APPENDIX

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APPENDIX A

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1858

IN RE: KAISER GYPSUM COMPANY, INC.;
HANSON PERMANENTE CEMENT, INC.,

Debtors.

TRUCK INSURANCE EXCHANGE,

Plaintiff – Appellant,

v.

KAISER GYPSUM COMPANY, INC.;
HANSON PERMANENTE CEMENT, INC.,

Debtors – Appellees,

and

LEHIGH HANSON, INC.,

Defendant – Appellee,

and

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS;
FUTURE CLAIMANTS REPRESENTATIVE,

Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:20-cv-00537-GCM)

Argued: Oct. 25, 2022 Decided: Feb. 14, 2023

Before KING, AGEE and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Agee wrote the opinion in which Judge King and Judge Quattlebaum joined.

ARGUED: Allyson Newton Ho, GIBSON, DUNN & CRUTCHER, LLP, Dallas, Texas, for Appellant. C. Kevin Marshall, JONES DAY, Washington, D.C.; Kevin C. Maclay, CAPLIN & DRYSDALE, CHARTERED, Washington, D.C.; Edwin J. Harron, YOUNG, CONAWAY, STARGATT & TAYLOR, Wilmington, Delaware, for Appellees. **ON BRIEF:** Michael A. Rosenthal, Michael K. Gocksch, New York, New York, David W. Casazza, Washington, D.C., Robert B. Krakow, Russell H. Falconer, Elizabeth A. Kiernan, Dallas, Texas, Matthew G. Bouslog, GIBSON, DUNN & CRUTCHER LLP, Irvine, California; Michael L. Martinez, GRIER WRIGHT MARTINEZ, PA, Charlotte, North Carolina; Scott R. Hoyt, PIA ANDERSON MOSS HOYT, LLC, Salt Lake City, Utah, for Appellant. Todd E. Phillips, James P. Wehner, CAPLIN & DRYSDALE, CHARTERED, Washington, D.C.; Sara (Sally) W. Higgins, Raymond E. Owens, Jr., HIGGINS & OWENS, PLLC, Charlotte, North Carolina, for Appellee the Official Committee of Asbestos Personal Injury Claimants. James L. Patton, Jr.,

Sharon M. Zieg, Sara Beth A.R. Kohut, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware; Felton E. Parrish, John M. "Jack" Spencer, ALEXANDER RICKS PLLC, Charlotte, North Carolina, for Appellee Lawrence Fitzpatrick the Future Claimants' Representative. Robert M. Horkovich, ANDERSON KILL PC, New York, New York for Appellees the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants' Representative. Gregory M. Gordon, Amanda Rush, Dallas, Texas, Daniel C. Villalba, Washington, D.C., Paul M. Green, JONES DAY, Houston, Texas; Ross R. Fulton, John R. Miller, Jr., RAYBURN COOPER & DURHAM, P.A., Charlotte, North Carolina, for Appellees Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. Mark A. Nebrig, MOORE & VAN ALLEN PLLC, Charlotte, North Carolina, for Appellee Lehigh Hanson, Inc.

AGEE, Circuit Judge:

This bankruptcy appeal involves a primary insurer's attempts to block its insureds' Chapter 11 reorganization plan (the "Plan"), which establishes a trust under 11 U.S.C. § 524(g) for current and future asbestos personal-injury liabilities. In adopting the bankruptcy court's recommendation to confirm the Plan, the district court concluded in relevant part that the primary insurer was not a "party in interest" under 11 U.S.C. § 1109(b) and thus lacked standing to object to the Plan. Having carefully considered the parties' briefs and the record, we affirm, but we do so on both § 1109(b) grounds and Article III grounds.

I.

A.

Enacted as part of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106, § 524(g) of the Bankruptcy Code allows a Chapter 11 debtor with substantial asbestos liabilities to obtain a channeling injunction that diverts all asbestos claims, current and future, to a trust established by the debtor's reorganization plan and funded by the debtor. *See* 11 U.S.C. § 524(g)(1)–(2). In formulating § 524(g), Congress sought to ensure equitable treatment for future claimants who, because of the long latency period associated with some asbestos-related illnesses, may not know of their claims until years after the bankruptcy. *See In re W.R. Grace & Co.*, 13 F.4th 279, 283 (3d Cir. 2021); *In re Quigley Co.*, 676 F.3d 45, 58–59 (2d Cir. 2012); *see also* H.R. Rep. No. 103-835, at 40. At the same time, Congress also sought to enable the debtor, who would otherwise face an unknown but potentially large number of future claims, to emerge from bankruptcy as an economically viable entity. *See W.R. Grace & Co.*, 13 F.4th at 283; *see also* H.R. Rep. No. 103-835, at 40–41.

For a debtor to obtain § 524(g) relief, several statutory criteria must be met, most of which are designed to safeguard "the due process rights" of claimants, particularly future claimants. *In re Grossman's Inc.*, 607 F.3d 114, 127 (3d Cir. 2010) (quoting *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 234 n.45 (3d Cir. 2004)); *see* 11 U.S.C. § 524(g)(2)(B), (4)(B). For example, the court must appoint a representative to protect the interests of future claimants during the reorganization, 11 U.S.C. § 524(g)(4)(B)(i), and must determine that the plan treats "present claims and future demands that involve similar claims in substantially

the same manner," *id.* § 524(g)(2)(B)(ii)(V); *see also id.* § 524(g)(4)(B)(ii) (stating that the court must find that the channeling injunction is "fair and equitable" to future claimants). Additionally, 75 percent of current claimants must vote to approve the plan. *Id.* § 524(g)(2)(B)(ii)(IV)(bb).

B.

Debtors-Appellees Kaiser Gypsum Company, Inc., and Hanson Permanente Cement, Inc., (collectively, the "Debtors") used to manufacture and sell asbestos-containing products. Since 1978, the two sister companies have been named in over 38,000 asbestos-related lawsuits nationwide. Despite maintaining liability insurance, the Debtors' outstanding asbestos liabilities combined with the risk of unknown future asbestos claims, including claims for punitive damages, drove the Debtors to seek Chapter 11 relief in 2016, at which time 14,000 lawsuits remained pending.

Following extensive negotiations with multiple parties, including several insurance companies, various creditors and government agencies, and court-appointed representatives of current and future asbestos claimants,[1] the Debtors arrived at the nearly consensual proposed Plan of reorganization. The Plan would establish a § 524(g) trust to resolve the Debtors' present and future asbestos personal-injury liabilities, with a channeling injunction to protect the Debtors from future asbestos claims, including claims for punitive damages, in the state and federal tort systems nationwide.

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[1] These include Appellee Official Committee of Asbestos Personal Injury Claimants and Appellee Future Claimants' Representative.

Critical to the trust's viability were the Debtors' rights under certain primary liability insurance policies issued by Appellant Truck Insurance Exchange ("Truck") from the 1960s through the 1980s. Under those policies, Truck must investigate and defend each covered asbestos personal-injury claim or suit asserted against the Debtors, "even if such claim or suit is groundless, false or fraudulent." J.A. 792. Truck must also indemnify the Debtors for each such claim up to a per-claim limit, typically $500,000 per claim,[2] excluding punitive damages. Importantly, Truck's primary coverage applies on a per-claim basis without a maximum aggregate limit, meaning that Truck's coverage is non-eroding, subject only to the $500,000 per-claim limit. The policies further specify that "[b]ankruptcy or insolvency of the [Debtors] or of the [Debtors'] estate[s] shall not relieve [Truck] of any of its obligations hereunder." J.A. 804. As for the Debtors, the policies require them to pay a deductible, typically $5,000 per claim, and to assist and cooperate with Truck in defending against asbestos claims asserted against them.

As part of the proposed reorganization Plan, the Debtors would assign their rights under the Truck policies to the § 524(g) trust. Those rights to non-eroding coverage, along with a one-time $49 million contribution by parent company Appellee Lehigh Hanson, Inc., and a secured five-year $1 million note issued by the Debtors, would provide the funding for the trust.

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[2] The Debtors maintained excess insurance coverage that would respond to amounts exceeding the per-claim limit of their primary coverage.

Structured to capitalize on the Truck policies, the proposed Plan provided that holders of *insured* asbestos personal-injury claims—claims that fall within available insurance coverage—would continue to assert actions against the reorganized Debtors, in name only, in the tort system to collect available insurance. Importantly, these claims would still be subject to all the insurers' pre-petition coverage defense rights—including the right to deny coverage should the Debtors fail to honor their assistance-and-cooperation obligations. If a claimant were to obtain a favorable judgment, the trust would pay the deductible, and Truck, pursuant to its coverage obligations under the policies, would pay up to the per-claim limit.

Holders of *uninsured* asbestos personal-injury claims—claims that fall outside available insurance coverage—would submit their claims directly to the trust for resolution through an administrative process. As part of that process, each claimant would have to provide certain disclosures and authorizations that would help ensure that the trust paid only valid, non-duplicative claims. In particular, a claimant would have to provide specific information regarding all other claims that relate in any way to the alleged asbestos injury and would also have to authorize the trust to obtain the claimant's submissions, if any, to other asbestos trusts.[3] After an individualized assessment of a particular uninsured claim, the trust could respond with a settlement offer, which the claimant could accept or reject.

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[3] The initial version of the Plan did not require these disclosures and authorizations, but the Debtors added them after the bankruptcy judge expressed concern about their absence.

Aside from the asbestos personal-injury claims, the proposed Plan would resolve the Debtors' other outstanding liabilities. For example, the Plan would settle the Debtors' decades-old asbestos-related environmental liabilities. It would also satisfy, in full, all general unsecured creditor claims, including a claim held by Truck for unpaid deductibles under the policies.

Consequently, the only remaining "impaired" class of creditors under the proposed Plan would be the asbestos personal-injury claimants, whose claims would be addressed by the trust.

C.

Following a vote, 100 percent of the asbestos personal-injury claimants approved the proposed Plan. The Plan also had unanimous support from all the other parties involved in the bankruptcy, save one—Truck.

Truck's chief objection to the Plan was that it did not require holders of *insured* claims, who would continue to pursue their claims in the tort system, to provide the same disclosures and authorizations that the Plan required of holders of *uninsured* claims. In other words, the Plan would provide "anti-fraud" protections to the trust in resolving uninsured claims but not to Truck in resolving insured claims. Truck contended that this disparate treatment would expose it to millions of dollars in fraudulent tort claims.

Despite Truck's insistence that the Debtors add these anti-fraud measures for insured claims to be litigated in the tort system, the Debtors declined to disturb the already negotiated Plan and proceeded to seek court approval. Truck in turn sent the Debtors a reservation-of-rights letter stating that the Debtors'

proposed Plan "appear[ed] to be collusive and in violation of [the Debtors'] duty to cooperate and assist" under the Truck policies. J.A. 864.

Following receipt of Truck's letter, the Debtors sought, in conjunction with confirmation of the Plan, a judicial determination that their conduct in negotiating and drafting the Plan did not transgress their assistance-and-cooperation obligations under the Truck policies or breach the implied covenant of good faith and fair dealing—a proposed finding termed the "Plan Finding."

Truck responded by filing a separate declaratory judgment action seeking the opposite judicial pronouncement—that the Debtors' bankruptcy conduct *did* violate the Truck policies' assistance-and-cooperation provision and the implied covenant of good faith and fair dealing; that the Debtors were not entitled to the Plan Finding; and that Truck should thereby be relieved of its coverage obligations. The district court stayed Truck's action pending the bankruptcy court's recommendation regarding whether to confirm the proposed Plan.

D.

After extensive briefing by the parties, the bankruptcy court held a hearing on the proposed Plan. Both in the briefing and at the hearing, Truck raised three main objections to confirmation. First, Truck contended that the Plan was not proposed in good faith, as required for all plans of reorganization under 11 U.S.C. § 1129(a)(3), because it reflected a collusive agreement between the Debtors and the claimant representatives to perpetuate fraudulently inflated recoveries in the tort system. Second, Truck argued that the proposed Plan Finding would impermissibly alter

its rights under the 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. And third, Truck claimed that the proposed trust did not comply with several § 524(g) requirements.

At a subsequent hearing, the bankruptcy court issued an oral ruling, later memorialized in writing, setting forth proposed findings of fact and conclusions of law and recommending confirmation of the Plan.

The bankruptcy court first observed that, as an insurer, Truck had standing to challenge the proposed Plan only to the extent that it was not "insurance neutral." In its analysis, the court found that the Plan didn't alter Truck's rights or obligations under the policies and therefore deemed the Plan insurance neutral. As a result, the bankruptcy court concluded that Truck was not a "party in interest" under 11 U.S.C. § 1109(b)[4] and thus lacked standing to challenge other aspects of the Plan, including whether the Plan was proposed in good faith and whether the trust complied with § 524(g). The bankruptcy court also found that Truck's additional status as a general unsecured creditor did not confer § 1109(b) standing because all general unsecured claims would be fully satisfied under the Plan.

In nonetheless considering Truck's objections on the merits, the bankruptcy court rejected them, finding that the trust satisfied § 524(g)'s requirements and that the Plan, which was extensively negotiated and maximized the Debtors' available assets to satisfy

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[4] Section 1109(b) provides that "[a] party in interest . . . may raise and may appear and be heard on any issue in a [Chapter 11] case." 11 U.S.C. § 1109(b).

claims, was proposed in good faith. In arriving at its good-faith finding, the bankruptcy court dismissed as purely speculative Truck's claim that unchecked rampant fraud would define the resolution of insured claims in the tort system absent the proposed anti-fraud measures. The bankruptcy court further determined that any effort to implement those measures would improperly invade the province of other federal and state courts by mandating "what kind of discovery is required in asbestos cases." J.A. 6639.

Following a de novo review, complete with additional briefing and a hearing, the district court confirmed the Plan over Truck's renewed objections. *See In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), 2021 WL 3239513 (W.D.N.C. July 28, 2021) (confirmation order); *In re Kaiser Gypsum Co.*, No. 16-31602 (JCW), 2021 WL 3215102 (W.D.N.C. July 28, 2021) (findings of fact and conclusions of law). In doing so, the district court adopted the bankruptcy court's findings of fact and conclusions of law in all material respects, thereby foreclosing Truck's requested declaratory relief. The district court also denied Truck's motion for a stay pending appeal.

Truck timely appealed, and we likewise denied Truck's request for a stay. Thereafter, the Debtors, joined by their parent Lehigh Hanson, moved to dismiss the appeal, asserting both that Truck lacks bankruptcy appellate standing to challenge the Plan and that the appeal is equitably moot.

Because the district court's order confirming the Plan is a final order, we have jurisdiction over this appeal under 28 U.S.C. § 1291.

II.

We begin with the Debtors' contention that Truck lacks bankruptcy appellate standing to challenge the Plan.

Under this circuit's "well-established" doctrine of bankruptcy appellate standing, only a "person aggrieved"—that is, a party "directly and adversely affected pecuniarily"—by a bankruptcy order may appeal that order. *In re Urb. Broad. Corp.*, 401 F.3d 236, 243–44 (4th Cir. 2005) (quoting *In re Clark*, 927 F.2d 793, 795 (4th Cir. 1991)).[5]

According to the Debtors, Truck is not a person aggrieved by confirmation of the Plan because neither the Plan's lack of fraud-prevention measures for insured claims litigated in the tort system nor the Plan Finding directly and pecuniarily harms Truck. Rather, the Debtors say, Truck's alleged harm hinges on the progression and outcome of future litigation and

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[5] As we explained in *Clark*, this doctrine of bankruptcy appellate standing, sometimes called the "person aggrieved" test, derives from the original Bankruptcy Code, which permitted only a "person aggrieved" to appeal a bankruptcy order. 927 F.2d at 795 (citing 11 U.S.C. § 67(c) (1976) (repealed 1978)). And as we also explained in *Clark*, although that specific textual limitation was later repealed, courts, including this one, "continue[] to use the test." *Id*. This continued use reflects a judicial recognition "that Congress [did not] intend[] to alter the right to appellate review by leaving undefined in the Code the requisites for standing." *In re Fondiller*, 707 F.2d 441, 443 (9th Cir. 1983); *accord In re Westwood Cmty. Two Ass'n*, 293 F.3d 1332, 1334 (11th Cir. 2002) ("Our sister circuits have agreed that, although Congress did not define who has standing to appeal in the Bankruptcy Code, no evidence exists that Congress intended to alter the definition set forth in the prior law, the Bankruptcy Act of 1898.").

thus is not a direct harm sufficient for bankruptcy appellate standing.

Truck responds that the Supreme Court foreclosed further application of the person-aggrieved test in *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). According to Truck, *Lexmark* rejected prudential forms of standing like bankruptcy appellate standing. But even if that standard survived *Lexmark*, Truck continues, it has satisfied it here.

We need not address these specific arguments as presented by the parties. This is because whatever its ability to show a direct and pecuniary harm resulting from confirmation of the Plan, Truck indisputably has standing to appeal the district court's conclusion that it lacked § 1109(b) standing, either as an insurer or as a creditor, to challenge the Plan in the first instance. Indeed, as the Third Circuit has explained, bankruptcy appellate standing refers to "standing to appeal the *substance* of the bankruptcy court's decision," which is "distinct from standing to appeal the bankruptcy court's decision regarding bankruptcy standing" under § 1109(b). *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 209–10 n.23 (3d Cir. 2011) (en banc) (emphasis added).

By finding that Truck was not a party in interest under § 1109(b), the district court denied Truck standing to otherwise object to the Plan in the first instance. Truck's seeking review of that determination therefore does not equate to an appeal of the "substance" of the Plan, which would trigger the rigorous requirements of bankruptcy appellate standing. Rather, it's an appeal of an adverse § 1109(b) standing determination. That being the case, the bankruptcy appellate-standing doctrine is not implicated. *See id.* ("[A]

party denied standing to sue, or to intervene, or to object, may obviously appeal such a determination." (quoting *In re Pittsburgh & Lake Erie R.R. Co. Sec. & Antitrust Litig.*, 543 F.2d 1058, 1064 (3d Cir. 1976))). To otherwise hold that a party must satisfy the more-exacting person-aggrieved standard to appeal a lower court's determination that the party lacked standing to challenge plan confirmation in the first instance "would risk leaving parties in interest who have been erroneously denied bankruptcy standing, but who do not meet the more stringent requirements for appellate standing, without legal redress for that error." *Id.* We do not erect such a barrier to redress here, and our decisions in *Clark* and *Urban Broadcasting*—neither of which involved facts like those presented here—don't counsel otherwise.

Because the district court's § 1109(b) findings denied Truck standing to object to the Plan at the outset, Truck has standing to appeal *those* findings, to which we now turn.[6]

III.

The district court held that Truck, as an insurer, was not a party in interest with standing to challenge the Plan because it was insurance neutral and therefore did not affect Truck's rights or obligations under the subject policies. As part of that insurance-neutrality determination, the district court made the Plan Finding, an affirmative declaration that the Debtors' conduct in bankruptcy—namely, their agreeing to a

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[6] We thus have no occasion to assess *Lexmark*'s effect, if any, on this circuit's bankruptcy appellate-standing jurisprudence. We also decline to consider the Debtors' equitable-mootness defense as it is similarly unnecessary to our resolution of this appeal.

plan that lacked Truck's desired anti-fraud measures for insured claims litigated in the tort system—breached neither the Debtors' assistance-and-cooperation obligations under the Truck policies nor the implied covenant of good faith and fair dealing. The district court also determined that Truck's additional status as a creditor did not independently render Truck a party in interest because Truck's claim was fully satisfied under the Plan.

These findings are legal conclusions that we review de novo. *See Foodbuy, LLC v. Gregory Packaging, Inc.*, 987 F.3d 102, 115, 118 (4th Cir. 2021); *see also In re Thorpe Insulation Co.*, 677 F.3d 869, 879 (9th Cir. 2012).

A.

Under § 1109(b), "[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 [Chapter 11]." 11 U.S.C. § 1109(b).

