] Liquidation Analysis, ECF No. 767 at 215.

($ in Thousands) **Chapter 11 Chapter 7 Assets** Cash $ 801.3 $ 801.3 Accounts Receivable $ $ $ 117.9 $ 117.9 Ongoing Business Investment 350.0 $ - Resolute Settlement Proceeds 18,395.0 $ 18,395.0 Other Asbestos Insurance $ 80,000.0 - 120,000.0 $ 31,500.0 - 40,000.0 **Total Assets $ 99,664.2 - 139,664.2 $ 50,814.2 - 59,314.2**

Secured Claims and Administrative Expenses Professional Fee Administrative Expense Claims $ $ $ $ $ $ $ $ $ 12,500.0 $ 12,500.0 Asbestos Trust Start-Up Costs 250.0 $ - Ongoing Business Investment 350.0 $ $ $ - Priority Tax Claims 35.0 35.0 Priority Non-Tax Claims 5.4 5.4 Secured Claims - $ - United States Trustee Fees 90.0 $ 90.0 Chapter 7 Trustee Fees - $ 890.5 Chapter 7 Trustee's Professional Fees and Expenses - $ 8,500.0 **Total Secured Claims and Administrative Expenses $ 13,230.4 $ 22,020.9 - 22,276.1**

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Assets Potentially Available for Claimants $ 86,433.8 - 126,433.8 $ 28,793.3 - 37,038.1 Unsecured Claims General Unsecured Claims $ 121.7 $ 121.7 Asbestos Claims Unknown Unknown **Total Unsecured Claims Unknown Unknown**

Id. As indicated in the foregoing table, there are two major identified variables in the Liquidation Analysis: (1) the amount of asbestos insurance proceeds that will be available in a Chapter 11 as opposed to a Chapter 7; and (2) administrative costs associated with a Chapter 7 liquidation. *Id.*

35 The methodology used to estimate the total liquidation proceeds available for Distribution and the principal assumptions and considerations underlying the liquidation analysis are described in the Disclosure Statement and the Liquidation Analysis. At a high level, the Liquidation Analysis assumes immediate conversion to Chapter 7; (ii) the orderly liquidation of the Debtor's assets by a court-appointed Chapter 7 trustee; and (iii) the liquidation of Asbestos Claims outside of a 524(g) trust. *See* Disclosure Statement § IX.B, ECF No. 767 at 51.

The category "Other Asbestos Insurance" includes Hopeman's rights under asbestos insurance policies issued by and related contracts with Non-Settling Asbestos Insurers, and the anticipated ability of holders of Asbestos Claims to recover from Non-Settling Asbestos Insurers when such holders become judgment creditors against Reorganized Hopeman. *Id.* ¶ 6, ECF No. 767 at 216. As these amounts are uncertain, the Plan Proponents estimated a range of outcomes under either a Chapter 11 scenario or a hypothetical Chapter 7 scenario. *Id.* For the low-end of the Chapter 7 scenario, this liquidation analysis estimates a recovery of $31.5 million, based on the proposed settlement entered into on the eve of bankruptcy between the Debtor and Chubb and on the further assumption that additional insurance would not be recoverable. *Id.* For the high-end, the liquidation analysis assumes an incremental additional recovery of $8.5 million from existing insurance policies for a total recovery of $40 million. *Id.* In contrast, under the Chapter 11 scenario, the liquidation analysis projects that the insurance recoveries will be materially higher, since the Plan's structure will provide an enduring framework under which holders of Asbestos Claims will be able to pursue litigation in the tort system and either enter settlements of their lawsuits payable by one or more of the Non-Settling Insurers or secure judgments that will permit claimants to pursue insurance coverage litigation to recover on their judgments. *Id.* This structure will have a significantly longer duration that will lead to more claimants receiving compensation for their injuries, and the availability of the channeling injunction through the Plan will offer certainty to insurers and could incentivize settlements. *Id.*

***40** The other significant departure is noted in the line items for Chapter 7 Trustee Fees and Chapter 7 Trustee's Professional Fees and Expenses. The Chapter 7 Trustee Fees are determined by statute. *See* 11 U.S.C. § 326; Liquidation Analysis ¶ 11, ECF No. 767 at 217; Combined Hr'g Tr. Day 1 184:6-10, ECF No. 1174 at 184. The Chapter 7 Trustee could, and undoubtedly would, hire

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professionals in a hypothetical Chapter 7 liquidation. Mr. Tully, a Senior Managing Director for FTI, the Court-approved financial advisor to the Committee, testified that the Chapter 7 trustee's professionals will "need to get up to speed on everything that happened here. That would be costly." Combined Hr'g Tr. Day 1 184:17-23, ECF No. 1174 at 184. After the professionals became familiar with the case, they would then have to figure out how to address the claims.

Unlike the orderly process contemplated by the Plan, *see* Plan §§ 8.12-8.13, ECF No. 1185 at 35-38, in a hypothetical Chapter 7 liquidation, any Asbestos Claim or Demand that the trustee is unable to settle cannot be resolved by the Bankruptcy Court and must be resolved in the tort system. *See* 28 U.S.C. § 157(b)(5) (requiring personal injury tort and wrongful death claims, such as these Asbestos Claims, either be heard by "the district court in which the bankruptcy case is pending, or ... the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending."). In that scenario, the Chapter 7 trustee would need to engage litigation counsel in numerous other courts to defend and liquidate the Asbestos Claims outside of this Bankruptcy Court. Liquidation Analysis ¶ 12, ECF No. 767 at 217. The Plan Proponents used Hopeman's historical annual costs of defending Asbestos Claims, as well as a review of comparable situations, to estimate the litigation cost to be $8.5 million. *Id.*; Combined Hr'g Tr. Day 1 185:4-8 (testimony of Mr. Tully that "Hopeman spent four or five million a year, for decades").

Under either the Plan or a Chapter 7 liquidation, holders of Class 3 General Unsecured Claims would receive payment in full. Liquidation Analysis, ECF No. 767 at 215. The Plan Proponents project that total assets available for distribution among the holders of Class 4 Channeled Asbestos Claims will be $86 million to $126 million under the Plan, as compared to $28 million to $37 million in a Chapter 7 liquidation. *See id.* Based on the Liquidation Analysis, no non-accepting holder of a Class 3 General Unsecured Claim or a Class 4 Channeled Asbestos Claim will receive less under the Plan than such holder would receive in a liquidation of the Debtor's assets. Combined Hr'g Tr. Day 1 181:10–186:6, ECF No. 1184 at 181-86. In other words, the Liquidation Analysis demonstrates that the holders of Asbestos Claims in Class 4 who did not vote in favor of the Plan will receive as much value under the Plan, if not more, than they would receive in a hypothetical Chapter 7 liquidation. Liquidation Analysis, ECF No. 767 at 213-17.

The Objecting Insurers take issue with the assumptions underlying and the methodology utilized in the Liquidation Analysis. First, the Objecting Insurers believe that the calculations are fundamentally wrong because the Liquidation Analysis assumes that the total amount of Asbestos Claims will be the same in a Chapter 7 as in a Chapter 11. The Objecting Insurers argue that only holders of current Asbestos Claims would be entitled to a distribution in a Chapter 7 case, whereas holders of future Asbestos Claims, i.e., Demands, would also be entitled to payment in a Chapter 11 case. If that is the case, the Plan Proponents would need to determine the total amount of current

Asbestos Claims and future Asbestos Claims to calculate the percentage distribution that would be available to holders of current Asbestos Claims *only* under either scenario.

***41** This Bankruptcy Court believes this argument is flawed and contrary to existing caselaw that acknowledges that the Bankruptcy Code's definition of "claims" and section 524(g)(5)'s definition of "demands" are, essentially, overlapping. This Bankruptcy Court agrees with the other courts that have addressed this issue that "future unknown Asbestos Personal Injury Claims are 'claims' within the meaning of section 101(5) of the Bankruptcy Code. Accordingly, it is appropriate to take the value of future Asbestos Personal Injury Claims into account in determining the Claims that would be required to be paid in a liquidation under chapter 7 of the Bankruptcy Code." *In re Eagle-Picher Indus.*, 203 B.R. at 275; *see also In re W.R. Grace & Co.*, 446 B.R. 96, 127 (Bankr. D. Del. 2011) (recognizing, in addressing objecting party's argument the best interests test was not satisfied, that "[i]n this bankruptcy case, in addition to the current Libby claims that remain to be liquidated there will be future demands due to the nature of asbestos disease.").

In *Grady v. A.H. Robins, Co.*, the Fourth Circuit squarely addressed whether future tort claims were "claims," albeit in the context of the automatic stay. 839 F.2d 198 (4th Cir. 1988). The term "claim" is defined in section 101(5) of the Bankruptcy Code to mean a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 105(A). A contingent right to payment is statutorily a "claim" under section 101(5). Thus, under the *Grady* standard, persons who had not yet manifested injury but who had used the [defective product] prior to the debtor's bankruptcy filing held "claims." *Grady*, 839 F.2d at 203. In so holding, the Fourth Circuit adopted the conduct test, which "merely require[s] the events giving rise to a claim must occur pre-petition." *In re Camellia Food Stores*, 287 B.R. 52, 57 (Bankr. E.D. Va. 2002) (first citing *Grady*, 839 F.2d at 202-03; then citing *Zeitler v. Martel* (*In re Zeitler*), 255 B.R. 172, 177 (E.D.N.C. 1999)).

There is no dispute that the asbestos exposure allegedly giving rise to current and future Asbestos Claims occurred prior to the Debtor's bankruptcy filing. Applying the conduct test, "future asbestos claimants have § 101(5) claims against the debtors. The manufacture and distribution of debtors' asbestos products and the future claimants' exposure thereto arose prior to the petition date, and the basis for liability is the debtors' prepetition conduct." *In re Eagle-Picher Indus.*, Case No. C-1-96-206, 1996 U.S. Dist. LEXIS 22742, at *22-23 (S.D. Ohio Sep. 25, 1996) (not reported on Westlaw).

Second, the Objecting Insurers take issue with the Liquidation Analysis' assumption that "the claims are the claims." Combined Hr'g Tr. Day 1 232:16, ECF No. 1174 at 232. The Liquidation Analysis lists the amount of total Asbestos Claims as "unknown." Liquidation Analysis, ECF No. 767 at 215. However, the Plan Proponents take the position that it is not necessary to estimate the amount of Asbestos Claims – if the total amount of claims are the same in both scenarios, then

creditors must fare better in Chapter 11 as there will be more dollars to distribute. The Objecting Insurers argue that the pool of claims in a Chapter 7 case may be smaller since a Chapter 7 bankruptcy typically includes the imposition of a bar date for filing claims. Without an estimate of the claims that would be allowed in a Chapter 7, the Objecting Insurers argue that the Plan Proponents have failed to meet their burden that the best interests test is met.

This issue is a much closer call, although the total amount of claims that would be filed in a Chapter 7 is speculative at best.. Mr. Tully testified during the Combined Hearing that the Plan Proponents had retained experts to prepare asbestos claims estimation reports. *See* Combined Hr'g Tr. Day 1 192:6-19, 234:7-235:25, ECF No. 1174 at 192, 234-35. These estimates were not included in the Liquidation Analysis presented to the Court. It is regrettable that this information was not presented during the Combined Hearing as it may have preemptively and conclusively addressed this part of Chubb's objection. However, even without the presentation of claim estimations, the Bankruptcy Court finds the logic of *W.R. Grace* to be compelling in accepting the Liquidation Analysis presented at the Combined Hearing:

> ***42** [T]he [Objecting Party] fail[s] to take into account the practical implications of what Chapter 7 liquidation would entail in this case. As the Bankruptcy Court properly noted, valuation of Grace creditors' claims under Chapter 7 is highly speculative due to the uncertainty associated with future claims related to latent pleural disease. These future claims are not and cannot yet be known. The Joint Plan accounts for this uncertainty in its proposed structure, and guarantees all claimants—both current and future—some degree of recovery. In contrast, a liquidation under Chapter 7 has no such reassurance in place. Rather, creditors' claims in a Chapter 7 proceeding would be put into a pool that would not distribute payments until all claims in the class were liquidated and all the assets were reduced to cash value.
>
> Given the latent nature of asbestos-related pleural disease, excessive time could pass until all future claims are ascertained. Thus, a Chapter 7 liquidation would need to be held open for a seemingly indefinite amount of time while all personal injury claimants pursued jury trials and settlements in the tort system. Such a process would result in inevitable delay and disparate – or, even worse, unavailable – recovery amongst personal injury claimants. Such uncertainty is certainly not within the creditors' best interests.

In re W.R. Grace & Co., 475 B.R. at 144-45 (internal citations omitted).

This Bankruptcy Court is cognizant that the Plan Proponents must provide evidence upon which the Court can make independent findings that the Plan is in the best interests of creditors. *In re Smith*, 357 B.R. at 67. The Bankruptcy Court finds that, given the uncertainty inherent in asbestos cases, there is sufficient evidence to permit the Court to so find. [36] If converted to Chapter 7, this case would be incredibly difficult to administer in a fair yet efficient manner. On one hand, the Chapter 7 trustee would have to consider the imposition of an arbitrary claims bar date. In that case,

creditors with timely-filed Asbestos Claims may potentially receive a higher distribution, but at the expense of other creditors who may not have manifested the disease and, consequently, are unfairly excluded from distributions. On the other hand, the Chapter 7 trustee could seek an extended bar date and wait to assess the entire pool of claims; however, since Chapter 7 is not structured to provide for interim distributions, absent some extraordinary remedy, holders of Asbestos Claims would have to wait until all Asbestos Claims had been filed in order to receive any distribution. By that time, many of these holders may have suffered or died without compensation. Under these facts and circumstances, the Court finds that the evidence adduced by the Plan Proponents sufficiently shows that the Plan is in the best interests of holders of Asbestos Claims and, therefore, satisfies section 1129(a)(7)(A).[37] *See In re W.R. Grace & Co.*, 475 B.R. at 142 (requiring the court to only make a well-reasoned estimate supported by the evidence).

36 By Order entered on August 22, 2025, the Court excluded Chubb's proposed expert witness, finding that the proposed testimony was unhelpful and, therefore, inadmissible. Order Granting Mot. in Lim. of the Debtor to Exclude the Expert Test. of Marc C. Scarcella, ECF No. 1147. The Objecting Insurers did not offer any other evidence in support of their arguments that the best interests test was not met.

37 Chubb argued that a hypothetical Chapter 7 liquidation may not entail more delay or create additional fees, as the Chapter 7 trustee could just agree to lift the automatic stay to allow claimants to promptly pursue and recover on their claims from insurance. While possible, there was no evidence to suggest that a Chapter 7 trustee would do so, rather than first trying to negotiate settlements directly with insurance, especially since the Debtor had already been able to negotiate the settlements provided in the Resolute Order and the Chubb Settlement Motion.

8. Section 1129(a)(8): Acceptance of the Plan by Each Impaired Class.

***43** All classes of Claims have either accepted the Plan or are unimpaired. The Plan provided for five classes. Plan § 3.1, ECF No. 1185 at 23-24. Classes 1 and 2 are unimpaired under the Plan and, therefore, are presumed to have accepted the Plan. *Id.*; 11 U.S.C. § 1126(f) ("[A] class that is not impaired under a plan, and each holder of a claim ... of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims ... of such class is not required."). Classes 3 and 4 are impaired and entitled to vote on the Plan. Plan § 3.1, ECF No. 1185 at 23-24. The only holder of a Class 3 General Unsecured Claims who voted, holding a Class 3 claim in the amount of $7,005.44 for voting purposes only, voted in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Out of the 2,416 ballots received by the Plan Proponents from holders of Class 4 Channeled Asbestos Claims, 2,409 creditors holding Claims in the amount of $2,409, for voting purposes only, voted in favor

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of the Plan. *Id.* In other words, 99.71% in number of creditors and 99.71% in amount of claims in Class 4 Channeled Asbestos Claims voted in favor of the Plan. *Id.* Therefore, Classes 3 and 4 both voted in favor of the Plan. *Id.*; 11 U.S.C. § 1126(c) ("A class of claims has accepted a plan if such plan has been accepted by creditors ... that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors".); 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb) (requiring any class "of the claimants whose claims are to be addressed by a [524(g)] trust ... [to] vote[ ], by at least 75 percent of those voting, in favor of the plan). However, Class 5 Equity Interests will not receive anything on behalf of their Interests and, as such, it is deemed to reject the Plan. Plan § 4.5, ECF No. 1185 at 25; 11 U.S.C. § 1126(g) ("[A] class is deemed not to have accepted a plan if such plan provides that the ... interests of such class do not entitle the holders of such ... interests to receive or retain any property under the plan on account of such ... interests."). Accordingly, the Plan does not satisfy section 1129(a)(8). Notwithstanding, the Plan is confirmable because, as set forth below, the Plan satisfies section 1129(b).

9. Section 1129(a)(9): Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code.

The Plan also meets the requirements regarding the payment of Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims, as required by section 1129(a)(9). Section 2.1 of the Plan provides that, subject to certain bar dates and unless otherwise agreed by the holder of an Administrative Claim, each holder of an Allowed Administrative Claim shall receive, in full satisfaction of its Administrative Claim, cash equal to the allowed amount of such Administrative Claim either: (a) as soon as practicable after the Effective Date; (b) the first Business Day that is at least thirty calendar days after the date on which such Administrative Expense Claim becomes Allowed; or (c) on such other date as may be agreed to by the holder of such Allowed Administrative Expense Claim and Reorganized Hopeman. Plan § 2.1, ECF No. 1185 at 22-23. Section 2.3 of the Plan provides that Priority Tax Claims against the Debtor (which include Claims entitled to priority other than Administrative Expense Claims and Priority Non-Tax Claims) will be paid on: (a) the Effective Date, (b) thirty days after the date such Priority Tax Claim becomes an Allowed Claim, or (c) the date such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy law. *Id.* § 2.3, ECF No. 1185 at 23. Accordingly, the Plan satisfies the requirements set forth in section 1129(a)(9).

10. Section 1129(a)(10): Acceptance By at Least One Impaired, Non-Insider Class.

As shown in the Voting Certification and as reflected in the record of the Combined Hearing, at least one Class of Claims that is impaired under the Plan has voted to accept the Plan, determined without including the acceptance by any insider, thereby meeting the requirements of section

1129(a)(10). Specifically, Class 3 General Unsecured Claims and Class 4 Channeled Asbestos Claims, which are not insider Classes and are the only voting Classes under the Plan, voted to accept the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Accordingly, the Plan satisfies section 1129(a)(10).

11. Section 1129(a)(11): Feasibility of the Plan.

Section 1129(a)(11) requires that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). As reflected in the Plan and the Reorganized Hopeman Projections, Reorganized Hopeman will generate cash flows through the real-estate investment contemplated by the Restructuring Transactions and will be capitalized with an additional $150,000 in Net Reserve Funds that will be invested in high-quality fixed income securities. Plan § 8.10, ECF No. 1185 at 35; Initial Plan Suppl. Ex. F, ECF No. 853 at 199-228 (the "Restructuring Transactions"); Initial Plan Suppl. Ex. I, ECF No. 853 at 233-35 (the "Projections").

***44** As the Projections demonstrate, Reorganized Hopeman will have the ability to fund its ongoing operations from cash flow generated by the investment acquired through the Restructuring Transactions and through interest earned on the Net Reserve Funds (as well as through the Asbestos Trust Assets, which will be used to satisfy Reorganized Hopeman's obligations to the holders of Channeled Asbestos Claims, including to provide notice, cooperate, and take whatever actions are necessary to maintain insurance coverage). Projections, ECF No. 853 at 235 The Restructuring Transactions, as evidenced by the Projections, ensure that Reorganized Hopeman generates positive cash flow into the future. *Id.* (projecting annual positive cash flow through 2030). The Debtor, through cash on hand by virtue of the Net Cash Reserves, the revenue that will be generated by the Restructuring Transactions, and the Asbestos Trust Assets available to the holders of Class 4 Channeled Asbestos Claims, will be able to fund the obligations imposed by the Plan. Overall, the Projections demonstrate that: (a) the Plan provides a feasible means of completing the Debtor's reorganization; and (b) Reorganized Hopeman will have more than sufficient funds to satisfy its obligations under the Plan. Accordingly, the Plan satisfies the feasibility standard of section 1129(a)(11).

12. Section 1129(a)(12): Payment of Bankruptcy Fees.

The Plan complies with section 1129(a)(12) by providing that all fees payable pursuant to 28 U.S.C. § 1930 will be paid in cash on or before the Effective Date. Plan § 13.6, ECF No. 1185 at 60.

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13. Section 1129(a)(13): Inapplicable.

Section 1129(a)(13) is not applicable because Hopeman does not maintain any retiree benefits, as defined in section 1114 of the Bankruptcy Code. Combined Hr'g Tr. Day 1 38:4-6, ECF No. 1174 at 38.

14. Section 1129(b): No Unfair Discrimination; Fair and Equitable.

The Plan has been accepted by Classes 3 and 4, the only voting Classes. Plan § 3.1, ECF No. 1185 at 23-24; Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. However, it is deemed to be rejected by Class 5 Equity Interests. Plan § 4.5, ECF No. 1185 at 25; 11 U.S.C. § 1126(g). The Plan may be confirmed even though Class 5 has not accepted the Plan because the Plan meets the "cramdown" requirements for confirmation under section 1129(b).

Section 1129(b) permits confirmation of a plan where (1) all other provisions of section 1129(a) other than subsection (8) are met; and (2) "if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b). As more fully discussed herein, other than the requirement in section 1129(a)(8) with respect to Class 5, all the requirements of section 1129(a) have been met. The Plan does not discriminate unfairly and is fair and equitable with respect to Class 5. No Class of Claims or Interests junior to Class 5 will receive or retain any property on account of their Claims or Interests, and no Class of Claims or Interests senior to Class 5 is receiving more than full payment on account of the Claims and Interests in such Class. The Plan therefore is fair and equitable, does not discriminate unfairly with respect to Class 5, and complies with section 1129(b).

15. Section 1129(c): Only One Plan.

16. Section 1129(d): Purpose of Plan.

There is only one plan that is being confirmed in the Chapter 11 Case, the Plan, thereby satisfying the requirements of section 1129(c) of the Bankruptcy Code.

The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933. Combined Hr'g Tr. Day 1 37:15-20, ECF No. 1174 at 37.

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D. The Bankruptcy Court Recommends Finding that the Plan Complies with Section 524 of the Bankruptcy Code.

As provided in section 524(g) of the Bankruptcy Code, the Plan includes a channeling injunction, which would prevent entities from taking legal action to recover, directly or indirectly, payment in respect of Asbestos Claims or Demands against Reorganized Hopeman. *See* 11 U.S.C. § 524(g)(1)(A) (A "court that enters an order confirming a plan of reorganization under chapter 11 may [also] issue ... an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section."). This channeling injunction "allows a debtor to address in one forum all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor." *Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 237 (4th Cir. 2025) (internal quotations and citations omitted); 11 U.S.C. § 524(g)(1)(B) (The 524(g) injunction "enjoin[s] entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that ... is to be paid in whole or in part by a trust described in paragraph (2)(B)(i)."). In addition to the requirements of section 1129, a plan that contains a channeling injunction must also comply with section 524(g)(2). *In re W.R. Grace & Co.*, 475 B.R. at 91. For the reasons stated below, the Bankruptcy Court finds that the Plan Proponents have met the requirements of section 524(g) and, as such, the asbestos channeling injunction should be approved.

1. The Asbestos Trust Satisfies the Requirements of Section 524(g)(2)(B)(i).

***45** An asbestos trust must:

> (I) ... assume the liabilities of a debtor which ... has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;
>
> (II) ... be funded in whole or in part by the [debtor's] securities ... and by the obligation of such debtor or debtors to make future payments, including dividends;
>
> (III) ... own, or ... be entitled to own if specified contingencies occur, a majority of the voting shares of—(aa) each such debtor; (bb) the parent corporation of each such debtor; or (cc) a subsidiary of each such debtor that is also a debtor; and
>
> (IV) is to use its assets or income to pay claims and demands.

11 U.S.C. § 524(g)(2)(B)(i). "Only if a trust satisfies all four of these requirements will it be considered proper under the statute." *In re W.R. Grace & Co.*, 475 B.R. at 93. In this case,

the Bankruptcy Court finds that the Asbestos Trust contemplated by the Plan satisfies all four requirements set forth under section 524(g)(2)(B)(i) and, as such, is proper.

Section 524(g)(2)(B)(i)(I) requires that an asbestos trust assume the liabilities of a debtor that, as of the petition date, has been named as a defendant in actions to recover damages for asbestos-related claims. 11 U.S.C. § 524(g)(2)(B)(i)(I); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement by its express terms, which state that "liability for all Channeled Asbestos Claims shall automatically, and without further act, deed, or court order, be channeled exclusively to and assumed by the Asbestos Trust. Plan § 4.4(b), ECF No. 1185 at 25; *see also id.* § 8.3(h), ECF No. 1185 at 32. By assuming the Hopeman's asbestos liability, the Asbestos Trust will be responsible for resolving Channeled Asbestos Claims in conjunction with the actions permitted under sections 8.12 and 8.13 of the Plan.

Much like *Kaiser Gypsum*, there is no real dispute that the Asbestos Trust assumes the Debtor's liabilities as to Channeled Asbestos Claims. "And rightly so—those claims are directly submitted to the [Asbestos] Trust for resolution." *In re Kaiser Gypsum Co.*, 135 F.4th at 197. However, the Objecting Parties contest whether the Non-Channeled Asbestos Claims are being assumed by the Asbestos Trust. The Bankruptcy Court agrees with the Fourth Circuit – section 524(g)(2)(B)(i)(I) is satisfied where the Trust has assumed the Debtor's rights to insurance coverage. *Id.* To that end, if a claimant holding a Non-Channeled Asbestos Claim received a favorable judgment in the tort system, the judgment would first be paid through any applicable insurance policy. *Id.* Just like in *Kaiser Gypsum*, "the Trust effectively assumes the Debtors' liabilities, either by directly resolving uninsured claims through the Trust's administrative process, or by indirectly resolving insured claims through a combination of tort system litigation, coverage under the Truck policy, and the Trust's other assets." *Id.* at 198. This structure satisfies section 524(g)(2)(B)(i)(I). *See id.*

46** ***Section 524(g)(2)(B)(i)(II) requires that the trust "be funded in whole or in part by the [debtor's] securities ... and by the obligation of such debtor ... to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement in part by providing that all Reorganized Hopeman Common Stock will be issued to the Asbestos Trust. Plan § 8.6, ECF No. 1185 at 34. The Plan Proponents and the Objecting Insurers disagree, however, about whether the Plan obligates the debtor to make future payments, including dividends, as required by the statute.

Section 524(g)'s funding requirement is intended to ensure an evergreen source of funds to pay both current and existing asbestos liability. "[T]he statute doesn't expressly require indefinite future payments or a minimum payment amount." *In re Kaiser Gypsum Co.*, 135 F.4th at 198-99. Rather, the evergreen source of funding may be insurance proceeds. *Id.* Applying this standard articulated by the Fourth Circuit in *Kaiser Gypsum*, the Plan satisfies section 524(g)(2)(B)(i)(II).

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Nevertheless, the Objecting Insurers contend that the Plan Proponents have not satisfied section 524(g)(2)(B)(i)(II) due to an "ongoing business" requirement that they argue is required by the statute and not satisfied by the Plan. *See* Chubb Plan Obj. ¶¶ 55-77, ECF No. 958 at 29-41; Liberty Mut. Plan Obj. ¶¶ 26-44, ECF No. 961 at 19-29; Travelers Plan Obj. ¶¶ 87-91, ECF No. 944 at 53-55. The Plan Proponents disagree. The Plan Proponents argue that the plain language of section 524(g)(2)(B)(i)(II) does not contain an ongoing-business requirement, and, even if an ongoing-business requirement were grafted onto the statute, that requirement is satisfied by the Plan. Having carefully reviewed the arguments of the Plan Proponents and the Objecting Insurers, the authorities cited by each, and having conducted an independent review of the relevant law, the Court rejects the Objecting Insurers' contention and finds that the Plan Proponents have satisfied section 524(g)(2)(B)(i)(II).

The Court "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989) (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985)). The statute is unambiguous – the plain language of section 524(g)(2)(B)(i)(II) is devoid of any reference to an ongoing-business requirement. *Cf. In re Kaiser Gypsum Co., Inc.*, 135 F.4h at 198 (reciting 524(g)'s funding requirements, without any mention of an ongoing-business requirement). "In light of the many express requirements laid out in § 524(g), ... had Congress intended § 524(g) require a debtor to operate a viable, ongoing, pre-petition business, it would have included statutory language to that effect in § 524(g)(2)(B)." *In re Flintkote Co.*, 486 B.R. at 131. Accordingly, "where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.' " *Ron Pair Enters. Inc.*, 489 U.S. at 241, 109 S.Ct. 1026 (quoting *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 61 L.Ed. 442 (1917)). The plain language of section 524(g)(2)(B)(i)(II), alone, is sufficient to dispose of the Objecting Insurers' assertions regarding the ongoing-business requirement.

Ignoring the plain language of the statute, the Objecting Insurers maintain that an ongoing business is required, relying on dicta in the Third Circuit's decision in *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004).[38] In *Combustion Engineering*, the Third Circuit was called upon to address a number of challenges to a debtor's section 524(g) plan, including arguments by a group of objecting insurers that the plan did not meet the requirements of section 524(g)(2)(B)(i)(II). *Id.* at 248. After reviewing section 524(g)(2)(B)(i)(II), the Third Circuit commented that "[t]he *implication* of [the funding] requirement is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants." *Id.* at 248 (emphasis added). Noting that the debtor's "post-confirmation business operations would be, at most, minimal," the Third Circuit observed that "it [was] *debatable* whether [the debtor] could satisfy § 524(g)(2)(B)(i)(II)," but declined to address the issue because "[w]hile the Objecting Insurers argue that § 524(g)(2)(B)(i)(II) is not satisfied,

they do not have standing to raise this matter. *Therefore, we need not address it*." *Id.* (emphasis added).

38 The Objecting Insurers also refer to two other cases, neither of which are binding or applicable here. *In re Lloyd E. Mitchell, Inc.*, Case No. 06-13250-NVA, 2012 WL 5988841, at *3 n.6, 2012 Bankr. LEXIS 5531, at *11 n.6 (Bankr. D. Md. Nov. 29, 2012) (mentioning an ongoing business requirement under section 524, but in the context of adjudicating a motion to lift the automatic stay); *In re Am. Capital Equip., LLC*, 688 F.3d at 160 (plan was unconfirmable for a plethora of reasons, including that it was being funded exclusively from mandatory surcharges on claims processed by the trust).

***47** In *Quigley*, the United States Bankruptcy Court for the Southern District of New York, correctly recognized that the *Combustion* court's musings about an implicit ongoing-business requirement were dicta. *In re Quigley Co.*, 437 B.R. 102, 140 (Bankr. S.D.N.Y. 2010) ("In dicta, the *Combustion Engineering* Court stated the provision [section 524(g)(2)(B)(i)(II)] implied that the reorganized debtor must be a going concern, such that it is liable to make future payments into the trust to provide an evergreen funding source for future asbestos claimants.") (internal citation and quotation marks omitted); *see In re Flintkote Co.*, 486 B.R. at 129 ("The Court of Appeals in *Combustion Engineering* stated, in dicta, that the "implication of [§ 524(g)(2)(B)(i)(II)] is that the reorganized debtor must be a going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants." (citation omitted)).

While section 524(g)(2)(B)(i)(II) does not contain an ongoing-business requirement, the Bankruptcy Court concludes that if there were such a requirement it would be satisfied here. Pursuant to the Restructuring Transactions provided for in the Plan, "Reorganized Hopeman will acquire a minority interest, and receive net cash flows on account of that interest, in a multifamily property near Houston, Texas." Restructuring Transactions, ECF No. 853 at 200. Reorganized Hopeman will also be capitalized with an additional $150,000, "which will be invested in high quality fixed income securities, anticipated to earn a market rate of interest of approximately 4%." *Id.* From these two investments, the Reorganized Hopeman anticipates receiving dividends and distributions. *Id.* After payment of necessary expenses under the Plan, any remaining dividends and distributions may be transferred by the Reorganized Hopeman to the Asbestos Trust, thereby becoming part of the Asbestos Trust Assets. *Id.*; Plan §§ 1.64, 8.2(a)(ii), ECF No. 1185 at 15, 30 (providing that the Trust will be funded on an ongoing basis from Excess Net Reserve Funds). In other words, Reorganized Hopeman is obligated to make future payments as required by section 524(g)(2)(B)(i)(II).

Prior to the Petition Date, the Debtor was engaged in the business of managing Asbestos Claims and its insurance assets, including investing its cash and proceeds of insurance settlements in low-risk assets to generate a return to be used to satisfy claims, Combined Hr'g Tr. Day 1 15:3-17:7, ECF No. 1174 at 15-17, which is part of what Reorganized Hopeman will do after the Effective

Date, Restructuring Transactions, ECF No. 853 at 200 (describing Reorganized Hopeman's post-confirmation investments). As such, the Plan contemplates that the Debtor will continue its pre-Petition Date business after the Plan becomes effective, thereby satisfying any ongoing-business requirement.

The Plan goes one step further by providing for another ongoing income stream as a source of funding for the Asbestos Trust – the Debtor's investment in certain real property. Courts have determined similar post-confirmation transactions are sufficient for an ongoing business requirement. *See, e.g.*, *In re Flintkote*, 486 B.R. at 131 (owning and leasing real estate was sufficient); Disclosure Statement for Am. Ch. 11 Plan of Reorganization of Gulfmark Offshore, Inc. § II.C, *In re Gulfmark Offshore, Inc.*, Case No. 17-11125-KG (Bankr. D. Del. June 27, 2017), ECF No. 173 at 24 ("The Debtor is a holding company, the sole assets of which (other than bank accounts and the intercompany notes receivable), are shares and LLC interests in its immediate subsidiaries."), *as subsequently confirmed*, Findings of Fact, Conclusions of Law & Order Confirming the Am. Ch. 11 Plan of Reorganization of Gulfmark Offshore, Inc., *In re Gulfmark Offshore, Inc.*, Case No. 17-11125-KG (Bankr. D. Del. Oct. 4, 2017, ECF No. 328; *see generally* Sander L. Esserman & David J. Parsons, *The Case for Broad Access to 11 U.S.C. § 524(g) in Light of the Third Circuit's Ongoing Bus. Requirement Dicta in* Combustion Eng'g, 62 N.Y.U. Ann. Surv. Am. L. 187 (2006). For these reasons, the Plan satisfies section 524(g)(2)(B)(i)(II) of the Bankruptcy Code.

48** ***Section 524(g)(2)(B)(i)(III) requires that the trust own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares "of each debtor." 11 U.S.C. § 524(g)(2)(B)(i)(III); *In re Kaiser Gypsum Co., Inc.*, 135 F.4th at 197. The Plan satisfies this requirement. The Plan provides that, upon the Effective Date, the Asbestos Trust will receive 100% of the Reorganized Hopeman Common Stock. Plan § 8.6, ECF No. 1185 at 34. Accordingly, the Plan complies with the language of section 524(g)(2)(B)(i)(III).

Section 524(g)(2)(B)(i)(IV) requires an asbestos trust "to use its assets or income to pay claims and demands." 11 U.S.C. § 524(g)(2)(B)(i)(IV). Here, the Asbestos Trust will assume the liability and responsibility for all Channeled Asbestos Claims, Plan § 8.3(a), ECF No. 1185 at 30, and will use its assets – the Asbestos Trust Assets, including the Asbestos Insurance Rights – to pay and satisfy Channeled Asbestos Claims in accordance with the Plan, the Asbestos Trust Agreement, and the Asbestos Trust Distribution Procedures, *id.* § 8.3(h), ECF No. 1185 at 32, thus satisfying the requirements of section 524(g)(2)(B)(i)(IV).

2. The Asbestos Trust Satisfies the Requirements of Section 524(g)(2)(B)(ii).

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Section 524(g)(2)(B)(ii) of the Bankruptcy Code requires the Court to make certain factual findings to support the issuance of a channeling injunction under section 524(g)(1)(A). As set forth below, Hopeman's history, the nature of asbestos-related litigation and the facts of this case all support the findings required for the issuance of the Asbestos Permanent Channeling Injunction under section 524(g)(1)(A) of the Bankruptcy Code.

Section 524(g)(2)(B)(ii)(I) requires the court to find that "the debtor is likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction." 11 U.S.C. § 524(g)(2)(B)(ii)(I). This requirement is clearly met in the case at bar. Here, the Debtor's asbestos-related liabilities are Asbestos Claims asserted against it allegedly arising out of the asbestos-containing products used in Hopeman's ship joining business. Lascell First Day Decl. ¶ 2, ECF No. 8 at 2; Combined Hr'g Tr. Day 1 18:4-16, ECF No. 1174 at 18. Since 1979, claimants have asserted more than 126,000 Asbestos Claims against Hopeman. Lascell First Day Decl. ¶ 20, ECF No. 8 at 7; Combined Hr'g Tr. Day 1 19:3-6, ECF No. 1174 at 19. As of the Petition Date, over 2,700 unresolved Asbestos Claims have been asserted against Hopeman. Combined Hr'g Tr. Day 1 19:7-9, ECF No. 1174 at 19.

Based on the substantial number of Asbestos Claims asserted against Hopeman and related personal injury lawsuits that were filed in the past and were continuing to be filed prior to the Petition Date, Hopeman would likely be subject to substantial future Demands for payment arising from the same or similar conduct or events that gave rise to the Channeled Asbestos Claims. *Id.* 38:7-17, 139:14-22, 140:11-23, ECF No. 1174 at 38, 139, 140. Accordingly, section 524(g)(2)(B)(ii)(I) is satisfied.

Section 524(g)(2)(B)(ii)(II) requires a court to find that "the actual amounts, numbers, and timing of such future demands cannot be determined." 11 U.S.C. § 524(g)(2)(B)(ii)(II). Hopeman is unable to predict with any degree of confidence the amounts, numbers and timing of future Demands in respect of alleged Asbestos Claims. Combined Hr'g Tr. Day 1 38:14-17, 140:11-23, ECF No. 1174 at 38, 140. Accordingly, section 524(g)(2)(B)(ii)(II) is satisfied.

49** ***Section 524(g)(2)(B)(ii)(III) requires a finding that "pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands." 11 U.S.C. § 524(g)(2)(B)(ii)(III). Under the Plan, Channeled Asbestos Claimants, current and future, will receive equitable treatment in accordance with the Asbestos Trust Distribution Procedures. Plan § 8.3(h), ECF No. 1185 at 32; Asbestos Tr. Distrib. Procs. § 1.1, ECF No. 1143 at 110. Without the Plan confirmed under section 524(g): (i) future claimants' interests would not be protected at all; and (ii) there would be no mechanism to bind future claimants to the mechanism provided in the Plan that provides an orderly process for the fair and equitable distribution of assets to asbestos claimants. *See* Combined Hr'g Tr. Day 1 20:19-22,

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103:2-23, ECF No. 1174 at 20, 103. Accordingly, the requirements of section 524(g)(2)(B)(ii)(III) are met.

Section 524(g)(2)(B)(ii)(IV) requires a court to find that, as part of the confirmation process, the terms of the channeling injunction proposed, including "any provisions barring actions against third parties," are set forth in the plan of reorganization and the disclosure statement in support of the plan. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(aa). A court must also find that "a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan." 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). As part of the confirmation process in the Chapter 11 Case, the Debtor included the terms of the Asbestos Permanent Channeling Injunction, including provisions therein barring actions against identified parties, in both the Plan and the Disclosure Statement. Plan § 10.3, ECF No. 1185 at 44; Disclosure Statement § I, ECF No. 767 at 9. Hopeman also designated Class 4 under the Plan for all Channeled Asbestos Claims. Plan § 4.4, ECF No. 1185 at 25. The voting Claim holders in Class 4 overwhelmingly accepted the Plan, with 99.71% voting in favor of the Plan. Voting Certification ¶ 12 & Ex. A, ECF No. 1077 at 3, 5. Therefore, section 524(g)(2)(B)(ii)(IV) is satisfied.

Finally, ***Section 524(g)(2)(B)(ii)(V)*** requires a court to find that

> the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable mechanisms, that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.

11 U.S.C. § 524(g)(2)(B)(ii)(V). Here, the Asbestos Trust will pay Channeled Asbestos Claims in accordance with the Asbestos Trust Distribution Procedures, which contain mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Channeled Asbestos Claims and future asbestos-related Demands that involve similar claims in substantially the same manner as present claimants.

Specifically, the Asbestos Trust Distribution Procedures provide for the processing and payment of the Uninsured Asbestos Claims, including the uninsured portions of Insured Asbestos Claims, that would have been paid by the Debtor prepetition, on an impartial, first-in- first-out basis, while also permitting the Channeled Asbestos Claimants whose claims are Insured Asbestos Claims to pursue their Channeled Asbestos Claims in the tort system. Asbestos Tr. Distrib. Procs. § 2.2, ECF No.

1143 at 111-12. To ensure substantially equivalent treatment of all present and future Uninsured Asbestos Claims, the Administrative Trustee will be required to determine, with the consent of the TAC and the FCR, the percentage of value that holders of present and future Uninsured Asbestos Claims are likely to receive from the Asbestos Trust (i.e., the "Payment Percentage"). *Id.* §§ 4.1, 4.2, ECF No. 1143 at 113-14. This determination will take account of, among other things, estimates of the Asbestos Trust's assets and liabilities (including projected expenses). *Id.* § 2.3, ECF No. 1143 at 112. Further, at least once every three years, the Administrative Trustee will be required to reconsider the then-applicable Payment Percentage based on current information. *Id.* § 4.2, ECF No. 1143 at 114. In determining whether to adjust the Payment Percentage, the Administrative Trustee is obligated to assess whether the then-applicable Payment Percentage is based on accurate, current information, and, if after reconsideration, the Administrative Trustee believes a change to the Payment Percentage is necessary, then the Administrative Trustee may effectuate such change with the consent of the TAC and the FCR. *Id.* Each Distribution made to an asbestos claimant will reflect the Payment Percentage in effect at the time of such Distribution. *Id.* § 4.3, ECF No. 1143 at 115. To further ensure equitable treatment of similarly-situated claims, in the event the Administrative Trustee determines it appropriate to increase the Payment Percentage, and such proposed increased Payment Percentage is subsequently adopted in accordance with the terms of the Asbestos Trust Distribution Procedures, the Administrative Trustee will be required to make supplemental payments to all asbestos claimants who previously liquidated their Asbestos Personal Injury Claims based on a lower Payment Percentage. *Id.*, ECF No. 1143 at 115-16. Accordingly, the Asbestos Trust Distribution Procedures provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Asbestos Personal Injury Claims and future asbestos-related Demands in substantially the same manner. The Plan and the Asbestos Trust Distribution Procedures contemplated therein satisfy the requirements in section 524(g)(2)(B)(ii)(V).

3. The Extension of the Asbestos Permanent Channeling Injunction to Third Parties, as Permitted by Section 524(g)(4)(A)(ii), Is Appropriate.

***50** Section 524(g)(4)(A)(ii) designates certain entities that are protected by a channeling injunction entered pursuant to section 524(g)(1)(A). Specifically, this section provides that such a channeling injunction:

> may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

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(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to —

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

11 U.S.C. § 524(g)(4)(A)(ii). The Plan proposes to extend the Asbestos Permanent Channeling Injunction to "Protected Parties." Plan § 10.3(a), ECF No. 1185 at 44-45. The term Protected Parties is defined as "(a) Hopeman or Reorganized Hopeman; (b) current and former directors, officers, or employees of Hopeman, or any past or present Affiliate of Hopeman, solely in their respective capacities as such; or (c) any Settled Asbestos Insurer, solely in its capacity as such." Plan § 1.98, ECF No. 1185 at 19. Thus, as required by section 524(g)(4)(A)(ii), the Plan clearly identifies either by name or by identifiable group each third-party subject to the Asbestos Channeling Injunction. In addition, the Plan defines Protected Party to include those parties that fit within the categories listed in section 524(g)(4)(A) of the Bankruptcy Code. Accordingly, the Court may, and should, extend the Asbestos Permanent Channeling Injunction to protect all Protected Parties from liability for any Channeled Asbestos Claims.

4. The Court Has Appointed a Legal Representative to Protect the Rights of Persons Who Might Subsequently Assert Demands as Required by Section 524(g)(4)(B)(i).

In order for the Asbestos Permanent Channeling Injunction to be effective against future asbestos claimants, section 524(g)(4)(B) requires "the court appoint[ ] a legal representative for the purposes of protecting the rights" of future claimants. 11 U.S.C. § 524(g)(4)(B)(i). In accordance with that subsection, the Bankruptcy Court appointed the FCR on May 14, 2025. *See* FCR Appointment Order, ECF No. 732. Although the FCR Appointment Order has been appealed, Notice of Appeal, ECF No. 745, the effectiveness of the FCR Appointment Order has not been stayed. The FCR was appointed as part of proceedings leading to issuance of the Asbestos Permanent Channeling Injunction for the purpose of protecting the rights of all persons, whether known or unknown, that

might subsequently assert, directly or indirectly, against Hopeman a Channeled Asbestos Claim that is a Demand addressed in the Asbestos Permanent Channeling Injunction and transferred to the Asbestos Trust. FCR Appointment Order ¶ 2, ECF No. 732 at 2. The FCR reviewed the Plan and the procedures related to the Asbestos Trust. Combined Hr'g Tr. Day 2 58:25-59:23, ECF No. 1175 at 59. Based on the representations of counsel at the Combined Hearing, the FCR supports the Plan as the best option for "maximum recovery to future claimants." *Id*. Accordingly, the Plan Proponents have met the requirements of section 524(g)(4)(B)(i).

5. Entry of the Asbestos Permanent Channeling Injunction Is Fair and Equitable with Respect to Future Asbestos Claimants as Required by Section 524(g)(4)(B)(ii).

***51** In addition to the appointment of the FCR, section 524(g)(4)(B) also requires a court to determine that entry of the channeling injunction, and the protection from liability that is afforded to the parties named therein, "is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party." 11 U.S.C. § 524(g)(4)(B)(ii). In accordance with that section, the Debtor and/or Reorganized Hopeman, on behalf of all the Protected Parties, are contributing certain assets to the Asbestos Trust. Plan § 8.3, ECF No. 1185 at 30-34. On the Effective Date of the Plan, (a) the Debtor and/or Reorganized Hopeman will contribute the Asbestos Trust Assets to the Asbestos Trust, *id.* § 8.3(a), ECF No. 1185 at 30; (b) the Debtor and/or Reorganized Hopeman will contribute the Asbestos Insurance Rights to the Asbestos Trust, *id.* § 8.3(b), ECF No. 1185 at 31; (c) 100% of Reorganized Hopeman's Common Stock will be issued to the Asbestos Trust, *id.* § 8.6, ECF No. 1185 at 34; and (d) Reorganized Hopeman will contribute the Excess Net Reserve Funds, if any, to the Asbestos Trust, *id.* § 8.5, ECF No. 1185 at 34. The contribution of the Asbestos Trust Assets, including the contribution of Asbestos Insurance Rights, will enable the Asbestos Trust to make substantial, meaningful distributions to the holders of Channeled Asbestos Claims. Plan § 8.3(k), ECF No. 1185 at 33. In light of these benefits, the Court finds that the Asbestos Permanent Channeling Injunction is fair and equitable.

E. The Bankruptcy Court Recommends Concluding that Hopeman Is Entitled to a Discharge.

The Objecting Insurers argue that the Debtor is not entitled to the supplemental discharge under section 524 – regardless of whether the Plan Proponents have complied with the requirements of section 524(g) – because the Debtor allegedly does not qualify for a discharge under section 1141 of the Bankruptcy Code. Chubb Plan Obj. ¶¶ 55-65, ECF No. 958 at 29-34; Liberty Mut. Plan Obj. ¶¶ 29, 42, ECF No. 961 at 21, 27-28. The Bankruptcy Court disagrees and recommends overruling the objections. The Debtor is entitled to both a discharge under section 1141 of the Bankruptcy Code, as well as a supplemental discharge under section 524.

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Pursuant to section 1141(d)(3) of the Bankruptcy Code, a debtor is not entitled to a discharge if

> (A) the plan provides for the liquidation of all or substantially all of the property of the estate;
>
> (B) the debtor does not engage in business after consummation of the plan; *and*
>
> (C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

11 U.S.C. § 1141(d)(3) (emphasis added). "Since the provisions of § 1141(d)(3) are in the conjunctive, if any one provision does not apply, confirmation of a plan results in the discharge of debt." *In re River Cap. Corp.*, 155 B.R. 382, 387 (Bankr. E.D. Va. 1991)

The first element that must be met to find that a debtor is ineligible for a discharge is that the plan must provide "for the liquidation of all or substantially all of the property of the estate." 11 U.S.C. § 1141(d)(3)(A). As Mr. Lascell confirmed in his unrefuted testimony, the Plan does not provide for the liquidation of all or substantially all of the property of the estate. Combined Hr'g Tr. Day 1 35:7-36:13, ECF No. at 35-36. In fact, no assets are being liquidated under the terms of the Plan. Instead, property of the estate is being transferred – either to Reorganized Hopeman (the successor to the Debtor) or to the Asbestos Trust (the owner of Reorganized Hopeman). The Asbestos Trust will receive the Asbestos Trust Assets. Plan § 8.3(a), ECF No. 1185 at 31. As part of the Asbestos Trust Assets, the Debtor will also transfer, not liquidate, the Asbestos Insurance Rights to the Asbestos Trust, the newly formed owner of Reorganized Hopeman, to maintain the Debtor's Asbestos Insurance Rights in their existing unliquidated form for the benefit of the holders of Channeled Asbestos Claims. *See id.* § 8.3(b), ECF No. 1185 at 31. All other property of the estate will be transferred to Reorganized Hopeman. *Id.* § 9.2, ECF No. 1185 at 42. There is no mention of liquidation of any assets and, therefore, this first element is not satisfied.

Having determined that one of the three elements set forth in section 1141(d)(3) is not present, the Debtor is entitled to a discharge. *See In re River Cap. Corp.*, 155 B.R. at 387. As further support for the issuance of a discharge, the Court finds that the second element of section 1141(d)(3) is also not present. Section 1141(d)(3)(B) restricts a debtor's entitlement to a discharge if "the debtor does not engage in business after consummation of the plan." 11 U.S.C. § 1141(d)(3)(B). Reorganized Hopeman will engage in business after the Effective Date. If the Plan is confirmed, "Hopeman will, as a reorganized debtor, continue to exist after the Effective Date." Plan § 8.11, ECF No. 1185 at 35. Under the Plan, Reorganized Hopeman is specifically authorized to continue to "operate its business and may use, acquire, and dispose of property and compromise or settle any Claims without supervision or approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or Confirmation Order." *Id.*

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***52** Reorganized Hopeman will receive the Net Cash Reserve as capitalization, which it will use for investments that will generate cash flow through distributions and/or dividends for the foreseeable future, Restructuring Transactions, ECF No. 853 at 199-228, much like the Debtor did prior to the bankruptcy filing, Combined Hr'g Tr. Day 1 15:3–17:7, ECF No. 1174 at 15-17. *See also In re Flintkote*, 486 B.R. at 132 ("The requirement under the statute in order to a receive a discharge, is simply to 'engage in business after consummation of the plan.' There is no ... language qualifying what level of business activity is sufficient." (citation omitted)).

Accordingly, because the Plan does not provide for the liquidation of all or substantially all the property of the estate and Reorganized Hopeman will be engaging in business after consummation of the Plan, the Court finds that the Debtor qualifies for a discharge pursuant to section 1141(d)(3). Having qualified for a Chapter 11 discharge pursuant to section 1141(d)(3) and having met all the requirements set forth in section 524(g), the Debtor is entitled to both a discharge under section 1141 of the Bankruptcy Code, as well as a supplemental discharge under section 524.