Our prior cases have not closely examined the scope of § 1109(b), but other courts have held that the statutory list of potential parties in interest is not exhaustive. *See, e.g.*, *In re Tower Park Props.*, 803 F.3d 450, 457 (9th Cir. 2015). Instead, that list reflects an understanding that a "party in interest" includes "anyone who has a legally protected interest that could be affected by a bankruptcy proceeding." *In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir. 1992); *accord Glob. Indus. Techs.,* 645 F.3d at 210. This interpretation of the statute tracks our general recognition that "the term 'including' is not one of all-embracing definition, but connotes simply an illustrative

application of the general principle." *United States v. Hawley*, 919 F.3d 252, 256 (4th Cir. 2019) (quoting *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941)).

Viewed through that lens, a party in interest could include a debtor's insurer. In determining whether a particular reorganization plan sufficiently affects an insurer's legal rights to render that insurer a party in interest, courts typically look to see whether the plan is "insurance neutral." *See, e.g.*, *Glob. Indus. Techs.*, 645 F.3d at 212. A plan is insurance neutral if it doesn't increase the insurer's pre-petition obligations or impair the insurer's pre-petition policy rights. *Id.* (citing *Combustion Eng'g*, 391 F.3d at 218). Stated another way, a plan is insurance neutral if it "does not materially alter the quantum of liability that the insurer[] would be called to absorb." *Id.* If a plan is insurance neutral, the objecting insurer ordinarily is not a party in interest under § 1109(b) and thus lacks standing to challenge the substance of the Plan. *See id.*

Here, the district court held that the Plan was insurance neutral because it expressly preserved Truck's coverage defenses and the Debtors' assistance-and-cooperation obligations under the policies, thereby placing Truck in the same position as it was pre-bankruptcy. Part and parcel of that determination was the Plan Finding, which the district court found appropriate and necessary given Truck's assertion that the Debtors' bankruptcy conduct violated the policies' assistance-and-cooperation provision and thereby voided coverage.

Although the Plan includes an "Insurance Neutrality" section expressly preserving Truck's pre-petition coverage defenses, J.A. 1711; *see also* J.A. 1704

(retaining the Debtors' assistance-and-cooperation obligations under the Truck policies), Truck argues that the Plan is not insurance neutral for two primary reasons. First, Truck asserts that the Plan Finding impermissibly alters Truck's policy rights by barring Truck from asserting future coverage defenses based on the Debtors' bankruptcy conduct. And second, Truck contends that the Plan reflects a scheme between the Debtors and the claimant representatives to expose Truck to fraudulent claims in the tort system. We address each contention in turn.[7]

i.

We first consider Truck's claim that the Plan Finding effectively rewrites the policies and impairs Truck's contractual rights. Because it is impossible to assert contractual rights that never existed in the first place, assessing Truck's claim necessarily requires determining whether the district court correctly held that the Debtors didn't breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing by agreeing to a plan that lacked Truck's desired anti-fraud measures. That inquiry, in turn, depends on the proper interpretation of the Truck policies under California law, the governing law as applicable to the policies.

In California, an insurance agreement is a contract to which the ordinary principles of contract

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[7] Were Truck to prove that the Plan is not insurance neutral, then clearly its rights as an insurer would be adversely affected. Accordingly, Truck has Article III standing to raise its insurance-neutrality arguments on appeal. *See Thorpe Insulation Co.*, 677 F.3d at 887. As discussed below, however, the same cannot be said of Truck's creditor-based § 1109(b) arguments, which assert only the interests of third parties.

interpretation apply. *Bank of the W. v. Super. Ct.*, 833 P.2d 545, 551–52 (Cal. 1992). Courts must therefore interpret an insurance policy's language in its "ordinary and popular sense," and in its proper context, with the goal of giving effect to the "mutual intention of the parties." *Id.* at 552.

Turning to the pertinent policy provision here, it provides:

> **8. <u>ASSISTANCE AND COOPERATION OF THE INSURED</u>:**
>
> The insured shall cooperate with the company, and upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the occurrence.

J.A. 803.

According to Truck, the Debtors' obligations to "cooperate with [Truck]" and to "assist in effecting settlements [and] securing and giving evidence," J.A. 803, require the Debtors, in this bankruptcy proceeding, to help Truck secure the disclosures and authorizations it considers necessary to combat potential fraud in litigating insured claims in the tort system.

The district court rejected Truck's broad reading, finding instead that the provision requires the Debtors to assist and cooperate with Truck only in relation to "Truck's defense efforts in individual suits." *Kaiser*

Gypsum Co., 2021 WL 3215102, at *32. Notwithstanding Truck's urging that the provision's language is not so limited, we agree with the district court.

To begin, nothing in the policy provision suggests that the Debtors' assistance-and-cooperation obligations extend to bankruptcy-plan negotiations. True, the first sentence obligates the Debtors to "cooperate" with Truck and to assist Truck in "effecting settlements [and] securing and giving evidence." J.A. 803. But the same sentence also specifically speaks of "attend[ing] hearings and trials," "obtaining the attendance of witnesses," and "in the conduct of suits." J.A. 803. Taken together with "effecting settlements" and "securing and giving evidence," these activities—along with the phrase "in the conduct of suits"—indicate traditional litigation activities, as opposed to activities typically undertaken in a bankruptcy proceeding. *See Bank of the W.*, 833 P.2d at 552 (stating that "policy terms must be read in their ordinary and popular sense" (internal quotation marks omitted)).

In addition, the policy provision's second and final sentence, which Truck ignores altogether, discusses the Debtors' ability to "voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of *the occurrence*." J.A. 803 (emphasis added). The term "occurrence," a well-known term of art in the insurance industry, *see, e.g.*, 9 Steven Plitt et al., Couch on Insurance § 126:29 (3d ed. 2022); *Occurrence*, Black's Law Dictionary (11th ed. 2019), is defined in the Truck policies as "an event, or *continuous or repeated exposure to conditions which results in personal injury* or property damage during the policy period," J.A. 801–02 (emphasis added). Utilizing that term in the

assistance-and-cooperation provision is highly probative of the provision's intended scope—a scope limited to the defense of claims stemming from an "occurrence." *See Bank of the W.*, 833 P.2d at 552 (stating that a court "must interpret the language in context, with regard to its intended function in the policy").

The provision's precise placement in the policy reinforces this view. Immediately preceding the assistance-and-cooperation provision are two provisions that require the Debtors to notify Truck whenever "an occurrence takes place" and whenever a "claim is made or suit is brought against" the Debtors. J.A. 803. The assistance-and-cooperation provision's placement immediately after these two provisions is instructive contextual evidence that the Debtors' assistance-and-cooperation obligations are triggered only in response to an "occurrence"-based "claim" or "suit" brought against the Debtors—not in response to a bankruptcy declaration. *See Travelers Cas. & Sur. Co. v. Transcon. Ins. Co.*, 19 Cal. Rptr. 3d 272, 278 (Ct. App. 2004) (concluding that a provision's placement in an insurance policy supplied necessary context for policy interpretation); *cf. Campbell v. Regents of the Univ. of Cal.*, 106 P.3d 976, 988 (Cal. 2005) (interpreting a section of the California Labor Code and finding that the immediately preceding statutory sections provided interpretive context).

It's also informative that the cooperation language at issue arises out of a *general liability insurance policy*. Truck hasn't cited a single decision by *any* court holding that such a policy's cooperation provision encompassed an insured's conduct in proposing a reorganization plan in a bankruptcy proceeding. Indeed, when pressed on this point at oral argument, Truck's counsel conceded that the provision here is a

"standard provision that so far as I'm aware has never been [alleged] to apply in a circumstance like this." Oral Argument at 5:36–7:01, https://www.ca4.uscourts.gov/OAarchive/mp3/21-1858-20221025.mp3. Absent cognizable evidence to the contrary, which is not present here, we cannot conclude that the policy provision at issue has the broad reach that Truck posits. *See Admiral Ins. Co. v. Grace Indus., Inc.*, 409 B.R. 275, 283 (E.D.N.Y. 2009) (holding that a similar cooperation clause required the debtor-insured only to assist its insurer "in the ultimate disposition of the actual claims, not to take on [its insurer as] a partner" in its own bankruptcy proceeding).

Considering both the immediate and broader context, we have little doubt that an ordinary reader would understand that any activities required under the assistance-and-cooperation clause are those that the parties intended the Debtors to perform in assisting Truck in the defense against individual claims triggering coverage under the policies. The Debtors could not have reasonably expected otherwise when they purchased those policies. And nothing in the Plan purports to alter the presentation of a claim on the merits in tort-system litigation on the part of the claimants, the Debtors, or Truck.

We therefore agree with the district court that the Debtors did not breach their assistance-and-cooperation obligations under the Truck policies by proffering a reorganization plan that lacked Truck's desired fraud-prevention measures. We likewise agree that the Debtors did not breach the implied covenant of good faith and fair dealing as that claim is premised on the same conduct just discussed. *See McKnight v. Torres*, 563 F.3d 890, 893 (9th Cir. 2009) (stating that

California's implied covenant of good faith and fair dealing "is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated by the contract" (quoting *Spinks v. Equity Residential Briarwood Apartments*, 90 Cal. Rptr. 3d 453, 477 (Ct. App. 2009))).[8]

Given these conclusions, we reject Truck's assertion that the Plan Finding alters Truck's policy rights. Simply put, those alleged rights never existed under the policies. As a result, the Plan Finding, which merely resolved a confirmation objection by Truck (an objection, we note, that would not exist independent of the bankruptcy proceeding), does not pose an obstacle to insurance neutrality.[9]

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[8] Truck argues that it is entitled to have a jury decide these issues. We disagree. As stated above, whether the Debtors' conduct in bankruptcy violated the Truck policies' assistance-and-cooperation provision turns not on any disputed fact but on the correct interpretation of the unambiguous policy provision, a pure question of law. *See MacKinnon v. Truck Ins. Exch.*, 73 P.3d 1205, 1212 (Cal. 2003).

[9] Truck suggests that, in adopting the bankruptcy court's recommendation to confirm the Plan, the district court overstepped its bounds by giving preclusive effect to the Plan Finding, thereby stripping Truck of a critical coverage defense in the tort system. But that argument assumes that such a defense is available under the Truck policies. And as explained above, it isn't as to the Debtors' conduct in preparing and presenting the Plan for confirmation. More to the point, the district court could not have confirmed the Plan unless the Plan Finding was prospectively binding on Truck given that the assignment of the Debtors' coverage rights under the Truck policies is essential to the trust's viability and thus to the overall success of the Plan. Permitting Truck to later raise the Debtors' bankruptcy conduct as a coverage defense in individual suits across the country would defeat

ii.

Truck's second argument—that the Plan is not insurance neutral because it facilitates fraudulent claims against Truck in the tort system—fares no better. The basis for this claim is the Plan's lack of fraud-prevention measures for insured claims that are to be resolved in the tort system. But what Truck fails to acknowledge is that it was not entitled to those measures before the bankruptcy proceeding. To the contrary, the Truck policies specifically obligate Truck to "[i]nvestigate and defend any claim or suit against the [Debtors] . . . *even if such claim or suit is groundless, false or fraudulent*." J.A. 792 (emphasis added). By not instituting Truck's desired anti-fraud measures, therefore, the Plan in no way alters Truck's pre-bankruptcy "quantum of liability," *Glob. Indus. Techs.*, 645 F.3d at 212; it merely retains Truck's decades-old pre-petition coverage obligations (and defenses). That the Plan doesn't instead seek to now limit Truck's potential liability exposure in the tort system provides no basis to conclude that the Plan isn't insurance neutral. To hold otherwise would expand the Debtors' obligations under the policies and grant Truck broad license to dictate the terms of the Debtors' own bankruptcy reorganization. We do not approve such a result.

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the reorganization's entire purpose and create inequitable results for claimants. The district court thus acted well within its authority in giving preclusive effect to the Plan Finding to avoid such an outcome. *See* 11 U.S.C. § 105(a) (empowering a court in bankruptcy to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Bankruptcy Code).

Because the Plan does not impair Truck's policy rights or otherwise alter Truck's quantum of liability but simply maintains Truck in its pre-petition position with all its coverage defenses intact, the Plan is insurance neutral. Accordingly, we hold that Truck, in its capacity as an insurer, is not a party in interest under § 1109(b) and therefore lacks standing to challenge the Plan in that capacity.

B.

Aside from its status as the Debtors' insurer, Truck argues that it is a party in interest with standing to challenge the Plan because it is (or at least was prior to confirmation of the Plan) one of the Debtors' creditors. As set out above, § 1109(b) states that a party in interest, including "a creditor," may raise and be heard on "any issue" in a Chapter 11 case. 11 U.S.C. § 1109(b). And because it is "a creditor," Truck says that the statute confers on it an unrestricted right to raise and be heard on "any issue," regardless of whether that issue impacts it in any way. In Truck's view, therefore, whether the Plan was proposed in good faith under 11 U.S.C. § 1129(a)(3) and whether the trust satisfies § 524(g)'s requirements are issues that Truck can challenge regardless of any nexus between those issues and Truck's legally protected interests.

The Debtors disagree. Pointing to the Seventh Circuit's decision in *James Wilson Associates*, the Debtors insist that § 1109(b) does not grant an entity standing to object to aspects of a reorganization plan that do not affect its legally protected interests. *See James Wilson Assocs.*, 965 F.2d at 169 ("We think all [§ 1109(b)] 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."). To that end, the Debtors argue that because Truck's general unsecured claim is fully satisfied under the Plan, Truck's status *as a creditor* is insufficient to satisfy § 1109(b)'s party-in-interest requirement.

But we need not decide this issue because, even if its claim is consistent with the text of § 1109(b), Truck still must have Article III standing to press its objections. *See Thorpe Insulation Co.*, 677 F.3d at 887; *Glob. Indus. Techs.*, 645 F.3d at 210.[10] And Truck does not raise any objections relating to its interests as a creditor, which is no surprise given that its only claim is fully satisfied under the Plan. Rather, Truck's objections either relate to its interests as an *insurer* or don't implicate its interests at all, such as the Plan's good-faith basis and the trust's compliance with § 524(g). In these circumstances, we fail to see how Truck has alleged any injury in fact as a creditor—and an unimpaired one at that—giving it Article III standing to object to aspects of a reorganization plan that in no way relate to its status *as a creditor* but instead implicate only the rights of third parties (who actually *support* the Plan). *See Warth v. Seldin*, 422 U.S. 490, 499 (1975) (stating that to establish Article III

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[10] We recognize that courts are split on the interplay of Article III and § 1109(b). *Compare Glob. Indus. Techs.*, 645 F.3d at 211 (observing that "Article III standing and standing under the Bankruptcy Code are effectively coextensive"), *with Tower Park Props.*, 803 F.3d at 457 n.6 (declining to "collapse the § 1109(b) requirements into Article III standing"). But we need not choose a side here. Whether or not Article III standing is coextensive with § 1109(b) standing, Article III standing is still required in every case. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.").

standing, a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties").

C.

In sum, as an insurer, Truck fails to show that the Plan impairs its contractual rights or otherwise expands its potential liability under the subject insurance policies, so it is not a party in interest under § 1109(b) with standing to challenge the Plan in that capacity. Similarly, as a creditor, Truck objects to parts of the Plan that implicate only the rights of third parties, which fails to allege an injury in fact sufficient to confer Article III standing. Accordingly, none of Truck's objections to the Plan can survive.

IV.

For these reasons, we affirm the district court's judgment.

AFFIRMED

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re KAISER GYPSUM COMPANY, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 16-31602 (JCW) (Jointly Administered) July 27, 2021

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING CONFIRMATION OF THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC., AS MODIFIED

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[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313). The Debtors' address is 300 E. John Carpenter Freeway, Irving, Texas 75062.

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INTRODUCTION

WHEREAS, Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. (together, the "Debtors" and, as reorganized entities after emergence, the "Reorganized Debtors") proposed the Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., dated October 14, 2019 [Conf. Exhibit 1][2] (as amended by the modifications set forth in the blackline of the Plan in Exhibit B attached to the Confirmation Order, and as may be further amended, the "Plan");[3]

WHEREAS, on October 23, 2019, the Bankruptcy Court signed its Order (I) Approving the Debtors' Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Joint Plan of Reorganization and (III) Scheduling a Hearing on Confirmation of Proposed Joint Plan of Reorganization and Approving

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[2] "D.I." refers to docket entries in the Debtors' lead bankruptcy case, 16-31602.

[3] Capitalized terms and phrases used herein have the meanings given to them in the Plan. The rules of interpretation set forth in Section I.B.1 of the Plan apply to these Findings of Fact and Conclusions of Law (the "Findings and Conclusions") and to the order confirming the Plan (the "Confirmation Order"), which is being issued concurrently herewith. In addition, in accordance with Section I.A of the Plan, any term used in the Plan, these Findings and Conclusions or the Confirmation Order that is not defined in the Plan, these Findings and Conclusions or the Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. A copy of the Plan (without the exhibits thereto) is attached to the Confirmation Order as Exhibit A and is incorporated herein by reference.

Related Notice Procedures [Conf. Exhibit 16] (the "Disclosure Statement Order"), by which the Bankruptcy Court, among other things, approved the Debtors' proposed disclosure statement (the "Disclosure Statement"), established procedures for the solicitation and tabulation of votes to accept or reject the Plan and scheduled a hearing to consider Confirmation of the Plan for March 30, 2020, which hearing was continued to and held on July 20, 2020 and July 22, 2020, with the Bankruptcy Court giving its oral ruling on August 13, 2020 (the "Confirmation Hearing");

WHEREAS, affidavits of service were executed by Prime Clerk LLC, the Bankruptcy Court-appointed notice, claims and solicitation agent ("Prime Clerk"), with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order (collectively, the "Affidavits of Service") and were filed with the Bankruptcy Court [D.I. 1892, 1904, 1911, 1938, 1947, 1948, 2007, 2042, 2168, 2172, 2178];[4]

WHEREAS, the Declaration of Anna Jadonath [D.I. 1903] (the "Publication Declaration") was filed with the Bankruptcy Court on November 14, 2019, regarding the publication of the Notice of (I) Deadline for Casting Votes to Accept or Reject Proposed Joint Plan of Reorganization, (II) Hearing to Consider Confirmation of Proposed Joint Plan of Reorganization and (III) Related Matters and/or the other forms of

[4] The Affidavits of Service were filed on November 6, 2019, November 14, 2019, November 20, 2019, December 17, 2019, January 2, 2020, January 6, 2020, February 7, 2020, February 14, 2020, March 24, 2020, March 30, 2020 and April 20, 2020.

publication notice approved by the Bankruptcy Court as set forth in the Disclosure Statement Order;

WHEREAS, the Declaration of Cameron R. Azari, Esq. on Implementation of Notice Regarding the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. [Conf. Exhibit 21] (the "Notice Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to publication notice of the Plan;

WHEREAS, the Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. [Conf. Exhibit 20] (the "Voting Agent Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to the results of the tabulation of the properly executed and timely received Ballots for the Plan as follows:

> **Class 4 Claimants.** The Debtors received 24,310 acceptances out of 24,310 votes from holders of Class 4 Asbestos Personal Injury Claims, with Class 4 claimants who voted in favor of the Plan holding Claims in the amount of $2,439,570,176.00 for voting purposes only, such acceptances being 100 percent in number and 100 percent in amount of all ballots received from holders of Class 4 Asbestos Personal Injury Claims (Voting Agent Decl. ¶ 10.);

WHEREAS, the Debtors made non-material modifications to the Plan, which are set forth in Exhibit B attached to the Confirmation Order (collectively, the "Modifications");

WHEREAS, Truck Insurance Exchange ("Truck") filed an objection to the Plan [D.I. 2070] and a consolidated response to the Plan Proponents' briefing [D.I. 2359] (together, the "Objection"), as well as various affidavits in support of its Objection [Conf. Exhibits 37, 65-67];

WHEREAS, the Objecting Excess Insurers made the Objecting Excess Insurers' Objections, and voluntarily withdrew them when the Plan was modified to insert, among other things, Section IV.M.3.a., entitled, "Settlement with Truck;"

WHEREAS, the Debtors filed a memorandum of law in support of Confirmation of the Plan [D.I. 2275] and a reply to Truck's consolidated response [D.I. 2377], and the Asbestos Personal Injury Committee (the "ACC") and the Future Claimants' Representative (the "FCR") filed an omnibus reply in support of the Plan [D.I. 2274] and a joint reply to Truck's consolidated response [D.I. 2376] (collectively, the "Memoranda of Law");

WHEREAS, the declarations of Kevin O'Neal Holdeman [Conf. Exhibit 23], John D. Bittner [Conf. Exhibit 22], Charles E. McChesney II [Conf. Exhibit 19] and Lawrence Fitzpatrick [Conf. Exhibit 18] were submitted in support of the Plan (collectively, the "Declarations");

WHEREAS, the Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Agent Declaration, the Affidavits of Service, the Publication Declaration, the Notice Declaration, the Memoranda of Law, the Declarations and the other pleadings before the Court in connection

with the Confirmation of the Plan, including the objections filed to the Plan;[5]

WHEREAS, the Court has considered the arguments of counsel made on the record at the Confirmation Hearing;

WHEREAS, the Court has considered all evidence presented and admitted into the record at the Confirmation Hearing;

WHEREAS, the Court has taken judicial notice of the papers and pleadings on file in these Reorganization Cases, including any related adversary proceedings;

WHEREAS, the Court, after due deliberation and for sufficient cause, finds that the evidence admitted in support of the Plan at the Confirmation Hearing is persuasive and credible;

NOW, THEREFORE, the Court enters the following Findings of Fact and Conclusions of Law with respect to Confirmation of the Plan.[6]

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[5] Truck's Objection was the only unresolved objection as of the Confirmation Hearing.