III. CONCLUSION

Section 11.1 of the Plan contains conditions precedent to Confirmation that must be satisfied or duly waived pursuant to Section 11.3 of the Plan. Plan §§ 11.1, 11.3, ECF No. 1185 at 48-53, 54. Based on the proposed findings contained herein, all conditions precedent set forth in Section 11.1 have been satisfied. [39]

39 For the avoidance of doubt, section 1146 of the Bankruptcy Code would apply at confirmation. 11 U.S.C. § 1146(a). As such, the following shall not be subject to any stamp tax or similar tax: (i) the creation of any Encumbrances; (ii) the making or assignment of any lease or sublease; (iii) the execution and implementation of the Asbestos Personal Injury Trust Agreement, including the creation of the Asbestos Personal Injury Trust and any transfers to or by the Asbestos Personal Injury Trust; (iv) any Restructuring Transaction; or (v) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments, applications, certificates or statements executed or filed in connection with any of the foregoing or pursuant to the Plan. *See id.*

For the foregoing reasons, the Bankruptcy Court submits these Proposed Findings of Fact and Conclusions of Law to the District Court and recommends confirmation of the Plan as proposed herein.

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674 B.R. 70
United States Bankruptcy Court, D. South Carolina.

IN RE: Otha Marvin DELANEY, Debtor(s).

Case Number: 13-00446-jd
|
Signed November 17, 2025

Synopsis

Background: Chapter 7 debtor filed motion to reopen bankruptcy case to list state court class action against creditor that debtor had failed to properly disclose in bankruptcy schedules. Creditor objected. Before hearing the merits of debtor's motion, the Bankruptcy Court addressed threshold issues of creditor's status as "party in interest" and Article III standing.

Holdings: The Bankruptcy Court, L. Jefferson Davis IV, J., held that:

under South Carolina law, three-year statute of limitations for actions to recover debts applied to creditor's loan secured by debtor's vehicle;

creditor with stale claim for deficiency against debtor was nonetheless a "creditor" within meaning of Bankruptcy Code;

creditor had a pecuniary interest in the estate that could be directly affected by reopening of bankruptcy case; and

creditor had Article III standing to object to debtor's motion to reopen.

Ordered accordingly.

Opinion, 671 B.R. 794, superseded.

Procedural Posture(s): Motion to Amend Order.

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Attorneys and Law Firms

J. Ashley Twombley, Twenge & Twombley, LLC, Beaufort, SC, J. Ronald Jones, Jr., Smith Debnam Narron Drake Saintsing & My, Charleston, SC, R. Michael Drose, Drose Law Firm, North Charleston, SC, for Debtors.

AMENDED ORDER [1] CONCERNING FIRST FINANCIAL OF CHARLESTON, INC.'S OBJECTION TO DEBTOR'S MOTION TO REOPEN

L. Jefferson Davis IV, United States Bankruptcy Judge

1 This order amends the order entered August 12, 2025. The motion of Otha Marvin Delaney to alter or amend that order is granted in part. The Court amends page 10 of this order pursuant to Fed. R. Bankr. P. 9023.

***72** **THIS MATTER** is before the Court on the Objection [2] by First Financial of Charleston, Inc. ("First Financial") to a Motion to Reopen [3] filed by Otha Marvin Delaney ("Debtor"). Debtor and First Financial have been engaged in a civil action for the past fourteen years (the "State Court Litigation") [4]. That litigation is now at the summary judgment stage, [5] where First Financial argues that Debtor should be barred from maintaining the State Court Litigation based on his failure of disclosure in this case. Debtor seeks to reopen this twelve-year-old bankruptcy case to list the cause of action against First Financial as an asset of this estate.

2 ECF No. 22.

3 ECF No. 19.

4 *Otha Delaney v. First Financial of Charleston Inc.*, Case No. 2011-CP-10-07166 (S.C. Ct. Com. Pl., Charleston Cnty., filed Oct. 4, 2011), 2011 WL 12556468

5 ECF No. 22, p. 8, ¶ 47.

As a threshold matter, Debtor raised whether First Financial has a right to be heard on the Motion to Reopen and standing to object. Both parties filed statements of dispute on July 14, 2025. [6] In his statement, Debtor objected to any witness testimony or evidentiary hearing until this issue was determined. The Court held a hearing on standing on July 16, 2025. The parties agreed that an evidentiary hearing on this issue was unnecessary as the matter was purely a question of law. [7] At the ***73** conclusion of the hearing, the Court orally ruled that First Financial had standing to

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object to the Motion to Reopen and continued the hearing on the merits of Debtor's Motion to Reopen until September 9, 2025.

6 ECF Nos. 28 and 29.

7 First Financial argues that it also purchased another creditor's claim, to solidify its own standing to object, and attempted to enter the assignment agreement at the hearing. Debtor objected to the evidence of assignment being introduced. The objection was sustained for lack of foundation. *See* Transcript of Hearing Held on July 16, 2025, at 59: 25–61:3, *In re Delaney*, C/A No. 13-00446-JD (Bankr. D.S.C. January 24, 2013), ECF No. 41.

FACTS AND PROCEDURAL BACKGROUND

On October 4, 2011, Debtor filed a class action in the Charleston County Court of Common Pleas against First Financial, alleging that First Financial violated the South Carolina Commercial Code related to its collection efforts against Debtor and other putative class members. Debtor is the lead plaintiff of the class. The State Court Litigation is not yet resolved. The nearly fourteen-year procedural history of the State Court Litigation is complex, but the facts relevant to this matter are simple.

The parties agree that Debtor entered into a retail installment sales contract to purchase a vehicle in October of 2007. First Financial was the secured party to that contract. Debtor defaulted on the loan contract. In the spring of 2008, First Financial repossessed the vehicle. Debtor's state court complaint alleges that Debtor, and others similarly situated, were not provided proper notice of disposition under the UCC when their collateral was sold.

On January 24, 2013, Debtor filed this Chapter 7 bankruptcy case. First Financial was not scheduled as a creditor and the State Court Litigation was listed as "dismissed" in the Statement of Financial Affairs. [8] Debtor did not schedule the State Court Litigation as an asset in Schedule B nor did he exempt any recovery from the action in Schedule C. First Financial asserts that the State Court Litigation was, in fact, not dismissed at the time of the petition or at the time the chapter 7 trustee filed his report of no assets. [9]

8 *See* ECF No. 1.

9 From the state court's records, it appears the State Court Litigation was dismissed prior to Debtor's discharge by the trial judge. On appeal, the trial court's order granting dismissal was reversed and the State Court Litigation has continued. *See Delaney v. First Fin. of*

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Charleston, Inc., 418 S.C. 209, 211, 791 S.E.2d 546, 547 (Ct. App. 2016), *rev'd*, 426 S.C. 607, 829 S.E.2d 249 (2019).

Debtor now asks the Court to reopen the 2013 bankruptcy case, for the purpose of amending schedules to "list and describe the [l]awsuit in a more fulsome manner." [10] First Financial opposes the relief because its recent motion for summary judgment in the State Court Litigation is pending before the trial court and reopening this case may impact that proceeding.

10 ECF No. 19, p. 2, ¶ 9.

ANALYSIS AND CONCLUSIONS OF LAW

Chapter 7 debtors must file schedules that list and describe all of their assets, including legal claims against others. 11 U.S.C. § 521(a)(1)(B)(i). When a chapter 7 case is closed, assets that the debtor scheduled but the trustee did not administer are automatically "abandoned," meaning they revert to the debtor's ownership. 11 U.S.C. § 554(c). But any assets that the debtor failed to schedule are not abandoned and instead remain property of the estate. 11 U.S.C. § 554(d). Debtor now seeks to correct a misstep in his original filing to disclose the State Court Litigation as an asset that may either be administered by a trustee or abandoned to him.

There are two threshold issues the Court must determine prior to hearing the merits of Debtor's Motion to Reopen. First, whether First Financial has a statutory right to be heard on its objection. Second, if it does have a right to be heard, ***74** whether that right is constrained by traditional Article III standing requirements.

Debtor contends [11] First Financial lacks both the right to be heard under the Bankruptcy Code and standing under Article III of the United States Constitution to object to his Motion to Reopen because First Financial's only demonstrated interest in this matter is the potential effect that reopening the case might have on the State Court Litigation. [12] This Court has previously found that a defendant to a state court action lacks standing to oppose reopening. *In re Boyd*, 618 B.R. 133, 160 (Bankr. D.S.C. 2020). However, the facts of *Boyd* were very different from the facts of this case. In *Boyd*, a debtor sought to reopen a chapter 13 case to disclose a post-petition cause of action and the party opposing reopening had no stake in the outcome of the bankruptcy case. In this case, the State Court Litigation was initiated pre-petition and remains pending against First Financial in its capacity as a former secured creditor of property pledged by Debtor. Debtor nevertheless avers First Financial is not presently a creditor. Debtor alleges that First Financial has not provided any evidence of its secured, unfulfilled lien against Debtor, [13] of its acquisition of another creditor's claim, [14] or of any pecuniary interest that would be directly affected by the reopening of this case.

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Debtor also contends that the statute of limitations has barred First Financial from seeking any additional recovery from Debtor under the 2007 contract.

11 *See* ECF No. 26 ("Debtor's Response to First Financial's Objection"), pp. 5–6.

12 *See* Debtor's Response to First Financial's Objection, p. 4.

13 *See* Debtor's Response to First Financial's Objection, pp. 3–4.

14 *See* Debtor's Response to First Financial's Objection, pp. 6–7.

First Financial disagrees, contending it has both a statutory right to be heard as a "party in interest" and, to the extent it is required, Article III standing to object. On both of these issues, the Court agrees with First Financial.

I. Right to be Heard as a Party in Interest

"A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C § 350(b). Fed. R. Bankr. P. 5010 allows a case to be reopened "on motion of the debtor or **a party in interest** pursuant to § 350(b) ..." Fed. R. Bankr. P. 5010 (emphasis added). However, the right to oppose a motion to reopen is not specifically addressed in the Bankruptcy Code or Rules. Courts considering the issue focus on whether the objecting party is a "party in interest." *See In re Malin*, 652 B.R. 828, 831-32 (Bankr. N.D. Ga. 2023). This Court agrees. If a party in interest has a right to raise an issue, it follows that the party in interest has the right to be heard when the issue is raised by another, and their rights would be impacted by the outcome.

"Party in interest" is not defined in the Bankruptcy Code, but the Fourth Circuit has indicated that a "party in interest" for bankruptcy purposes includes " 'all persons whose pecuniary interests are directly affected by the bankruptcy proceedings.' " *In re Boyd*, 618 B.R. at 146 (quoting *Yadkin Valley Bank & Trust Co. v. McGee (In re Hutchinson)*, 5 F.3d 750, 756 (4th Cir. 1993)) (internal citations omitted).

For additional guidance in determining who qualifies as a "party in interest," many courts look to the definition set forth in 11 U.S.C. § 1109(b). Section 1109(b) states that a "party in interest" includes, but is not limited to, "the debtor, ***75** the trustee, a creditor's committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee..."

The Supreme Court has recently discussed the meaning of the term, holding "party in interest" is "capacious" and covers any party whose "financial exposure may be directly and adversely affected by a plan ...." *Truck Ins. Exch., Inc. v. Kaiser Gypsum Co.*, 602 U.S. 268, 284, 144 S.Ct.

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1414, 219 L.Ed.2d 41 (2024). "This understanding aligns with [the Supreme Court's] observation that Congress uses the phrase 'party in interest' in bankruptcy provisions when it intends the provision to apply 'broadly.' " *Id*. at 278, 144 S.Ct. 1414 (citing *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000)); *see also* 11 U.S.C. § 502(a). While § 1109(b) is limited [15] to cases under chapter 11, this Court and others have applied the "party in interest" concept to analyze the term as it pertains to a party's right to be heard in Chapter 7 cases. *See In re Taylor*, No. CA 11-00156-DD, 2011 WL 3206994, at *3 (Bankr. D.S.C. July 27, 2011) (finding that a creditor in a chapter 7 case is a party in interest under § 1109 and therefore may object to the Trustee's motion to sell property of the estate free and clear of liens).

15 The Supreme Court has cautioned against using the term beyond the scheme to which it is related but notes that the term has been construed in other contexts as including those directly and adversely affected by the outcome of a proceeding. *Truck Ins. Exch.*, 602 U.S. at 279, n.4, 144 S.Ct. 1414 (citing *Western Pacific California R. Co. v. Southern Pacific Co.*, 284 U.S. 47, 51–52, 52 S.Ct. 56, 76 L.Ed. 160 (1931)).

As discussed below, First Financial is a creditor with a pecuniary interest in the estate that may be directly affected if this case is reopened. Therefore, under the big tent interpretation of *Truck Ins. Exch.*, First Financial is a party in interest with a right to be heard on Debtor's requested relief.

a. First Financial's Status as a Creditor

"The terms 'debt' and 'claim' are coextensive: a creditor has a 'claim' against the debtor; the debtor owes a 'debt' to the creditor." S.Rep. No. 989, 95th Cong., 2d Sess. 23, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5809; H.R.Rep. No. 595, 95th Cong., 2d Sess. 310, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6267. "By this broadest possible definition ... the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." S.Rep. No. 595, 95th Cong., 2d Sess. 22, reprinted in 1978 U.S.C.C.A.N. 5787, 5808; H.R.Rep. No. 95–595, 95th Cong., 2d Sess. 309, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6266.

This statutory intent is reflected in the Code's definition of "claim" as a "right to payment." 11 U.S.C. § 101(5). Even a claim that is disputed is nevertheless a claim as the Code defines the term. *In re Knight*, 55 F.3d 231, 234 (7th Cir. 1995). A "creditor," in turn, is defined as an entity holding a "claim against the debtor." 11 U.S.C. § 101(10). Again, regardless of whether the claim is disputed, the claim holder is still treated as a creditor in a bankruptcy case. *B-Real, LLC v. Chaussee (In re Chaussee)*, 399 B.R. 225, 233 (B.A.P. 9th Cir. 2008).

State law usually determines whether a party has a "right to payment." *Midland Funding, LLC v. Johnson*, 581 U.S. 224, 228, 137 S.Ct. 1407, 197 L.Ed.2d 790 (2017). Actions to recover debts

in South Carolina must generally [16] be ***76** brought within three years of the default on the debt. S.C. Code Ann. § 15–3–530 (2015). This bar only effects the remedy available to a collecting party rather than the underlying right: it does not erase the debt. *In re Vaughn*, 536 B.R. 670, 677 (Bankr. D.S.C. 2015) (internal citations omitted); *Amaker v. New*, 33 S.C. 28, 11 S.E. 386, 387 (1890) (holding under South Carolina law that the statute of limitations "does not operate as the payment of the debt"). An unenforceable obligation is nonetheless a "right to payment," and therefore a "claim," under the Bankruptcy Code. *Midland Funding,* 581 U.S. 224 at 229, 137 S.Ct. 1407, 197 L.Ed.2d 790.

16 Actions for breach of a bond, a contract secured by a mortgage of real property, and certain sealed instruments must be brought within 20 years under S.C. Code Ann. § 15–3–520 (2015). As First Financial's loan was secured by Debtor's vehicle, and not real property, the three year limitation period prescribed in § 15–3–530 applies.

First Financial asserted that, after the repossession and liquidation of Debtor's vehicle, Debtor owed a balance of $4,187.57. Debtor asserts First Financial was not a creditor when this bankruptcy case was filed and, therefore, not a party in interest, because any claim First Financial may have had was stale. However, Debtor's Response to First Financial's Objection concedes that Debtor and First Financial entered into a loan agreement in 2007, and Debtor breached the loan agreement in the same year. [17] Further, at the hearing, Debtor's counsel agreed that it was "beyond dispute" that after Debtor's default on the loan agreement, First Financial sent Debtor a demand letter, declared Debtor in default, repossessed Debtor's vehicle, sold the vehicle, and notified Debtor via letter that he still owed First Financial money after the proceeds from the sale of the vehicle were applied to his deficiency. [18] By Debtor's own description, First Financial had a claim for a deficiency against Debtor. Though that claim may be stale, First Financial is still a "creditor" as that term is defined in the Code. *See Amaker v. New*, 33 S.C. 28, 11 S.E. at 387; *Midland Funding*, 581 U.S. 224 at 229, 137 S.Ct. 1407, 197 L.Ed.2d 790. Whether First Financial's claim would ultimately be allowed is an issue for another day, but the Supreme Court's holding in *Midland Funding* is clear: the Court should not speculate as to what may happen during the claim allowance process when making this threshold determination as to whether First Financial is a creditor. Since First Financial is a creditor, it has statutory right to be heard as a party in interest to oppose Debtor's Motion to Reopen.

17 *See* ECF No. 26, p. 3.

18 *See* ECF No. 41, 23: 24–24:3.

b. First Financial's Status a Party with a Pecuniary Interest

Moreover, the State Court Litigation is premised on the existence of a pre-petition creditor/debtor relationship between First Financial and Debtor and should have been disclosed as an asset. 11 U.S.C. § 521(a)(1)(B)(i). Rather than schedule the State Court Litigation as an asset, Debtor only

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disclosed the action in the Statement of Financial Affairs as a dispute that ended prior to the commencement of this bankruptcy case. Had Debtor properly scheduled the State Court Litigation, the action would an asset for the trustee to administer.

Debtor, arguably, is not the real party in interest in the State Court Litigation, following the filing of his 2013 chapter 7 petition. [19] ***77** *Martineau v. Wier*, 934 F.3d 385, 391 (4th Cir. 2019). First Financial has incurred costs defending the suit since this bankruptcy case was filed. Debtor's requested relief may further prolong the litigation, require First Financial to dedicate additional resources to its defense, and blunt First Financial's ability to use a judicial estoppel defense in the State Court Litigation. *See Smidt v. Nationstar Mortgage LLC (In re Smidt)*, No. BAP CC-24-1071-FGL, 2025 WL 863113, at *7 (B.A.P. 9th Cir. Mar. 19, 2025) (holding a defendant in state court litigation brought by the debtor had standing as a party in interest to object to the debtor's motion to reopen the case because if the case had been reopened, the defendant would have had to incur additional attorneys' fees defending against the debtor's state court claims and might have lost a judicial estoppel defense). The costs First Financial has and will continue to incur in defending the State Court Litigation are a pecuniary interest directly affected by this bankruptcy imbuing First Financial with statutory status as a party in interest. *In re Boyd*, 618 B.R. at 146.

19 This sentence is amended from Order entered August 12, 2025.

II. Article III Standing

Questions concerning the right to be heard as a party in interest in a bankruptcy case are often considered alongside questions of constitutional standing. Because this Court traffics in assets, obligations, and the adjustment of the debtor/creditor relationship, the overlap between the two is nearly seamless. However, the Circuits are split over whether the "right to be heard" as a party in interest incorporates Article III's requirements for standing or imposes more stringent limitations. [20]

20 *Compare In re Global Indus. Techs., Inc.*, 645 F.3d 201, 211 (3d Cir. 2011) (bankruptcy standing is coextensive with Article III standing) *with Hughes v. Tower Park Props., LLC (In re Tower Park Props., LLC)*, 803 F.3d 450, 456–57, n.6 (9th Cir. 2015) (bankruptcy standing is more restrictive than Article III standing); *see also Carl F. Schier PLC v. Nathan (In re Cap. Contracting Co.)*, 924 F.3d 890, 895 (6th Cir. 2019). They are also split over whether it applies outside of Chapter 11 bankruptcies. *See Id.* The Fourth Circuit has declined to explicitly confront either of these questions. *See Kiviti v. Bhatt*, 80 F.4th 520, 534, n.11 (4th Cir. 2023).

Debtor asserts that First Financial must also have Article III standing for the Court to consider its objection. Debtor cites this Court's opinion in *Boyd* in support of this assertion. However, the facts of *Boyd* are different and, since that case was decided, the Fourth Circuit and the Supreme

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Court have cast doubt on the notion that a party objecting to relief in this Court must demonstrate Article III standing to be heard.

As courts are split on whether the party in interest standard equates to Article III standing, the courts are also split on whether Article III's case-or-controversy requirement even applies to this Court. The Third, Seventh, Eighth, and Tenth Circuits have reasoned that Article III standing requirements apply in proceedings before bankruptcy courts because Article III limitations apply to federal courts and bankruptcy courts are federal courts, without analyzing the issue further.[21] In ***78** contrast, the Fifth Circuit has concluded that Article III standing requirements do not apply to bankruptcy courts because bankruptcy courts are not authorized by Article III.[22]

21 *See In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) ("To object to the confirmation of a reorganization plan in bankruptcy court, a party must, in the first instance, meet the requirements for standing that litigants in all federal cases face under Article III of the Constitution."); *Rosenfeld v. Rosenfeld (In re Rosenfeld)*, 698 F. App'x 300, 303 (6th Cir. 2017) (applying the case or controversy requirement to adversary proceedings in bankruptcy courts and asserting federal courts "may decide only 'cases' and 'controversies.' "); *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 639 F.3d 402, 405 (8th Cir. 2011) (Article III standing before a bankruptcy court is required because "federal courts must ensure that Article III standing exists."); *Pettine v. Direct Biologics, LLC (In re Pettine)*, 655 B.R. 196, 207 (10th Cir. BAP (Colo.) 2023) (holding Article III standing limits the jurisdiction of bankruptcy courts "based on the derivative nature of bankruptcy court jurisdiction."). The courts which hold that Article III case or controversy limitations apply to bankruptcy court proceedings generally arrive at that conclusion due to the fact that bankruptcy courts derive their jurisdiction through the same statutory jurisdictional provision as the district courts, 28 U.S.C. § 1334, with all bankruptcy cases, matters, and proceedings being referred to the bankruptcy courts by the district courts through general orders of reference.

22 *NexPoint Advisors, L.P., v. Pachulski Stang Ziehl & Jones, L.L.P. (In re Highland Cap. Mgmt., L.P).*, 74 F.4th 361, 366 (5th Cir. 2023) ("Bankruptcy courts are not authorized by Article III of the Constitution, and as such are not presumptively bound by traditional rules of judicial standing."); *Furlough v. Cage (In re Technicool Sys., Inc.)*, 896 F.3d 382, 385 (5th Cir. 2018) ("Bankruptcy courts are not Article III creatures bound by traditional standing requirements."). The Fifth Circuit's conclusions in *Highland Capital Management* and *Technicool* that bankruptcy courts are not subject to Article III jurisdictional constraints are arguably dicta because, in both cases, the court concluded that the "person aggrieved" test, which applies to standing to appeal a bankruptcy court decision, is more stringent

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than the Article III standing requirement and the appellant in each case did not satisfy that requirement. 74 F.4th at 366–67, 896 F.2d at 385–86.

The Fourth Circuit has recently issued conflicting decisions on whether Article III jurisdictional constraints apply to bankruptcy courts: *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc. (In re Kaiser Gypsum Co., Inc.)*, 60 F.4th 73 (4th Cir.), *cert. granted sub nom.*, 602 U.S. 268, 144 S. Ct. 1414, 219 L.Ed.2d 41, 217 L.Ed.2d 154 (2023), *and rev'd and remanded sub nom.*, *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024), and *Kiviti v. Bhatt*, 80 F.4th 520 (4th Cir. 2023), *cert. denied*, —— U.S. ——, 144 S. Ct. 2519, 219 L.Ed.2d 1200 (2024).

In *Kaiser Gypsum*, the Fourth Circuit held an 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, which is "still required in every case." *Id.*, 60 F.4th 73, 88; n.10. The Fourth Circuit further held that the insurer lacked standing as a party in interest under 11 U.S.C. § 1109 because the plan, under which the insurer's general unsecured claim was fully satisfied, did not affect the insurer's legally protected interest. *Id.*

Following appeal, *Kaiser Gypsum* was reversed and remanded. *See Truck Ins. Exch.*, 602 U.S. 268, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024). The Supreme Court held that the insurer was a party in interest with standing to object to the plan due to its financial responsibility for claims against the debtor under 11 U.S.C. § 1109 and did not address the Fourth Circuit's holding that standing under Article III is required for parties raising objections in bankruptcy cases.[23] *Id.*, 602 U.S. at 280–281, 144 S.Ct. 1414.

23 The Bankruptcy Court for the District of Delaware held that recent Supreme Court authority, including *Truck Ins. Exch.*, indicate that a party objecting to relief in bankruptcy court does not need to demonstrate Article III standing to be heard on the basis that the objecting party is not invoking the court's jurisdiction. *In re AIO US, Inc.*, 672 B.R. 261, 271-72 (Bankr. D. Del. 2025). In the context of *Truck Ins. Exch.*, the District of Delaware specifically noted "if the Supreme Court believed that the question of insurer standing to object to confirmation implicated Article III of the Constitution, [one would expect] the Court to have considered and addressed that question before turning to the statutory issue." *Id.*, 672 B.R. at 268-69.

***79** In *Kiviti v. Bhatt*, the Fourth Circuit held once a case is validly referred to a bankruptcy court under 28 U.S.C. § 157, the constraints of Article III—such as mootness, or the case-or-controversy requirement—no longer apply as a matter of constitutional law. *Id.*, 80 F.4th at 536. The Fourth Circuit reasoned that a district court can only refer a case that it has jurisdiction over to a bankruptcy court, and as every action by a district court is constrained by Article III, any case that is referred to the bankruptcy court must satisfy Article III. *Id.*, 80 F.4th at 533 (citing *Ex parte McCardle*, 74 U.S. 7 Wall. 506, 514, 7 Wall, 19 L.Ed. 264 (1868); *Motor Vehicle Cas. Co. v. Thorpe Insulation*

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Co. (In re Thorpe Insulation Co.), 677 F.3d 869, 880 (9th Cir. 2012); and *Croniser v. Butler (In re Croniser)*, No. 22-1227, 2022 WL 7935991, at *1 (4th Cir. Oct. 14, 2022) (unpublished)).

However, "[o]nce a case is validly referred to the bankruptcy court, the Constitution does not require it be an Article III case or controversy for the bankruptcy court to act," as the Article III case or controversy requirement comes from the Constitution's limits on judicial power, and Bankruptcy Courts do not wield judicial power. *Id*. (citing *In re Technicool Sys., Inc.*, 896 F.3d 382, 385 (5th Cir. 2018)) ("Bankruptcy courts are not Article III creatures bound by traditional standing requirements."). Further, the Fourth Circuit reasoned that bankruptcy courts, "as statutory creatures, have whatever power Congress lawfully gives them." *Id*. 28 U.S.C. § 157(b)(1) grants bankruptcy courts power to "hear and determine all [bankruptcy] cases ... and all core proceedings ... referred" to them by a district court—not just those proceedings that could be fully adjudicated in a district court. *Id.*, 80 F.4th at 533 (4th Cir. 2023). As 28 U.S.C. § 157(b)(1) does not include language requiring proceedings before a bankruptcy court meet Article III's "case or controversy" requirement, the Fourth Circuit declined to impose such a requirement. *Id*., 80 F.4th at 534 (citing Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 96 (2012)) ("[W]hat a text does not provide is unprovided.").