[6] The Bankruptcy Court made additional findings and conclusions on the record at the Confirmation Hearing, which findings and conclusions are adopted and fully incorporated herein.

I. FINDINGS OF FACT.[7]

A. HISTORY OF THE DEBTORS' ASBESTOS PERSONAL INJURY AND ENVIRONMENTAL LIABILITIES.

1. Background.

Debtor HPCI owns the Permanente Property, which consists of more than 3,400 acres of land that includes a cement plant, rock plant and quarry (including the minerals) located in Santa Clara County, California. (McChesney Decl. ¶ 10.) HPCI leases the Permanente Property to its non-debtor affiliate Lehigh Southwest Cement Company ("Lehigh Southwest"), pursuant to a July 1, 2008 Master Agreement Regarding Permanente Cement Plant, Quarry and Rock Plant and a July 1, 2008 Quarry Mineral Lease Agreement (together, the "Permanente Leases") (Id.) Under the Permanente Leases, HPCI receives rent, royalties and other payments from Lehigh Southwest, which, in turn, operates the cement plant, rock plant and quarry and assumes responsibility for the Permanente Property's operating costs. (Id.) The Permanente Leases further provide that HPCI is obligated to fund capital expenditures for the cement plant, quarry and rock plant, and reclamation obligations related to the quarry. (Id.) In accordance with an agreement reached with the ACC, the FCR and the Creditors' Committee, and as approved by the Bankruptcy Court in its April 10, 2017 Agreed Order Amending

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[7] These Findings and Conclusions constitute the Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

the Interim DIP Financing Order [Conf. Exhibit 24], HPCI has not been paying its obligations to fund capital expenditures and reclamation under the Permanente Leases, subject and without prejudice to Lehigh Southwest's right to accrue those ongoing obligations. (Id.)

The Debtors are wholly-owned, indirect subsidiaries of Lehigh Hanson, Inc. ("Lehigh Hanson"). (Id. ¶ 9.) Lehigh Hanson is not a Debtor in these Reorganization Cases. (Id.) HPCI is the direct parent of Kaiser Gypsum, non-debtor Permanente Cement Company and two operating non-debtor subsidiaries, Hanson Micronesia Cement, Inc. and Hanson Permanente Cement of Guam, Inc. (together, the "Operating Subsidiaries"), which distribute and sell cement in key markets in the Pacific region, including Saipan and Guam. (Id.) Lehigh Hanson provides the funding required by the Operating Subsidiaries. (Id.) Non-debtor Permanente Cement Company has no assets or operations. (Id.)

Kaiser Gypsum currently has no material tangible assets or business operations, other than managing its significant, legacy asbestos-related and environmental liabilities described below. (Id. ¶ 11.) Under the Plan, the Debtors' non-debtor affiliate, Lehigh Cement Company LLC ("Lehigh Cement"), will transfer to Kaiser Gypsum its interests in certain real property located in Kosse, Limestone County, Texas and Kunkletown, Monroe County, Pennsylvania (together, the "Real Properties"), together with Lehigh Cement's rights under certain leases related to the Real Properties. (Id.) Based on the Projections, Kaiser Gypsum is expected to generate net cash flows of approximately $68,000 and $93,000 in 2020 and 2021, respectively. (Bittner Decl. ¶ 30.)

2. General Overview of the Debtors' Manufacture and Sale of Products Alleged to Contain Asbestos.

Kaiser Gypsum's principal business consisted of manufacturing and marketing gypsum plaster, gypsum lath and gypsum wallboard. (Declaration of Charles E. McChesney II in Support of First Day Pleadings [Conf. Exhibit 36] (the "First Day Declaration") ¶ 25.)

In connection with its wallboard business, Kaiser Gypsum marketed, manufactured and sold products categorized as "wallboard accessories," which included joint compounds, texture paints and other similar products used to laminate wallboard or cover radiant heat surfaces and cables. (McChesney Decl. ¶ 12.) Certain versions of these wallboard accessories included asbestos during varying time periods. (Id.) In addition to wallboard accessory products, Kaiser Gypsum manufactured mineral fiberboard products, which are used for acoustical ceiling tile and lay-in board that also contained asbestos. (Id.) By 1978, Kaiser Gypsum had sold substantially all its assets and ceased to be involved in any product manufacturing. (Id.)

HPCI's primary business was the manufacture and sale of Portland cement products, which is a fine powdery substance that is mixed with water and an aggregate, such as gravel or sand, to form concrete. (Id. ¶ 13.) HPCI made two types of products—"masonry cement," and "plastic cement"—that in certain versions and at certain times contained asbestos. (Id.)

3. History of the Debtors' Asbestos Personal Injury Litigation.

The Debtors' asbestos-related liabilities arise from their manufacture and sale of certain products that contained asbestos. (McChesney Decl. ¶ 12.) Although asbestos was removed from each of the Debtor's products, the Debtors have been the subject of thousands of lawsuits. (Id. ¶ 14.) Since 1978, one or both of the Debtors have been named in more than 38,000 asbestos-related lawsuits. (Id.) As of August 31, 2016, the Debtors were named as defendants in approximately 14,000 asbestos-related bodily injury lawsuits pending in courts across the country. (Id.)

4. Asbestos Personal Injury Insurance and Coverage Litigation.

Truck issued a Comprehensive General Liability policy, renewed annually, that covered the Debtors from January 1, 1965 through April 1, 1983 (collectively, the "Truck Policies"). (McChesney Decl. ¶ 15.) As a result of over 19 years of litigation,[8] it is now settled that: (a) Truck must defend each covered Asbestos Personal Injury Claim (without eroding coverage) and indemnify the Debtors for such claims up to the $500,000 per claim limit of the Truck Policy year selected by the Debtors;[9] and (b) the Debtors' excess

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[8] Certain issues in asbestos coverage litigation are the subject of an appeal pending in the California Court of Appeal (No. B278091); however, those issues do not address (and will not alter) the fundamental aspects of the Debtors' coverage for Asbestos Personal Injury Claims under the Truck Policies.

[9] Although the per-occurrence limit and deductibles under the Truck Policies vary, virtually all Asbestos Personal Injury Claims have triggered a policy year with a $5,000 deductible and a $500,000 per claim primary product liability insurance limit. (McChesney Decl. ¶ 15, n.4.)

insurers are obligated under their policies (each an "Excess Policy") to respond to an Asbestos Personal Injury Claim and indemnify the Debtors for amounts in excess of the $500,000 Truck policy limit. (Id.) The Excess Policy obligated to respond corresponds to the Truck policy year selected by the Debtors. (Id.) In addition, there exists certain excess coverage available to pay asbestos claims outside the policy periods of the Truck Policies, and the Plan includes an exhibit list identifying all known available excess insurance policies that provide coverage for asbestos claims. (Plan Exhibit IV.M.3, List of Asbestos-Only Policies.)

In December 2013, the Debtors and certain of their excess insurers entered into a confidential coverage in place agreement (the "Excess CIP Agreement") with respect to the Debtors' excess coverage. (Id. ¶ 16.) The Excess CIP Agreement provides, among other things, that: (a) the excess insurers that are party to the Excess CIP Agreement will provide coverage for the Asbestos Personal Injury Claims in amounts above Truck's primary policy limit of $500,000, notwithstanding the insolvencies of certain excess insurers; and (b) the Debtors will pay to the excess insurers some portion of any funds distributed from insolvent asbestos insurers in accordance with a formula set forth in the Excess CIP Agreement. (Id.)

Although the Debtors successfully established insurance coverage for substantially all of the Asbestos Personal Injury Claims before filing for bankruptcy, they still faced substantial costs and risks associated with asbestos-related lawsuits. (Id. ¶ 17.) The Debtors were obligated to pay policy deductibles, owing more than $3 million in deductibles as of the Petition Date, and faced liability for uninsured judgments and claims, including punitive damages. (Id.) In at least

three prepetition cases, juries awarded punitive damages against the Debtors in amounts ranging from $100,000 to $20,000,000. (Id.)

5. The Debtors' Environmental Liabilities.

One or both of the Debtors also have alleged environmental liabilities arising from formerly owned and/or operated properties located in St. Helens, Oregon and Seattle, Washington.[10] (McChesney Decl. ¶ 18.)

Both Debtors owned and operated facilities in the Seattle area during periods between 1929 and 1987. (Id. ¶ 20.) HPCI operated a cement plant, and owned and operated a ready-mix cement plant and a bulk cement receiving, storage and distribution facility. (Id.) Kaiser Gypsum owned and operated the same cement plant, as well as a gypsum plant and a gypsum accessories facility. (Id.) All of these facilities were on or adjacent to the Lower Duwamish Waterway, an industrial waterway near Seattle, Washington. (Id.) By 1978, Kaiser Gypsum had sold all of its operations in the Seattle area, and by 1987, HPCI had sold all of its facilities in Seattle. (Id.)

In 1956, Kaiser Gypsum acquired a fiberboard manufacturing facility in St. Helens, Oregon that produced ceiling tiles, ceiling panels and related products. (Id. ¶ 19.) In 1978, Kaiser Gypsum sold the plant to Owens Corning Fiberglas Corporation ("Owens Corning"). (Id.) In 1987, the plant was sold to Armstrong World Industries, Inc. ("Armstrong"), which closed the plant in 2018. (Id.)

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[10] HPCI never owned or operated the St. Helens plant. (McChesney Decl. ¶ 18, n.5.)

A five-mile stretch of the Lower Duwamish Waterway is a United States Environmental Protection Agency (the "EPA") Superfund site (the "Lower Duwamish Superfund Site" and, together with the aforementioned former Seattle area facilities adjacent to the Lower Duwamish Superfund Site and the St. Helens site, the "Two Sites") involving approximately 120 potentially responsible parties ("PRPs"), including the Debtors. (Id. ¶ 21.)

6. Environmental Insurance.

The Debtors believe that they have liability insurance that provides coverage for their environmental liabilities relating to their formerly owned plants in Seattle and St. Helens. (Id. ¶ 22.) On September 29, 2016, the Debtors filed suit against their environmental insurers in state court in Oregon seeking coverage for defense and indemnity costs incurred and to be incurred with respect to their environmental liabilities at the Two Sites. (Id.)

B. PREPETITION DISCUSSIONS WITH REPRESENTATIVES OF ASBESTOS CLAIMANTS.

Prior to the Petition Date, an ad hoc committee of asbestos personal injury claimants (the "Ad Hoc Committee") consisting of law firms that have filed Asbestos Personal Injury Claims against the Debtors was formed to engage in discussions with the Debtors regarding the terms of a consensual plan of reorganization. (First Day Decl. ¶ 46.) Following its formation, the Ad Hoc Committee retained bankruptcy counsel, insurance counsel, a financial advisor and an asbestos estimation consultant. (Id.) The Ad Hoc Committee's work prepetition included gathering, review and analysis of information regarding the Debtors. In that

regard, the Ad Hoc Committee delivered to the Debtors a series of information requests and, in response thereto, the Debtors provided the Ad Hoc Committee with numerous documents and other information. (Id.) Prior to the Petition Date, the Debtors and the Ad Hoc Committee also agreed on the selection of Lawrence Fitzpatrick as the FCR. (Id.) Mr. Fitzpatrick retained his own counsel and an estimation consultant. (Id.) The Debtors provided the FCR and his professionals with the same information they furnished to the Ad Hoc Committee. (Id.)

Prepetition meetings and other communications occurred among some or all of the Debtors, Truck, the Ad Hoc Committee and the FCR. (First Day Decl. ¶ 47.) Communications between the Debtors and certain of the excess carriers also took place. (Id.) Among other things, the parties discussed the filing of the Reorganization Cases and potential paths forward to a consensual plan. (Id.) Although all the parties indicated a desire to reach agreement on a consensual reorganization plan, due to time constraints, the parties were not able to engage in substantive discussions regarding the terms of a plan prior to the Petition Date. (Id.)

C. DEBTORS' DECISION TO FILE THE REORGANIZATION CASES.

The Debtors filed these Reorganization Cases to fairly and permanently resolve their legacy asbestos and environmental liabilities. (McChesney Decl. ¶ 23.) Resolving these liabilities in accordance with the Plan will benefit both the Debtors and their creditors by, among other things, (a) eliminating the ongoing costs, administrative burdens, risks and distractions that the Debtors have been subjected to from these decades-old liabilities, and (b) providing for

(i) the liquidation in the tort system and the payment of current and future Asbestos Personal Injury Claims from the Asbestos Personal Injury Trust and the Debtors' asbestos insurers and (ii) the payment in full on the Plan's Effective Date of all Allowed General Unsecured Claims, including Allowed Environmental Claims. (Id.)

D. APPOINTMENT OF THE CREDITORS' COMMITTEE, THE ASBESTOS PERSONAL INJURY COMMITTEE AND FUTURE CLAIMANTS' REPRESENTATIVE.

On October 14, 2016, the Bankruptcy Court entered an order appointing the Creditors' Committee pursuant to section 1102 of the Bankruptcy Code. [D.I. 84]. On August 30, 2019, the Creditors' Committee filed a motion [D.I. 1771] indicating that members Owens Corning and Armstrong were retiring from the committee and requesting Ash Grove Cement Company ("Ash Grove") be substituted as a member of the committee for such retiring members. On October 17, 2019, the Bankruptcy Court entered an order [D.I. 1864] granting the Creditors' Committee's motion. On October 19, 2016, the Bankruptcy Court entered an order appointing the ACC pursuant to section 1102 of the Bankruptcy Code. [D.I. 100] With the assistance of counsel and other advisers, the ACC has been active in all aspects of the Debtors' cases, including numerous investigations and ultimately the negotiation of the Term Sheet leading to the Plan.

In addition, by order dated October 19, 2016 [D.I. 99], the Bankruptcy Court approved the appointment of Lawrence Fitzpatrick as the FCR. Mr. Fitzpatrick has extensive experience with the resolution of asbestos-related personal injury claims and asbestos

bankruptcy cases. (Fitzpatrick Decl. ¶¶ 4-10.) With the assistance of counsel and other advisors, Mr. Fitzpatrick has been involved in all aspects of the Debtors' Reorganization Cases.

E. RESOLUTION OF THE REORGANIZATION CASES.

1. Settlement Regarding Asbestos Personal Injury Claims.

On October 20, 2017, the Debtors and Lehigh Hanson reached an agreement in principle with the ACC and the FCR on the treatment of present and future Asbestos Personal Injury Claims. (McChesney Decl. ¶ 26.) The Plan implements that settlement by, among other things, providing for the creation and funding of the Asbestos Personal Injury Trust to resolve Asbestos Personal Injury Claims pursuant to section 524(g) of the Bankruptcy Code. (Id.) The Asbestos Personal Injury Trust to be created under the Plan will be funded with a $49 million cash payment by the Debtors or Lehigh Hanson, a $1 million Payment Note, the first $12 million of net recovery on Phase 1 Claims, if any (after the Asbestos Personal Injury Trust Appellate Costs have been deducted) and the assignment of the Debtors' rights under insurance policies covering Asbestos Personal Injury Claims. (Id.; Fitzpatrick Decl. ¶ 16.) The Plan provides that, with respect to the Debtors' Insured Asbestos Claims, the insurer's defense rights will be preserved and asbestos claimants will be permitted to continue to assert actions against the Reorganized Debtors in name only in the tort system to collect available insurance. (Plan §§ III.B.4., IV.L, IV.Q.) The Asbestos Personal Injury Trust will fairly and equitably satisfy the Asbestos Personal Injury Claims in accordance with the

Asbestos Personal Injury Trust Distribution Procedures, described below.

2. Settlements Regarding Environmental Claims.

The Debtors successfully negotiated settlement agreements with the Oregon Department of Environmental Quality (the "DEQ") regarding the St. Helens site and the United States regarding the Lower Duwamish Superfund Site. (McChesney Decl. ¶ 29.) The Debtors also reached settlement agreements with other environmental creditors, multiple insurers and several co-PRPs regarding the Two Sites. (Id.)

In particular, the Debtors have negotiated and the Bankruptcy Court has approved settlements with (a) Armstrong [D.I. 1556], pursuant to which Armstrong withdrew its proofs of Claim with respect to the St. Helens site and paid the Debtors $1 million; (b) Owens Corning [D.I. 1558], pursuant to which Owens Corning's proofs of Claim were deemed withdrawn and Owens Corning was deemed to waive and release any Claims against the Debtors related to the St. Helens site; (c) the DEQ [D.I. 1625], pursuant to which the Debtors agreed to pay in full an Allowed General Unsecured Claim in the amount of $67 million; (d) the City of Seattle (the "City") [D.I. 1602], pursuant to which the City will have an Allowed General Unsecured Claim in the amount of $80,951.87 against each of the Debtors; (e) the Port of Seattle (the "Port") [D.I. 1603], pursuant to which the Port will have an Allowed General Unsecured Claim in the amount of $81,815.22 against each of the Debtors; (f) King County, Washington (the "County") [D.I. 1604], pursuant to which the County will have an Allowed General Unsecured Claim in the amount of $85,255.87 against each of the Debtors; (g) The Boeing Company

("Boeing") [D.I. 1601], pursuant to which Boeing will have an Allowed General Unsecured Claim in the amount of $137,500.00 against each of the Debtors; and (h) Ash Grove [D.I. 1908], pursuant to which Ash Grove will have an Allowed General Unsecured Claim in the amount of $8,618.42 against each of the Debtors. (McChesney Decl. ¶ 30.)

In addition, the Bankruptcy Court entered an order [D.I. 1789] approving the Debtors' settlement with the United States, on behalf of the EPA and the United States Department of Interior, acting through the U.S. Fish and Wildlife Service (the "DOI"), and the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration (the "NOAA"), pursuant to which the Debtors agreed to the allowance and payment in full of the following general unsecured claims: (a) Proof of Claim No. 10 (EPA) in the amount of $1,300,000 against Kaiser Gypsum; (b) Proof of Claim No. 11 (EPA) in the amount of $1,300,000 against HPCI; (c) Proof of Claim No. 9 (NOAA) in the amount of $200,000 against Kaiser Gypsum; (d) Proof of Claim No. 6 (NOAA) in the amount of $200,000 against HPCI; (e) Proof of Claim No. 7 (DOI) in the amount of $200,000 against Kaiser Gypsum; and (f) Proof of Claim No. 8 (DOI) in the amount of $200,000 against HPCI. (Id. ¶ 31.) The Debtors' agreement with the United States also resolved the following claims filed by Ash Grove on behalf of the United States: (a) Proof of Claim No. 648 (EPA) in the amount of $325,000 against Kaiser Gypsum; (b) Proof of Claim No. 653 (EPA) in the amount of $325,000 against HPCI; (c) Proof of Claim No. 651 (NOAA) in the amount of $50,000 against Kaiser Gypsum; (d) Proof of Claim No. 650 (NOAA) in the amount of $50,000 against HPCI; (e) Proof of Claim No. 649 (DOI) in the amount

of $50,000 against Kaiser Gypsum; and (f) Proof of Claim No. 652 (DOI) in the amount of $50,000 against HPCI. (Id.)