The Fourth Circuit does not render an explicit holding as to whether Article III standing is required for parties raising objections in bankruptcy courts in *Kiviti*. The Court need not reconcile the divergent interpretations of 28 U.S.C. § 157[24] in this case, because, if Article III standing is required, First Financial has it.[25]

24 *See*, supra, n. 21, n. 22. *See also White-Lett v. NewRez, Inc.*, 661 B.R. 63, 84 (N.D. Ga. 2024).

25 *See Sanders v. First Recovery, LLC*, No. 5:23-CV-00553-FL, 2024 WL 4164163, at *3, n.5 (E.D.N.C. Aug. 6, 2024).

"To establish constitutional standing, the party must first 'have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical[.]' " *In re Boyd*, 618 B.R. 133, 146 (Bankr. D.S.C. 2020) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (internal citations omitted). Second, the party must establish that the injury in fact is traceable to the conduct at issue. *Lujan*, 504 U.S. at 560, 112 S.Ct. 2130. "Finally the party must show that it is 'likely', as opposed to merely 'speculative,' that the injury will be 'redressed ***80** by a favorable decision.' " *Id*., 504 U.S. at 561, 112 S.Ct. 2130 (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41–42, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)).

Debtor's Response to First Financial's Objection[26] accurately notes this Court has found the defendant in a debtor's post-petition tort suit lacked constitutional standing to file a motion to

reconsider an order reopening the debtor's bankruptcy case based on the potential loss of a defense in the tort suit, which the Court deemed too speculative to constitute an injury in fact. *See In re Boyd*, 618 B.R. at 146. However, unlike the defendant in *Boyd*, First Financial's injury in fact does not depend on the outcome of an unscheduled claim. First Financial has suffered an injury in fact: it has incurred costs over the last 12 years defending the State Court Litigation, which was initiated pre-petition and that Debtor may have had no right to pursue once this case was filed. Those costs are not speculative. *See In re Smidt*, 2025 WL 863113, at *6 (holding that a state court defendant's litigation costs, incurred over eight years defending a lawsuit that the debtor failed to properly schedule in his Chapter 7 case, were an injury in fact and the defendants therefore had Article III standing to object to the debtor's third motion to reopen the case). Debtor's requested relief could further prolong the State Court Litigation and require First Financial to dedicate additional resources to its defense. At this stage, First Financial has made sufficient factual allegations of an injury in fact to support standing under Article III to object to Debtor's Motion to Reopen the case. That injury is traceable to conduct of Debtor and may be redressed by hearing the merits of both Debtor's Motion to Reopen and First Financial's opposition to it.

26 *See* ECF No. 27, p. 4.

A hearing on the merits of Debtor's Motion to Reopen and the objection by First Financial shall be heard on September 9, 2025. In addition to the requirements of the Scheduling Order entered July 22, 2025, the parties are directed to file a **joint** statement of dispute on or before September 2, 2025, using the appropriate local form.

AND IT IS SO ORDERED.

All Citations

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2025 WL 3282371
Only the Westlaw citation is currently available.
United States Bankruptcy Court, S.D. New York.

IN RE: Jordan Roy BECKERMAN, Debtor.

Case No. 25-11549 (JPM)
|
Signed November 25, 2025

Synopsis

Background: Creditor of bankrupt limited liability company (LLC), in which Chapter 7 debtor was former manager and principal shareholder, filed motion to extend deadline to object to debtor's discharge and dischargeability of debts.

Holdings: The Bankruptcy Court, John P. Mastando III, J., held that:

creditor was party in interest with standing to seek extension of deadline;

creditor had notice and opportunity to timely object, as factor weighing against finding of cause to extend deadline;

complexity of case was neutral factor in determining whether there was cause to extend deadline;

creditor failed to diligently pursue discovery prior to expiration of deadline;

there was no bad faith or non-cooperation by debtor;

collateral estoppel was unlikely to apply; and

there was not cause to extend deadline.

Motion denied.

Procedural Posture(s): Motion for Extension of Time.

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MEMORANDUM OPINION AND ORDER DENYING LENDER EDMUND JOHN LOWELL'S MOTION FOR ENTRY OF AN ORDER EXTENDING TIME TO OBJECT TO THE DEBTOR'S DISCHARGE AND/OR DISCHARGEABILITY

JOHN P. MASTANDO III, UNITED STATES BANKRUPTCY JUDGE

I. INTRODUCTION

***1** This is the individual Chapter 7 bankruptcy case of Jordan Roy Beckerman (the "**Debtor**"), a former manager and principal shareholder of Yale Entertainment, LLC a/k/a Yale Productions ("**Yale Entertainment**") (which has filed its own separate Chapter 7 bankruptcy, *In re Yale Entertainment, LLC*, Case No. 25-10997 (Bankr. S.D.N.Y.)). [1] Before the Court is the motion filed on October 14, 2025 by Edmund John Lowell ("**Lowell**"), a secured creditor of Yale Entertainment but not of the Debtor, seeking to extend the deadline to object to the Debtor's discharge and/or dischargeability of debts (the "**Motion**"). (Dkt. No. 23).

1 References to "Dkt. No." are filings in the bankruptcy case *In re Jordan Roy Beckerman*, Case No. 25-11549 (Bankr. S.D.N.Y. filed July 11, 2025). References to "Yale Dkt. No." are to filings in the corporate case *In re Yale Entertainment, LLC*, Case No. 25-10997 (Bankr. S.D.N.Y. filed May 14, 2025) ("***Yale Entertainment***").

On November 11, 2025, the Debtor filed a response opposing the Motion (the "**Response**"). (Dkt. No. 34). The Response argues that (1) Lowell lacks standing because he only holds a claim against Yale Entertainment, not the Debtor, and (2) Lowell had "full notice and opportunity" but had "taken no action" to pursue discovery "until one week before the deadline." (*Id*.)

On November 15, 2025, Lowell filed a reply (the "**Reply**"), asserting that (1) he has standing as a "party in interest" under Bankruptcy Rules 4004(b)(1) and 4007(c), and (2) "cause" exists for an extension because any delay was attributable to the Debtor's obstruction and Lowell pursued discovery "diligently and in good faith." (Dkt. No. 36).

A hearing on the Motion was held on November 18, 2025 (the "**Hearing**"). (Dkt. No. 38).

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The Court has reviewed and considered the Motion, the Debtor's Response, Lowell's Reply, the arguments presented at the Hearing, and the record as a whole. For the reasons set forth below, the Motion is **DENIED**.

II. BACKGROUND

A. THE YALE ENTERTAINMENT CASE

The Debtor co-founded Yale Entertainment, an independent film production company headquartered in New York, with Jordan Levine ("**Levine**"), who is not a party in this case. (Yale Dkt. No. 1). On May 14, 2025, the Debtor and Levine caused Yale Entertainment to file for Chapter 7 bankruptcy as a corporate debtor. (*Id.*) At the time of filing, the Debtor was a manager and principal shareholder of Yale Entertainment, holding 43.675% equity stake indirectly through Felix Productions, LLC. (Dkt. No. 23, ¶ 26).

In *Yale Entertainment*, Lowell is scheduled as a creditor holding a secured claim of $2,967,000 secured by substantially all of Yale Entertainment's assets, and an unsecured claim of $165,000. (Yale Dkt. No. 1, Schedule D & E/F). Lowell's secured claims against Yale Entertainment are evidenced by three loan agreements executed on May 20, 2024, May 31, 2024, and November 22, 2024, respectively.[2] (*Id.*; Dkt. No. 36, ¶ 6).

[2] Lowell and Yale Entertainment executed three agreements: (1) the Company Loan Agreement dated May 20, 2024; (2) the Bridge Loan Agreement dated May 31, 2024; and (3) the Amendment and Forbearance Agreement dated November 22, 2024. Each agreement was signed by Lowell and by Jordan Levine on behalf of Yale Entertainment. (*Id.*; Dkt. No. 36, ¶ 6).

***2** On September 3, 2025, the Court entered an order authorizing Lowell to issue Rule 2004 subpoenas for document production from, and for the examination of, Yale Entertainment (the "**Rule 2004 Order**"). (Yale Dkt. No. 18). The Rule 2004 subpoenas were served on the Debtor, but arguably not on Levine or Yale Entertainment.[3] (Yale Dkt. Nos. 24 & 25).

[3] The parties have extensively litigated service of the Rule 2004 subpoenas in *Yale Entertainment*. On October 15, 2025, Lowell's counsel filed two affidavits attesting to service of the Rule 2004 subpoenas on the Debtor and the Debtor's counsel. (Related Yale Dkt. Nos. 24 & 25). Service was also attempted on Yale Entertainment, the Chapter 7 trustee in *Yale Entertainment*, and Levine, but each declined to accept service. (Related Yale Dkt. No. 32). Levine argues that neither he nor the Debtor is a proper recipient because the appointment of the Chapter 7 trustee relieved them of managerial duties, deprived them access to Yale

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Entertainment's books and records, and they are no longer authorized representatives of Yale Entertainment. (Related Yale Dkt. No. 43).

On October 23, 2025, Lowell moved to confirm prior service of the Rule 2004 subpoenas and to authorize alternative service by email and the designation of agents ("**Lowell's Motion**"). (Related Yale Dkt. No. 32). On October 24, 2025, Yale Entertainment filed a cross-motion to quash or, alternatively, to reconsider the Court's prior order granting the issuance of Rule 2004 subpoenas (the "**Cross-Motion**"). (Related Yale Dkt. No. 35) Lowell objected to the Cross-Motion on November 12, 2025 ("**Lowell's Objection**"). (Related Yale Dkt. No. 46). On the same day, Levine objected to Lowell's Motion ("**Levine's Objection**") (Related Yale Dkt. No. 43), and Lowell filed a reply ("**Lowell's Reply**"). (Related Yale Dkt. No. 49).

The Court held a hearing on November 19, 2025. After considering the parties' augments at the hearing and record as a whole, the Court **GRANTED** Lowell's Motion and **DENIED** Yale Entertainment's Cross-Motion, and directed the parties to confer as a result of certain aspects of the Court's ruling.

Between October 7 and 8, 2025, Lowell attempted service on Yann Geron, counsel for Yale Entertainment, who allegedly declined service. (Dkt. No. 36, ¶ 12; Yale Dkt. No. 32). Then, on October 9, 2025, Lowell moved for additional Rule 2004 discovery from third parties GoDaddy.com LLC and Microsoft Corporation, which the Court granted on October 17, 2025. (Yale Dkt. Nos. 21 & 27).

On October 23, 2025, Lowell moved for an order confirming prior service of the Rule 2004 subpoena and authorizing alternative service of process by email and designating agents for service. (Yale Dkt. No. 32). On October 24, 2025, Yale Entertainment filed a cross-motion to reconsider the Court's Rule 2004 Order or, in the alternative, to quash Lowell's Rule 2004 subpoenas. (Yale Dkt. No. 35). Following a hearing on November 19, 2025, the Court granted Lowell's motion and denied Yale Entertainment's cross-motion, and directed the parties to confer as a result of certain aspects of the Court's ruling.

B. THE DEBTOR'S INDIVIDUAL BANKRUPTCY

On July 11, 2025, the Debtor filed this Chapter 7 case in his individual capacity. (Dkt. No. 1). The Debtor reports total assets of $1,372,587 and total liabilities of $13,439,893. (Dkt. No. 14, Form 106). His scheduled secured creditors are: (1) BMW Financial Services (liens on his two vehicles); (2) Walden Savings Bank (a $894,269 first mortgage on his residence); and (3) Lake Michigan Credit Union (a $350,000 second mortgage on his residence). (*Id.*, Schedule D.) The Debtor's unsecured creditors include, among others: (1) Levine; (2) his spouse Rachel Beckerman; and (3) several of Yale Entertainment's secured creditors (but not including Lowell), who extended loans for which the Debtor acted as a personal guarantor.[4] Although Lowell appears on the Verification of Creditor Matrix attached to the Debtor's Chapter 7 petition, he is *not* scheduled as a creditor

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and has *not* filed a claim against the Debtor individually (nor does he claim to be a creditor of the Debtor). (Dkt. Nos. 1 & 14).

4 There is a substantial overlap between the Debtor's creditors and Yale Entertainment's creditors. In the Debtor's individual bankruptcy, the following creditors hold unsecured claims, while they hold secured claims in the Yale Entertainment case: Kerberos Capital Fund III LP, Ocean Crest Ventures LLC, Miro Productions LLC, and Complex Management LLC. (Dkt. No. 14; Yale Dkt. No. 1).
The following creditors are scheduled as unsecured in both the Debtor's case and the Yale Entertainment case: Forward Financing LLC, Dual Venture LLC, BizFund LLC, Kurt Ebner, and Bee Hive Productions LLC. (Dkt. No. 14; Yale Dkt. No. 1).

***3** On July 16, 2025, a § 341 creditors' meeting was scheduled for August 20, 2025 in the Debtor's case. (Dkt. No. 2). The revised notice set October 20, 2025 as the deadline to object to discharge or dischargeability of debt. (Dkt. No. 12). At the § 341 meeting, Lowell's counsel was allegedly "limited to one question he could ask the Debtor." (Dkt. No. 36, ¶ 5).

No discovery has been sought in this case. On September 17, 2025, the Chapter 7 trustee issued a report of no distribution ("**No-Asset Report**"), asserting that "a diligent inquiry into the [Debtor's] financial affairs" revealed "no property available for distribution." (Dkt. Sept. 17, 2025).

On October 14, 2025—one week before the objection deadline—Lowell filed the instant Motion seeking an extension. (Dkt. No. 23). The Debtor filed the Response on November 11, 2025 (Dkt. No. 34), and Lowell filed the Reply on November 15, 2025. (Dkt. No. 36). The Chapter 7 trustee has not responded. The Hearing was held on November 18, 2025. (Dkt. No. 38).

III. LEGAL STANDARD

Section 727 of the Bankruptcy Code requires a court to grant a Chapter 7 discharge "unless one of the enumerated grounds for denial of discharge is proven." *In re Gardner*, 384 B.R. 654, 662 (Bankr. S.D.N.Y. 2008); *see also* 11 U.S.C. §§ 727(a)(1)-(12) (grounds include, among others, transferring or concealing property with intent to hinder, delay, or defraud creditors; failure to keep or preserve adequate records; making a false oath or account; failure to explain loss of assets; and refusal to obey court orders).

A discharge under § 727 releases the debtor from personal liability for all debts except those deemed nondischargeable under § 523. *See* 11 U.S.C. § 727(b). Nondischargeable debts under § 523 include, for example, certain tax obligations, child support and alimony, educational loans, and certain fines and penalties. *See Grogan v. Garner*, 498 U.S. 279, 287, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991) (citing 11 U.S.C. §§ 523(a)(1)-(8)).

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"A creditor may object to the debtor's discharge under [§] 727(a)" by filing an adversary complaint under Bankruptcy Rule 4004. *In re Butler*, 308 B.R. 1, 18 (Bankr. S.D.N.Y. 2004). Rule 4004(a) sets the deadline: "a complaint objecting to the debtor[']s discharge under § 727(a) ... shall be filed no later than 60 days after the first date set for the meeting of creditors." *Id*. (citing *Kontrick v. Ryan*, 540 U.S. 443, 443, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004)); *see also* Fed. R. Bankr. P. 4004(a). Similarly, "a complaint to determine the dischargeability of a debt under [§] 523(c)" shall be filed by the same 60-day deadline. *In re Bressler*, 600 B.R. 739, 743 (Bankr. S.D.N.Y. 2019); *see also* Fed. R. Bankr. P. 4007(c). Before those deadlines expire, "any party in interest" may move to extend the filing deadline "for cause." *In re Sklar*, 626 B.R. 750, 769 (Bankr. S.D.N.Y. 2021) (citing Fed. R. Bankr. P. 4004(c) and 4007(c)).

IV. ANALYSIS

A. STANDING

The initial question presented in the Motion is whether Lowell has standing to seek an extension. Although objections to debt discharge (§ 727) or dischargability (§ 523) are typically brought by creditors, Rule 4004(b)(1) authorizes "any party in interest" to move for an extension. *See In re McMahon*, 2022 WL 17330920, at *4 (Bankr. E.D.N.Y. Nov. 29, 2022) (citing Fed. R. Bankr. P. 4004(b)(1)).

The Bankruptcy Code does not define "party in interest." *See Krys v. Official Committee of Unsecured Creditors of Refco, Inc*., 505 F.3d 109, 117 (2d Cir. 2007) (citing *Roslyn Savings Bank v. Comcoach Corp*., 698 F.2d 571, 573 (2d. Cir. 1983)). But "the phrase has generally been interpreted in a Chapter 7 case to refer to creditors of the debtor who have claims against the estate and whose pecuniary interests are directly affected by the bankruptcy proceedings." *In re Richardson Foods, Inc*., 667 B.R. 500, 520 (Bankr. S.D.N.Y. 2025). The Supreme Court has emphasized that "anyone holding a direct financial stake in the outcome of the case" may qualify as a "party in interest." *Id*. at 522 (quoting *Truck Insurance Exchange v. Kaiser Gypsum Company, Inc*., 602 U.S. 268, 277-78, 144 S.Ct. 1414, 219 L.Ed.2d 41 (2024)). In *Truck Insurance*, the Supreme Court held that an "insurer with financial responsibility for bankruptcy claims"—though not a creditor—was a "party in interest" because its financial interests could be "directly or adversely affected" by the debtor's bankruptcy process. *Truck Insurance*, 602 U.S. at 281, 144 S.Ct. 1414; *see also Richardson Foods*, 667 B.R. at 522. While *Truck Insurance* arose in the context of a Chapter 11 reorganization, this Court has found in *Richardson Foods* that, in a Chapter 7 liquidation, the party seeking "party in interest" standing must demonstrate a "direct financial stake in the outcome of the case." *Richardson Foods*, 667 B.R. at 522 (citing *Truck Insurance*, 602 U.S. at 284, 144 S.Ct. 1414).

***4** Under these standards, the Court finds that Lowell is a "party in interest." Although he does not hold a claim against the Debtor individually, he is a secured creditor of Yale Entertainment,

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a company in which the Debtor "acted as a principal in the company's financing decisions rather than as a passive equity holder." (Dkt. No. 36, ¶ 38; Exhibit E). At the § 341 meeting, the Debtor acknowledged holding a 43.675% equity stake in Yale Entertainment through Felix Productions, LLC, an entity formed solely to hold the Debtor's interest. (Dkt. No. 23, ¶ 26). Furthermore, the creditors in the Debtor's individual bankruptcy substantially overlap with those in Yale Entertainment's case. (Dkt. No. 36, ¶ 22). Many of Yale Entertainment's secured creditors —including Kerberos Capital Fund III LP, Ocean Crest Ventures LLC, Miro Productions LLC, and Complex Management LLC—hold unsecured claims against the Debtor by virtue of personal guaranty agreements. (Dkt. No 14; Yale Dkt. No. 1). Thus, a discharge in this case could potentially impact Lowell's recovery in *Yale Entertainment*, as well as the administration of any interrelated or overlapping claims.

To the extent the Debtor argues that Lowell lacks "party in interest" standing because Lowell is not in contractual privity with the Debtor—whether as a creditor or as an obligee of a personal guaranty agreement—the Court is unpersuaded. (Dkt. No. 34, ¶ 21). A party need not be in contractual privity with the debtor to qualify as a "party in interest." *See In re Ascentra Holdings, Inc.*, 657 B.R. 339, 352 (Bankr. S.D.N.Y. 2023) (holding that a party may establish standing by "asserting a pecuniary interest ... [or] an equitable claim against the estate.") (citations modified). It suffices to show that the party possesses a "direct financial stake in the outcome" of asset distribution, whether through a contractual claim or otherwise. *In re Suffolk Regional Off-Track Betting Corp.*, 462 B.R. 397, 403 (Bankr. E.D.N.Y. 2011) (quoting *In re Ionosphere Clubs, Inc.*, 208 B.R. 812, 814 (S.D.N.Y. 1997)). Lowell has made that showing. The Debtor cites no legal authority requiring that a party in interest be "a creditor, signatory, or guarantor." (Dkt. No. 34, ¶ 21). On this record, the Court finds that Lowell has demonstrated a financial stake and a sufficient nexus to the Debtor and the estate to qualify as a "party in interest" under Rules 4004(b)(1) and 4007(c).

B. "CAUSE" FOR EXTENSION

The next issue presented is whether Lowell has sufficiently established "cause" to extend the Rule 4004 deadline. The movant bears this burden and must support the request with specific facts; conclusory assertions are insufficient. *See In re Higgins*, 270 B.R. 147, 157 (Bankr. S.D.N.Y. 2001) ("If the burden of establishing cause for extension of a time limit is not met by the moving party, the motion shall be denied."). Ultimately, the party "asserting the non-dischargeability of a debt bears the burden of proof by a preponderance of the evidence." *In re Bressler*, 601 B.R. 318, 333 (Bankr. S.D.N.Y. 2019).

"Cause" is not defined by the Bankruptcy Code. Instead, that "determination is committed to the [bankruptcy] court's discretion." *In re Nowinski*, 291 B.R. 302, 305 (Bankr. S.D.N.Y. 2003). In the Second Circuit, factors that "inform the court's discretion" include:

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(1) whether the creditor had sufficient notice of the deadline and the information to file an objection;

(2) the complexity of the case;

(3) whether the creditor exercised diligence;

(4) whether the debtor refused in bad faith to cooperate with the creditor; and

(5) the possibility that proceedings pending in another forum will result in collateral estoppel on the relevant issues.

Id. (citing, *inter alia*, *In re Mendelsohn*, 202 B.R. 831, 832 (Bankr S.D.N.Y. 1996); *In re Grillo*, 212 B.R. 744, 747 (Bankr. E.D.N.Y. 1997); *In re Weinstein*, 234 B.R. 862, 866 (Bankr. E.D.N.Y. 1999); *In re Benedict*, 90 F.3d 50, 55 (2d Cir. 1996)).

Considering all five factors as a whole, the Court finds that Lowell has failed to carry his burden to establish "cause" by a preponderance of the evidence.

(i) Notice and Opportunity

The Court finds that this factor weighs against an extension. The Debtor argues that Lowell had "ample notice and opportunity" to file a § 727 / § 523 objection, noting that Lowell had "contacted Debtor's counsel" as early as "June 2025." (Dkt. No. 34, ¶ 10). By Lowell's own admission, his counsel "drafted a complaint" alleging "fraudulent inducement and fraudulent concealment in connection with Lowell's 2024 financing of Yale Entertainment" and threatened to file it. (Dkt. No. 23, Exhibit C). But Lowell "did not file [the] complaint." (Dkt. No. 34, ¶ 11). According to the Debtor, after attending the Debtor's § 341 meeting on August 20, 2025, Lowell "did not ... seek discovery" and instead "chose to wait until less than a week before October 20, 2025" to file an extension. (*Id*.)

***5** Lowell concedes notice but attributes delay to the Debtor's obstruction. Lowell alleges that the Debtor "refused to answer questions at the [Debtor's] § 341 meeting," joined Yale Entertainment's "motion to quash [Rule 2004] subpoenas," and "has not facilitated service or production of records," notwithstanding the Rule 2004 Order in *Yale Entertainment*. (Dkt. No. 36, ¶ 21). Lowell further asserts that Yale Entertainment's counsel "instructed the Debtor ... not to respond [to Lowell's requests] on the grounds that [Lowell had] already obtained the Rule 2004 Order." (*Id*. ¶ 10). Based on these allegations, Lowell argues that denying an extension would allow the Debtor to "benefit from his own obstruction." (Dkt. No. 34, ¶ 21).

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The Court disagrees with Lowell's arguments. Lowell attended the Debtor's § 341 meeting, had timely notice of the October 20, 2025 deadline, and prepared a draft complaint as early as July 17, 2025. (Dkt. Nos. 12 & 23). The record reflects adequate notice. *See In re Kramer*, 492 B.R. 366, 371 (Bankr. E.D.N.Y. 2013) (finding sufficient notice where the creditor "received notice of and attended the [§] 341 meeting and was aware of the deadline."). Moreover, despite circulating and threatening to file the complaint, Lowell never filed it—yet now seeks an extension. (Dkt. No. 23, Exhibit C). While the Court is not making any findings regarding the strength of Lowell's potential § 727 / § 523 claims, these facts undercut Lowell's assertion that he lacked notice or opportunity to timely object.

As for the alleged "Debtor obstruction," the only conduct that Lowell identifies in this case is the Debtor's purported refusal to answer Lowell's questions at the § 341 meeting. (Dkt. No. 36, ¶ 5). All other alleged acts of obstruction concern Rule 2004 discovery in *Yale Entertainment*. (*Id*. ¶ 21). While refusal to answer questions at a § 341 meeting may not reflect total cooperation (*see infra* Section II(B)(iv)), the circumstances here do not support a finding of obstruction because Lowell is not a creditor and had not pursued any discovery in this case. (*Id*.) A debtor is obligated to answer questions posed by the trustee and creditors at the § 341 meeting. *See Pereira v. United States Department of Justice*, 2016 WL 2745850, at *2 (S.D.N.Y. May 11, 2016) ("The debtor is statutorily obliged to appear at the [§ 341] meeting and answer under oath questions from the trustee and creditors regarding the estate."); *see also In re Holland*, 2019 WL 3283050, at *11 (Bankr. D. Vt. July 19, 2019) (denying extension of Rule 4004 deadline where the debtor had "answered all questions asked by the creditor's counsel"); *but see* 11 U.S.C. § 341(e) (noting that the court may, "for cause," order that the "trustee not convene a [§ 341] meeting of creditors" upon the request of "a party in interest"). Regarding any alleged instances of debtor obstruction related to Rule 2004 discovery in *Yale Entertainment*, Lowell cites no legal authority requiring or permitting the Court to impute discovery-related conduct from another proceeding to excuse his failure to meet the objection deadline here, especially when he did not file a complaint or pursue any discovery in this case.