Under applicable law and in accordance with the terms of the settlements with the DEQ and the United States, the Debtors received contribution protection with respect to the matters addressed in each settlement concerning the Two Sites. (McChesney Decl. ¶ 32.)

The Debtors also reached settlement agreements with the following insurers to resolve disputes with respect to environmental insurance coverage, which have been approved by the Bankruptcy Court (the "Environmental Insurance Settlements"): (a) London Market Insurers and Continental Insurance Company, Columbia Casualty Company, and National Fire Insurance Company of Hartford; (b) Insurance Company of the State of Pennsylvania and National Union Fire Insurance Company of Pittsburgh, PA; (c) Truck; (d) Westchester Fire Insurance Company and Westchester Surplus Lines Insurance Company; (e) Hartford Fire Insurance Company, First State Insurance Company, New England Insurance Company and Twin City Fire Insurance Company; (f) Munich Reinsurance America, Inc. and Executive Risk Indemnity, Inc.; (g) Transport Insurance Company, as successor in interest to Transport Indemnity Company; (h) Allstate Insurance Company, as successor in interest to Northbrook Excess and Surplus Insurance Company f/k/a Northbrook Insurance Company; (i) Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation; and (j) Allianz Underwriters Insurance Company and Fireman's Fund Insurance Company. (McChesney Decl. ¶ 33.) In addition, the Debtors negotiated a further settlement

agreement with Associated International Insurance Company and Transamerica Premier Ins. Co. and TIG Insurance Company [D.I. 2136], which has been approved by the Bankruptcy Court. (Id.) Pursuant to these settlements, the insurers will pay the Debtors a total of approximately $50.8 million to buy back certain of the Debtors' rights to environmental insurance coverage free and clear of all liens, claims, encumbrances and interests. (Id.) These settlements will not affect coverage for Asbestos Personal Injury Claims. (Id.)

3. Settlement with Lehigh Hanson.

Finally, the Debtors reached an agreement with Lehigh Hanson, pursuant to which Lehigh Hanson has agreed to contribute up to $28.15 million, minus the amount of the Insolvent Insurers Proceeds to which the Debtors are determined to be entitled, for the payment of Allowed General Unsecured Claims under the Plan. (Id. ¶ 34; Plan § IV.E.)

4. Sufficient Funds to Pay All Allowed General Unsecured Claims.

As a result of all the agreements described above, the Debtors will have sufficient funds to pay all Allowed General Unsecured Claims in full. (Bittner Decl. ¶ 24; McChesney Decl. ¶ 35.) The Debtors estimate that the aggregate amount of Allowed General Unsecured Claims is approximately $72,569,631.[11] (Bittner Decl. ¶ 22; McChesney Decl. ¶ 35.) As a result of the Environmental Insurance Settlements and the

[11] This figure does not include any amounts with respect to the currently disputed Claims held by Glacier Northwest, Inc. but includes an amount of $465,140.83 to reflect the amount at which the disputed Truck Claim was resolved by the Bankruptcy Court in advance of the Confirmation Hearing.

agreement with Lehigh Hanson, the Debtors will have available funds sufficient to pay that amount. (Bittner Decl. ¶ 24; McChesney Decl. ¶ 35.)

F. MODIFICATIONS TO THE PLAN.

The Modifications to the Plan do not materially or adversely affect or change the treatment of any Claim against or Interest in any Debtor and fully comply with all applicable provisions of the Bankruptcy Code and Rules.

G. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE.

1. Section 1129(a)(1) — Compliance of the Plan with Applicable Provisions of the Bankruptcy Code.

The Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code.

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

i. The Plan, which constitutes a separate plan of reorganization for each of the Debtors, meets the classification requirements of sections 1122(a) and 1123(a)(1)-(4) of the Bankruptcy Code. Article II of the Plan classifies Claims and Interests into seven separate categories. (Plan art. II.) In particular, Article II of the Plan segregates into separate Classes Priority Claims (Class 1), Secured Claims (Class 2), General Unsecured Claims (Class 3), Asbestos Personal Injury Claims (Class 4), Surety Bond Claims (Class 5), Intercompany Claims (Class 6) and Stock Interests (Class

7). 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. (McChesney Decl. ¶ 37.)

ii. In accordance with section 1123(a)(2) of the Bankruptcy Code, Article III of the Plan identifies and describes each Class of Claims or Interests that is not impaired under the Plan. In particular, Article III of the Plan indicates that Classes 1-3 and 5-7 are unimpaired. (Plan art. III.)

iii. In accordance with section 1123(a)(3) of the Bankruptcy Code, Article III of the Plan identifies and describes each Class of Claims or Interests that is impaired under the Plan. In particular, section III.B.4 of the Plan states that Class 4 (Asbestos Personal Injury Claims) are impaired and provides for the treatment of that class. (Plan § III.B.4.)

iv. In accordance with section 1123(a)(4) of the Bankruptcy Code, the Plan provides the same treatment for each Claim or Interest of a particular Class unless the holder of such a Claim or Interest agrees to less favorable treatment. (Plan art. III.)

b. Section 1123(a)(5) — Adequate Means for Implementation of the Plan.

In accordance with the requirements of section 1123(a)(5) of the Bankruptcy Code, Article IV and various other provisions of the Plan provide adequate means for the Plan's implementation. Specifically, the Plan provides for: (a) except as otherwise provided in the Plan and subject to the Restructuring Transactions, the Debtors' continued corporate existence and

the vesting of all property of the respective Estates of the Debtors and any property acquired by a Debtor or Reorganized Debtor under the Plan in the appropriate Reorganized Debtor under section IV.A of the Plan; (b) the consummation of the Restructuring Transactions under section IV.B of the Plan; (c) certain real estate and lease transactions under section IV.C of the Plan; (d) the adoption of the corporate constituent documents that will govern the Reorganized Debtors and the identification of the initial boards of directors of the Reorganized Debtors under section IV.D of the Plan; (e) sufficient cash resources to make all plan distributions pursuant to section IV.E of the Plan; (f) the creation of, and transfer of certain assets to, the Asbestos Personal Injury Trust under section IV.F of the Plan; (g) the appointment of the Asbestos Personal Injury Trustee under section IV.H of the Plan; (h) the funding of the Asbestos Personal Injury Trust under section IV.K.2 of the Plan; (i) the transfer of and preservation of rights of action by the Reorganized Debtors, and the release of certain rights of action against the Debtors, under section IV.R of the Plan; (k) the release of all mortgages, deeds of trust, liens or other security interests against the property of the Estate under section IV.S of the Plan; (l) the authorization to execute various documents and to enter into various transactions to effectuate the Plan and the exemption from certain transfer taxes under section IV.T of the Plan; and (m) the direction to comply with QSF Regulations under section IV.V of the Plan. Accordingly, the Plan fully complies with the requirements of section 1123(a)(5) of the Bankruptcy Code.

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

The Plan provides that the certificates of incorporation of each Reorganized Debtor will prohibit the issuance of nonvoting equity securities to the extent required under section 1123(a) of the Bankruptcy Code. (Plan § IV.D.1.) Accordingly, the Plan fully complies with the requirements of section 1123(a)(6) of the Bankruptcy Code.

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) of the Bankruptcy Code and ensures that the selection of the officers and directors of each of the Reorganized Debtors is consistent with the interests of creditors and equity security holders and with public policy. Under section IV.D.2 of the Plan, the initial boards of directors of each of the Reorganized Debtors will consist of the directors and officers of each Debtor immediately prior to the Effective Date. (Plan § IV.D.2.) Further, this section of the Plan provides that directors and officers will serve from and after the Effective Date until a successor is duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the terms of the certificates of incorporation and by-laws or similar constituent documents of the applicable Reorganized Debtor and

applicable state law. (Id.) The Plan's provisions with respect to the selection of directors and officers are consistent with the interests of creditors and public policy.

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)(1)-(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;" (b) "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest," 11 U.S.C. § 1123(b)(3)(A)-(B); or (c) "the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests." 11 U.S.C. § 1123(b)(4). Finally, a plan may "modify the rights of holders of secured claims . . . or . . . 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]." 11 U.S.C. § 1123(b)(5)-(6).

As described above, the Plan provides for the impairment of Class 4, 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. IV.) In particular, Asbestos Personal Injury Claims will be channeled to the Asbestos Personal Injury Trust for

resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures. (Plan § III.B.4.) The Plan also provides for (a) the assumption, assumption and assignment or rejection of executory contracts and unexpired leases to which the Debtors are parties (Plan art. V) and (b) the retention and enforcement of certain claims by the Debtors (Plan § IV.R).

Finally, in accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes numerous other provisions necessary for its implementation that are consistent with the Bankruptcy Code, including: (a) Article IV of the Plan providing for (i) the creation of the Asbestos Personal Injury Trust and (ii) the appointment of the Asbestos Personal Injury Trustee; (b) Article VI 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 IX of the Plan regarding the discharge of Claims and injunctions against certain actions; and (e) Article X 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.

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

The Plan provides for the satisfaction of Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. (Plan § V.B.) Additionally, in accordance with Article III of the Plan, certain Claims

may be Reinstated. All Cure Amount Claims and Reinstated Claims will be determined in accordance with the underlying agreements and applicable non-bankruptcy law, and pursuant to the procedures established in the Plan or, to extent applicable, any separate orders of the Bankruptcy Court. (Plan §§ III.B, V.B.) Accordingly, the Plan fully complies with the requirements of section 1123(d) of the Bankruptcy Code.

2. Section 1129(a)(2) — Compliance with Applicable Provisions of the Bankruptcy Code.

The Debtors have complied with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code, including section 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018. The Disclosure Statement and the procedures by which the ballots for acceptance or rejection of the Plan were solicited and tabulated were fair, properly conducted and in accordance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and the Disclosure Statement Order. Votes with respect to the Plan were solicited in good faith and in a manner consistent with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement Order. The Debtors, the Reorganized Debtors, Lehigh Hanson, the ACC and the FCR, their respective members 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) — Proposal of the Plan in Good Faith.

Section 1129(a)(3) of the Bankruptcy Code 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). A plan is considered proposed in good faith "if there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the [Bankruptcy] Code." Hanson v. First Bank of S.D., 828 F.2d 1310, 1315 (8th Cir. 1987); see also In re SGL Carbon Corp., 200 F.3d 154, 165 (3d Cir. 1999) (the good faith standard in section 1129(a)(3) requires that there must be "'some relation'" between the chapter 11 plan and the "reorganization-related purposes" that chapter 11 was designed to serve); In re Zenith Elecs. Corp., 241 B.R. 92, 107 (Bankr. D. Del. 1999) ("The good faith standard requires that the plan be proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code." (quotation marks omitted)); In re New Valley Corp., 168 B.R. 73, 80 (Bankr. D.N.J. 1994) ("It is generally held that a plan is proposed in good faith if there is a reasonable likelihood that the plan will achieve a result consistent with the objectives and purpose of the Bankruptcy Code."). The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the formulation of a chapter 11 plan. See McCormick v. Bane 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.").

In determining whether the plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the reorganization plan itself. See In re Sound Radio, Inc., 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (concluding that the good faith test provides the court with significant flexibility and is focused on an examination of the plan itself, rather than other, external factors), aff'd in part, remanded in part on other grounds, 103 B.R. 521 (D.N.J. 1989), aff'd, 908 F.2d 964 (3d Cir. 1990). The plan proponent must show, therefore, that the plan has not been proposed by any means forbidden by law and that the plan has a reasonable likelihood of success. See In re Century Glove, Inc., Civ. A. Nos. 90-400-SLR, 90-401-SLR, 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("A court may only confirm a plan for reorganization if . . . the 'plan has been proposed in good faith and not by any means forbidden by law . . . .' Moreover, 'where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied[.]'"); see also Fin. Sec. Assur. Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship), 116 F.3d 790, 802 (5th Cir. 1997) (same). Whether a plan has been proposed in good faith turns on whether it "'will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.'" In re Am. Capital Equip., LLC, 688 F.3d 145, 156 (3d Cir. 2012).

The Plan serves valid bankruptcy objectives—it is the product of extensive arms'-length negotiations among the ACC, the FCR, the Debtors and numerous other parties, reflects a consensual resolution of the Debtors' asbestos and environmental liabilities and maximizes the value of assets available to satisfy claims. In re Michener, 342 B.R. 428, 434 (Bankr. D.

Del. 2006); Am. Capital Equip., LLC, 688 F.3d at 156 (explaining that the two "'recognized' policies, or objectives, [of Chapter 11] are 'preserving going concerns and maximizing property available to satisfy creditors'"). That the Plan maximizes the value of assets is demonstrated by the fact that creditor recoveries are greater than could be realized if the Debtors were to liquidate. (Bittner Decl. ¶ 20; Liquidation Analysis.[12])

To arrive at this juncture, the Debtors actively involved their creditor constituencies in the Plan-formulation process. (McChesney Decl. ¶ 39.) The Debtors provided substantial information to all constituencies and, thereafter, reached numerous settlements that will be implemented through the Plan. (Id.) As described above and in the Disclosure Statement and the McChesney Declaration, the Debtors engaged in arms'-length negotiations with many parties in interest over the course of these cases and the Plan reflects agreements among the Debtors, Lehigh Hanson, the ACC, the FCR, the EPA, the DEQ and the Debtors' insurers and other constituents. (Id.) The Debtors' good faith in proposing the Plan is evidenced by these negotiations and agreement and further by the unanimous support of the holders of Class 4 Claims, the only Class entitled to vote on the Plan. See Voting Agent Declaration; see also Eagle-Picher, 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).

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[12] The Liquidation Analysis is attached as Exhibit IV to the Disclosure Statement and was admitted into the record at the Confirmation Hearing. [Conf. Exhibit 22-B.]

Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code have been fully satisfied.

Truck made a number of arguments that the Plan was not proposed in good faith. For the reasons set forth below, Truck lacks standing to make these arguments, but even if Truck had standing, the arguments would fail.

Contrary to Truck's contention, the Plan does not violate the spirit and purpose of section 524(g). The Court finds no requirement that all of a debtor's asbestos liabilities must be resolved by a section 524(g) trust, as opposed to being resolved in the tort system. Here, moreover, the Debtors have effectively unlimited insurance. Under these circumstances, the fact that the Trust resolves only uninsured claims is not contrary to section 524(g).

Truck argued that the Plan represented a collusive and improper agreement to send claims back to the tort system. The argument that resolving asbestos cases in the tort system is unfair or constitutes bad faith is rejected. Bankruptcy courts routinely grant relief from the automatic stay to allow claimants and creditors to pursue insurance in state court.[13] In its

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[13] Bankr. Hr'g Tr. (8/13/2020) 29:11-19. Moreover, other Section 524(g) plans of reorganization have been approved that provided for tort claims to be sent back to the tort system. See, e.g., In re Thorpe Insulation Co., Case No. 07-19271(BB) (Bankr. C.D. Cal. May 8, 2013) (providing that asbestos claimants can commence actions in the tort system consistent with the other provisions of the plan and distribution procedures); In re Plant Insulation Co., 485 B.R. 203, 213 (N.D. Cal. 2012), rev'd on other grounds, 734 F.3d 900 (9th Cir. 2013), and aff'd, 544 F. App'x 669 (9th Cir. 2013) ("Alternatively, under the Plan, asbestos injury claimants retain their right to pursue Plant and Non-Settling Insurers by

argument, Truck relied heavily on Judge Hodges' findings in Garlock. This Court is concerned for the same reasons that the bankruptcy court was concerned in Garlock, but this Court does not read Garlock as an indictment of the tort system or a ruling that a party cannot get a fair trial in state and federal courts. Truck's arguments also hinged on speculation as to future events, such as what would happen in state courts, and are unsupported. This Court is not inclined to indict its colleagues on the state benches, nor does the Court believe that a bankruptcy court in North Carolina is necessary to protect state courts from fraud. The findings in Garlock have been widely debated, and indeed some state legislatures have taken steps to address these issues. State courts and litigants will obviously be alert to what has been proposed in this case and can take their own actions.

Bankruptcy is not intended to relieve insurers of their contractual liabilities, or to improve their position under their insurance contracts in the tort system.[14] It is not within the province of this Court to

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filing a tort action, subject to several conditions."); In re Burns & Roe Enters., Inc., Nos. 00-41610, 05-47946 (RG) 2009 WL 438694, at *4 (D.N.J. Feb. 23, 2009) ("The Trust may authorize individual claimants, whose claims are potentially covered by policies issued by CNA, to commence litigation in the tort system."); see also In re Sound Shore Med. Ctr., Case No. 13-22840 (Bankr. S.D.N.Y. Oct. 2, 2013), ECF No. 367 (permitting claims to return to tort system); In re UTGR, Inc. d/b/a Twin River, Case No. 09-12418 (Bankr. R.I. Mar. 19, 2010), ECF No. 610 (same).

[14] Further, the Truck Policies expressly state that the Debtors' bankruptcy does not relieve Truck of its obligations under the Truck Policies. Conf. Exhibit 30, 1974 Truck Policy at TRK0000587 ("Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.").

mandate to state courts and other federal courts what kind of discovery is required in asbestos cases. The remedy Truck seeks—a requirement that before an asbestos claimant can sue in state court they must provide pre-suit discovery that is not mandated in other forums and not for the benefit of the Asbestos Personal Injury Trust—is essentially legislative in nature, and is inappropriate. The Court hereby rejects this burdensome and unprecedented attempt to impair the rights of asbestos claimants to pursue their claims in the tort system.

Finally, the Court rejects Truck's argument it was unfairly denied an opportunity to negotiate with the parties both pre- and post-petition. While the preference in bankruptcy is for parties to negotiate, there is no requirement that a plan satisfy the desires of an insurer. Furthermore, the evidence establishes that no substantive Plan negotiations occurred prepetition. Thus, Truck was not excluded. (First Day Decl. ¶ 47.) Postpetition, all parties were free to negotiate, but Truck did not. Hr'g Tr. (7/20/2020) at 153:18-154:8. Truck attempted to negotiate only after the Plan Proponents had already reached an agreement in the form of the Term Sheet. Id. at 154:2-8. The Debtors, the ACC, the FCR and Truck then participated in mediation to determine whether there was a resolution that could be reached that would involve Truck. Id. at 154:9-18. It is not surprising that Truck found it difficult to negotiate with the parties to reduce its unlimited obligations under the Truck Policies to a fixed or otherwise limited amount. That is certainly no basis for an objection. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code have been fully satisfied.

4. Section 1129(a)(4) — Court Approval of Certain Payments as Reasonable.

In accordance with section 1129(a)(4) of the Bankruptcy Code, all fees to which parties may be entitled in connection with the Reorganization Cases, including Professionals' Fee Claims, are subject to the approval of the Bankruptcy Court. (Plan § III.A.1.) Although the Bankruptcy Court has authorized the interim payment of the fees and expenses incurred by Professionals in connection with the Reorganization Cases, all such fees and expenses remain subject to final review for reasonableness by the Bankruptcy Court. (Id.) 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 art. X.) Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

5. Section 1129(a)(5) — Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy.

The Debtors have disclosed all information required by section 1129(a)(5) of the Bankruptcy Code, including the names of the Reorganized Debtors' officers and directors. (Disclosure Statement § III.A.2; Plan § IV.D.2.) The appointment of the proposed directors and officers, each of who is highly qualified and experienced, is consistent with the interests of the holders of Claims and Interests and with public policy.

6. Section 1129(a)(6) — Approval of Rate Changes.

Section 1129(a)(6) of the Bankruptcy Code is not applicable because the Debtors' current businesses do not involve the establishment of rates over which any regulatory commission has or will have jurisdiction after Confirmation. (McChesney Decl. ¶ 42.)

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

Each holder of a Claim in the sole impaired Class (Class 4) has accepted the Plan or, as demonstrated by the Liquidation Analysis, will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. (Bittner Decl. ¶ 12; Liquidation Analysis.) Thus, the Plan satisfies the requirement of section 1129(a)(7)(A) of the Bankruptcy Code.

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

Pursuant to section 1129(a)(8) of the Bankruptcy Code, all classes of Claims and Interests have either accepted the Plan or are unimpaired. (Voting Agent Decl. ¶ 10.) Specifically, Class 4, the only class entitled to vote on the Plan, unanimously voted in favor of the Plan. (Id.) Classes 1-3 and 5-6 are unimpaired under the Plan and, therefore, are deemed to have accepted the Plan. (Plan § III.B; Disclosure Statement Order ¶ II.B.) Accordingly, the Debtors have satisfied section 1129(a)(8) of the Bankruptcy Code.

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 Claims and Priority Tax Claims, as set forth in section 1129(a)(9) of the Bankruptcy Code.

Section III.A.1 of the Plan provides that, subject to certain bar dates and unless otherwise agreed by the holder of an Administrative Claim and the applicable Debtor or Reorganized Debtor, 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; or (b) if the Administrative Claim is not allowed as of the Effective Date, thirty (30) days after the date on which such Administrative Claim becomes allowed by a Final Order or a Stipulation of Amount and Nature of Claim. In addition, Administrative Claims based on ordinary course liabilities shall be satisfied by the applicable Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holder of such Administrative Claims or further approval of the Bankruptcy Court.

Further, Section III.B.l of the Plan provides that Priority Claims against any Debtor (which include Claims entitled to priority other than Administrative Claims and Priority Tax Claims) will be paid on the Effective Date in an amount equal to the Allowed Claim. Section III.A.2 of the Plan provides that, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Reorganized

Debtor, on the Effective Date or as soon as practicable after the date when such Claim becomes an Allowed Claim, each Allowed Priority Tax Claim will receive payment in full of the allowed amount of the Priority Tax Claim.

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

As shown in the Voting Agent Declaration and as reflected in the record of the Confirmation 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, with respect to all Reorganized Debtors under the Plan. (Voting Agent Decl. ¶ 10.) Specifically, Class 4 Claims (Asbestos Personal Injury Claims), which is not an insider Class and is the only impaired Class under the Plan, has voted unanimously to accept the Plan. (Id.)

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

On or about the Effective Date, non-debtor Lehigh Cement Company LLC will transfer its interest in the Real Properties located in Kosse, Limestone County, Texas and Kunkletown, Monroe County, Pennsylvania, together with its rights under certain leases with a third party related to the Real Properties, to Kaiser Gypsum. (Plan § IV.C; Bittner Decl. ¶ 30; McChesney Decl. ¶ 11.) The leases are expected to generate net cash flow for Kaiser Gypsum of approximately $68,000 in 2020 and $93,000 in 2021, as demonstrated in the projections attached Exhibit III to the Disclosure Statement and admitted into evidence at the Confirmation Hearing [Conf. Exhibit 22-A] (the "Plan Projections"). (Plan Projections; Bittner Decl. ¶ 30.)

HPCI will continue to own its non-Debtor operating subsidiaries (Hanson Micronesia Cement, Inc. and Hanson Permanente Cement of Guam, Inc.), and the Permanente Property. (Bittner Decl. ¶ 30.) HPCI is expected to generate net cash flows from the Permanente Property and the operating subsidiaries of approximately $6.5 million and $2.6 million in 2020 and 2021, respectively. (Plan Projections; Bittner Decl. ¶ 30.)

The Reorganized Debtors will have the ability to fund their ongoing operations from cash flow generated by the businesses they directly or indirectly own. (Bittner Decl. ¶ 30; Plan Projections.) Kaiser Gypsum's lease arrangements for the Real Properties will ensure that it will generate positive cash flow into the future. (Id.) HPCI's Permanente Plant lease arrangement with non-debtor Lehigh Southwest, coupled with cash flow from its non-debtor subsidiaries, similarly shows that HPCI will generate positive cash flow into the future. (Id.) Additionally, each of the Debtors is ultimately owned by Lehigh Hanson, which has the financial wherewithal to provide any additional funding needed by either entity. (Bittner Decl. ¶ 32.) Finally, the Debtors have sufficient cash and access to financing, in combination with (a) Lehigh Hanson's cash and access to financing and (b) the proceeds of insurance, to fund the obligations imposed by the Plan. (Id. ¶ 34.)

Overall, (a) the Plan provides a feasible means of completing a reorganization of the Reorganized Debtors' businesses, and (b) there is a more than reasonable assurance that the Reorganized Debtors will be able to satisfy all of their obligations under the Plan. (Id. ¶ 33.) Accordingly, the Plan satisfies the

feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

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 § III.A.l.b.)

13. Section 1129(a)(13) — Retiree Benefits.

Section 1129(a)(13) of the Bankruptcy Code is not applicable because the Debtors do not maintain any retiree benefits, as defined in section 1114 of the Bankruptcy Code. (McChesney Decl. ¶ 42.)

14. Section 1129(d) — Purpose of Plan.

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. (Id. ¶ 40.)

H. THE ASBESTOS PERSONAL INJURY TRUST AND THE ASBESTOS PERMANENT CHANNELING INJUNCTION COMPLY WITH SECTION 524(g) OF THE BANKRUPTCY CODE.

The Plan comports with the Bankruptcy Code's requirements for issuance of an injunction to enjoin entities from taking legal action to recover, directly or indirectly, payment in respect of asbestos-related claims or demands against the Reorganized Debtors.

1. The Asbestos Personal Injury Trust Satisfies the Requirements of Section 524(g)(2)(B)(i) of the Bankruptcy Code.

a. ***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). The Plan satisfies this requirement by its express terms, which state that "the Asbestos Personal Injury Trust shall assume liability and responsibility, financial and otherwise, for all Asbestos Personal Injury Claims." (Plan § IV.K.3.) By assuming the Debtors' asbestos liability, the Asbestos Personal Injury Trust will be responsible for resolving Uninsured Asbestos Claims and the portion of Insured Asbestos Claims that is not covered by an Asbestos Insurance Policy. (See Plan § IV.O.; Asbestos Personal Injury Trust Distribution Procedures §§ 2.2, 5.2, 5.3.)

b. ***Section 524(g)(2)(B)(i)(II)*** requires that the trust "be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends." 11 U.S.C. § 524(g)(2)(B)(i)(II). The Plan satisfies this requirement by providing that the Asbestos Personal Injury Trust will be funded in part by the Payment Note. (Plan § IV.K.2.b.) Pursuant to section 101(49) of the Bankruptcy Code, a "security" includes, among other things, a note. 11 U.S.C. § 101(49). The Payment Note requires the Reorganized Debtors to make a payment of $1 million on or before the fifth anniversary of the Effective Date. This obligation is secured by the Pledge of 100% of the equity of each Reorganized

Debtor. (Plan § I.A.104.) Accordingly, the issuance of the Payment Note, of which both Debtors are co-obligors, nominally satisfies section 524(g)(2)(B)(i)(II)'s requirement that the trust be funded "in part by the securities of 1 or more debtors and by the obligation of such debtor or debtors to make future payments, including dividends."[15]

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[15] There is an argument that the note is pretextual, given its short term and small amount. See In re Congoleum Corp., 362 B.R. 167, 177 (Bankr. D.N.J. 2007). However, other courts have confirmed such plans, particularly, where, as here, the note is only a minor part of the funding to pay claims and/or where none of the affected parties object . See In re W. Asbestos Co., 313 B.R. 832, 851 (Bankr. N.D. Cal. 2003) (in the context of a plan in which an insurer was contributing approximately $740 million in cash to the asbestos trust, noting that "the Plan also provides that MacArthur will contribute to the Trust a promissory note for $500,000, payable over five years . . . [and] requires MacArthur to make payments to the Trust pursuant to the note" and concluding that the note and payment pursuant thereto "are sufficient to satisfy 11 U.S.C. § 524(g)(2)(B)(i)(II)."); In re J T Thorpe Co., 308 B.R. 782, 788-89 (Bankr. S.D. Tex. 2003) (finding that the "[p]lan complies with Section 524(g)(2)(B)(i)" when trust is "to be funded in part by a Promissory Note for $2.3 million" and "in part by proceeds received pursuant to the terms of the Asbestos Insurance Action Recoveries, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Settlement Agreements, and by the Asbestos Insurance Policies"); In re Leslie Controls, Inc., Case No. 10-12199 (CSS) (Bankr. D. Del. Jan. 10, 2011), Second Conformed First Amended Plan of Reorganization of Leslie Controls, Inc. §§ 1.93, 1.94, 9.3(h), (i) (in the context of a trust funded with, among other things, $74 million in cash, satisfying section 524(g)(2)(B)(i)(II), in part, through the contribution of a $1 million promissory note) and In re Leslie Controls, Inc., Case No. 10-12199 (CSS) (Bankr. D. Del. Jan. 10, 2011), Findings of Fact, Conclusions of Law, and Order Confirming the Second Conformed First Amended Plan of Reorganization of Leslie Controls, Inc. § U.3 (concluding that plan complies with

To the extent section 524(g)(2)(B)(i)(II) may contain a "ongoing business" requirement, the Plan satisfies it. Here, both Debtors have ongoing business operations. HPCI owns the Permanente Property, a more than 3,400 acre property in California that includes a cement plant, rock plant and quarry, which it leases to a non-debtor affiliate, Lehigh Southwest. (McChensey Decl. ¶ 10.) Lehigh Southwest pays rent, royalties and other payments to HPCI, and Lehigh Southwest is responsible for ongoing operating costs on that property, HPCI remains responsible for capital expenditures and reclamation operations related to the property. (Id.) HPCI also owns equity in operating subsidiaries that distribute and sell cement in the Pacific region. (Id. ¶ 9.) The Permanente Property and these equity interests will vest in Reorganized HPCI, which will continue to manage these assets. (Plan § IV.A.) As set forth in the Plan Projections, HPCI's net cash flows will exceed $6.5 million in 2020 and $2.6 million in 2021. (Plan Projections; Bittner Decl. ¶ 30.)

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section 524(g)(2)(B)(i)(II) of the Bankruptcy Code and confirming plan).

This Court has done so as well, albeit, in an uncontested confirmation hearing. See In re Garlock Sealing Techs. LLC, No. 3:17-CV-00275-GCM, 2017 WL 2539412, at *20 (W.D.N.C. June 12, 2017) (confirming plan where the trust was to be funded, in part, by deferred contributions in the amount of $60 million which was to be paid by a reorganized debtor no later than the first anniversary of the plan's effective date and cash contributions totaling $400 million (citing Plan §§ 7.3.2 and 7.8(1); Plan Ex. H, I, and J)). We need not address this issue. For not only is the Note a small part of the total funding, but the parties with an interest in the Trust (asbestos personal injury claimants, the ACC, the FCR and the Debtors) support the Plan. Truck has objected but has no interest in the Trust and thus no standing to make this argument.

Additionally, non-debtor Lehigh Cement Company LLC will transfer its interests in the Real Properties, together with its rights under certain leases related to the Real Properties, to Kaiser Gypsum. (McChensey Decl. ¶ 11; Plan § IV.C.) The leases related to the Real Properties are expected to generate net cash flows for Kaiser Gypsum of approximately $68,000 in 2020 and $93,000 in 2021, as set forth in the Plan Projections. (Plan Projections; Bittner Decl. ¶ 30.)

c. ***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). The Plan satisfies this requirement. The Plan provides that, upon the Effective Date, the Asbestos Personal Injury Trust will receive a Payment Note in the principal amount of $1 million secured by a Pledge of 100% of the equity in the Reorganized Debtors. (Plan §§ IV.K.2.b, I.A.98, I.A.104.) If the Reorganized Debtors fail to pay the Payment Note in full on or before the fifth anniversary of the Effective Date, the Asbestos Personal Injury Trust can foreclose on the Pledge of the Reorganized Debtors' equity and become the 100% owner of the Reorganized Debtors. (Id.) This structure also complies with the language of section 524(g)(2)(B)(i)(III).[16]

d. ***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 Personal Injury Trust will assume all liability and responsibility for all Asbestos Personal

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[16] See supra note 15.

Injury Claims (Plan § IV.K.3.) and will use its assets, which will include the Debtors' assigned asbestos insurance rights, to resolve Asbestos Personal Injury Claims and Demands in accordance with the Plan, the Asbestos Personal Injury Trust Distribution Procedures and the Confirmation Order (Plan § IV.F.), thus satisfying the requirements of section 524(g)(2)(B)(i)(IV).

e. ***The Debtors are Entitled to a Discharge.*** The Debtors are entitled to a discharge under section 1141 of the Bankruptcy Code. Pursuant to section 1141(d)(3) of the Bankruptcy Code: "The confirmation of a plan does not discharge a debtor if—(A) the plan provides for the liquidation of all or substantially all of the property of the 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). None of these factors is present here.

First, the Plan does not provide for the liquidation of all or substantially all of the property of the estate. The Debtors are transferring certain of their rights under insurance policies to the Asbestos Personal Injury Trust but HPCI is retaining its other assets and Kaiser Gypsum is acquiring additional assets. As described above, the Permanente Property will vest in Reorganized HPCI, and HPCI will also retain its equity interest in its subsidiaries. Reorganized Kaiser Gypsum will become the owner of the Real Properties. These assets, and the income that the Reorganized Debtors will obtain from them, is projected to be significant. Additionally, as explained above, the Reorganized Debtors will engage in business following confirmation of the Plan. Notwithstanding the foregoing,

no release or discharge of any of the Parties or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, shall diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

2. The Asbestos Personal Injury Trust Satisfies the Requirements of Section 524(g)(2)(B)(ii) of the Bankruptcy Code.

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, the Debtors' history, the nature of asbestos-related litigation and the facts of these Reorganization Cases all support the findings required for the issuance of the Asbestos Permanent Channeling Injunction under section 524(g)(1)(A) of the Bankruptcy Code.

a. ***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).

Here, the Debtors' asbestos-related liabilities arise from their manufacture and sale of certain products that contained asbestos. (McChesney Decl. ¶ 12.) Since 1978, one or both of the Debtors have been named in more than 38,000 asbestos-related lawsuits.

(Id. ¶ 14) As of August 31, 2016, the Debtors were defendants in approximately 14,000 pending asbestos-related bodily injury lawsuits pending in courts across the country. (Id.)

Based on the substantial number of asbestos-related personal injury lawsuits that were filed in the past and were continuing to be filed prior to the Petition Date, the Debtors would likely be subject to substantial future Demands for payment arising from the same or similar conduct or events that gave rise to the Asbestos Personal Injury Claims. (Id. ¶ 43; Fitzpatrick Decl. ¶ 36.) Accordingly, section 524(g)(2)(B)(ii)(I) is satisfied.

b. ***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). The Debtors are unable to predict with any degree of confidence the amounts, numbers and timing of future Demands in respect of alleged asbestos-related personal injuries. (McChesney Decl. ¶ 43.) Accordingly, section 524(g)(2)(B)(ii)(II) is satisfied.

c. ***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, all asbestos claimants, current and future, will receive equitable treatment in accordance with the Asbestos Trust Distribution Procedures. Without the Plan, there is a risk that present claimants will be treated more favorably than future claimants because the potential for uninsured judgments, including punitive damages, could leave the Debtors without sufficient assets to make equivalent

payments to future claimants. (McChesney Decl. ¶ 44; Fitzpatrick Decl. ¶ 37.) Thus, the requirements of section 524(g)(2)(B)(ii)(III) are met.

d. ***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 these cases, the Debtors included the terms of the Asbestos Permanent Channeling Injunction, including provisions therein barring actions against any Protected Party, in both the Plan and the Disclosure Statement. (Plan § IX.B.2; Disclosure Statement § VII.Q.2.) The Debtors also designated Class 4 under the Plan for all Asbestos Personal Injury Claims. (Plan §§ III.B; Disclosure Statement § VII.Q.2.) The voting Claim holders in Class 4 unanimously accepted the Plan. (Voting Agent Decl. ¶ 10.)

e. ***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 Personal Injury Trust will pay Asbestos Personal Injury Claims in accordance with the Asbestos Personal Injury Trust Distribution Procedures set forth in Exhibit I.A.19 to the Plan, which contain mechanisms that provide reasonable assurance that the Asbestos Personal Injury Trust will value, and be in a financial position to pay, present Asbestos Personal Injury Claims and future asbestos-related Demands that involve similar claims in substantially the same manner. (Fitzpatrick Decl. ¶ 41.)

Specifically, the Asbestos Personal Injury Trust Distribution Procedures provide for the processing and payment of the uninsured portions of Insured Asbestos Claims and the Uninsured Asbestos Claims that would have been paid by the Debtors prepetition, on an impartial, first-in-first-out basis. To ensure substantially equivalent treatment of all present and future Asbestos Personal Injury Claims, the Asbestos Personal Injury Trustee will be required to determine, with the consent of the Trust Advisory Committee and the FCR, the percentage of value that holders of present and future Asbestos Personal Injury Claims are likely to receive from the Asbestos Personal Injury Trust (the "Payment Percentage"). This determination will take account of estimates of payments related to Uninsured Amounts, the value of the Asbestos Personal Injury Trust Assets, and projected expenses. Further, at least once every three years, the Asbestos Personal Injury Trustee will be required to reconsider the then-applicable Payment Percentage based on current information. In determining

whether to adjust the Payment Percentage, the Asbestos Personal Injury Trustee is obligated to assess the liability forecast on which the Payment Percentage is based against the claims filed and the Asbestos Personal Injury Trust's corresponding payment history. Each Distribution made to an asbestos claimant will reflect the Payment Percentage in effect at the time of such Distribution. To further ensure equitable treatment of similarly-situated claims, in the event the Asbestos Personal Injury Trustee determines it appropriate to increase the Payment Percentage, the Asbestos Personal Injury 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.

Accordingly, the Asbestos Personal Injury Trust Distribution Procedures provide reasonable assurance that the Asbestos Personal Injury 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. As a result, the Plan and the Asbestos Personal Injury Trust Distribution Procedures contemplated therein satisfy the requirements of section 524(g)(2)(B)(ii)(V).

3. The Extension of the Asbestos Permanent Channeling Injunction to Third Parties Is Appropriate.

Sections 524(g)(3)(A) and 524(g)(4)(A)(ii) of the Bankruptcy Code designate certain entities that are protected by a channeling injunction entered pursuant to section 524(g)(1)(A). Specifically, section 524(g)(3)(A) provides that

> (ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect

> transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and
>
> (iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason.

11 U.S.C. § 524(g)(3)(A)(ii)-(iii). Consistent with that section, the Plan contemplates that the Asbestos Permanent Channeling Injunction will be extended to protect the following:

> Entities that, pursuant to the Plan or on or after the Effective Date, become a direct or indirect transferee of, or successor to, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent that liability is asserted to exist by reason of such Entity becoming such a transferee or successor [Plan § I.A.109.h.]; and
>
> Entities that, pursuant to the Plan or on or after the Effective Date, make a loan to any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust or to a successor to, or transferee of, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent that liability

> is asserted to exist by reason of it becoming such a lender[.] [id. § I.A.109.i.].

In addition to the entities protected by virtue of section 524(g)(3)(A), section 524(g)(4)(A)(ii) provides that a channeling injunction entered pursuant to section 524(g)(1)(A):

> 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—
>
> (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). As required by section 524(g)(4)(A)(ii), each Protected Party under the Plan is either identifiable from the terms of the injunction or is a member of an identifiable group. (Plan § I.A.109.) 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. (Id.) Each Protected Party under the Plan therefore falls within the groups designated in sections 524(g)(3)(A) and 524(g)(4)(A)(ii) as third parties to whom a channeling injunction may be extended. Accordingly, the Court may extend the Asbestos Permanent Channeling Injunction to protect all Protected Parties from liability for any Asbestos Personal Injury Claims.