(ii) Complexity

The Court finds that this factor is neutral. In assessing complexity, courts consider whether the case presents unusual issues, multiple parties, interrelated entities, or records dispersed across third parties such that meaningful investigation cannot reasonably be completed within the ordinary Rule 4004 timeframe. *See, e.g.*, *In re Kellogg*, 41 B.R. 836, 837 (Bankr. W.D. Okla. 1984) (extending deadline where "there [were] complexities" and "many parties and issues [were] affected"); *In re Floyd*, 37 B.R. 890, 891 (Bankr. N.D. Tex. 1984) (extending deadline to allow a creditor to undertake discovery and clarify its position where affairs of the debtor were complex). In the Chapter 7 context, "complexity" is found where there are atypical features, issues, or claims beyond a straightforward liquidation. *See In re Gotay*, 2005 WL 3789330, at *2 (Bankr. S.D.N.Y.

Aug. 30, 2005) (denying extension where the case is "a straightforward Chapter 7 liquidation containing little complexity with regard to the parties, issues and affairs of the [d]ebtor").

***6** Here, while the record indicates that some creditor claims may be intertwined with those in *Yale Entertainment*, it does not establish that the Debtor's case is unusually complex. Lowell argues that this is an atypical consumer Chapter 7 because it is "economically and procedurally intertwined with" *Yale Entertainment*, since both cases involve "the same insiders, overlapping creditors, and ... guarantees giv[ing] rise to potential claims[.]" (Dkt. No. 36, ¶ 2). But Lowell does not identify specific insider transactions, intercompany transfers, or books and records under the custody of third parties that he cannot reasonably access within the ordinary Rule 4004 timeframe. [5]

5 The only paragraph in the Motion that gestures at "insider transactions" or "intercompany transfers" is the following:

> Preliminary financial materials in the Yale Entertainment case reflect significant insider transactions—including more than $800,000 during 2024 and approximately $3.85 million cumulatively through December 31, 2024—allocated to Mr. Beckerman and Mr. Levine; these distributions material depleted members' capital and are reflected in Yale Entertainment's negative members' equity—approximately $9.62 million as of December 31, 2024 (increasingly to approximately $9.90 million by April 29, 2025); accordingly, completion of Bankruptcy Rule 2004 discovery in Yale Entertainment is directly relevant to discharge and dischargeability issues here. (Dkt. No. 23, ¶ 25).

Although this paragraph describes aggregate dollar figures and date ranges, the Court views it as factually insufficient for purposes of Rule 4004. Lowell identifies no specific transfer, counterparty, account, document, or date. He ties no transaction to a particular § 727 ground (*e.g.*, concealment, false oath, failure to keep records) and articulates no "viable or colorable" § 523 claim (*e.g.*, false pretenses, actual fraud) traceable to the Debtor personally. *See Thompson*, 177 B.R. 443, 450 (Bankr. E.D.N.Y. 1995) (holding that a movant must at least show a "viable or colorable" theory of non-dischargeability). Indeed, Lowell neither filed a § 727 / § 523 complaint nor explained in the Motion which legal bases he might attempt to pursue.

To the extent that Lowell's draft § 727 / § 523 complaint suggests claims of "fraudulent inducement" or "fraudulent concealment," he must plead sufficient facts to describe "the circumstances constituting fraud ... with particularity." *Novak v. Kasaks*, 216 F.3d 300, 306 (2d. Cir. 2000); *see also In re Synchrony Financial Securities Litigation*, 988 F.3d 157, 169 (2d. Cir. 2021). Pleading fraud with "particularity" means "specifying the who, what, where, and how [of the fraud]." *Reynolds-Sitzer v. EISAI, Inc.*, 586 F.Supp.3d 123, 135 (N.D.N.Y. 2022); *see also Paraco Gas Corp. v. Travelers Casualty and Surety Co. of America*, 51 F.Supp.3d 379, 392 (S.D.N.Y. 2014) ("[T]he plaintiff must allege specific facts as to the fraud, including the misleading statements, speaker, time, place, individuals involved, and specific conduct at issue."). While a Rule 4004 extension does not demand a well-pleaded

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complaint, it does require more than generalized references to "insider transactions" and negative equity at a corporate affiliate.

Nor has Lowell presented concrete factual or legal complexities giving rise to potential § 727 / § 523 claims against the Debtor. Although Lowell broadly asserts complexity due to possible insider dealings and commingling of assets, he does not articulate those theories in a way that maps onto specific § 727 or § 523 grounds. (Dkt. No. 23, ¶ 25). Unlike certain Yale Entertainment secured creditors (*e.g.*, Kerberos Capital Fund III LP) that hold unsecured claims against the Debtor via personal guaranties, Lowell is not a party, obligee, or beneficiary to any such guaranty. (Dkt. No. 34, ¶ 21). Lowell does not point to any concrete interrelated claims and entities, beyond asserting that "at least six of the same lenders representing at least approximately $3.3 million in funded principal obligations" appear in both cases. (Dkt. No. 36, ¶ 22). Certain overlapping creditors and shared background facts, without more, do not establish unusual complexity. Although Rule 4004 does not require a fully-developed § 727 / § 523 claim, it does require a "viable or colorable claim" of non-dischargeability to justify extension. *See In re Thompson*, 177 B.R. 443, 450 (Bankr. E.D.N.Y. 1995) (holding that § 523 only require a creditor to show that it "has a viable or colorable claim that its debt is non-dischargeable ... and not to prove its claim on the merits."); *see also In re Bartomeli*, 303 B.R. 254, 268 (Bankr. D. Conn. 2004) (holding that "only a showing that a colorable or viable [§ 523] claim exists is required.") (internal citations omitted). Lowell has not met this burden.

***7** The Debtor has also not demonstrated that his individual Chapter 7 case is plainly straightforward. The fact that the Debtor "is not a party, signatory, or guarantor to any transactions with [Lowell]" does not, by itself, suggest that this is a simple case of consumer liquidation. (Dkt. No. 34, ¶ 21). Complexity turns on the presence of atypical issues, the Debtor's ties to third parties, and accessibility of relevant information—not on contractual privity with the movant. *See, e.g.*, *Thompson*, 177 B.R. at 450; *Kellogg*, 41 B.R. at 837; *Floyd*, 37 B.R. at 891.

Given that neither side has substantiated its position with specific facts, the Court cannot conclude that this is either an unusually complex case warranting more time or a straightforward liquidation. On its face, the Chapter 7 trustee's No-Asset Report suggests administrative simplicity. (Dkt. Sept. 17, 2025). However, the possibility of claims related to the Debtor's role at Yale Entertainment, if supported by concrete facts, could complicate the issues. On balance, the current record does not tip the scale either way.

(iii) Diligence

The Court finds that this factor weighs against an extension. "The majority view is that there can be no cause justifying an extension of time to object to discharge where the party seeking the extension failed to diligently pursue discovery prior to the expiration of the deadline." *In re Chatkhan*, 455 B.R. 365, 368 (Bankr. E.D.N.Y. 2011) (quoting *Grillo*, 212 B.R. at 747 (denying extension where

the creditor waited until five days prior to expiration to file an extension)); *see also Mendelsohn*, 202 B.R. at 832 (denying extension where the creditor failed to seek a Rule 2004 examination and moved for an extension on the last day to file an objection to discharge); *accord In re Leary*, 185 B.R. 405, 406 (Bankr. D. Mass. 1995) (denying extension where the creditor waited until ten days prior to the expiration of the deadline to pursue Rule 2004 examinations).

The circumstances here do not justify a deviation from the majority rule. Lowell contends that he had pursued discovery "diligently and in good faith," and any delays stemmed from difficulties obtaining documents—not from inaction. (Dkt. No. 36, ¶ 2). Lowell represents that he has "engaged in ongoing discovery" in *Yale Entertainment* "in which the Debtor has ... been served with a subpoena pursuant to the Rule 2004 Order." (Dkt. No. 23, ¶ 24). Before filing this Motion, Lowell also pursued additional Rule 2004 relief in the Yale Entertainment case. (*Id*.) Lowell argues that those discovery efforts are both relevant and necessary for potential § 727 / § 523 objections here because the Debtor and his co-manager allegedly continue to withhold "account data, mailboxes, logs, and metadata," which are "essential to evaluating whether there has been any concealment, failure to maintain records, or false oath."[6] (Dkt. No. 36, ¶ 19).

6 In *Yale Entertainment*, the Debtor and Levine dispute Lowell's assertion that they control Yale Entertainment's books and records. They argue that, upon the Chapter 7 filing, the Chapter 7 trustee—not the company's former managers and directors—became the proper custodian of the debtor's books and records and the administrators of estate property. (Yale Dkt. No. 43, ¶¶ 13-14). The Court agrees. *See Morrison v. United States Trustees*, 2010 WL 2653394, at *3 (E.D.N.Y. June 24, 2010) ("Once the trustee is appointed, the trustee becomes the estate's sole representative."); *see also In re Dicks*, 579 B.R. 704, 708 (Bankr. E.D.N.Y. 2017) ("In a Chapter 7 case, the trustee is solely responsible for administering the assets of the estate."); *In re Lion Capital Group*, 44 B.R. 690, 703 (Bankr. S.D.N.Y. 1984) ("[T]he Trustee ... has possession of the corporate books, records, and files of [the] debtors.").

***8** In response, the Debtor argues that none of those discovery efforts demonstrate diligence in this case because they occurred exclusively in the separate Yale Entertainment case. (Dkt. No. 34, ¶ 11). The Court agrees. It is undisputed that no discovery was sought in this case before (or after) the Rule 4004 deadline lapsed. (*Id*. ¶ 14). The Debtor's individual Chapter 7 case is legally distinct from Yale Entertainment's corporate case. Absent joint administration (which no party sought) or consent, discovery undertaken solely in *Yale Entertainment* does not satisfy the diligence requirement here. *See Johnson v. Insider Inc*., 2022 WL 16836819, at *1 (S.D.N.Y. Nov. 8, 2022) (noting that, while courts may "consolidate related cases [for joint administration] *sua sponte*[,] ... consolidation is appropriate when actions pending before the court involve a common question of law or fact.") (internal quotations omitted). The Court will not treat the two cases as a single proceeding based solely on the Debtor's prior role as Yale Entertainment's principal

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shareholder and manager. Accordingly, the Court finds that Lowell has failed to establish diligence by a preponderance of the evidence.

(iv) Debtor Cooperation

The Court finds that this factor weighs against an extension. In assessing the "degree of cooperation by a debtor in providing requested information," courts look for indicia of "bad faith." *McMahon*, 2022 WL 17330920, at *5. "Bad faith" refusal of discovery requests can be inferred from a party's "failure to respond ... [despite] repeated attempts at communication," and "failure to offer any explanation for refusal[.]" *Amador v. Andrews*, 2009 WL 3963964 at *2 (S.D.N.Y. Nov. 19, 2009); *see also Brill v. Queens Lumber Co., Inc.*, 2012 WL 441287 at *4 (E.D.N.Y. Feb. 10, 2012). Absent a finding of bad faith, "mere recalcitrance in discovery does not support a finding of cause." *McMahon*, 2022 WL 17330920, at *5 (quoting *Nowinski*, 291 B.R. at 307); *see also Benedict*, 90 F.3d at 55 (noting that while "recalcitrant behavior in complying with ... discovery requests" may be an appropriate basis to extend a creditor's time under certain circumstances, it is not a sufficient ground absent a finding of bad faith).

As noted above, Lowell alleges that the Debtor impeded discovery by refusing to answer questions at the § 341 meeting and by failing to produce key documents notwithstanding the Rule 2004 Order in *Yale Entertainment*. (Dkt. No. 36, ¶ 21). He further asserts that Yale Entertainment's counsel instructed the Debtor not to respond to Lowell's requests, which allegedly evidences bad faith refusal. (*Id.*). The Debtor responds that any alleged non-cooperation in *Yale Entertainment* is irrelevant here because, in the Debtor's individual Chapter 7, Lowell "made no formal request to obtain discovery" from the Debtor. (Dkt. No. 34, ¶ 22). The Court finds that the record in this case does not show discovery requests directed to the Debtor that went unanswered. Absent additional facts, the record does not support a finding of bad faith non-cooperation in this case.

To the extent that Lowell argues that he was treated disparately from similarly situated creditors —which purportedly reflects bad faith non-cooperation—the Court disagrees. Lowell points out that the Debtor "stipulated with Kerberos Capital Fund III LP to extend [its] deadline object to dischargeability under [§] 523," yet "opposes a comparable extension for Lowell." (Dkt. No 36, ¶¶ 33-34). But Kerberos is not similarly situated. Kerberos holds a direct unsecured claim against the Debtor by virtue of a personal guaranty that the Debtor executed in connection with Kerberos's loan extension to Yale Entertainment. (Dkt. No. 38; Yale Dkt. No. 1). Lowell, by contrast, is neither a signatory to nor beneficiary of any such guaranty from the Debtor. (*Id.*) Given that Kerberos and Lowell stand differently with respect to the Debtor, their treatment does not reflect bad faith and provides no basis to infer non-cooperation.

Because no discovery was sought from the Debtor in this case before the Rule 2004 deadline, and the record does not establish bad faith non-cooperation by the Debtor, the "debtor cooperation" factor weighs against an extension.

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(v) Possibility of Collateral Estoppel

***9** The Court finds that this factor weighs against an extension. "The common-law doctrine of collateral estoppel ... embodies a judicial policy in favor of judicial economy, the stability of former judgments and finality." *In re Mulligan*, 560 B.R. 22 (Bankr. D. Conn. 2016). Its purpose is "to relieve parties of the cost and vexation of repetitious lawsuits, conserve judicial resources and promote the certainty of judicial determinations." *In re Hooker Investments, Inc.*, 131 B.R. 922, 925 (Bankr. S.D.N.Y. 1991) (citing *Commissioner v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 92 L.Ed. 898 (1948)). "Factors that counsel against application of collateral estoppel include: inability to obtain review of the prior judgment; whether the available relief in the two actions is different; lack of foreseeability at the time of the prior action that the issue would arise in subsequent litigation; and the ability of the precluded party to have a full and fair adjudication in the prior action." *Sanders v. Sanders*, 2021 WL 4392053, at *11 (S.D.N.Y. Sept. 24, 2021).

Lowell has not shown that the pending disputes in *Yale Entertainment* will likely result in collateral estoppel in this case. Indeed, issues concerning the Debtor's conduct in his managerial capacity in *Yale Entertainment* could theoretically produce findings bearing directly on certain elements of § 727 and § 523 claim in this proceeding (*e.g.*, material omissions, false oaths, transfers or concealment, or willful and malicious injury). However, Lowell has not advanced any "viable or colorable" § 727 / § 523 claims in this case, since he neither filed the draft complaint nor articulated a theory of non-dischargeablity in the Motion. *See In re Thompson*, 177 B.R. at 450 (requiring a showing of a "viable or colorable claim that ... debt is non-dischargeable[.]"). Nor has there been a showing that the issues determined here will have a collateral estoppel effect in *Yale Entertainment*. Collateral estoppel does not apply where the would-be issues are merely speculative or not shown to be identical to those litigated in *Yale Entertainment*. *See Central Torah Education & Scholarship Fund, Inc. v. Solomon Capital LLC*, 621 Fed. Appx. 64, 65 (2d Cir. 2015) ("Four elements must be met for collateral estoppel to apply: (1) the issues of both proceedings must be identical, (2) the relevant issues were actually litigated and decided in the prior proceeding, (3) there must have been 'full and fair opportunity' for the litigation of the issues in the prior proceeding, and (4) the issues were necessary to support a valid and final judgment on the merits.").

Because the Debtor's individual case is distinct from *Yale Entertainment*, granting an extension of here would not promote judicial economy or prevent re-litigation of issues already decided. It would instead postpone the Debtor's fresh start without a concrete showing that identical, actually-litigated issues in *Yale Entertainment* would be dispositive of a well-pleaded § 727 / § 523 complaint in this case. Thus, this factor weighs against an extension.

V. CONCLUSION

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For the foregoing reasons, the Court finds that Lowell has failed to carry his burden to establish "cause" for extension under Bankruptcy Rules 4004(c) and 4007(c).

Accordingly, the Motion is **DENIED**.

IT IS SO ORDERED.

All Citations

--- B.R. ----, 2025 WL 3282371

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2025 WL 3545484
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United States Bankruptcy Court, E.D. Louisiana.

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IN RE: The ROMAN CATHOLIC CHURCH OF the ARCHDIOCESE OF NEW ORLEANS, [1] Debtor.

1 An Order directing joint administration of the Chapter 11 bankruptcy case of The Roman Catholic Church of The Archdiocese of New Orleans, [No. 20-10846], as lead case, with the Chapter 11 bankruptcy cases of (i) All Saints Roman Catholic Church, New Orleans, Louisiana, [No. 25-12579], (ii) Annunciation Of The Blessed Virgin Mary Roman Catholic Church, Bogalusa, Louisiana, [No. 25-12580], (iii) Ascension Of Our Lord Roman Catholic Church, Laplace, Louisiana, [No. 25-12581], (iv) The Visitation Of Our Lady Roman Catholic Church, Marrero, Louisiana, [No. 25-12582], (v) Assumption Of Mary Roman Catholic Church, Avondale, Louisiana, [No. 25-12583], (vi) Assumption Of The Blessed Virgin Mary Roman Catholic Church Braithwaite, Louisiana, [No. 25-12584], (vii) Blessed Francis Xavier Seelos Roman Catholic Church, New Orleans, Louisiana, [No. 25-12585], (viii) Blessed Sacrament-St. Joan Of Arc Roman Catholic Church, New Orleans, Louisiana, [No. 25-12586], (ix) The Congregation Of St. Rita Roman Catholic Church Of Harahan, [No. 25-12587], (x) Blessed Trinity Roman Catholic Church, New Orleans, Louisiana, [No. 25-12588], (xi) Christ The King Roman Catholic Church, Gretna, Louisiana, [No. 25-12589], (xii) Corpus Christi-Epiphany Roman Catholic Church, New Orleans, Louisiana, [No. 25-12590], (xiii) Divine Mercy Roman Catholic Church, Kenner, Louisiana, [No. 25-12591], (xiv) Good Shepherd Roman Catholic Church, New Orleans, Louisiana, [No. 25-12592], (xv) Sts. Peter And Paul Roman Catholic Church, Pearl River, Louisiana, [No. 25-12593], (xvi) Holy Family Roman Catholic Church, Franklinton, Louisiana, [No. 25-12594], (xvii) St. Thomas Roman Catholic Church, Pointe A La Hache, Louisiana, [No. 25-12595], (xviii) Holy Family Roman Catholic Church, Luling, Louisiana, [No. 25-12596], (xix) St. Rita Roman Catholic Church, New Orleans, Louisiana, [No. 25-12597], (xx) Holy Name Of Mary Roman Catholic Church, New Orleans, Louisiana, [No. 25-12598], (xxi) St. Rita Roman Catholic Church, Harahan, Louisiana, [No. 25-12599], (xxii) Holy Spirit Roman Catholic Church, New Orleans, Louisiana, [No. 25-12600], (xxiii) St. Raymond And St. Leo The Great Roman Catholic Church, New Orleans, Louisiana, [No. 25-12601], (xxiv) Immaculate Conception Roman Catholic Church, Marrero, Louisiana, [No. 25-12602], (xxv) Immaculate Conception Roman Catholic Church, New Orleans, Louisiana, [No. 25-12603], (xxvi) St. Pius X Roman Catholic Church, New Orleans, Louisiana, [No. 25-12604], (xxvii) Mary Queen Of Peace Roman Catholic Church, Mandeville, Louisiana, [No. 25-12605], (xxviii) St. Philip Neri Roman Catholic Church, Metairie, Louisiana, [No. 25-12606], (xxix) Mary Queen Of Vietnam Roman Catholic Church, New Orleans, Louisiana, [No. 25-12607], (xxx) St. Peter's Roman Catholic Church, Covington, Louisiana, [No. 25-12608], (xxxi) Mary, Help Of Christians Roman Catholic Church, Harvey, Louisiana, [No. 25-12610], (xxxii) St. Peter Roman Catholic Church, Reserve, Louisiana, [No. 25-12611], (xxxiii) Mater Dolorosa Roman Catholic Church, New Orleans, Louisiana, [No. 25-12612], (xxxiv) St. Peter Claver Roman Catholic Church, New Orleans, Louisiana, [No. 25-12613], (xxxv) Most Holy Name Of Jesus Roman Catholic Church, New Orleans, Louisiana, [No. 25-12614], (xxxvi) St. Paul The Apostle Roman Catholic Church, New Orleans, Louisiana, [No. 25-12615], (xxxvii) Most Holy Trinity Roman Catholic Church, Covington, Louisiana, [No.

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|

Signed December 9, 2025

Attorneys and Law Firms

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SECTION A

MEMORANDUM OPINION SUPPLEMENTING CONFIRMATION ORDER

MEREDITH S. GRABILL, UNITED STATES BANKRUPTCY JUDGE

***1** The Court enters this *Memorandum Opinion* to memorialize the oral ruling of the Court made on December 8, 2025, to resolve two remaining objection to plan confirmation:

The Court makes these findings of fact and conclusions of law pursuant to Bankruptcy Rules 7052 and 9014. The Court's oral findings are hereby incorporated into the written confirmation order that will be issued by this Court.

Before the Court is the objection asserted by Travelers Insurance Company to the confirmation of the (now) Seventh Amended Plan of Reorganization proposed by the Debtor, the Additional Debtors, and the Official Committee of Unsecured Creditors. As stated on the record at the last hearing, the Seventh Amended Plan has resolved all of Travelers' objections, including any of its "Insurance Neutrality" objections, save two.

Of import to the Court's ruling is the manner in which the proposed plan treats Class 3 Known Abuse Claims and Class 4 Unknown Abuse Claims. At a high level, the plan provides that a settlement trust will be created on or before the Effective Date and will be funded free and clear with $130 million cash-on-hand on the Effective Date, and, ultimately, with another $70 million from the sale of Christopher Homes, guaranteed by two promissory notes issued by the Debtor and/or Additional Debtors, as well as approximately $30 million from certain Settling Insurers. The transactions with Settling Insurers involved settlements with the Debtors and Additional Debtors under Bankruptcy Rule 9019, culminating in the Settling Insurers' purchase of certain of Debtors' insurance policies free and clear under § 363 of the Bankruptcy Code. The motions to effect those transactions were noticed separate and apart from the plan and approved by separate orders of this Court. No objections were filed before the entry of those orders. The plan recognizes and incorporates those orders. The settlement trustee appointed through the plan has sole fiduciary duty to administer the trust.

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Travelers is not a Settling Insurer and none of the funds transferred to the settlement trust are proceeds paid from any settlement between Travelers and the Debtor and Additional Debtors. But on the Effective Date, any and all rights and claims belonging to abuse claimants, the Debtor, and any co-insured party under applicable policies issued by Travelers to the Debtor and/or any co-insured will be transferred to the settlement trust. In exercising his fiduciary duty to administer the trust, the settlement trustee has sole authority to liquidate, settle, or even abandon any claims or causes of action transferred to the settlement trust.

I. PLAN OBJECTION ONE: "The Joint Plan Must Not Impair Travelers' Ability To Object to Abuse Claims" (ECF Doc. 4563, ¶¶ 25-28)

In its objection, Travelers asserts that its "right to object to Abuse Claims, including those filed after the March 1, 2021 bar date established by this Court ... should be fully preserved under the Joint Plan."

Let's first talk about Travelers' rights pre-confirmation to object to proofs of claim. Section 502 of the Bankruptcy Code governs allowance of claim or interests and states in relevant part that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest ... objects." Section 1109(b) of the Bankruptcy Code provides that "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, as creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter." The plain wording of § 1109(b) lists entities that are "parties in interest" but that list is not an exclusive one. "Courts have long recognized that the meaning of the term [party in interest] must be determined on an 'ad hoc' basis, and the categories mentioned in Section 1109 are not meant to exclude other types of interested parties from the purview of that section." *In re Roman Catholic Diocese of Albany, New York*, No. 23-10244, 2025 WL 2536165, at *2 (Bankr. N.D.N.Y. Sept. 3, 2025) (quoting *Savage & Assocs. P.C. v. K&L Gates LLP (In re Telegent, Inc.)*, 640 F.3d 53, 60 (2d Cir. 2011)). The Supreme Court recognized in *Truck Insurance Exchange v. Kaiser Gypsum Co*., that the use of § 1109(b)'s broad language was part of an "effort to encourage and promote greater participation in reorganization cases," as Congress was concerned that "a few insiders, whether representatives of management or major creditors, could use the reorganization process to gain an unfair advantage." 602 U.S. 268, 280 (2024).

***2** Since the passage of the 1978 Bankruptcy Code, courts have been called upon to define who is a party in interest in various contexts and situations that arise during the course of a chapter 11 bankruptcy case. But as observed by Judge Glenn in *In re MF Global Holdings, Ltd*., although "[a] 'party in interest' is broadly defined by the statute ... an entity that does not hold a financial stake in the case is generally excluded from the definition of 'party in interest.' " 469 B.R. 177, 188 (Bankr. S.D.N.Y. 2012). And you see that general rule applied over and over again in chapter 11, including

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by the Supreme Court in *Truck Insurance Exchange*, where the Court held that "an insurer **with financial responsibility for bankruptcy claims** is a 'party in interest' that may object to a chapter 11 plan of reorganization." 602 U.S. at 285.

During the course of this bankruptcy case, hundreds of abuse claimants filed proofs of claim against the Debtor or Additional Debtors—not against Travelers. Unlike the insurer in *Truck Insurance Exchange*, Travelers' liability to defend and pay on abuse claims here has neither been adjudicated nor has Travelers formally accepted responsibility to pay for those claims. In fact, currently pending before the Court is Travelers' motion to terminate the automatic stay to allow it to file a declaratory action in federal district court challenging insurance coverage for abuse claims filed against the Debtor and/or Additional Debtors. [ECF Doc. 4404]. Judge Littlefield in *In re Roman Catholic Diocese of Albany, New York*, asks a great question: How can insurance companies claim standing to object to proofs of claim on the basis that they are likely to contribute to the bankruptcy distribution while simultaneously claiming they are under no obligation to make said contribution? *See* 2025 WL 2536165, at *5. As he correctly pointed out: "[T]he allowance of a claim creates an obligation for the Diocese, not the Insurers; that obligation is not real until either the Insurers concede liability or are otherwise adjudicated to be responsible." *Id*. at *6.