4. The Rights of Persons That Might Subsequently Assert an Asbestos Personal Injury Claim That Is a Demand Addressed by the Asbestos Permanent Channeling Injunction and Transferred to the Asbestos Personal Injury Trust Were Represented by the Future Claimants' Representative.

In accordance with section 524(g)(4)(B)(i) of the Bankruptcy Code, 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 any Debtor an Asbestos Personal Injury Claim that is a Demand addressed in the

Asbestos Permanent Channeling Injunction and transferred to the Asbestos Personal Injury Trust. Accordingly, the Debtors have met the requirements of section 524(g)(4)(B)(i) of the Bankruptcy Code.

5. Entry of the Asbestos Permanent Channeling Injunction Is Fair and Equitable with Respect to Future Asbestos Claimants.

Section 524(g)(4)(B)(ii) of the Bankruptcy Code 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).

On the Effective Date: (a) the Reorganized Debtors and/or Lehigh Hanson on behalf of and as a contribution to such Reorganized Debtors will pay an aggregate of $49 million in cash to the Asbestos Personal Injury Trust; (b) the Reorganized Debtors, as co-obligors, shall issue the Payment Note to the Asbestos Personal Injury Trust; (c) the Reorganized Debtors shall transfer the Phase 1 Claims to the Asbestos Personal Injury Trust, free and clear of any liens, claims or encumbrances, including any rights of setoff based on any liability of the Debtors;[17] and (d) the

[17] The Debtors or the Reorganized Debtors shall pay all Debtor Appellate Costs. The Asbestos Personal Injury Trust shall pay all Asbestos Personal Injury Trust Appellate Costs. If the Asbestos Personal Injury Trust ultimately obtains any recovery with respect to Phase 1 Claims, whether as a result of settlement or

Reorganized Debtors shall transfer the Asbestos Personal Injury Insurance Assets to the Asbestos Personal Injury Trust. (Plan § IV.K.2.)

In addition, notwithstanding any other provisions of the Plan, no release or discharge of any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, shall diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset. (Plan IV.R.3.c).

Further, under the Plan, holders of Insured Asbestos Claims may initiate, continue and/or prosecute suit against the Reorganized Debtors in the tort system to obtain the benefit of insurance coverage under the Asbestos Insurance Policies, unless and until the Asbestos Personal Injury Trust, with the consent of the TAC and the FCR, has settled (other than pursuant to the Excess CIP Agreement) all rights to coverage for Asbestos Personal Injury Claims applicable to the Asbestos Personal Injury Claim of a particular holder.[18] In the event that a holder of an Insured

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judgment that exceeds $12 million, the Asbestos Personal Injury Trust shall remit to the Debtors or the Reorganized Debtors any amounts remaining, in excess of $12 million, after the Asbestos Personal Injury Trust Appellate Costs have been deducted from the full recovery amount. (Plan § IV.K.2.c.)

[18] In the event such a settlement occurs, such holder of an Insured Asbestos Claim shall pursue payment of its Asbestos Personal Injury Claim from the Asbestos Personal Injury Trust in

Asbestos Claim commences such an action, the complaint may name the applicable Reorganized Debtor(s) as a defendant(s) and shall be deemed by operation of law to be an action against the applicable Reorganized Debtor(s). Notwithstanding the foregoing, the Reorganized Debtors shall have no obligation to answer, appear or otherwise participate in the action in any respect other than as set forth in the Plan and as may be necessary to maintain coverage under the Asbestos Insurance Policies, and any judgment that may be obtained in the action cannot be enforced against the assets of the Reorganized Debtors, other than from the Asbestos Insurance Policies. (Plan IV.O.1).

In light of the substantial contributions made to the Asbestos Personal Injury Trust on behalf of all Protected Parties, entry of the Asbestos Permanent Channeling Injunction, and the naming of the Protected Parties therein, is fair and equitable with respect to persons that might subsequently assert future asbestos-related Demands. Accordingly, the Debtors have satisfied the requirements of section 524(g)(4)(B)(ii).

I. COMPREHENSIVE SETTLEMENT OF CLAIMS AND CONTROVERSIES.

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 the Plan, including the settlement of certain estate claims set forth in Section IV.R.2 and the releases set forth in Section IV.R.3, constitute a good-faith compromise and settlement of

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accordance with the Asbestos Personal Injury Trust Distribution Procedures.

all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Asbestos Personal Injury Claim or Interest or any Distribution to be made pursuant to the Plan on account of any Allowed Claim, Asbestos Personal Injury Claim or Interest.

J. SATISFACTION OF CONDITIONS TO CONFIRMATION.

1. Section VIII.A of the Plan contains conditions precedent to Confirmation that must be satisfied or duly waived pursuant to Section VIII.C of the Plan. The conditions precedent set forth in Sections VIII.A.1 through VIII.A.5 of the Plan have been satisfied.

2. Concerning the establishment of the Asbestos Personal Injury Trust and issuance of the Asbestos Permanent Channeling Injunction, the Court specifically finds:

a. The Asbestos Permanent Channeling Injunction is to be implemented in connection with the Plan and the Asbestos Personal Injury Trust.

b. The Asbestos Personal Injury Trust, as of the Effective Date, shall assume all liability and responsibility, financial and otherwise, for all Asbestos Personal Injury Claims, and, upon such assumption, no Protected Party shall have any liability or responsibility, financial or otherwise, therefor. Provided, however, the Plan provides that holders of Insured Asbestos Claims may initiate, continue and/or prosecute suits against the Reorganized Debtors in the tort system to obtain the benefit of insurance coverage under the Asbestos Insurance Policies, unless and until the Asbestos Personal Injury Trust, with the consent of the TAC and the FCR, has settled (other than pursuant to the Excess CIP Agreement) all rights to

coverage for Asbestos Personal Injury Claims applicable to the Asbestos Personal Injury Claim of a particular holder, in which event such holder shall pursue payment of its Asbestos Personal Injury Claim from the Asbestos Personal Injury Trust in accordance with the Asbestos Personal Injury Trust Distribution Procedures.

In the event that a holder of an Insured Asbestos Claim commences such an action, the complaint may name the applicable Reorganized Debtor(s) as a defendant(s) and shall be deemed by operation of law to be an action against the applicable Reorganized Debtor(s).

c. Notwithstanding the foregoing, the Reorganized Debtors shall have no obligation to answer, appear or otherwise participate in the action in any respect other than as set forth in the Plan and as may be necessary to maintain coverage under the Asbestos Insurance Policies, and any judgment that may be obtained in the action cannot be enforced against the assets of the Reorganized Debtors, other than from the Asbestos Insurance Policies.

d. As of the Petition Date, each Debtor had been named as a defendant in a personal injury or wrongful death action seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.

e. The Asbestos Personal Injury Trust will be funded in whole or in part by securities of the Reorganized Debtors and by the obligation of such Reorganized Debtors or Debtors to make future payments, which payments may be funded by contributions from Lehigh Hanson to the Reorganized Debtors.

f. The Asbestos Personal Injury Trust, by the exercise of rights granted under the Plan, will be entitled to own, if specified contingencies occur, a majority of the voting shares of each of the Reorganized Debtors.

g. The Asbestos Personal Injury Trust shall use its assets or income to pay Asbestos Personal Injury Claims, including Demands.

h. Each of the Debtors 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 Asbestos Permanent Channeling Injunction.

i. The actual amounts, numbers and timing of such future Demands cannot be determined.

j. Pursuit of such Demands outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Claims and future Demands.

k. The terms of the Asbestos Permanent Channeling Injunction, including any provisions barring actions against third parties pursuant to section 524(g)(4)(A) of the Bankruptcy Code, are set out in the Plan.

l. The Plan establishes, in Class 4 (Asbestos Personal Injury Claims), a separate class of the claimants whose Claims are to be addressed by the Asbestos Personal Injury Trust.

m. At least two-thirds in amount and 75% in number of those voting Claims in Class 4 (Asbestos Personal Injury Claims) have voted in favor of the Plan.

n. Pursuant to court orders or otherwise, the Asbestos Personal Injury Trust shall 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 Asbestos Personal Injury Claims, that provide reasonable assurance that the Asbestos Personal Injury Trust shall value, and be in a financial position to pay, Asbestos Personal Injury Claims, including Demands, in substantially the same manner.

o. Each Protected Party is identifiable from the terms of the Asbestos Permanent Channeling Injunction by name or as part of an identifiable group, and each Protected Party is or may be alleged to be directly or indirectly liable for the conduct of, Claims against or Demands on a Debtor to the extent that such alleged liability arises by reason of one or more of the following:

i. such Entity's ownership of a financial interest in any Debtor or Reorganized Debtor, or any past or present Affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor;

ii. such Entity's involvement in the management of any Debtor, Reorganized Debtor or predecessor in interest of any Debtor or Reorganized Debtor;

iii. such Entity's service as an officer, director or employee of any Debtor, Reorganized Debtor, any past or present Affiliate of any of Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor or Entity that owns or at any time has owned a financial interest in any Debtor, Reorganized

Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor; or

iv. such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, any predecessor in interest of any Debtor or Reorganized Debtor or of an Entity that owns or at any time has owned a financial interest in any Debtor, Reorganized Debtor, any past or present affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor**,** including (A) involvement in providing financing (debt or equity) or advice to an Entity involved in such a transaction or (B) acquiring or selling financial interest in any Entity as part of such transaction.

p. 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 any Debtor an Asbestos Personal Injury Claim that is a Demand addressed in the Asbestos Permanent Channeling Injunction and transferred to the Asbestos Personal Injury Trust.

q. Identifying each Protected Party (by name or as part of an identifiable group, as applicable) in the Asbestos Permanent Channeling Injunction is fair and equitable with respect to individuals that might subsequently assert Demands against each such Protected Party, in light of the benefits provided,

or to be provided, to the Asbestos Personal Injury Trust by or on behalf of any such Protected Party.

r. The Plan and the Asbestos Personal Injury Trust Documents comply with section 524(g) of the Bankruptcy Code in all respects.

s. The Plan and Exhibits are a fair, equitable and reasonable resolution of the liability of the Debtors for the Asbestos Personal Injury Claims.

t. The FCR has adequately and completely fulfilled his duties, responsibilities and obligations as the representative for the individuals referred to in finding Section I.J.p above in accordance with section 524(g) of the Bankruptcy Code.

u. Adequate and sufficient notice of the Plan and the Confirmation Hearing, as well as all deadlines for objecting to the Plan, has been given to (i) all known creditors and holders of Interests, (ii) parties that requested notice in accordance with Bankruptcy Rule 2002 (including the ACC and the FCR), (iii) all parties to Executory Contracts and Unexpired Leases, (iv) all taxing authorities listed on the Debtors' Schedules or in the Debtors' Claims database, in each case, (v) the Department of the Treasury by service upon the District Director of the IRS, (vi) state attorney generals and state departments of revenue for states in which any of the Debtors have conducted business, and (vii) the Securities and Exchange Commission, (A) in accordance with the solicitation procedures governing such service and (B) in substantial compliance with Bankruptcy Rules 2002(b), 3017 and 3020(b). Such transmittal and service were adequate and sufficient, and no other or further notice is or shall be required.

v. The Debtors' conduct in connection with and throughout these Reorganization Cases, including, but not limited to, their negotiations with the ad hoc committee of asbestos personal injury claimants and the prepetition future claimants' representative, and the commencement of these Reorganization Cases, as well as the drafting, negotiation, proposing, confirmation, and consummation of the Plan, and their opposition to any other plan of reorganization, does not and has not violated any Asbestos Insurer Cooperation Obligations contained in any Asbestos Insurance Policies, nor was such conduct a breach of any express or implied covenant of good faith and fair dealing. The Objecting Excess Insurers' consent to this finding in the particular facts and circumstances of these Reorganization Cases is expressly without prejudice to the rights of any party to contend that such a finding is or is not appropriate in any subsequent bankruptcy case not involving these Debtors. (This provision is referred to herein as the "Plan Finding.")

K. THE PLAN IS INSURANCE NEUTRAL.

The Plan is insurance neutral. Specifically, the Plan's insurance neutrality provision found in section IV.Q expressly preserves all "Insurer Coverage Defenses," which is defined to include "all defenses at law or in equity that any Asbestos Insurer may have under applicable non-bankruptcy law to provide insurance coverage to or for Asbestos Personal Injury Claims" and states that the transfer of insurance rights to the Asbestos Personal Injury Trust "shall not affect the liability of any Asbestos Insurer." (Plan §§ I.A.84, IV.Q.) The Plan also states that "the discharge and release of the Debtors and Reorganized Debtors from all Claims and the injunctive protection

provided to the Debtors, Reorganized Debtors and Protected Parties with respect to Claims as provided herein shall not affect the liability of any Asbestos Insurer." (Id. § IV.Q.) Thus, the Plan neither increases Truck's obligations nor impairs its prepetition contractual rights under the Truck Policies. The Plan simply restores Truck to its position immediately prior to the Petition Date.

Moreover, the Plan expressly provides that the Reorganized Debtors will continue to fulfill their cooperation obligations arising under the Asbestos Insurance Policies, including the Truck Policies. (Plan § IV.L.1 ("The Reorganized Debtors shall have a continuing obligation to satisfy the Assistance and Cooperation, Inspection and Audit, and Notice of Occurrence Provisions set out in the Asbestos Insurance Policies."), IV.L.2 ("Enforcement of Reorganized Debtors' Obligations to Cooperate with Respect to Insurance Matters")). Thus, although the -Asbestos Insurers may not argue that the Debtors' conduct in filing and prosecuting these Reorganization Cases, or in pursuing and consummating the restructuring provided under the Plan, breached the Asbestos Insurer Policies, its rights to pursue coverage defenses to individual Asbestos Personal Injury Claims for any alleged post-Effective Date violations by the Reorganized Debtors remain intact. Put differently, the Plan restores each insurer to the position it was in immediately prior to the Petition Date, with its rights and obligations under the applicable Asbestos Insurer Policies left undisturbed, as if the Debtors' bankruptcy had never occurred. Such treatment does not diminish Truck's rights or increase its burdens under the Truck Policies.

Truck has limited standing to object to the Plan solely on the grounds that the Plan is not insurance neutral, including, within that limited context, that the Debtors are in violation of the Assistance and Cooperation Clause and are therefore not entitled to the Plan Finding. However, because the Plan is insurance neutral and returns Truck to the tort system exactly as it was prepetition, Truck does not have standing to advance confirmation issues such as contentions that: the Plan is collusive and not in good faith; the Debtors are not entitled to a discharge; or the elements of 11 U.S.C. § 524(g) are not met. Nor does Truck obtain standing to object to confirmation because it is also a creditor in this case. Truck is an unsecured creditor, and unsecured creditors are unimpaired under the Plan.

Despite finding and concluding that the Plan is insurance neutral and that Truck lacks standing to object to the Plan on the grounds set forth herein, the Court has considered Truck's objections and, in light of the record before it, alternatively finds and concludes that Truck's objections lack merit and should be overruled in their entirety for the reasons stated herein and in the Bankruptcy Court's oral ruling made on the record at the hearing held August 13, 2020.[19]

1. Truck Has No Interest in the Asbestos Personal Injury Trust.

Truck objects to the Plan on the basis that the Asbestos Personal Injury Trust does not comply with the

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[19] The Bankruptcy Court permitted Truck to fully participate in the confirmation process, including participating in pre-hearing discovery, filing pre-hearing briefs, and in presenting argument and evidence at the Confirmation Hearing.

structure and funding requirements of section 524(g) of the Bankruptcy Code. Truck, however, will not be entitled to any Distributions from the Asbestos Personal Injury Trust, nor do the terms of the trust have an effect on the Truck's obligations under the Asbestos Insurance Policies.[20] Due to the absence of any injury to its interests, Truck lacks standing to argue that the Asbestos Personal Injury Trust fails to satisfy the requirements of section 524(g) of the Bankruptcy Code.

2. Even If it Had Standing, Truck's Arguments about the Plan's Treatment of Its Breach Claim Are Overruled.

Truck contends that the Plan violates the Assistance and Cooperation Clause[21] in its policies (as well as an implied covenant of good faith and fair dealing), resulting in the loss of coverage under the Truck Policies. As such, Truck objects to the Plan Finding.

Addressing first this Court's jurisdiction, because the Plan Finding deals with core matters, it can be made by this Court. It is undisputed that the Debtors had insurance coverage as of the Petition Date. Accordingly, the finding is a bankruptcy matter arising in Title 11 because it would have no existence outside of bankruptcy. The actions that Truck contends violate the Truck Policies and relieve it of its obligations under those policies all relate to whether the Plan

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[20] In the event the Asbestos Personal Injury Trust and Truck reach a post-Confirmation agreement, the agreement is subject to Section IV.M.3.a of the Plan and notice to the Objecting Excess Asbestos Insurers and approval by the Bankruptcy Court. (Plan § I.A.120.)

[21] Defined below.

should have been confirmed, the legality of its provisions, the good faith of the Plan Proponents, and the conduct of the parties during the Reorganization Cases case. Those are all core bankruptcy matters. Travelers Cas. and Sur. Co. v. Skinner Engine Co., Inc. (In re Am. Capital Equip., LLC), 325 B.R. 372, 377-78 (W.D. Pa. 2005).

These issues do not need to be decided in the adversary proceeding Truck filed in the District Court. The Truck adversary is effectively a bankruptcy confirmation objection. But it relates to core matters, meaning those issues do not need to be decided in the Truck adversary. In any case, resolving the merits of Truck's contention do not implicate any jury trial right. There is no disputed issue of fact.

That the finding addresses a state law contract is of no moment. Core proceedings often deal with state-law rights, and contract rights, in particular. Any bankruptcy plan deals with contract rights, and often modifies them. And in this case, this adjudication of these rights would not exist outside of a bankruptcy environment, so they are core.

Truck's contention that the Plan impairs its contract rights is based on a false premise: the notion that its contract gives it the right to collaterally attack elsewhere a confirmation ruling and make determinations of the propriety of the parties' conduct in the course of this case. Such rights never existed under the Truck Policies, and to the extent they did, they would be preempted by the Bankruptcy Code. See, e.g., In re Federal-Mogul Glob. Inc., 684 F.3d 355, 382 (3d Cir. 2012).

Finally, the Plan does not violate the Truck policy. Truck is an insurer who contracted to defend the

Debtors' asbestos claims in the state and federal court system, and Truck is being sent back to defend these claims in the court system. This does not violate the Truck policies. Nor does the Assistance and Cooperation Clause in the Truck Policies require the Debtors to take strategic direction from their insurer in bankruptcy. Admiral Ins. Co. v. Grace Indus., Inc., 409 B.R. 275, 283 (E.D.N.Y. 2009) ("[T]he cooperation clause only required Grace to assist in the ultimate disposition of the actual claims, not to take on a partner to make litigation decisions solely regarding Grace's own bankruptcy reorganization."). Here, that the Plan did not contain features that Truck would have preferred does not violate the terms of the Truck Policies.

L. TRUCK'S COURSE OF CONDUCT BEFORE THE BANKRUPTCY COURT.

Truck raised its confirmation objection with the Bankruptcy Court before refiling it as the Complaint (as defined below), including in its First Amended Disclosure Statement for the First Amended Truck Plan [D.I. 1204 at 2] and in a confirmation objection filed on November 6, 2018 [Conf. Exhibit 95 at 19-20]. Truck later sent a "reservation of rights" letter to the Debtors' counsel, dated April 3, 2019, asserting that the Debtors had, solely as a result of their efforts in furtherance of the Reorganization Cases, breached the "Assistance and Cooperation Clause" in the Truck Policies and threatening to deny coverage if the Debtors did not capitulate and either support Truck's competing plan or revise the Plan to benefit Truck. [Conf. Exhibit 62]. Truck raised its objection again on June 6, 2019, as a supplemental objection to a prior version of the Plan and Disclosure Statement [D.I. 1682], arguing that the Debtors must file an adversary proceeding to resolve the dispute. Then, approximately

ten months after first raising its objection and on the eve of the Bankruptcy Court's September 4, 2019 ruling on Truck's and the Debtors' competing disclosure statements, Truck filed its Complaint for Declaratory Relief [Adv. Proc. 19-3052, D.I. 1] (the "Complaint"),[22] alleging that its confirmation objection was a state-law insurance dispute that was non-core and must be tried before a jury in the District Court. Truck then filed its Motion to Withdraw the Reference of Adversary Proceeding to the Bankruptcy Court [Civ. No. 19-0467-GCM, D.I. 1] and its brief in support [Civ. No. 19-0467-GCM, D.I. 1-1] ("Truck's Adversary Brief").[23] The District Court stayed the matter until the Bankruptcy Court ruled on the Plan. Order [Civ. No. 19-0467-GCM, D.I. 3].

Contrary to Truck's assertions,[24] the Complaint is not an insurance coverage action that happened to take place at the same time as the Reorganization Cases. It is a declaratory judgment action filed by the Debtors' primary general liability insurer seeking to

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[22] The Complaint requests declaratory judgments that the Debtors breached their duty of assistance and cooperation, as well as the implied covenants of good faith and fair dealing, under the Truck Policies and that, as a consequence, Truck is relieved of its contractual obligations under the policies. The Complaint also requests a declaratory judgment that the Debtors are not entitled to the Plan Finding.

[23] Truck incorporated its Adversary Brief into the terms of its Objection. Objection [D.I. 2070] at 25.

[24] Truck asserts that it never raised the allegations in its Complaint as a confirmation objection. As the Bankruptcy Court found, however, Truck inserted its coverage-based arguments into the confirmation process. Bankr. Hrg Tr. 25:10-15 ("This was a variety of threats being made to block confirmation or to avoid coverage until [Truck] got what it wants in the confirmation process.").

avoid any and all liability for Insured Asbestos Personal Injury Claims under the Truck Policies (the primary asset of the Debtors' estates), based solely on the Debtors' actions in support of the Reorganization Cases and confirmation of the Plan. See, e.g., In re Am. Capital Equip., 325 B.R. at 377-78 ("Travelers itself has framed the issues in its declaratory judgment complaint such that the claims and rights that it asserts could arise only in the context of this bankruptcy case and would not exist independent of the bankruptcy environment. As such, we find that the adversary proceeding is core."). The Plan Finding is a necessary part of the confirmation process given that the right to receive the proceeds of the Truck Policies comprises the majority of the ultimate value of the Asbestos Personal Injury Trust Assets. See id. Because of this, Confirmation of the Plan must include a ruling that Truck cannot use the Reorganization Cases and actions taken in furtherance of such cases as a defense to coverage after the Plan is confirmed or to collaterally attack the Confirmation Order with another court.

The record clearly shows that Truck's Complaint, its Objection and the Plan Finding are each inextricably intertwined with both each other and the Plan confirmation process, including findings and conclusions the Court must make regarding whether the Plan and the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code under section 1129(a)(1) and (2); whether the Plan has an adequate means of implementation and was proposed in good faith and not by any means forbidden by law under sections 1123(a)(5) and 1129(a)(3); whether the Plan is feasible under section 1129(a)(11); and whether the Plan meets the requirements of section 524(g). These are all statutory-based confirmation matters that fall

within the jurisdiction of this Court under 28 U.S.C. § 1334 and that must be raised in the context of the Reorganization Cases. See, e.g., Special Metals Corp., 317 B.R. at 330-331 (debtors' confirmed plan was res judicata upon liability of insurers and precluded insurers from asserting that they had been relieved of their contractual obligations under policies). That the Plan Finding addresses a matter of state law is of no moment. See 28 U.S.C. § 157(b)(3) ("A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.")

II. CONCLUSIONS OF LAW.

A. JURISDICTION AND VENUE.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. The Debtors were and are qualified to be debtors under section 109 of the Bankruptcy Code. Venue of the Reorganization Cases is proper under 28 U.S.C. §§ 1408 and continues to be proper.

B. APART FROM ISSUES RELATED TO INSURANCE NEUTRALITY, TRUCK LACKS STANDING TO OBJECT TO THE PLAN.

While there is no requirement that a section 524(g) plan be insurance neutral, because the Plan is insurance neutral (see Section I.K. above), Truck lacks standing to object to Confirmation of the Plan. See, e.g., In re Pittsburgh Corning Corp., 417 B.R. 289, 317 (Bankr. W.D. Pa. 2006) (finding plan insurance neutral and, therefore, insurers had no standing to object to confirmation); In re Combustion Eng'g, Inc., 391 F.3d at 218, as amended (Feb. 23, 2005) (holding that insurers lacked standing insofar as the

plan did not affect their rights); Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp., 518 B.R. 307, 329 (W.D. Pa. 2014) (concluding that the insurer's "arguments that it has standing are without merit" because "[t]he plan did not dramatically increase the 'quantum of liability,' harm . . . [insurer's] contractual rights, or increase its administrative burdens"); J T Thorpe Co., No. 02-41487-H5-11, 2003 WL 23354129, at *1 (Bankr. S.D. Tex. Jan. 30, 2003) (noting that the district court had affirmed the bankruptcy court's prior ruling sustaining the debtors' objection to insurers' standing to object to the disclosure statement and the plan); In re Fuller-Austin Insulation, No. 98-2038-JJF, 1998 WL 812388, at *1 (D. Del. Nov. 10, 1998) (holding that insurers lacked standing to object to both the approval of the disclosure statement and the plan itself because the plan preserved insurers' rights in coverage litigation).[25]

Even absent insurance neutrality, Truck lacks standing to object to the structure and funding of the Asbestos Personal Injury Trust because Truck has no interest in the trust and the trust will have no effect on its legal or pecuniary interests (see Section I.K. above).[26] In objecting to the Plan on this basis, Truck

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[25] Truck holds a General Unsecured Claim against the Estates; however, that Claim will be paid in full under the Plan. Plan § III.B.3. Truck is not raising its objection as the holder of an unimpaired Claim, but as an insurer that is not satisfied with the outcome of the Reorganization Cases, despite the fact that the Plan is insurance neutral. But a debtor is not required to take on a partner in its bankruptcy case or to make litigation decisions for the benefit of insurers. See Bankr. Hr'g Tr. (8/13/2020) at 18:12-19:1.

[26] Courts consider standing on claim-by-claim basis. See Friends of the Earth, Inc. v. Laidlaw Envtl. Servo (TOC), Inc.,

is impermissibly asserting the rights of third-party asbestos claimants. See Combustion Eng'g, Inc, 391 F.3d at 248 ("While . . . [insurers] argue that § 524(g)(2)(B)(i)(II) is not satisfied, they do not have standing to raise this matter."); In re A.P.I., Inc., 331 B.R. 828, 867 (Bankr. D. Minn. 2005) ("[T]he insurers cannot be heard in objection to the plan on its conformity with either § 524(g)(2)(B)(i)(II) or (i)(III)."), aff'd sub nom. OneBeacon Am. Ins. Co. v. A.P.I., Inc., 2006 WL 1473004 (D. Minn. May 25, 2006).

C. ENTRY OF THE PLAN FINDING IS PROPER.

1. Truck Has Received All Necessary Procedural Protections.

Truck argues that Bankruptcy Rule 7001(2) requires that any ruling regarding its Complaint, Objection and the Plan Finding be made in the context of an adversary proceeding, not a contested confirmation hearing. Truck Adversary Brief [Adv. Proc. 19-3052, D.I. 5-1] at 2 (citing FED. R. BANKR. P. 7001(2) ("The following are adversary proceedings: . . . a proceeding to determine the validity, priority, or extent of a lien or other interest in property . . . ."). Bankruptcy Rule 7001(2) does not require this result. Neither Truck's Complaint nor Objection (a) challenges the Debtors' ownership of the Truck Policies, (b) alleges that Truck

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528 U.S. 167, 185 (2000) (standing is determined on an ad hoc basis, and party "must demonstrate standing separately for each form of relief sought"); accord Rosen v. Tenn. Comm'r of Fin. & Admin., 288 F.3d 918, 928 (6th Cir. 2002) ("It is black-letter law that standing is a claim-by-claim issue."); Sentinel Trust Co. v. Newcare Health Corp. (In re Newcare Health Corp.), 244 B.R. 167, 172 (BAP 1st Cir. 2000) ("In bankruptcy, a party may have standing for some matters and not for others.") (citing In re Tascosa Petroleum Corp., 196 B.R. 856 (D. Kan. 1996)).

holds a competing interest in the Truck Policies or (c) argues that Truck is entitled to the proceeds of the Truck Policies. To the contrary, Truck alleges that the Debtors' conduct in furtherance of the Reorganization Cases breached the Truck Policies. These breach of contract claims do not require the Court to determine the validity, priority or extent of a lien or other interest in property. See, e.g., U.S. Brass Corp., 110 F.3d 1216, 1268 (7th Cir. 1997) ("The issue in these cases is the scope of the insurance policies, an issue of contractual interpretation, not their ownership.").

Because an adversary proceeding is not required, Truck's Complaint and Objection were properly considered in connection with the Confirmation Hearing. See Ralls v. Decktor Pet Ctrs, Inc., 177 B.R. 420, 428 (D. Mass. 1995) ("Matters not listed in Rule 7001 proceed via a 'contested matter' hearing."); In re Aegis Mortg. Corp., Adv. No. 08-50237, 2008 WL 2150120, at *7 (Bankr. D. Del. May 22, 2008) ("Scott cannot seek to enforce this claim for money damages through an adversary proceeding because the relief he seeks is not of a type enumerated in Rule 7001."); see also In re Duncan, 448 F.3d 725, 727 n.1 (4th Cir. 2006) (describing an adversary proceeding as an action brought "for one or more of the reasons specified in Bankruptcy Rule 7001.").

Moreover, the fundamental components of due process are the right to be heard after notice that is reasonably calculated under the circumstances to apprise a party of the pendency of a matter and adequate to afford that party of an opportunity to object. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). The contested Confirmation Hearing before the Bankruptcy Court, coupled with this Court's *de novo* review process, satisfies these requirements.

The record shows that Truck received notice and an opportunity to be heard, filed written objections to the Plan that mirrored those contained in the Complaint,[27] participated in approximately six months of confirmation-related discovery that included matters surrounding the Debtors' alleged breach of the Truck Policies and presented evidence and argument at the Confirmation Hearing. See, e.g., Objection [D.I. 2070, supporting exhibits at D.I. 2072]; Conf. Exhibits 6-12 (Truck's responses and objections to discovery requests), 29-36 (the Debtors and Truck's joint exhibits), 37-74 (Truck's exhibits admitted into evidence), 55-61 (responses and objections to Truck's discovery requests); see generally Bankr. Hr'g Trans. August 13, 2020.[28]

The record clearly reflects that Truck has received all procedural protections necessary to permit this Court or the Bankruptcy Court to dispose of Truck's Complaint and Objection in the context of Plan confirmation upon *de novo* review of the Bankruptcy proposed findings of fact and conclusions of law. Truck's alleged right to a jury trial does not change this analysis. See, e.g., Barber v. Kimbrell's, Inc., 577 F.2d 216,

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[27] Truck's Objection incorporates and repeats the same arguments it made in support of its motion to withdraw the reference regarding its Complaint. Obj. at 25.

[28] Bankruptcy Rule 9014, which governs contested matters, requires that the fundamental requisites of due process be satisfied in the same manner as in an adversary proceeding. See FED. R. BANKR. P. 9014(b) ("The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004[.]"). Bankruptcy Rule 9014 also incorporates a significant portion of the rules governing adversary proceedings. Id. Rule 9014(c), (d).

221 n.12 (4th Cir. 1978) ("[W]here summary judgment is properly granted, no Seventh Amendment issue arises."); Smith v. Kitchen, 156 F.3d 1025, 1029 (10th Cir. 1997) (holding that when a plaintiff fails to plead sufficient facts to overcome a motion to dismiss, there are "no facts to be 'tried' by a jury").

2. As a Matter of Law, the Debtors' Acts and/or Omissions Leading Up to and During the Reorganization Cases Did Not Breach the Assistance and Cooperation Clause or Any Other Express Provision of the Truck Policies.

Truck's relationship to the Debtors is governed solely by contract. Aerojet-General Corp. v. Transport Indemn. Co., 17 Cal. 4th 38, 76 (1997).[29] "[I]nterpretation of an insurance policy is a question of law." Waller v. Truck Ins. Exch., 11 Cal. 4th 1, 18 (1995); Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1264 (1992) (despite special features, ordinary rules of contract interpretation apply to insurance contracts). Where possible, the Court infers the parties' intent solely from the written provisions of the insurance policy. AIU Ins. Co. v. Superior Court, 51 Cal. 3d 807, 822 (1990); see Bank of the West, 2 Cal. 4th at 1264

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[29] The parties agree that as applied to coverage for Asbestos Personal Injury Claims, California law governs interpretation of the Truck Policies. See, e.g., D.I. 2438 (Court order submitted by agreement of the parties applying California law to policy dispute); D.I. 2328 at 7 (Truck conceding California law applies to application of statute of limitations under Debtors' insurance policy claims); D.I. 5-1 (Adv. Pro. Case 19-03052) at 12 (Truck stating its policy rights are controlled by California law).

(where policy language "is clear and explicit, it governs").

Truck contends that, upon Confirmation, the Debtors' actions in furtherance of their Reorganization Cases will constitute a breach of the Assistance and Cooperation Clause in the Truck Policies. See, e.g., Conf. Exhibit 95, Objection to Motion for Approval of Debtors' Disclosure Statement at 19-20; Conf. Exhibit 62, April 3 Reservation of Rights Letter; Complaint ¶¶ 16-17, 64-68, Prayer ¶¶ (a)-(b); Hoyt Dep. at 74:4-75:25.[30] That provision, in its entirety, provides as follows:

> **8. ASSISTANCE AND COOPERATION OF THE INSURED**
>
> The insured shall cooperate with the Company [Truck], and upon the Company's request, shall attend hearings and trials and shall assist in affecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as

[30] Although Truck's Objection alleges that these breaches already have occurred (see generally, D.I. 2070) Truck's Rule 30(b)(6) corporate witness, Scott Hoyt, clarified that the Debtors' breach of their policy obligations only will occur at the time a plan is confirmed without fraud protection mechanisms like those imposed in In re Garlock Sealing Techs., LLC, 504 B.R. 71 (Bankr. W.D.N.C. 2014) ("Garlock"). See Hoyt Dep. at 28:6-29:7; 177:16-180:11; 192:13-195:6.

> shall be imperative at the time of the occurrence.

Conf. Exhibit 30, 1974 Truck Policy at TRK 0000586 (the "Assistance and Cooperation Clause").[31]

This Court has jurisdiction to apply well-settled rules of insurance policy interpretation to evaluate the Assistance and Cooperation Clause and to determine whether and how they apply to the Debtors' conduct in these bankruptcy proceedings. See E.M.M.I. Inc. v. Zurich Am. Ins. Co., 32 Cal. 4th 465, 470 (2004) ("The proper question is whether the [provision or] word is ambiguous in the context of this policy and the circumstances of this case"). Although Truck argues that this involves "an inherently factual finding" or will result in a "novel legal ruling on state law insurance policy coverage issues" (D.I. 2359 at 11), Truck admits that that "[t]he relevant part of the Assistance and Cooperation provision of the Truck policies is straightforward" and that Truck "seeks only to hold the Debtors to their *enumerated* policy obligations." D.I. 2359 at 11, 13 (emphasis added). This Court can determine the Debtors' obligations under the Assistance and Cooperation Clause as a matter of contractual interpretation "solely from the written provisions of the insurance policy." AIU Ins. Co., 51 Cal. 3d at 822; Bank of the West, 2 Cal. 4th at 1264; see Bankr. Hr'g Tr. at 25:23-25 Conf. Exhibit 7, Truck's Responses and Objections to Debtors' First Set of Requests for Production ("The meaning of the [Assistance and Cooperation] Clause is set by its text and by relevant case law. The interpretation of the

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[31] The Assistance and Cooperation Clause is included within Asbestos Insurer Cooperation Obligations as that term is defined in the Plan.

[Assistance and Cooperation] Clause is a legal question for the Court on which no discovery is required or appropriate.").

Truck asks the Court to construe the term "cooperate" to require Debtors to undertake, in their own bankruptcy proceedings, to secure certain disclosures that Truck claims are necessary to prevent alleged or assumed fraud. Such an interpretation offends well-settled rules of insurance policy interpretation.

First, the specific examples of things that the Debtors are obligated to do under the Assistance and Cooperation Clause establish that assistance and cooperation must be provided, when requested by Truck, in connection with Truck's defense efforts in individual suits (i.e., attending hearings and trials, affecting settlements, securing and giving evidence, obtaining the attendance of witnesses and "in the conduct of suits"). A plain reading of the Truck Policies evidences that the parties, at the time of contracting, intended the Assistance and Cooperation Clause to apply to the enumerated activities, as well as other activities of like kind, "in the conduct of suits." See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 338 (9th Cir. 1996) (applying California law, interpreting policy language narrowly in the context in which it appears); Martin Marietta Corp. v. Ins. Co. of N. Am., 40 Cal. App. 4th 1113, 1126 (1995) ("where general words follow a specific enumeration, the general words should not be construed in their broadest sense but should be read as applying to the same general class of things as the specifically enumerated things").

Although cooperation can refer to several things, it always relates to the defense of individual cases in the context of liability insurance. For instance, courts "have construed cooperation provisions to impose an

obligation to: (a) provide the insurer with a full and truthful account of the occurrence, and to satisfy the insurer's reasonable request for information on the underlying details of the case; (b) assist the insurer by forwarding notices, summonses, pleadings or other suit papers, so that the insurer may promptly prepare a defense against a third-party complaint; (c) submit to an examination under oath, or otherwise make himself available for trial, as the insurer conducts his defense; and (d) cooperate in the substantive aspects of his defense, such as filing third-party actions when requested and avoiding settlement without the approval of the insurer." Kallis, et al., Policyholder's Guide to the Law of Ins. Coverage § 24.03 (1st ed. 2019 Supp. 2012).[32]

Second, Truck contends that the Debtors have breached the Truck Policies by "colluding" with litigation adversaries (i.e., the ACC and the FCR) to negotiate and sponsor a plan that would require Truck to defend current and future Asbestos Personal Injury Claims against the Debtors without access to certain exposure evidence that Truck wants, such as Garlock-style "fraud prevention measures" that could have been included in the plan. D.I. 2070 at 27-31. However, the typical pattern giving rise to a claim of improper collusion by an insured is where, in the context of a third-party lawsuit, the insured agrees with the claimant to an amount of liability, stipulates to judgment and then assigns to the claimant the right to satisfy that judgment from an insurance policy, combined with a covenant by the claimant not to sue the

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[32] Truck admits that before these bankruptcy proceedings, the Debtors always had fulfilled their defense-related obligations under the Assistance and Cooperation Clause. Hoyt Dep. at 19:2-20:13, 27:13-29:7.

insured. See, e.g., Safeco Ins. Co. of Amer. v. Parks, 170 Cal. App. 4th 992, 1013 (2009) ("[C]ollusion occurs when the insured and the third party claimant work together to manufacture a cause of action for bad faith against the insurer or to *inflate the third party's recovery* to artificially increase damages flowing from the insurer's breach . . . . The insurer may raise collusion as a defense in a subsequent bad faith action.") (emphasis added); Andrade v. Jennings, 54 Cal. App. 4th 307, 327 (1997) ("Collusive assistance in the procurement of a judgment not only constitutes a breach of the cooperation clause but also is a breach of the covenant of good faith and fair dealing."). There is no prejudice to Truck here. Rather, the Plan returns Asbestos Personal Injury Claims to the tort system and places Truck in the same position it was in before the Debtors' bankruptcy. See Hoyt Dep. 108:17-109:15.