Of course, when Judge Littlefield declined to find that the insurers before him had standing to object to proofs of claim, there was no plan on file in that bankruptcy case. Does the analysis change here now that the Court is considering a plan that would assign the Debtors' and Additional Debtors' interests in insurance claims and recoveries against Travelers to the settlement trust? The Court is not convinced that it does, especially since, at this time, the only articulated basis for Travelers' objections to abuse claimants' proofs of claim is to find them untimely filed in the bankruptcy case. The purpose of a bar date in a chapter 11 case is to ensure finality and fix the universe of the **debtor's** liability—not Travelers'. As observed by Judge Goldblatt in *In re AIO US, Inc*., "the case law on party-in-interest standing under § 1109(b) limits an objector to asserting its own rights—it may not assert the rights of others." 672 B.R. 261, 273 (Bankr. D. Del. 2025). And as he also acknowledged, "[t]he Supreme Court has, in other contexts, expressed due concern for the risk that a party may seek to weaponize its procedural rights to participate in litigation to serve some ulterior purpose." *Id*. (citing *Bell Atl. v. Twombly*, 550 U.S. 544, 558 (2007) and *Truck Ins. Exchange*, 602 U.S. at 282).

Nevertheless, heeding Judge Goldblatt's advice in *In re AIO US, Inc*., that "in a close case, one should err on the side of considering an objection on the merits as opposed to disregarding it on the ground that the objector lacks standing, and employ other tools as appropriate to guard against the potential misuse of the procedural right to be heard for tactical purposes," 672, B.R. at 277, the Court will rule on the merits of Travelers' objection.

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***3** This plan contemplates that abuse claims will be channeled post-confirmation into the settlement trust for final liquidation and payment, as is common in mass tort bankruptcy cases. Travelers is concerned that the Debtor's agreement to allow as timely filed those abuse claims that were filed after the bar date, but before May 16, 2025 (when the settlement between the Debtor, the Additional Debtors, and the Committee was announced), "would potentially lead to 'allowance' and payment of many untimely and unwarranted claims to the detriment of the holders of timely-filed Abuse Claims." [ECF Doc. 4563, ¶ 27]. Although the Court commends Travelers' regard for holders of timely filed abuse claims, Travelers' own rights are well protected. The settlement trust will not be funded by any contribution by Travelers without Travelers' consent via settlement or adjudication by a court of competent jurisdiction. Section 7.4 of the plan further reserves all of Travelers' rights and defenses. In the event that the settlement trustee approves the filing of a litigation claim against Travelers in a state or federal court with competent jurisdiction—Travelers is free to assert a defense pertaining to the timeliness of the filing of any proof of claim in this bankruptcy case before that tribunal.

Accordingly, the Court overrules Travelers' objection. To clear up any confusion or incongruency between the plan and the allocation protocol, the Court strikes any grant to Travelers as a Non-Settling Insurer, of the right contained in §§ 4.3(b) and 4.4(b) of the plan to object to proofs of claim filed by abuse claimants as contrary to applicable law.

II. PLAN OBJECTION TWO: "The Joint Plan Fails To Sufficiently Protect Non-Settling Insurer Contribution Claims." (ECF Doc. 4563, ¶¶ 18–24)

With no ability to recover directly from a Settling Insurer for contribution in the event that an abuse claimant or the settlement trust (as assignee of the abuse claimant) obtains a judgment against Travelers in subsequent post-confirmation litigation, § 6.9(d) of the plan provides that Travelers' liability to the settlement trust is offset and reduced by the amount that any Settling Insurer is found liable to pay Travelers.

Travelers' remaining objection is limited to its inability under the plan to seek contribution of defense costs from an abuse claimant or the settlement trust (as assignee of the abuse claimant) in the event that an abuse claimant pursues her claim in a court of competent jurisdiction and Travelers obtains a judgment in that litigation or in separate coverage litigation that it is not liable for the claim. In other words, can Travelers recoup its defense costs if an abuse claimant gets "zero'd out" at trial or if Travelers wins in any action seeking a declaration that there is no coverage obligations for the sexual abuse claims alleged in this case?

At oral argument, Travelers cited *Arceneaux v. Amstar Corporation*, 200 So. 3d 277 (La. 2016), to assert that under Louisiana law, "an insurer that defends an indemnity is responsible for its *pro rata* share when there is overlapping coverage" and that Louisiana law is "clear" that we consider "time on the risk that determines how the *pro rata* shares among co-primary insurers are

determined." [ECF Doc. 4765]. Travelers asserted its right to recoup defense costs from alleged co-primary insurers is an equitable one, not based in contract. *See id*.

In Louisiana, as in most, if not all states, an insurer's obligation to defend suits against its insured is broader than its liability for damage claims. The Louisiana Supreme Court articulated the now long-held rule in Louisiana regarding an insurer's duty to defend its insured in 1969 in the case captioned *American Home Assurance Co. v. Czarniecki*,:

> The insurer's duty to defend suits brought against its insured is determined by the allegations of the injured plaintiff's petition, with the insurer being obligated to furnish a defense unless the petition unambiguously excludes coverage.
>
> Thus, if, assuming all the allegations of the petition to be true, there would be both (1) coverage under the policy and (2) liability to the plaintiff, the insurer must defend the insured regardless of the outcome of the suit.

230 So.2d 253, 259 (La. 1969). That pronouncement by the Louisiana Supreme Court became known as the "eight-corners rule"; that is, an insurer must look to the four corners of the petition and the four corners of the policy to determine whether it has a duty to defend. The general rule in Louisiana when an insurer seeks contribution for defense costs from another insurer is to apportion defense costs equally by head. *See, e.g*., *Vaughn v. Franklin*, 785 So.2d 79, 89 (La. 1 Cir. 2001).

***4** The *Arceneaux* case cited by Travelers is not reflective of the general rule, but identifies a method of allocating indemnification as well as defense costs that was adopted to deal specifically with long-latency occupational disease cases:

> As to an insurer's duty to indemnify, liability is to be prorated among insurance carriers that were on the risk during periods of exposure to injurious conditions. That indemnification is allocated pro rata is based in large part on Louisiana's adoption of the exposure theory in long latency disease cases. Long latency occupational disease cases are *sui generis* in that a distinct body of jurisprudential law has been developed which applies solely to them. Under the exposure theory, the "occurrence" that triggers coverage under an insurance policy is the plaintiff's exposure to harmful conditions within the policy period. Such a theory was adopted to establish when coverage was triggered in cases that involved diseases when there is a "lengthy temporal separation between the alleged tortious conduct and the appearance of injury." This approach is based on the concept that insurers may limit their liability to discrete and finite periods.

200 So. 3d at 282. Based on specific language in the policy before it, the *Arseneaux* court adopted the reasoning applied in a U.S. Court of Appeals for the Sixth Circuit case, *Insurance Co. of North America v. Forty-Eight Insulations, Inc*., 633 F.2d 1212 (6th Cir. 1980), to apply a *pro rata* method

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of apportioning defense costs in the long-latency disease case before it. In *Arseneaux*, that meant apportioning defense costs between an insurer and its insured that was actually considered self-insured for periods of no coverage. The *Arseneaux* court observed:

> The duty to defend arises solely under contract. It is well-settled that "an insurance policy is a contract between the parties and should be construed using the general rules of interpretation of contract set forth in the Civil Code...."
>
> While the duty to defend is broader than the duty to indemnify, neither obligation is broader than the policy's coverage period in the context of long latency disease cases that trigger occurrence-based policies. In addition, the concept of "joint and several" is not a concept that is currently a part of Louisiana's tort law....
>
> Having concluded that defense costs are to be prorated in this case, we now determine the formula for allocation. In this case ... the amount of time an insurer was on the risk would seem to be the appropriate consideration. Because the duty to defend is distinct from the duty to indemnify, the details of the policy need not enter the equation of how defense costs are to be allocated so long as the policy is triggered.

200 So. 3d at 286, 289.

This Court has not located a Louisiana case that treats child sexual abuse as a long-latency occupational disease as it has with asbestos-disease and hearing loss. Indeed, it stretches common sense to imagine characteristics of child sexual abuse to include "lengthy temporal separation between the alleged tortious conduct and the appearance of injury," but that issue is not before the Court. But whether Louisiana's more general apportionment-by-head method applies or *Arseneaux*'s *pro rata* apportionment applies to insurers seeking to recoup defense costs from other insurers in cases of child sexual abuse claims, Travelers has a problem: There is no "equitable" right to such contribution under Louisiana law and the record before the Court shows that there is no overlapping coverage for any of the years covered by Travelers.

***5** Travelers relies heavily on the holding in *In re Boy Scouts of America*, 137 F.4th 126, 168 (3d Cir. 2025), for the proposition that a plan of reorganization that denies a non-settling insurer the ability to recover defense costs represents a non-consensual third-party release of the non-settling insurer's claims in violation of the Supreme Court's holding in *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204 (2024). [ECF Doc. 4563]. But the facts in that case are markedly different from those here. In the *Boy Scouts* case, a primary insurer settled with the debtor and an overlapping excess carrier found itself unexpectedly incurring defense costs it had the right to recoup. Here, as a primary insurer with no overlapping co-primary insurers, Travelers is required to absorb its own defense costs and has no claim of contribution of defense costs from an abuse claimant or the settlement trust (as assignee of the abuse claimant).

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For that reason, the existence of the "Judgment Reduction" provision in § 6.9(d) of the plan is sufficient to ensure Travelers can obtain full satisfaction and adequate protection for the loss of any right it may hold to obtain contribution from Settling Insurers. The Court finds that the *Purdue Pharma* prohibition on non-consensual, third-party releases is not implicated here.

Accordingly, the Court overrules Travelers' objection.

III. CONFIRMATION RULING

Before the Court is the *Seventh Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Church on the Archdiocese of New Orleans and Additional Debtor, Proposed by the Debtor, the Additional Debtors, and the Official Committee of Unsecured Creditors, Dated as of December 1, 2025*, with attached exhibits, [ECF Doc. 4738].

All objections to the Plan have been either compromised and withdrawn or overruled.

The Court listened to days of testimony from experts and fact witnesses on behalf of the plan proponents, with robust cross-examination by counsel for the United States Trustee and the Bond Trustee. The testimony included the testimony from Archbishop Gregory Aymond and Archbishop James Checchio and culminated in deeply personal accounts given in this courtroom by 23 abuse survivors. I also reviewed four written survivor statements that reached the Court over the weekend.

To Survivors: I would like you to know how valuable and powerful your voices are. Each of you showed immeasurable courage to stand tall and speak your truth not just for yourselves, but for all Survivors who could not come forward.

I have sat with the things you told me for almost a week now.

I heard you when you told me the horror of how you were hurt. I heard you when you told me how you were deceived. Exploited. Alone. Shattered.

I heard you when you told me how you suffered and continue to suffer. How you have been heartbroken. How you have felt powerless. And abandoned. And not believed. And discarded.

I heard you when you told me you became angry. And stayed angry.

I heard you when you told me you drank, used drugs, gambled, and binged to try and get away from the all-consuming pain.

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I heard you when you told me that your relationships fell apart. That you didn't know how to trust. And just couldn't trust.

I heard you when you told me you were homeless. Couldn't work. Couldn't sleep or eat.

I heard you when you told me you lost your faith. When you described your "dark life."

I heard you and ached for you when you told me you wanted to die.

But I also heard you when you told me that you found someone who listened and did not leave.

I heard you when you told me found your faith again. I heard you recite Philippians 4:13.

I heard you when you told me you found healthy love. And when you told me that you were able to show healthy love.

***6** I heard the power in your voice and saw resilience in your face.

Most of all, I saw and felt hope.

No court system could ever make Survivors whole.

I heard and believed Survivors when they told me that the abuse they suffered continues to affect every aspect of their lives and the lives of their friends and family. They described a rotting ripple effect resulting from abuse.

To be clear: The poison of child abuse affects everyone in our community. Even if you are unaware that you know someone who has suffered abuse, the betrayal of any child in our community destroys the things we all search for. We yearn for the safety of family, for friendships, for connection, and for the kinds of fellowship that are built through ministries, cultural activities, youth sports, and community outreach by the people in churches, in our schools, and in other public-service organizations. Child abuse takes those things away. It sows mistrust. It breeds isolation.

So let's do something about it today.

Based on the record before it, the Court finds that all elements required for confirmation of this plan under § 1129 of the Bankruptcy Code have been met. The Court specifically finds that the Plan has been filed in good faith and by no means forbidden by law pursuant to § 1129(a)(3). The Court also finds that, while not perfect, the non-monetary remedies when implemented represent

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a good chance that we will not wind up here again. The Court reminds everyone that the non-monetary terms of this Plan represent the floor—not the ceiling—on our efforts to prevent and detect abuse and promote transparency and healing. Thus, the Court finds that the plan proponents have satisfied the requirements of § 1129(a)(11).

Confirmation of this plan is a first step in validating and healing the hurt endured by Survivors and those who love them. Together, the Church, Survivors, and the rest of us have a real opportunity to do something extraordinary. We have the chance to take responsibility. To rebuild trust. And to lead.

I commend the hard work and steadfastness of the professionals and lay volunteers in this case.

This plan is complex and has many moving parts, particularly in light of the non-monetary remedies featuring the Survivors Bill of Rights that will be implemented. I could be mistaken, but I don't believe that this country has seen anything as progressive yet in these cases. Although I know that the Debtor and the Additional Debtors will move as quickly as possible to implement all of the mechanics, many of the terms of the plan depend upon bringing human resources and advisors on board. That said, the Court believes it is a good idea to schedule a status conference for about six months out, on Thursday, May 21, 2026, at 1:30 pm. It will be a great opportunity to see how we're doing.

I would ask the Debtor to make the changes to the two sections of the plan that are affected by the Court's ruling on Travelers' objections, file a clean, final version, and if necessary, send an updated proposed confirmation order to the Court for docketing. I am confident we can process the order today.

All Citations

Slip Copy, 2025 WL 3545484

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2025 WL 3554256
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United States Bankruptcy Court, D. Idaho.

IN RE: James A. LITTLE and Jan R. Little, Debtors.

Case No. 24-00661-BPH
|
Signed December 10, 2025

Attorneys and Law Firms

James Justin May, Matthew T. Christensen, Johnson May, PLLC, Boise, ID, for Debtors.

MEMORANDUM OF DECISION

HON. BENJAMIN P. HURSH, U. S. BANKRUPTCY JUDGE

I. Introduction

***1** In this Chapter 7 bankruptcy,[1] the Chapter 7 Trustee ("Trustee") filed a Motion to Approve a Settlement and Sale ("Sale Motion") on June 27, 2025.[2] The Sale Motion seeks approval of a sale of property to and settlement with Robert and Rochelle Oxarango (collectively, the "Oxarangos").[3] Objections to the settlement and sale were lodged by debtors James and Jan Little (together, the "Debtors") and interested parties Gretchen Hyde and Dinah Reaney (together, the "Sisters").[4] Responses to the objections were filed by Trustee and the Oxarangos.[5] For the reasons stated herein, the Court grants the Sale Motion.

1 Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

2 Doc. 46.

3 A Settlement, Stipulation, and Sale Agreement ("Settlement Agreement") executed on June 27, 2025, is attached to the Sale Motion as Exhibit A.

4 Doc. 52.

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[5] Docs. 56 and 57.

II. Jurisdiction and Venue

Settlements and sales of estate property concern the administration of the estate, allowance or disallowance of claims against the estate, and liquidation of estate property. Accordingly, the instant dispute is a core proceeding under 28 U.S.C. § 157(b)(2)(A)–(B), (N)–(O). Pursuant to 28 U.S.C. § 157(b)(1), this Court may hear, determine, and enter final orders and judgments in core proceedings. *Dunmore v. United States*, 358 F.3d 1107, 1114 (9th Cir. 2004). Accordingly, this Court has jurisdiction to adjudicate the dispute herein.

Venue is proper in the district where the underlying case is pending. 28 U.S.C. §§ 1391(b), 1409(a). The Debtors' bankruptcy case is pending before this Court. Accordingly, venue is proper in this Court.

III. Background and Facts

A. Little Family Ranch, Succession Planning, and the Oxarango's Acquisition of the Sisters' and Jim's Interests

Debtor James Little ("Jim") was born, raised, and worked on ranches his entire life. As a child, he and his siblings assisted their parents with the ranches. When his parents passed, the ranches and other assets were divided between Jim and his two siblings. Jim received Van Deusen Ranch, Inc. ("Van Deusen"). Due to disparities in size, Jim had to acquire certain interests held by his siblings to equalize the division of assets.

Jim has three daughters: Rochelle, Gretchen, and Dinah. In 2009, Jim was diagnosed with chronic obstructive pulmonary disease. Around this time, Jim and Gretchen discussed the future of the ranch, including either selling it or keeping it in the family. Rochelle and her husband Robert had a sheep operation in eastern Idaho. Gretchen suggested that Jim contact Rochelle and Robert to explore their interest in returning to Van Deusen.

During these preliminary discussions between Jim and the Oxarangos, the Oxarangos expressed an interest and willingness to operate Van Deusen with Jim. However, the Oxarangos explained that their willingness to work with Jim and "keep the ranch in the family" had limitations. [6] As the family members responsible for day-to-day operations and management, the Oxarangos did not want other family members, such as the Sisters, involved in management. [7]

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6 Adv. Doc. 37-2 at ¶¶ 4, 12, 14. References to docket entries in *Oxarango v. Geile, et al.,* No. 24-06021-BPH, the adversary proceeding associated with Debtors' bankruptcy case, are denoted as "Adv. Doc.".

7 Adv. Doc. 37-2 at ¶ 12.

***2** Jim explained to the Oxarangos that a deal could be reached where the Oxarangos would buy out the Sisters' interests in Van Deusen, resulting in Jim and the Oxarangos jointly controlling management and operations of the ranch. Additionally, the Oxarangos would later acquire Jim's remaining interests and obtain "full ownership" of the ranch. [8] On Christmas Day in 2010, Jim disclosed to the entire family his plans to transition management and operations to the Oxarangos. [9]

8 *Id.*

9 Adv. Doc. 37-1 at ¶ 4; Adv. Doc. 37-2 at ¶ 4.

A year later, Jim and his accountant developed valuations and spreadsheets which initiated a series of negotiations, transactions, and buyouts beginning in 2012 and continuing through 2015. [10] Ultimately, these transactions included two other entities: V Dot Cattle Company ("V Dot") and David Little Family LLLP ("DLF"). Like many other ranching and closely held family businesses, the selection of business organizations was influenced by estate planning. Jim's parents created DLF in 1990 and contributed certain interests in Van Deusen and V Dot to it. DLF permitted Jim's parents to gift interests in entities to family members. DLF is comprised of 40 general partnership units. The general partner has control. The limited partners have no control despite having an ownership interest in DLF. Jim was the general partner in 2012. Rochelle, Gretchen, and Dinah each held a 24.22% in DLF as limited partners in 2021. [11]

10 Adv. Docs 37-10 at p. 24:5–6; 37-2 at ¶¶ 7–8; 21, p. 18 at ¶ 18.

11 Adv. Docs. 21, p. 18 at ¶ 12; 24, at ¶ 12. All citations to the Complaint (Adv. Doc. 1) or Counterclaims (Adv. Doc. 21) are for facts that are either admitted in the answers, agreed to in the statement of undisputed facts, or sufficiently established by the evidence presented at the hearing. The Complaint and Counterclaims are also cited *infra* to describe the parties' positions.

In 2012, DLF had a 48.11% interest in Van Deusen and a 15.16% interest in V Dot. [12] As DLF's general partner, Jim controlled DLF's interests in Van Deusen and V Dot. Jim's individual interest in Van Deusen was 10.12%, and his individual interest in V Dot was 50.13%. [13] When combined, DLF and Jim's ownership interest in Van Deusen in 2012 was 58.23%. At that same time, DLF

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and Jim's combined ownership interest in V Dot was 65.29%. [14] As the general partner of DLF, Jim effectively had complete control of DLF, Van Deusen, and V Dot in 2012.

12 Adv. Doc. 35-3.

13 Adv. Docs. 21, 19 at ¶ 13; 24 at ¶ 13; 35-2 at ¶ 1.

14 Adv. Doc. 35-3 at ¶ 2.

In 2012, the parties reached an agreement whereby the Oxarangos agreed to purchase the following interests from Jim and the Sisters: [15]

	Van Deusen	V Dot
Jim Little (Projected Buyout)	$579,000	$858,400
Gretchen Hyde	$241,000	$305,000
Dinah Reaney	$241,000	$305,000

The buyouts proceeded in phases with the Oxarangos buying out the Sisters' interests first. According to Jim's notes, at the closing for the Sisters buyout, the parties "[g]ot things done with some acrimony .... Int [sic] full opinions about pennies on the dollar that Gretch personally expressed.... It will take them time .... some time to heal those scars." [16] No one disputes that the Oxarangos completed this transaction and acquired the Sisters' interests.

15 Adv. Docs. 35-3 at Ex. 1; 35-4; 37.

16 Adv. Doc. 37-10 at 41:11–19. The acrimony continues today. During the initial hour of the hearing in this matter, Gretchen sat at counsel table and as time went on, she shook her head with increasing vigor and rolled her eyes when she disagreed with the testimony of a witness. Ultimately, the Court had to instruct Gretchen to restrain herself.

***3** Following completion of the first phase, Rochelle and Jim revisited the mechanics of how Jim's interests in Van Deusen and V Dot would ultimately be transferred to the Oxarangos. These discussions were influenced by the parties' specific concerns. For Jim, it was important that the ranch operations continue [17] and that Debtors receive a sufficient income stream to maintain their lifestyle. [18]

17 Adv. Doc. 37-10 at 113:4–7.

18 *Id.* at 113:20–114:3.

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In order to accomplish these goals, Jim had to carefully consider his future financial security as well as the possibility that a long-term liability owed to him by the Oxarangos or one of the entities may undermine the viability of future operations. Further, if the stream of payments necessary to maintain his lifestyle exceeded either the Oxarangos' or V Dot's capacity to make such payments, his interest in ensuring the ranch continued as a "ranch" and stayed within the family could be undermined. Conversely, if the payments failed to maintain Debtors' lifestyle, they would be deprived of the economic security they needed.

Another relevant factor for Jim included the tax consequences associated with any sale or transfer. During the time period when the parties were evaluating how to structure the transaction, Jim's capital account in V Dot had a negative balance of approximately $500,000, and a sale would trigger tax consequences. [19] As an alternative to a sale, the parties seemingly agreed on a deal structure that provided Jim a guaranteed salary as consideration for his interests in V Dot.

19 Adv. Doc. 37-2 at ¶¶ 17–18.

For the Oxarangos, control required complete ownership. Their greatest concern was that after years of work, other family members with a minority interest could threaten their investment and work by undermining their overarching agreement with Jim. In light of this concern, the Oxarangos were not comfortable with an agreement that was dependent on a provision in a will or other estate planning document because these documents can be withdrawn or amended over time. To accommodate this concern, the parties negotiated options that afforded the Oxarangos an opportunity to acquire Jim's interests in V Dot and DLF following his death.

Ultimately, Jim and the Oxarangos executed a series of documents in or around April 2015. First, the Oxarangos agreed to pay Jim a total of $579,417.50 for Jim's shares of Van Deusen stock. [20] The Oxarangos paid $35,420 in cash and provided Jim a promissory note for the remaining purchase price, $543,997.50. [21] Additionally, Jim transferred 20 of his 40 general partnership units in DLF to Rochelle. [22] Finally, at the same time, consistent with the parties' negotiations and agreements, Jim as "seller" executed two option agreements that granted the Oxarango Family Trust the right to acquire his remaining interests in V Dot and the remaining 20 general partnership units in DLF for $10.00 following his death. [23]

20 Adv. Doc. 21 at 6, ¶ 46; 35-3 at Exs. 7–8.

21 *Id.*

22 Adv. Docs. 21 at ¶ 35; 24 at ¶ 35

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[23] Adv. Docs. 24 at ¶ 32; 37-1 at ¶ 16; 35-4 at Ex. 2; 37-10 at p. 95:3–97:6.

Following the completion of the transactions with the Sisters and Jim, the Oxarangos continued working on the ranch. Jim and Rochelle, as the general partners of DLF, effectively controlled Van Deusen and V Dot. Consistent with the parties' agreements, payments totaling approximately $1,100,000 were paid to Jim over the following years as a salary.[24] Additionally, the Oxarangos made the payments required by the promissory note they executed in connection with the Van Deusen acquisition.

[24] Adv. Docs. 37-1 at ¶ 9; 37-2 at ¶ 35.

***4** As time went on and Jim's involvement with the ranch diminished, it became increasingly difficult to justify making payments to Jim that were characterized as a salary or wages. Sensitive to this issue, Jim, the Oxarangos, and Jim's accountant considered alternatives that would permit Jim to receive another income stream as a substitute for the "salary" that Jim initially negotiated to avoid the tax consequences of a sale. Their answer was to sell the Roseberry property to the Oxarangos.

In the seven years that followed the Oxarangos' agreement with Jim, the record suggests neither Jim nor the Oxarangos were confused about the terms of their agreement, which accomplished Jim's twin goals of transitioning control and ownership to the Oxarangos while providing Debtors a revenue stream. This changed in 2022 when the Debtors sued their daughter and son-in-law, the Oxarangos.

B. Parties' History of Litigation

1. State Court Litigation

In 2022, Debtors accused the Oxarangos of undue influence and constructive fraud, alleging in part that Jim lacked the capacity to contract.[25] To date, the Oxarangos have successfully defended themselves against these claims. They moved for summary judgment in the state court action, and while awaiting a decision, Debtors developed a new theory for unwinding the transaction between Jim and the Oxarangos. By a letter to the Oxarangos in June 2023, Jim "revoked" the option agreements for lack of consideration.

[25] Adv. Doc. 37-5.

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In February of 2024, the Third Judicial District Court of Idaho ("State Court") granted the Oxarangos' summary judgment motion and dismissed Debtors' claims with prejudice.[26] In a thoughtful decision, the State Court made observations and findings that remain relevant here because the parties have a pending adversary proceeding that addresses many of the same issues.

26 Adv. Doc. 37-8.

First, the State Court observed that the matter came before it "roughly a decade, if not longer, after the Littles and Oxarangos formed a plan which would transfer complete ownership and control over the Littles' farm and ranching business from the Littles to the Oxarangos."[27] Later in its analysis, the State Court concluded:

> In the Court's view, nothing about that notation, nor the language of the option agreement, suggests any ambiguity as to what the agreement meant: V Dot's interests would be sold to the Oxarangos for $10 upon [Jim's] death, if it had not been previously bequeathed to them. Mr. Little was given substantial time to look at these documents, and he had the assistance of at least his accountant during the two meetings prior to their execution. This term did not change when presented with the actual option agreements that were executed. Indeed, the unchallenged option agreement regarding his Little Family Limited Partnership contained an identical clause regarding the purchase price.[28]

This conclusion is important because the validity of the options, whether the options lacked consideration, and revocation of the options remain disputed issues in the adversary proceeding.

27 *Id.* at 1–2.

28 *Id.* at 11.

Next, the State Court scrutinized the Roseberry transaction and concluded: "After closely examining the Roseberry transaction to check for signs of unfair advantage, from which susceptibility could be inferred, the Court does not see a genuine issue of material fact."[29] It went on to address various arguments and conclude that the Roseberry transaction would provide Jim with an ongoing revenue stream, independent of the payroll revenue stream that ended.[30]

29 *Id.* at 13.

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30 *Id.*

***5** Finally, and important here, the State Court observed:

> Mr. Little's own declaration never claims that he did not understand the nature and effect of the contract [for the Roseberry transaction], save for whether the number proposed was representative of fair market value. He claims he was worried for the ranch, but there is no evidence to suggest that his worry overcame his free will. Indeed, he did not appear to have a problem with the sales price until a family member spoke to him about it, and even then, he showed the wherewithal to contact his accountant to provide a valuation of the property. There is no evidence to indicate that Mr. Little was left without any time or room to exercise his free will in regards to the transaction. [31]

The State Court's observation here is relevant because there remain allegations of undue influence in the pending adversary complaint.

31 *Id.* at 16–17.

In a separate lawsuit, the Sisters filed a complaint against the Oxarangos, which was also dismissed. [32] Unhappy with dismissal, the Sisters appealed to the Idaho Supreme Court, which appeal remains pending. [33]

32 Adv. Doc. 37-4 at ¶ 5.

33 *Id.*; *Hyde v. Oxarango*, Idaho Supreme Court Case No. 51625.

2. Debtors' Prior Bankruptcy is Dismissed

This is the Debtors' second bankruptcy filing in less than two years. They filed their first bankruptcy petition under Chapter 11 in July 2023, just four months after the State Court dismissed with prejudice their claims challenging the validity of the options and the Roseberry Transaction. Having been unsuccessful in State Court, Debtors filed an adversary complaint against the Oxarangos seeking a determination that revocation of the options was valid and to avoid the transfer of and recover the Roseberry property. Ultimately, the issues raised in this adversary proceeding were never considered because the United States Trustee moved to dismiss the case shortly after the conclusion of the meeting of creditors.

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Following a contested hearing, Debtors' first bankruptcy case was dismissed in part because the Court found that Debtors filed their case for the purpose of avoiding a two-party dispute (with the Oxarangos) and the filing did not have a valid bankruptcy purpose.[34] This Court previously explained:

> [I]n light of all the circumstances and the *Bootjack Dairy* decision, these factors indicate Debtors filed their chapter 11 bankruptcy case without a valid bankruptcy purpose. Debtors do not appear to be utilizing the bankruptcy court to obtain a fresh start or reorganize their debts. Rather, Debtors' bankruptcy was filed in an attempt to force the dissolution of V Dot, which Mr. Little operated with the Oxarangos, and in an attempt to obtain a more favorable outcome in their ongoing litigation with the Oxarangos. These alone are not valid purposes for filing bankruptcy....[35]

The case was dismissed on February 9, 2024.

34 Adv. Doc. No. 37-4 at ¶ 6; *In re Little*, Idaho Bankruptcy Case No. 23-00352-NGH, Doc. 98.

35 *In re Little*, Idaho Bankruptcy Case No. 23-00352-NGH, Doc. 98 at 11–12.

C. This Bankruptcy and the Adversary Proceeding

***6** Eight months after their previous Chapter 11 case was dismissed, on October 2, 2024, Debtors filed the instant case under Chapter 7. Less than a month later, on October 30, 2024, the Oxarangos commenced an adversary proceeding against Debtors. In the adversary proceeding, the Oxarangos seek declaratory relief, specifically: a determination of the validity of the options and the impact of any purported revocation; damages for wrongful dissociation of V Dot, revocation of the options (if such revocation was legally effective), and their actions taken in reliance on the options; a determination that any debt owed to the Oxarangos by Debtors arising from the foregoing is nondischargeable; and attorneys' fees.[36] The Oxarangos calculate their monetary damages to be in the millions. The Oxarangos initially filed Claim No. 7 on December 20, 2024, in the amount of $3,283,103.50. On July 9, 2024, the Oxarangos amended their proof of claim, increasing the amount to $8,522,797.50.

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[36] Adv. Doc. 1.

Debtors answered the Oxarangos' complaint and counterclaimed on numerous grounds. Through their counterclaims, Debtors also seek a determination of the validity of the options and the impact of any purported revocation. They further seek: a determination that V Dot was required to be terminated under the terms of its partnership agreement upon the Debtors' first bankruptcy filing; a determination that the Oxarangos purchased Jim's interests in Van Deusen with funds from Van Deusen itself and thus the shares that the Oxarangos "purchased" are treasury stock rather than vested in the Oxarangos; damages for breach of fiduciary duty; and an accounting.[37] Debtors also plead an objection to the Oxarangos' proof of claim. Debtors moved for summary judgment in the adversary proceeding, which remains pending.[38]

[37] Adv. Doc. 21.

[38] Adv. Doc. 35.

Trustee has now been placed in the middle of this decade-long tale of succession planning, familial conflict, and litigation. Further complicating matters is that, by all accounts, there are sufficient assets in Debtor's estate to easily make a 100% distribution to all claimants other than the Oxarangos. In Trustee's view, the resolution of this case is dependent upon the validity and amount of the Oxarangos' claim, which in turn is directly intertwined with the validity of the options and any revocation that may have occurred.

If the options were not revoked, the Oxarangos' damages would probably be substantially smaller than asserted in their proof of claim, and the estate would control partnership interests subject to a $10 purchase option upon Jim's death, effectively rendering them unmarketable. If the options were revoked, the Oxarangos' damages would likely be much greater because they relied on their agreement with Jim. There is no dispute that underlying the agreements between Jim and the Oxarangos was the understanding that the Oxarangos would ultimately control the ranch and its operations. The parties' complaint, answer, and counterclaims detail the parties' disputes surrounding these issues.[39]

[39] *See* Adv. Docs. 1; 20; 21; 24.

D. The Proposed Settlement and Sale

The Sale Motion contemplates the sale of estate assets to the Oxarangos, in their individual capacities and as trustees of the Oxarango Family Trust U/T/A dated April 1, 2015, along with compromising and settling claims between the estate and Oxarangos.[40] Under the proposed

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transaction, the Oxarangos will pay the estate $590,868.35 and withdraw their proof of claim. The estate will sell, transfer, and convey to the Oxarangos Jim's interests in V Dot and DLF. Additionally, the estate and the Oxarangos will exchange mutual releases and settle all prepetition claims between Debtors and the Oxarangos. The estate will be dismissed from the adversary complaint. The assets to be sold are as follows:

1. Mr. Little's 54.28% ownership interest in VDot, which interest were previously general partnership units in VDot;

2. Mr. Little's 20 partnership units in the David Little Family LLLP, an Idaho limited liability limited partnership, which interest were previously general partnership units in DLF;

***7** 3. Mr. Little's 26.72% ownership interest in the DLF, which interest are limited partnership units;

4. the 22.5 acres listed in the Debtors' Petition and Schedules (Dkt. No. 1), more specifically described in Schedule 2 to Exhibit A hereto (the "Pasture"), and the Debtors' rights and interests in that certain Lease Agreement dated September 1, 2020, by and between the Debtors as "Landlord" and Robert L. Hyde and Gretchen J. Hyde, as "Tenant";

5. the Counterclaims asserted by the Debtors in the Defendants James and Jan Little's Answer to Complaint and Counterclaims (Adv. Dkt. No. 21) filed in the Adversary, to the extent that the Counterclaims accrued before the Bankruptcy Case was filed (the "Counterclaims");

6. any and all claims and rights related to that certain Option Agreement dated April 1, 2015 related to the DLF general partnership interest owned at that time by Mr. Little, and the Option Agreement dated April 1, 2015 related to the VDot general partnership interest owned at the time by Mr. Little (the "Options"); and

7. any and all other causes of action, legal or equitable rights or remedies, or claims of any nature whatsoever, held by the Debtors before the Bankruptcy Case was filed that the Debtors' claim to have against the Oxarangos, VDot, the DLF, and Van Deusen.

("Settlement Assets"). [41]

40 Doc. 46 at 17–18.

41 For purposes of defining the Settlement Assets, defined terms and attachments are given the meaning they possess in the Sale Motion at Doc. 46.

Trustee conducted a substantial investigation into the claims, counterclaims and underlying issues between the parties. He reviewed the dockets in the State Court litigation and Debtors' prior

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bankruptcy case. He analyzed the estate's claims against the Oxarangos as alleged by Debtors in the adversary proceeding and the Oxarangos' claims against the estate. He conducted an inspection of Debtors' assets, including a physical visit to the ranch. He engaged professionals including counsel and accountants and sought their advice. [42]

42 *Id.*; Doc. 56.

Based upon the Trustee's investigation and the analysis and advice of the estate's professionals, the Trustee negotiated the proposed settlement and sale with the Oxarangos. According to the Trustee, the negotiation was not easy. From the Oxarangos' perspective, paying $590,000, along with all their attorneys' fees incurred to date, just to obtain a result similar to the parties' prepetition negotiations and agreements is an exceedingly unfair outcome. Conversely, a better result for the estate is difficult to imagine. All claims will be paid in full, complex litigation will be resolved, and Debtor will retain his home and other assets.

If approved, the Oxarangos will obtain control of Van Deusen and DLF. Such a result is objectionable to the Sisters, who seemingly argue that the wholesale dissolution of entities, liquidation of assets, and distributions to themselves as limited partners in DLF is a better alternative for the estate. Strangely, Debtors also object to the Trustee's proposal, even though it achieves an outcome that is closely aligned with prior agreements between Jim and the Oxarangos.

E. Expert Report of Jeffrey S. Pickett

***8** Prior to the hearing, the Debtors filed an expert report by Jeffrey Pickett ("Pickett") to respond to the Oxarangos' expert. [43] Pickett also testified at the hearing. While this Court found his testimony credible and his report instructive, the analysis performed by Pickett was in furtherance of the Sisters' "complete liquidation" scenario, rather than an analysis of the transaction before the Court. [44]

43 Doc. 58; Oxarangos' report filed at Adv. Doc. 37-3.

44 Doc. 58 at p. 16 of 74 ("if the Chapter 7 Trustee is able to sell the entire business ....").

Rather than assess whether the settlement negotiated by the Trustee was an exercise of reasonable business judgment, Pickett testified that sale of the "entire operation"—including assets owned by V Dot and Van Deusen—represents a better outcome for the estate and parties. [45] When asked by this Court, Pickett agreed that he believed the Trustee would "step into the shoes of Mr. Little; he would cause all of Mr. Little's entities to sell all of the assets of these entities; then he would pull all of that money in, use it to pay for things first and then distribute the rest to the

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shareholders."[46] According to Pickett, the liquidation of assets owned by the non-debtor entities controlled by Jim would net the Oxarangos more than they invested, pay all the creditors, and return Debtors a surplus.[47] Pickett conceded that he did not know how the Trustee would sell non-debtor assets to generate the millions his analysis was predicated upon.[48]

45 Doc. 78 at p. 152. Such testimony does not strike the Court as a reasonable assessment of the Sale Motion, but rather mere furtherance of the Debtors' and Sisters' best-case-scenario thinking that only looks at assets, divorced from the existing partnership agreements and bankruptcy.

46 Doc. 78 at 155.

47 *Id.*at 159.

48 *Id.*at 158.

Pickett's analysis reflects Debtors' and the Sisters' self-interests, rather than the interests of the estate. At its best, it is a misguided attempt to place the interests of some family members, Debtors, and the Sisters above the interests of other family members—the Oxarangos. At its worst, it is a cavalier attempt by Debtors and the Sisters to usurp the role of the Trustee, substitute their judgment for that of the Trustee, and obtain a more favorable outcome in this forum following their defeats in state court. While the Court does not question Pickett's qualifications, he was asked to opine on a transaction involving the liquidation of non-debtor assets as an alternative to the transaction before the Court—the sale of the Settlement Assets. For this reason, the Court affords Pickett's testimony little weight.

F. Undisclosed Litigation Financing and Parties' Relationships

At the conclusion of the hearing, the Court questioned how Debtors were financing the ongoing litigation against the Oxarangos. After efforts to avoid the question proved unsuccessful, Debtors' counsel Adam Little disclosed the source of litigation funding. However, the Court remained confused regarding the relationships between Adam Little, entities Adam Little has an interest in, Debtors' creditors (including entities Adam Little has an interest in), and payment of the Sisters' legal fees by another third-party entity associated with Adam Little. To clarify the relationships between the parties' opposing the settlement, the Court entered an order directing disclosure of all sources of payment of the Debtors' attorneys' fees, including funding from entities associated with Adam Little.[49]

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[49] Doc. 75.

***9** In response, Adam Little filed a declaration disclosing that in June 2023, Highland Livestock and Land Co. Ltd agreed to provide a loan to Debtors. The loan was used to pay Debtors' attorneys Johnson May PLLC. Adam Little is Secretary of Highland Livestock and Land Co. Ltd. and a shareholder. He is also representing Debtors in this case, despite not having any bankruptcy experience.

Later, in March 2024, Little Enterprises, LLLP agreed to pay 50% of the Sisters' legal fees associated with the Sisters' lawsuit against the Oxarangos. Adam Little is a general partner of Little Enterprises, LLLP. In November 2024, Highland Livestock and Land Co. Ltd provided a second loan to Debtors to cover the legal fees attributable to Johnson May, PLLC's representation of Debtors in the adversary proceeding. Johnson May did not amend its Rule 2016 disclosure until September 22, 2025—six days after the hearing. [50]

[50] Doc. 74.

Finally, the declaration discloses that Debtors filed bankruptcy to:

> ... trigger the required termination of V Dot partnership in order to access the equity value of that company. If necessary (and based on the assumption that Oxarangos would refuse to liquidate V Dot), Jim & Jan planned to pursue claims in state court post-bankruptcy to enforce the V Dot partnership agreement. (At that time, Jim and Jan planned to borrow funds with a lien on their house in order to fully pay the assumed outstanding Chapter 7 claims.) [51]

Notably, the declaration discloses Debtors hoped to accomplish in this bankruptcy precisely what they sought to accomplish in their prior dismissed bankruptcy—the dissolution of V Dot. [52] Such a result was explicitly characterized by the Court as an "invalid purpose."

[51] Doc. 77 at ¶ 17.

[52] *In re Little*, 23-00352-NGH, Doc. 98 at 9.

IV. Parties' Positions

Years ago, this matter originated as a two-party dispute between Jim and the Oxarangos. It has now transformed into a four-party dispute with Trustee and the Oxarangos on one side, urging the

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Court to approve the Sale Motion, and Debtors and the Sisters on the other, urging the Court to deny the motion. Each party has submitted substantial briefing advocating their desired outcome. Under the umbrella of the proposed Sale Motion, numerous sub-disputes have arisen.

Debtors' and the Sisters' contentions can be distilled to one point: Trustee did not conduct an objective valuation of the Settlement Assets. While they advance a number of other arguments which the Court takes up below, at bottom, Debtors and the Sisters favor a result that has immediate economic benefits for themselves while ignoring the distinction between the estate's interest in the entities and the assets owned by those entities.

Trustee's response emphasizes the due diligence he conducted, including a review of the docket in the State Court litigation, the docket in Debtors' previous bankruptcy case, a detailed analysis of the Oxarangos' pending claims in the adversary, and a physical visit to Van Deusen, all culminating in negotiations with the Oxarangos over several months with the advice of counsel and accountants. [53]

53 Doc. 56 at 5–8; Doc. 70 at 00:54:26–00:55:40, 01:08:25–01:15:45, 02:35:17–02:42:12, 03:00:52–03:01:51.

Additionally, both Trustee and the Oxarangos emphasize the benefits to Debtors from this proposed settlement and sale. Trustee could take an easier route by waiting for a resolution in the adversary proceeding and then begin selling Debtors' nonexempt assets—including their residence—to satisfy claims. Instead, Trustee has crafted a compromise that allows Debtors to remain in their home while also resolving expensive and complex litigation that has spanned multiple years, multiple forums, and multiple bankruptcies.

V. Applicable Law and Analysis

***10** Due to the long-running nature of this dispute and the many parties involved, the parties have advanced numerous arguments of variable quality. This Court will dispense with the threshold and third-party issues before turning to the merits of the Sale Motion.

A. Threshold Issues

1. Ownership of the Counterclaims that Trustee Proposes to Sell

Debtors assert the counterclaims are their individual property and not property of the bankruptcy estate. Conversely, the Oxarangos argue the counterclaims are property of the bankruptcy estate and thus saleable by Trustee. Debtors present no law in support of their argument, instead

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arguing, "[t]he Trustee has provided no analysis of whether the estate independently owns those claims ...." [54]

54 Doc. 51 at 15.

A bankruptcy estate is created upon commencement of a bankruptcy case and includes "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." § 541(a)(1). " 'Legal causes of action are included within the broad scope of § 541.' Pre-petition causes of action are part of the bankruptcy estate and post-petition causes of action are not." *Krohn v. Glaser (In re Glaser)*, No. 18-1175, 2019 WL 1075613, at *2 (B.A.P. 9th Cir. Mar. 5, 2019) (quoting *Goldstein v. Stahl (In re Goldstein)*, 526 B.R. 13, 21 (B.A.P. 9th Cir. 2015)). To the extent applicable, state law controls when a cause of action accrues. *Id.* at *3 (citing *Cusano v. Klein*, 264 F.3d 936, 947 (9th Cir. 2001)). The Court's task, then, is to determine whether the counterclaims to be sold to the Oxarangos are prepetition or postpetition causes of action.

The Court initially notes that the Sale Motion only seeks approval of the sale of the counterclaims insofar as they "accrued before the [b]ankruptcy [c]ase was filed." [55] However, an examination of each counterclaim indicates that, except for the objection to the Oxarangos' proof of claim, each counterclaim arose before the petition date: October 2, 2024. Each claim arises out of a transaction that occurred between 2012 and 2015, with the exception of issues arising from the Roseberry property—which occurred in 2020. Accordingly, all claims existed "as of the commencement of the case" and are, therefore, property of the bankruptcy estate and may be sold by the Trustee.

55 Doc. 46 at 17.

2. Reasonableness of the Sale Process

Debtors argue the private sale was unreasonable while the Oxarangos argue that the Trustee had the discretion to choose between a public auction and private sale, and that a private sale was more appropriate in this circumstance. " 'A trustee's selection of bidding and sale procedures is a matter committed to the trustee's business judgment, to which the bankruptcy court ... give[s] deference.' " *In re Frantz*, 534 B.R. 378, 387 (Bankr. D. Idaho 2015) (citing *Irish Pub Arrowhead Land, LLC v. Gillespie (In re Irish Pub Arrowhead, LLC)*, Nos. 13-1024 & 13-1043, 2014 Bankr. LEXIS 514, at *10 (B.A.P. 9th Cir. Feb. 6, 2014)). Additionally, both public auctions and private sales are contemplated by Rule 6004.

The Court finds Trustee's decision to opt for a private sale rather than a public auction to be a reasonable exercise of his business judgment. The Oxarangos point out that this transaction fully

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resolves the estate's litigation, simplifies administration, and moves the case towards closure in a single transaction and it does so without forcing Debtors out of their residence. [56] Such efficiency would be unlikely if the assets were listed at public auction. More importantly, as pointed out by both Trustee and the Oxarangos, the partnership interests are subject to transfer restrictions requiring the consent of the Oxarangos prior to a transfer. [57] The Oxarangos have been unequivocal about their unwillingness to consent to a transfer to anyone other than themselves. [58]

56 Doc. 57 at 17–18.

57 *Id.* at 17; Doc. 56 at 2–3.

58 Doc. 57 at 19.

***11** Finally, the Court has substantial doubts about the marketability of the assets to be sold in this transaction, [59] which include interests in closely held entities. The buyer would find themselves in business with the Oxarangos and, to a lesser degree, the Sisters. It is not surprising that Trustee privately negotiated with the Oxarangos. As the existing operators possessing the ability to withhold consent to a sale to an outside party, the Oxarangos were the party most likely to have an interest in acquiring the assets being sold. Additionally, they are the party with the greatest interest in buying the claims against them, likely in hopes of finding peace after years of litigation. It would be a difficult, time-consuming, and potentially fruitless exercise for Trustee to attempt to market and sell these assets at public auction.

59 Doc. 70 at 00:43:42–00:44:06, 01:17:50–01:18:52, 01:26:38–01:27:38.

Accordingly, a private sale is a reasonable exercise of Trustee's business judgment.

3. Ipso Facto Termination Clause

Debtors argue that due to their prior bankruptcy filing, V Dot has terminated pursuant to provisions in its partnership agreement. Conversely, Trustee argues that (1) Debtors identified their interest in V Dot as personal property in their most recent petition; (2) Idaho partnership law does not permit termination of a partnership until after the partnership has wound up; and (3) the ipso facto termination clause in the V Dot partnership agreement is rendered ineffective by the Bankruptcy Code.

The Court agrees with Trustee and finds that the ipso facto termination clause in the V Dot partnership agreement conflicts with both Idaho partnership law and the Code, thus it is inoperative. Under Idaho partnership law, termination of a partnership requires more than an ipso

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facto clause deeming the partnership terminated upon occurrence of an event. The Idaho Supreme Court in *Mays v. Davis*, 967 P.2d 275, 277 (Idaho 1998), provided a concise summary of the process required for termination of an Idaho partnership:

> The dissolution of a partnership is the change in the relation of the parties caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. A partnership is not terminated upon dissolution, but continues until the winding up of the partnership affairs is completed. Winding up is the process of settling partnership affairs after dissolution, and generally involves an accounting and liquidation of the partnership's assets.

(citations omitted); *see also* Idaho Code § 30-24-802.

Consistent with *Mays*, Trustee correctly contends "the Debtors' argument that V Dot is terminated has no merit because V Dot has not completed the winding up process .... [A]t most, the V Dot operating agreement would require the partnership to begin the winding up process upon the Debtor's bankruptcy filing."[60] Further, Idaho law contemplates a transfer of limited partnership interests while a limited partnership is in the process of winding up. Idaho Code § 30-24-702(c). The V Dot partnership agreement could not simply terminate the partnership upon Debtors' bankruptcy filing: at most, it could mandate that V Dot begin winding up. Even if it did, the V Dot limited partnership interest would still be transferable. Notably, Jim did not act in a manner consistent with this theory in the intervening months between his first bankruptcy filing and this one, having never attempted to initiate a windup.

60 Doc. 56 at 9.

Not only is the ipso facto termination clause of limited import under Idaho law, it is also inoperative under the Bankruptcy Code pursuant to § 541(c)(1)(B). That subsection provides, "an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement ... that is conditioned on the insolvency or financial condition of the debtor, [or] on the commencement of a case under this title, ... and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property." It is well established that "§ 541(c)(1) overrides *ipso facto* clauses 'in an agreement, transfer instrument, or applicable nonbankruptcy law.' " *Pearce v. Woodfield (In re Woodfield)*, 602 B.R. 747, 755 (Bankr. D. Or. 2019) (emphasis in original); *Movitz v. Fiesta Invs., LLC (In re Ehmann)*, 319 B.R. 200, 206 (Bankr. D. Ariz. 2005).

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***12** Under similar facts, the court in *Woodfield* found that "§ 541(c)(1)(B) speaks [ ] broadly of preventing forfeiture, modification, or termination of a property right" and found that the dissociation provisions were preempted and invalidated by the Bankruptcy Code. *Id.* at 755–56. The same is true here: any provision of the V Dot operating agreement purporting to modify Jim's interest upon his bankruptcy filing is rendered inoperative by § 541(c)(1)(B). Accordingly, under both Idaho and bankruptcy law, the ipso facto clause does not resolve this issue or diminish the value of this compromise.

4. Issues Specific to the Sisters

a. Breach of Fiduciary Duty

The Court is satisfied that the Sisters, as limited partners of the entities, may have a pecuniary interest in this transaction sufficient to confer standing to object as parties in interest.[61] However, the Court finds the Sisters' objections meritless. The Sisters argue (without citation to authority) that the fiduciary duty owed to them by Trustee is violated by this sale because it offers "an unduly discounted price to the Oxarangos, especially given the illusory nature of the 'damages' the Oxarangos claim."[62] Trustee responds that this argument was made without citation to any authority and that this sale conforms to Trustee's fiduciary duties as a general partner pursuant to Idaho Code § 30-24-409.

61 The Sisters filed a supplemental brief on standing following the hearing. Doc. 73. This Court is persuaded by the U.S. Supreme Court case cited in their brief. In *Truck Ins. Exch. v. Gypsum Co., Inc.*, 602 U.S. 268 (2024), the Court found that "Congress uses the phrase 'party in interest' in bankruptcy provisions when it intends the provision to apply 'broadly.' " *Id.* at 278 (quoting *Hartford Underwriter Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 7 (2000). The Court stated, "the general theory ... is that anyone holding a financial stake in the outcome of the case should have an opportunity ... to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest." *Id.* at 277–78 (quoting 7 *Collier on Bankruptcy* ¶ 1109.01 (16th ed. 2023)). Accordingly, this Court finds that standing as a party in interest is not demanding and the Sisters satisfy this standard because they are limited partners.

62 Doc. 52 at 3.

Ordinarily, the Court will not address arguments that are "too undeveloped to be capable of assessment." *Hibbs v. HDM Dep't of Human Res.*, 273 F.3d 844, 873 n.34 (9th Cir. 2001); *see also Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929–30 (9th Cir. 2003). The Sisters

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have provided this Court with no authority to support their contentions. On that basis alone, the objection is subject to being overruled. However, to afford the parties and any reviewing courts a more robust analysis, the Court will consider the merits of the objection.

The Trustee does not owe an independent fiduciary duty to the Sisters that is breached by the Sale Motion. The Sisters have failed to cite any authority for the proposition that a Chapter 7 Trustee has an independent fiduciary duty to a limited partner when the Trustee liquidates a general partner's interest in the partnership. Even if the Sisters had cited authority for this proposition, the argument is specious under the facts presented here. The Sisters are currently limited partners in DLF with Jim and the Oxarangos, who have the general partnership interests and control. If approved, the Sisters' will retain their limited partnership interests, and the Oxarangos will become the sole general partner. While the Sisters may dislike the change in control that will accompany the transfer, their subjective feelings about a transaction are not synonymous with a breach of any alleged duty.

***13** Contrary to Sisters' arguments and assumptions, the partnership interest that is the subject of the sale has little value outside the existing partners. A stranger's interest in being partners—general or limited—with the Oxarangos or the Sisters would be tempered by the evident and public familial infighting. The Sisters favor a singular outcome: dissolution of entities, winding up, sale of assets, and distributions to them now rather than later. This outcome reflects the Sisters' self-interest, not the estate's interest. [63] Thus, the argument alleging a breach of fiduciary duty has no merit.

63 Even if the Sisters presented authority that prevented a general partner from selling his interest, the Trustee is a creature of the Bankruptcy Code and owes his duty to the estate above all else. § 323(a). The Trustee owes a fiduciary duty to the entire creditor body and cannot hold any interest adverse to the estate. *Dye v. Brown (In re AFI Holdings, Inc.)*, 530 F.3d 832, 844 (9th Cir. 2008); *Goodwin v. Mickey Thompson Enter. Grp., Inc. (In re Mickey Thompson Enter. Grp., Inc.)*, 292 B.R. 415, 421 (B.A.P. 9th Cir. 2003) ("a trustee's fiduciary duty to maximize the assets of the estate trumps any contractual obligation that a trustee arguably may incur in the course of making an agreement that is not enforceable unless it is approved by the court"). While in analogous business reorganizations the Trustee owes a duty to shareholders, "[o]ne of the painful facts of bankruptcy is that the interests of shareholders become subordinated to the interests of creditors." *Commodity Futures Trading Com'n v. Weintraub*, 471 U.S. 343, 355 (1985). Sisters have demonstrated neither a breach of duty nor that their interests supersede that of the creditor body. Accordingly, even under their best case, this Court would likely find this point unpersuasive.

The Trustee is not required to liquidate property unless it is compatible with the best interests of the estate. *Piatt v. Solomon (In re Piatt),* 2008 WL 8444827, at *7 (B.A.P. 9th Cir. May 29, 2008) (when

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there is a surplus, the trustee must abandon property or present "legitimate, persuasive reasons to the bankruptcy court to justify his continued efforts to sell the property ...."). The outcome urged by the Sisters challenges this recognized principle. First, this statement is referring to estate property. Notably here, the Sisters are arguing the Trustee should exercise Jim's controlling interest in non-debtor entities to liquidate assets held by those entities, pay the entities' creditors, and then distribute the surplus to partners and equity owners, including themselves and Debtors.

Neither Debtors nor Sisters have proffered a persuasive rationale for the winding down, dissolution, and liquidation of the non-debtor entities. Doing so would have no benefit to the estate or its creditors. The Sisters are not creditors. In essence, the Trustee would be liquidating excess surplus property for Debtors and the Sisters with no corresponding benefit to the estate. Pickett's lack of familiarity with these principles and failure to acknowledge the distinctions between estate property and non-debtor entity property illustrate the flaws in his analysis. Had Pickett considered these principles, he would have recognized the sale of the non-debtor assets by the Trustee in his capacity as the controlling member/partner of the non-debtor entities was simply not a result authorized by the Bankruptcy Code in these circumstances.

b. The Sisters' Rights to Notice and First Refusal

The Sisters argue that their rights to notice and first refusal are ignored by the contemplated transaction. The Oxarangos respond that the Sisters received notice of the sale through service of the Sale Motion, as evidenced by the Sisters' objection, and have had an opportunity to meet the Oxarangos' offer but have failed to do so.

***14** Under Idaho law, a right of first refusal is "a potential buyer's contractual right to meet the terms of a third party's offer if the seller intends to accept that offer." *Tricore Invs. LLC v. Est. of Warren*, 485 P.3d 92, 117–18 (Idaho 2021) (cleaned up) (quoting *Nicholson v. Coeur d'Alene Placer Mining Corp.*, 392 P.3d 1218, 1222 (Idaho 2017)). Gretchen received notice of this sale. [64] Clearly Dinah also received notice, as indicated by the objection she filed with Gretchen. Despite having notice, the Sisters have taken no action to meet the Oxarangos' offer. More than 180 days have elapsed since the Sale Motion was filed with the Court and to date the Sisters have failed to make a competing offer. The right of first refusal is not a right to override the sale because the Sisters are unhappy with the purchaser or outcome. Rather, the right of first refusal is an opportunity to meet another's offer. The Sisters have failed to do so here. [65]

64 Doc. 48.

65 The Sale Motion was filed June 27, 2025. Sufficient time has elapsed for Sisters to present an alternative proposal and to date they have not done so. Indeed, Sisters' preferred alternative appears to be the liquidation of assets, winding down and dissolution of V Dot, and possibly DLF. This outcome will net the greatest return for the Sisters and subvert the prepetition agreements between Debtor and Oxarangos.

B. Standards for Settlement and Sale

No threshold issue prevents this sale. Accordingly, this Court turns to the merits. In *In re Arkoosh Produce*, 2003 WL 25273746, at *9 (Bankr. D. Idaho July 1, 2003), this Court provided a succinct overview of the standards applicable to hybrid settlements and sales:

> [I]t is inappropriate for the court to substitute its own judgment as to the wisdom of a proposed settlement for that of the trustee. *In re 110 Beaver Street P'ship*, 244 B.R. 185, 187 (Bankr. D. Mass. 2000). The court need not engage in an exhaustive analysis of the law and merits of each claim, or the likelihood of the outcome, as doing so would in large part defeat the purpose of settlement. *See In re Goldstein*, 131 B.R. 367, 370 (Bankr. S.D. Ohio 1991). Rather, the court's role is to ensure that the trustee has exercised proper business judgment in making the decision to agree to the proposed settlement, *Goodwin v. Mickey Thompson Entm't Group, Inc. (In re Mickey Thompson Entm't Group, Inc.)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003), and that the settlement "falls above the lowest possible point in the range of reasonableness." *Beaver Street P'ship,* 244 B.R. at 187 (internal citations omitted).
>
> In this context, the business judgment rule requires the trustee's decision to be made "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the [estate]." *In re Dalen,* 259 B.R. 586, 609 (Bankr. W.D. Mich. 2001) (citing *Aronson v. Lewis,* 473 A.2d 805, 812 (Del. 1984)). Assuming the trustee is properly informed of the relevant facts and has otherwise complied with the business judgment rule in reaching a tentative settlement, and that sufficient evidence of the trustee's compliance is put into the record, the court may focus its efforts on determining whether the settlement meets the four-part [*Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377 (9th Cir. 1986)] test.

The Court employs this general framework in its assessment of the Sale Motion.

1. *A & C Properties* Factors – Rule 9019

Trustee argues that the *A & C Properties* factors favor approval of this transaction for the following reasons: his probability of success on the merits in the adversary proceeding is difficult to ascertain and the estate benefits from the certainty provided by this transaction; the extreme complexity of

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this litigation; the expenses, inconvenience, and delay associated with continued litigation of the adversary proceeding; and delivery of full payment to all creditors in the near term. The Court agrees.

***15** To approve a settlement under Rule 9019, the Court must find that the compromise is fair and equitable. *A & C Props.*, 784 F.2d at 1381. *A & C Properties* set out the factors that courts in the Ninth Circuit consider in determining whether a proposed settlement is fair and equitable. *Id.* Those include:

> (a) [t]he probability of success in the litigation;
>
> (b) the difficulties, if any, to be encountered in the matter of collection;
>
> (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
>
> (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. In the situation of a hybrid sale and settlement, as is the case here, the *A & C Properties* factors are considered in addition to the business judgment rule. *Arkoosh Produce*, 2003 WL 25273746, at *9.

The Court first considers Trustee's likelihood of success on the merits in the adversary proceeding. However, "when assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial on the merits is not required .... If the court were required to do more than canvass the issue, there would be no point in compromising; the parties might as well go ahead and try the case." *Spark Factor Design, Inc. v. Hjelmeset (In re Open Medicine Inst., Inc.)*, 639 B.R. 169, 181 (B.A.P. 9th Cir. 2022) (cleaned up) (quoting *Burton v. Ulrich (In re Schmitt*, 215 B.R. 417, 423 (B.A.P. 9th Cir. 1997) and *Suter v. Goedert*, 396 B.R. 535, 548 (D. Nev. 2008)).

Trustee advances that his probability of success in the adversary proceeding is "unknown" due to the numerous potential outcomes discussed earlier.[66] Trustee emphasizes that this uncertainty is a reason to approve the Sale Motion. The Court agrees. Based on the history of this dispute and a brief analysis of the merits of Debtors' counterclaims, the Court finds that any position the Trustee could take against the Oxarangos would have a dubious likelihood of success.[67] Rather than expose the estate to potential liability and the expense of litigating the adversary proceeding, Trustee seeks to avoid that uncertainty through this transaction.

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66 Doc. 46 at 11.

67 *See supra*, Part III.B–C.

Second, the Court considers the difficulties to be encountered should Trustee prevail in the adversary proceeding. Trustee admits that there would not be much difficulty in collecting a judgment in the adversary proceeding because this litigation primarily involves the legal status of the ranch entities. Since the parties agree on this issue, this factor weighs against approval of the settlement.

Third, the Court considers the complexity of the adversary proceeding. This factor favors approval of the settlement. The adversary proceeding is at the summary judgment stage and has already generated over a thousand pages of pleadings, motions, and expert reports. The disputed factual issues in the adversary proceeding span over a decade, including two separate cases prior to this one and numerous potential witnesses. The legal issues involve factual disputes that are animated by family dynamics. Resolving such disputes is no easy task. Credibility becomes an important factor. Ultimately, it requires resolution of the long-running dispute over the validity of the options, the impact of any purported revocation thereof, and a final determination of which party controls the ranch.[68] The Court finds that these complex factual and legal issues favor approval of the settlement.

68 As noted above (*supra*, Part. III.A.), the word "ranch" is a pregnant term in this context, composed of three different entities, but addressed by the parties as though it is a single entity. However, Jim currently only holds an interest in DLF and V Dot. Adv. Doc. 21 at 18–19. Importantly, DLF holds 48.11% of Van Deusen Ranch, meaning that whoever controls DLF also controls Van Deusen. In essence, the Sale Motion gives full ownership of V Dot to the Oxarangos, makes the Oxarangos the sole general members of DLF and the majority partners (with Sisters' holding limited partnerships and a minority interest), and allows the Oxarangos to control Van Deusen.

***16** Fourth, the Court considers the expense, inconvenience, and delay necessarily attending continued litigation of the adversary proceeding. This factor favors approval of the settlement. The litigation associated with the issues to be settled here has cost hundreds of thousands of dollars, spanned years and multiple courts, with no near-term resolution in sight. Should the settlement be denied, the issues raised in the adversary proceeding would proceed to trial, estimated by the parties to require five days. The trial will include numerous witnesses and days of questioning, undoubtedly leading to further expense and delay. Alternatively, approval of the settlement would not only resolve the adversary proceeding but also conclude the bankruptcy case with full payment to creditors.

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The Court acknowledges the probability of an appeal is high because Debtors and Sisters are not funding the litigation themselves. They have nothing to lose by appealing an adverse decision by this Court. Conversely, the Oxarangos are likely to appeal if they lose because they uprooted their lives in 2010 and have expended tremendous effort and expense in reliance on their agreements with the Sisters and Jim. [69] The Court finds that the expense, inconvenience, and delay involved with continued litigation of the adversary proceeding strongly favors approval of this settlement. An immediate appeal of this Court's decision approving the Sale Motion and vacating the trial will prove more cost effective for all parties involved than incurring the expense of trial and an appeal three to four months from now.

69 This Court is particularly troubled by Adam Little's efforts to fund litigation indefinitely. The Oxarangos pointed out that Adam Little's efforts to act as a witness and his ownership of a creditor entity may raise professional responsibility issues. Doc. 57 at 14. This Court ordered that Adam Little disclose the details related to compensation in its order at Doc. 74. Entities associated with Adam Little have evidently been funding this litigation including the original state court case, the Sisters' state court case, this bankruptcy, and the adversary proceeding. Doc. 77. Whatever the motive, this Court cannot find that there is any benefit to indefinite litigation over a global settlement today.

Finally, the Court considers the paramount interest of the creditors, which in this case favors approval of this settlement. The other creditors in this case could not ask for a better outcome than this transaction which results in immediate 100% payment of claims. Approval of the compromise pays all claims of the estate and may be "the only apparent means for the Trustee to liquidate the value" of Debtors' claims and interests for the benefit of the Estate. *Gibson v. Speier (In re Gibson)*, 2011 WL 4502044, at *7 (B.A.P. 9th Cir. Aug. 3, 2011). Further, the creditors benefit from the certainty and finality afforded by this transaction. Additionally, "no creditor ha[s] filed an objection to the settlement, and ... no creditor appeared at the hearing to oppose the settlement." *Paulson v. Mitchell (In re Paulson)*, 2011 WL 3300082, *7 (B.A.P. 9th Cir. May 10, 2011). The only objections were filed by Debtors and Sisters, neither of which is a creditor. The Court finds that the paramount interest of the creditors is best served by approval of this transaction.

In its analysis, the Court also considers the interests of Debtors because of the surplus nature of this case and Trustee's repeated assertion that if this transaction is not approved, he may look to other assets including Debtors' residence. Jim has worked and improved the ranch over the course of his life and understandably wishes to see it passed down to the next generation in the way that he sees fit. At one time, this meant passing it on to the Oxarangos. Jim's outlook has changed, although the cause is unclear. At best, it is attributable to unexpected circumstances he has encountered with his health. At worst, the change is attributable to familial meddling. It is likely a combination of both. Irrespective of the cause, the Oxarangos were entitled to rely on, and did rely on, the agreements reached with Jim. Approval of this transaction provides for the expeditious and

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economical administration of this case and resolution of litigation that risks putting Debtors in a worse financial position than they are in now. The *A & C* factors weigh in favor of approval.

2. Business Judgment Standard – § 363(b)

***17** "In determining whether to approve a proposed sale under section 363, courts generally apply standards that, although stated various ways, represent essentially a business judgment test." 3 *Collier on Bankruptcy* ¶ 363.02(4). "[T]he business judgment rule requires the trustee's decision to be made 'on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the [estate].' " *Arkoosh Produce*, 2003 WL 25273746, at *9 (quoting *In re Dalen,* 259 B.R. at 609).

"[T]he bankruptcy court reviews the trustee's (or debtor in possession's) business judgment to determine independently whether the judgment is a reasonable one. The court should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." 3 *Collier on Bankruptcy* ¶ 363.02(4). Further, "[t]he price to be paid should be 'fair and reasonable.' " *Id.* Additionally, the Court has "the ultimate responsibility to assure that optimal value" is realized by the estate. *Fitzgerald v. Ninn Worx SR, Inc. (In re Fitzgerald)*, 428 B.R. 872, 884 (B.A.P. 9th Cir. 2010) (citing *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005)).

The Court is persuaded that Trustee has proposed this transaction in good faith and the sales price reflects the optimal value the estate could hope to realize in light of the familial discord that accompanies this case. Trustee has explained at length the due diligence involved with the crafting of this transaction. Trustee retained counsel and accountants to further advise him on the most effective way to resolve this estate, ultimately arriving at the transaction contemplated here. There is no indication, nor has it even been alleged, that Trustee has structured this transaction in bad faith.

Trustee has been thrust into a yearslong family dispute with a complicated legal and factual history. The dispute remains ongoing, and both sides are entrenched in their positions. In all or nothing litigation, the results for the estate are difficult to predict. Rather than potentially wait for years for litigated finality, this transaction eliminates the uncertainty for the estate. The Trustee's proposal has many benefits: (1) the withdrawal of over $9 million in claims against the estate; (2) a 100% distribution on all remaining claims; (3) likely payment of all administrative expenses; (4) potential surplus to Debtors; (5) promotion of judicial economy; and (6) the value to creditors of immediate payment over speculative future returns. It also avoids having the estate embroiled in a family dispute that involves a significant emotional component that may cloud or eliminate objectivity. [70]

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70 During the hearing, one party had difficulty managing their responses to witness testimony, illustrating how challenging it has been for this family where sisters and parents with the financial backing of a cousin are pitted against another sister and her husband who were chosen by Debtor to maintain and operate the ranch.

The likelihood that Trustee could structure such an integrated transaction and simultaneously accomplish so many goals at once with a third-party purchaser is exceedingly low. While there is a theoretical possibility that a better deal could be reached, that possibility hinges on numerous assumptions, including a complete victory for Debtors in the adversary proceeding—a result that has invariably eluded them in three prior years of litigation before multiple courts. The estate could not seek a better outcome than 100% payment of claims and full resolution of the litigation.

***18** In exchange for the powers, protections, and benefits conferred upon him by the Bankruptcy Code, Jim submitted his assets to the control of Trustee. Those assets included the partnership interests and legal claims related to control of the ranch and its operations. Trustee, in carrying out his duties under the Bankruptcy Code, was charged with administering Debtors' nonexempt assets, which include the partnership interests, but also include Debtors' residence. Trustee exercised reasonable business judgment when electing to liquidate Debtors' business interests rather than Debtors' residence.

3. Ability to Sell Free and Clear – § 363(f)

The Court must consider whether Trustee may sell the partnership interests free and clear of other interests pursuant to § 363(f). Trustee notes that, "[t]he only co-owners of any of the Settlement Assets are the Oxarangos who own interests in the Ranch entities. Nonetheless, the sale is authorized under 11 U.S.C. § 363(f)(2) because the Oxarangos have consented to the sale by entering the Settlement Agreement with the Trustee."[71] No party has disputed that the Oxarangos are the only other owners of the partnership interests or that the Oxarangos have consented to this transaction. The Court agrees with Trustee and finds that the Oxarangos, as the only other owners of the general partnership interests, have consented to the sale of the interests, and thus the estate's partnership interests may be sold to the Oxarangos free and clear pursuant to § 363(f)(2). Therefore, a sale free and clear is permissible under both §§ 363(b) and (f).

71 Doc. 46 at 13. *See supra*, Part. III.A. and n. 68 for an explanation of how the entities composing the ranch are essentially transferred.

VI. Conclusion

The saga of litigation and uncertainty over the future of Van Deusen ends here. Having concluded that no threshold issues precluded sale under the Sale Motion, this Court finds that both the *A&C* factors and the business judgment standard are satisfied. The Sale Motion results in an optimal outcome for the estate given the significant uncertainty and cost of this litigation. Accordingly, the Sale Motion will be granted. An Order will be entered separately.

All Citations

Slip Copy, 2025 WL 3554256

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PANELIST BIOGRAPHIES

HON. BRUCE A. HARWOOD (RET.)
Chief Judge, United States Bankruptcy Court, District of New Hampshire

Hon. Bruce A. Harwood (ret.) served as Chief Judge of the United States Bankruptcy Court for the District of New Hampshire from 2013 until his retirement in August, 2024. He also served on the First Circuit's Bankruptcy Appellate Panel.

Prior to his appointment to the bench, he chaired the Bankruptcy, Insolvency and Creditors' Rights Group at Sheehan Phinney Bass & Green in Manchester, New Hampshire, representing business debtors, asset purchasers, secured and unsecured creditors, creditors' committees, trustees in bankruptcy, and insurance and banking regulators in the rehabilitation and liquidation of insolvent insurers and trust companies. He was a chapter 7 panel trustee in the District of New Hampshire, and mediated insolvency-related disputes.

Judge Harwood is President of the American Bankruptcy Institute, and serves on its Executive and Management Committees. He previously served as the ABI's Secretary, its VP Communication, Information & Technology; Co-Chair of its Commercial Fraud Committee; program Co-Chair and Judicial Chair of its Northeast Bankruptcy Conference; Northeast Regional Chair of the ABI Endowment Fund's Development Committee, and a member of the ABI's Civility Task Force. He is a Fellow in the American College of Bankruptcy.

Judge Harwood received his B.A. from Northwestern University, and his J.D. from Washington University School of Law.

MIRANDA H. TURNER
Partner, Plevin & Turner LLP (Washington, DC)

Miranda Turner represents insurers in mass tort bankruptcies and hotly contested coverage litigation, advancing insurers' interests on a wide variety of critical coverage questions such as allocation, contribution, exhaustion, and the duty to defend. She currently represents insurers in diocesan and related bankruptcies in New York, California, and Maryland arising out of sexual abuse.

Miranda also represents insurance companies in coverage litigation in multiple state and federal jurisdictions. She has been involved in some of the most notable large-scale insurance coverage disputes in the past several years, including liability for talc claims, COVID 19-related business interruption claims, claims arising out of sexual abuse, asbestos liability, construction defects, and environmental contamination.

Miranda has an active litigation practice, regularly handling matters having to do with key insurance issues, such as trigger, conditions to coverage, exclusions, allocation and contribution, and impairment and exhaustion of policy limits, as well as notice, scope of coverage, coverage for attorneys' fee awards, rescission of policies, issues under claims-made policies, and third-party beneficiaries and settlement releases. She provides strategic advice and policy analysis regarding coverage, defenses to coverage, and emerging issues in the industry.

Miranda's experience representing insurance clients in bankruptcy matters includes both Chapter 11 and Chapter 7. Miranda also has experience with regulatory investigations, enforcement actions, and advice regarding disclosures and governance.

ORI KATZ
Partner, Sheppard, Mullin, Richter & Hampton LLP (San Francisco, CA)

Ori Katz has over two decades of experience helping clients navigate challenging business bankruptcies, restructurings and insolvency matters. He is a member of the Finance and Bankruptcy group and serves on the firm's Executive Committee.

A Fellow of the American College of Bankruptcy, Ori represents debtors, creditors, committees and asset purchasers in significant bankruptcy cases and litigation. He advises lenders on loan workouts, foreclosures and borrower bankruptcies, having handled portfolios exceeding $1 billion in funded debt. Ori has successfully reorganized companies across industries including real estate, retail, biotech, agriculture, telecommunications and media.

With strategic insight and a results-driven approach, Ori helps clients navigate distressed asset sales, resolve creditor disputes and emerge from intricate reorganizations.

EDWIN H. CALDIE
Partner, Stinson LLP (Minneapolis, MN)

Ed is a well-rounded lawyer whose instincts excel with bankruptcy matters. He is particularly adept at creating solutions others might overlook. Ed counsels Fortune 500 companies, secured and unsecured creditors' committees, trustees, investment funds and others in complex bankruptcies, workouts and related disputes, particularly in the energy, oil and gas, retail and health care sectors. His keen understanding of complex financial structures helps him craft creative solutions for clients.

Ed has played a leading role in a variety of large and often groundbreaking bankruptcy cases, representing a range of clients in Chapter 11 cases, workouts, civil lawsuits and commercial disputes. In addition to creditor's rights cases, Ed has handled corporate internal investigations and securities fraud cases. As counsel for the unsecured creditor's committee, he was instrumental in helping survivors of clergy abuse win a $210 million settlement from the Archdiocese of St. Paul and Minneapolis, the largest diocese bankruptcy case in the nation.

Ed gravitates toward the complex cases. He recently led settlement negotiations between national broadcasters in the Aereo Inc. bankruptcy and an infringing debtor, which led to a significant payout to unsecured creditors. He has represented major utility companies, equipment lessors and oil and gas companies, and recently led negotiations for a wholesale petroleum products distributor in multiple debt workouts, collections matters and civil suits.

Ed writes and speaks frequently, and is active in the Turnaround Management Association, among other organizations. He's also a singer, songwriter and performer with Circus of the West, which includes several Stinson attorneys. Known for his dedication to clients and his love of solving the puzzles his cases present, Ed said that his work for survivors of the clergy abuse matter has been his most rewarding. "My only trepidation in that case arose solely from my fear that I would not be able to do the claimants justice," he said.

PRODUCER BIOGRAPHIES

JORDYN M. PAPERNY
Associate, Winthrop Golubow, Hollander, LLP (Newport Beach, CA)

Jordyn Paperny joined Winthrop Golubow Hollander, LLP in 2025. Licensed to practice law in both California and New York, Jordyn concentrates her practice on bankruptcy and restructuring matters, including Chapter 11 cases, out-of-court restructurings, and insolvency-related litigation.

Prior to joining the firm, Jordyn practiced at a large international law firm, where she advised debtors, creditors, and other stakeholders on complex restructuring matters across a wide range of industries and jurisdictions, as well as handled commercial business litigation in both state and federal courts.

Jordyn earned her Juris Doctor, *summa cum laude*, from New York Law School, and received her Bachelor of Arts in Law and Communications from the University of Arizona.

CARLOS A. NEVAREZ
Associate, Hunton Andrews Kurth LLP (Los Angeles, CA)

Carlos represents clients in complex, high-stakes commercial litigation and bankruptcy disputes nationwide, at both the state and federal levels. His blended knowledge and experience includes prosecuting and securing the dismissal of adversary actions in contested chapter 7 and chapter 11 cases, and representing clients ranging from large corporations to mid-sized companies and high net-worth individuals in business and commercial disputes. His practice covers a broad range of matters such as partnership disputes, defense against civil RICO and trade secret claims, high-value real estate investment fraud actions, regulatory enforcement matters, and defense of products liability actions—including the successful representation of a globally renowned pharmaceutical company that resulted in the dismissal of all claims against the client.

Prior to joining Hunton, Carlos was an associate at a California-based litigation and trial boutique.

Prior to private practice, Carlos served as a law clerk to the Honorable Ernest M. Robles of the United States Bankruptcy Court for the Central District of California, where he prepared orders and rulings on a variety of contested matters, drafted memorandum opinions on adversary actions, analyzed issues of first impression, and handled a broad range of issues, including nondischargeability, asset sales, claim objections, and plan confirmation. He also externed for the Honorable John A. Mendez of the United States District Court for the Eastern District of California.

Outside of work, Carlos enjoys practicing rock and classical pieces on the piano and playing chess.