Third, the Assistance and Cooperation Clause is not reasonably susceptible to the meaning that Truck advocates—i.e., that the Assistance and Cooperation Clause can be used to control the Debtors' conduct in their own bankruptcy. Admiral Ins. Co. v. Grace Indus., Inc., 409 B.R. 275, 283 (E.D.N.Y. 2009) ("[T]he cooperation clause only required Grace to assist in the ultimate disposition of the actual claims, not to take on a partner to make litigation decisions solely regarding Grace's own bankruptcy reorganization."). Belying Truck's novel argument, case law interpreting and applying this standard form policy language repeatedly and consistently measures cooperation in the context of individual suits.[33]

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[33] For instance, an insurer's duty to indemnify is excused only if its ability to provide a defense in an underlying case has been

3. As a Matter of Law, the Debtors' Acts and/or Omissions Leading Up to And During the Reorganization Cases Did Not Breach the Covenant of Good Faith and Fair Dealing Implied Into the Truck Policies.

Truck's argument that, upon Confirmation, the Debtors' actions in furtherance of their Reorganization Cases will constitute a breach of the covenant of good faith and fair dealing implied by law into the Truck Policies is even weaker.

Under California law, "[t]here is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." Comunale v. Traders & Gen. Ins. Co., 50 Cal. 2d 654, 658 (1958). However, the duty of good faith and fair dealing cannot impose upon an insured any obligation that differs from the insured's express obligations under the policy.

Moreover, the California Supreme Court has rejected the concept of "reverse bad faith" asserted

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substantially prejudiced by an insured's failure to cooperate. Truck Ins. Exch. v. Unigard Ins. Co., 79 Cal. App. 4th 966, 976 (2000); Campbell v. Allstate Ins. Co., 60 Cal. 2d 303, 307 (1963). In such a case, the insurer would have to prove that if the insured had cooperated, there was a substantial likelihood the trier of fact would have found in the insured's favor. Billington v. Interins. Exch. of S. Cal., 71 Cal. 2d 728, 737 (1969). Because of this, prejudice resulting from an insured's alleged failure to cooperate cannot be determined until the outcome of the underlying case is known. United Servs. Auto. Ass'n v. Martin, 120 Cal. App. 3d 963, 966 (1981) ("Logically, the required showing of prejudice cannot be made while the main tort action is still pending, its outcome uncertain, and therefore declaratory relief against the injured persons at this stage is inappropriate.").

against a policyholder as a defense to coverage. See Kransco v. Amer. Empire Surplus Lines Ins. Co., 23 Cal. 4th 390, 407 (2000), as modified (July 26, 2000); see also Endurance Amer. Specialty Ins. Co. v. Lance-Kashian & Co., CV F 10–1284 LJO DLB, 2010 WL 3619476 (E.D. Cal. Sept. 13, 2010); Hale v. Provident Life & Acc. Ins. Co., 2003 WL 1510463 (Cal. Ct. App. Mar. 25, 2003). Indeed, Truck (through its coverage counsel) admits that such a claim cannot stand under California law. Hoyt Dep. at 126:10-16 ("Q. . . . you are aware that the California Supreme Court has rejected the concept of reverse bad faith as a defense [to] coverage in California, yes? A. I believe that is correct.").

Finally, the covenant of good faith and fair dealing implied into the Truck Policies requires any policy interpretation to be consistent with Truck's obligations—i.e., Truck must refrain from doing anything that would injure the Debtors' right to receive the benefits of the insurance agreement (Waller, 11 Cal. 4th at 36), requiring Truck to "'give at least as much consideration to the welfare of its insured as it gives to its own interests.'" Vu v. Prudential Property & Cas. Ins. Co., 26 Cal. 4th 1142, 1150 (2001) (citation omitted); Egan v. Mut. of Omaha Ins. Co., 24 Cal. 3d 809, 818-19 (1979) ("For the insurer to fulfill its obligation not to impair the right of the insured to receive the benefits of the agreement, it again must give at least as much consideration to the latter's interests as it does to its own."). Bankruptcy is not intended to relieve insurers of their contractual liabilities or to improve their position under their insurance contracts in the tort system.

In sum, as a matter of law, the Debtors' conduct in connection with and throughout these Reorganization Cases does not and has not violated any Asbestos

Insurer Cooperation Obligations, including the Assistance and Cooperation Clause contained in the Truck Policies, nor was such conduct a breach of any implied covenant of good faith and fair dealing in those policies.

D. MODIFICATIONS TO THE PLAN.

The Modifications (i) do not adversely change, in any material respect, the treatment under the Plan of any Claims or Interests and (ii) comply in all respects with Bankruptcy Rule 3019. Pursuant to section 1127(b) of the Bankruptcy Code and Bankruptcy Rule 3019, the Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of acceptances or rejections of the Plan under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims against or Interests in the Debtors be afforded an opportunity to change previously cast acceptances or rejections of the Plan as Filed with the Bankruptcy Court. Disclosure of the Modifications through the Debtors' service of its motion to modify the Plan [D.I. 2342] and as made on the record at the Confirmation Hearing constitute due and sufficient notice thereof under the circumstances of the Reorganization Cases. Accordingly, the Plan (as modified) is properly before the Court and all votes cast with respect to the Plan prior to the Modifications shall be binding and shall be deemed to be cast with respect to the Plan as modified.

E. EXEMPTIONS FROM TAXATION.

Pursuant to section 1146(a) of the Bankruptcy Code, 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.

F. COMPLIANCE WITH SECTION 1129 OF THE BANKRUPTCY CODE.

As set forth in Section I.G above, which is incorporated fully herein, the Plan complies in all respects with the applicable requirements of section 1129 of the Bankruptcy Code.

G. COMPLIANCE WITH SECTION 524(g) OF THE BANKRUPTCY CODE.

As set forth in Section I.H above, which is incorporated fully herein, the Plan complies in all respects with the applicable requirements of section 524(g) of the Bankruptcy Code.

H. TRANSFER OF BOOKS AND RECORDS TO THE ASBESTOS PERSONAL INJURY TRUST.

Section IV.J. of the Plan provides that, prior to the Effective Date, the Debtors will establish a repository containing all their the books and records that are necessary for the defense of Asbestos Personal Injury Claims, and shall make that repository available to the Entities that are responsible for the processing or defense of Asbestos Personal Injury Claims, and that

are entitled to review, copy or use such documents. The transfer of these materials is essential to the Plan and to the implementation of the Asbestos Personal Injury Trust and the preservation of its assets. (McChesney Decl. ¶ 49.) To the extent the Debtors or Reorganized Debtors, as applicable, provide the Asbestos Personal Injury Trust access to any privileged books and records, such access shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records, and each of the Reorganized Debtors and the Asbestos Personal Injury Trust shall retain the right to assert any applicable privilege with respect to such books and records.

I. APPROVAL OF THE SETTLEMENTS AND RELEASES PROVIDED UNDER THE PLAN.

The settlement of certain estate claims set forth in section IV.R.2 of the Plan and the releases set forth in Section IV.R.3 of the Plan, including the releases of nondebtor parties pursuant to the general releases in Section IV.R.3.c, are (i) integral to the terms, conditions and settlements contained in the Plan, (ii) appropriate in connection with the Debtors' reorganization and (iii) supported by reasonable consideration. In light of all of the circumstances, settlement of certain estate claims in Section IV.R.2 of the Plan and the releases in Section IV.R.3 of the Plan are fair, equitable and in the best interests of the Estates.

Signed: July 27, 2021

/s/ Graham C. Mullen
Graham C. Mullen
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re KAISER GYPSUM COMPANY, INC., et al.,[1] Debtors.	Chapter 11 Case No. 16-31602 (JCW) (Jointly Administered) July 27, 2021

ORDER CONFIRMING THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC., AS MODIFIED

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313). The Debtors' address is 300 E. John Carpenter Freeway, Irving, Texas 75062.

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INTRODUCTION

WHEREAS, Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. (together, the "Debtors" and, as reorganized entities after emergence, the "Reorganized Debtors"), proposed the Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., dated October 14, 2019 [Conf. Exhibit 1],[2] as amended by the non-material modifications and clarifications set forth on the blackline of the Plan in Exhibit B attached hereto and incorporated herein by reference (as it may be amended, the "Plan");[3]

WHEREAS, on October 23, 2019, the Bankruptcy Court entered its Order (I) Approving the Debtors' Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or

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[2] "D.I." refers to docket entries in the Debtors' lead bankruptcy case, 16-31602.

[3] Capitalized terms and phrases used herein have the meanings given to them in the Plan. The rules of interpretation set forth in Section I.B.1 of the Plan apply to the Findings of Fact and Conclusions of Law (the "Findings and Conclusions"), which are being issued concurrently herewith, and to this Order (this "Confirmation Order"). In addition, in accordance with Section I.A of the Plan, any term used in the Plan or this Confirmation Order that is not defined in the Plan or this Confirmation Order, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

A copy of the Plan (without exhibits) is attached hereto as Exhibit A and incorporated herein by reference. Failure to reference or incorporate a specific portion of the Plan, the Plan's exhibits or Plan-Related documents (as defined in Section IV.A. below) in this Confirmation Order does not affect the validity of enforceability of such provision under the terms of this Confirmation Order.

Reject Proposed Joint Plan of Reorganization and (III) Scheduling a Hearing on Confirmation of Proposed Joint Plan of Reorganization and Approving Related Notice Procedures [Conf. Exhibit 16] (the "Disclosure Statement Order"), by which the Bankruptcy Court, among other things, approved the Debtors' proposed disclosure statement (the "Disclosure Statement");

WHEREAS the Disclosure Statement Order established procedures for the solicitation and tabulation of votes to accept or reject the Plan and scheduled a hearing to consider Confirmation of the Plan for March 30, 2020, which hearing was continued to and held on July 20, 2020 and July 22, 2020, with the Bankruptcy Court giving its oral ruling on August 13, 2020 (the "Confirmation Hearing");

WHEREAS, affidavits of service were executed by Prime Clerk LLC, the Bankruptcy Court appointed notice, claims and solicitation agent ("Prime Clerk"), with respect to the mailing of notice of the Confirmation Hearing and solicitation materials in respect of the Plan in accordance with the Disclosure Statement Order (collectively, the "Affidavits of Service") and were filed with the Bankruptcy Court [D.I. 1892, 1904, 1911, 1938, 1947, 1948, 2007, 2042, 2168, 2172, 2178];[4]

WHEREAS, the Declaration of Anna Jadonath [D.I. 1903] (the "Publication Declaration") was filed with the Bankruptcy Court on November 14, 2019, regarding the publication of the Notice of (I) Deadline for Casting Votes to Accept or Reject Proposed Joint

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[4] The Affidavits of Service were filed on November 6, 2019, November 14, 2019, November 20, 2019, December 17, 2019, January 2, 2020, January 6, 2020, February 7, 2020, February 14, 2020, March 24, 2020, March 30, 2020 and April 20, 2020.

Plan of Reorganization, (II) Hearing to Consider Confirmation of Proposed Joint Plan of Reorganization and (III) Related Matters and/or the other forms of publication notice approved by the Bankruptcy Court as set forth in the Disclosure Statement Order;

WHEREAS, the Declaration of Cameron R. Azari, Esq. on Implementation of Notice Regarding the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. [Conf. Exhibit 21] (the "Notice Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to publication notice of the Plan;

WHEREAS, the Declaration of James Daloia of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. [Conf. Exhibit 20] (the "Voting Agent Declaration") was filed with the Bankruptcy Court on July 1, 2020, attesting to the results of the tabulation of the properly executed and timely received Ballots for the Plan as follows:

> **Class 4 Claimants**. The Debtors received 24,310 acceptances out of 24,310 votes from holders of Class 4 Asbestos Personal Injury Claims, with Class 4 claimants who voted in favor of the Plan holding Claims in the amount of $2,439,570,176.00 for voting purposes only, such acceptances being 100 percent in number and 100 percent in amount of all ballots received from holders of Class 4 Asbestos Personal Injury Claims (Voting Agent Decl. ¶ 10.);

WHEREAS, the Debtors made non-material modifications to the Plan, which are set forth in Exhibit B attached hereto (collectively, the "Modifications");

WHEREAS, Truck Insurance Exchange ("Truck") filed an objection to the Plan [D.I. 2070] and a consolidated response to the Plan Proponents' briefing [D.I. 2359] (together, the "Objection"), as well as various affidavits in support of its Objection [Conf. Exhibits 37-53, 65-67] (the "Truck Affidavits");

WHEREAS, the Objecting Excess Insurers made the Objecting Excess Insurers' Objections, and voluntarily withdrew them when the Plan was modified to insert, among other things, Section IV.M.3.a., entitled, "Settlement with Truck;"

WHEREAS, the Debtors filed a memorandum of law in support of Confirmation of the Plan [D.I. 2275] and a reply to Truck's consolidated response [D.I. 2377], and the Asbestos Personal Injury Committee and the Future Claimants' Representative filed an omnibus reply in support of the Plan [D.I. 2274] and a joint reply to Truck's consolidated response [D.I. 2376] (collectively, the "Memoranda of Law");

WHEREAS, the declarations of Kevin O'Neal Holdeman [Conf. Exhibit 23], John D. Bittner [Conf. Exhibit 22], Charles E. McChesney II [Conf. Exhibit 19] and Lawrence Fitzpatrick [Conf. Exhibit 18] were submitted in support of the Plan (collectively, the "Declarations");

WHEREAS, the Court has reviewed the Plan, the Disclosure Statement, the Disclosure Statement Order, the Voting Agent Declaration, the Affidavits of Service, the Publication Declaration, the Notice Declaration, the Memoranda of Law, the Declarations, the Truck Affidavits and all other pleadings before the

Court in connection with the Confirmation of the Plan, including the objections filed to the Plan;[5]

WHEREAS, the Court has considered the arguments of counsel made on the record at the Confirmation Hearing;

WHEREAS, the Court has considered all evidence presented and admitted into the record at the Confirmation Hearing;

WHEREAS, this Court has taken judicial notice of the papers and pleadings on file in these Reorganization Cases, including any related adversary proceedings;

WHEREAS the Court has made a *de novo* review of the record, including the Bankruptcy Court's proposed findings of fact and conclusions of law submitted in this matter;

WHEREAS, this Court has separately entered the Findings and Conclusions, including the findings that (a) this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) the Debtors were and are qualified to be debtors under section 109 of the Bankruptcy Code and (c) venue of the Reorganization Cases is proper pursuant to 28 U.S.C. § 1408, and continues to be proper; and

WHEREAS, the Findings and Conclusions establish just cause for the relief granted herein;

THE COURT HEREBY ORDERS THAT:

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[5] Truck filed the only objection that remained unresolved as of the Confirmation Hearing.

I. GENERAL PROVISIONS REGARDING CONFIRMATION OF THE PLAN AND APPROVAL OF PLAN-RELATED DOCUMENTS.

A. MODIFICATIONS TO THE PLAN.

Pursuant to section 1127(a) of the Bankruptcy Code and Rule 3019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Modifications are authorized and approved in all respects.

B. CONFIRMATION OF THE PLAN.

The Plan and all exhibits thereto are CONFIRMED in each and every respect, pursuant to section 1129 of the Bankruptcy Code; provided, however, that if there is any direct conflict between the terms of the Plan or any exhibit thereto and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. All objections to the Plan, other than those withdrawn with prejudice (subject to Section IV.M.3.a of the Plan) in their entirety prior to, or on the record at, the Confirmation Hearing are either resolved on the terms set forth herein or overruled in their entirety. This Court's basis for overruling Truck's objections in their entirety are set forth in the Findings and Conclusions. The Findings and Conclusions are hereby incorporated by reference in their entirety, as if they were fully set forth herein.[6]

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[6] The Court has considered and overruled each objection to the Plan raised by Truck, whether as part of its Complaint for Declaratory Relief [Adv. Proc. 19-3052, D.I. 1] or its objections filed with the Bankruptcy Court.

C. CONDITIONS TO CONFIRMATION AND CONSUMMATION OF THE PLAN.

Nothing in this Confirmation Order or in the Findings and Conclusions shall in any way affect the provisions of Article VIII of the Plan, which includes provisions regarding (i) the conditions precedent to Confirmation of the Plan and to the Effective Date of the Plan, (ii) the waiver of any such conditions and (iii) the effect that the nonoccurrence of such conditions may have with regard to the Plan and this Confirmation Order. Upon the satisfaction or waiver of the conditions contained in Section VIII.B of the Plan and the occurrence of the Effective Date, substantial consummation of the Plan, within the meaning of section 1127 of the Bankruptcy Code, shall be deemed to occur.

D. EFFECTS OF CONFIRMATION.

Subject to section I.C of this Confirmation Order, notwithstanding any otherwise applicable law, immediately upon the entry of this Confirmation Order, the terms of the Plan and this Confirmation Order shall be binding upon all Entities, including the Debtors, the Reorganized Debtors, any and all holders of Claims, Demands or Interests (irrespective of whether such Claims or Interests are impaired under the Plan or whether the holders of such Claims or Interests accepted, rejected or are deemed to have accepted or rejected the Plan), any and all nondebtor parties in interest, including nondebtor parties to Executory Contracts and Unexpired Leases with any of the Debtors and any and all Entities who are parties to or are subject to the settlements, compromises, releases, waivers, discharges and injunctions described herein and in the Findings and Conclusions and the respective heirs, executors, administrators, trustees, affiliates,

officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors or assigns, if any, of any of the foregoing.

E. APPROVAL, MODIFICATION AND EXECUTION OF PLAN-RELATED DOCUMENTS.

1. The Plan and all exhibits thereto, substantially in the form as they exist at the time of the entry of this Confirmation Order, including the documents relating to the Asbestos Personal Injury Trust, are approved in all respects.

2. All relevant parties, including the Debtors and the Asbestos Personal Injury Trustee, shall be authorized, without further action by this Court or the Bankruptcy Court, to execute the applicable Plan-Related Documents (as such capitalized term is defined in Section IV.A of this Confirmation Order) and make modifications to such documents in accordance with the Plan's terms, including Section XI.D of the Plan, and the terms of the Plan-Related Documents, if applicable, between the time of entry of this Confirmation Order and the Effective Date of the Plan.

3. The Parties[7] are hereby authorized to amend or modify the Plan at any time prior to the substantial consummation of the Plan, but only in accordance with section 1127 of the Bankruptcy Code and Section XI.D of the Plan. In addition, without the need for a further order or authorization of this Court or the Bankruptcy Court, or further notice to any Entities, but subject to the express provisions of this Confirmation Order and Section XI.D of the Plan, the Parties shall be authorized and empowered to make

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[7] As defined in Plan Section 1.A.96.

modifications to the documents Filed with this Court or the Bankruptcy Court, including exhibits to the Plan and documents forming part of the evidentiary record at the Confirmation Hearing, consistent with the terms of such documents in their reasonable business judgment as may be necessary.

II. CLAIMS BAR DATES AND OTHER CLAIMS MATTERS.

A. GENERAL BAR DATE FOR ADMINISTRATIVE CLAIMS.

Except as otherwise provided in Section III.A.1.d.i of the Plan and Section II.B below, unless previously Filed, requests for payment of Administrative Claims must be Filed with the Bankruptcy Court and served on the Reorganized Debtors at the addresses set forth in Section XI.K of the Plan no later than sixty (60) days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the requesting party by 120 days after the Effective Date.

B. BAR DATES FOR CERTAIN ADMINISTRATIVE CLAIMS.

1. Professional Compensation.

Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated by the

Bankruptcy Rules, this Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than ninety (90) days after the Effective Date. A Professional may include any outstanding, non-Filed monthly or interim request for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be Filed with the Bankruptcy Court and served on the Reorganized Debtors and the requesting party by the later of (i) eighty (80) days after the Effective Date and (ii) thirty (30) days after the Filing of the applicable Final Fee Application. To the extent necessary, this Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, Filed interim requests for a Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application. All fees outstanding and payable under the Fee Order, shall be paid promptly by the Debtors, and/or the DIP Lender, after the order approving the respective fees and expenses is entered.

2. Ordinary Course Liabilities.

Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including any Intercompany Claims that are Administrative Claims, Administrative Claims of governmental units for Taxes (including Tax audit Claims relating to Tax years or portions thereof commencing after the Petition Date) and Administrative Claims arising from those contracts and leases of the kind described in Section V.E of the Plan, shall not be required to File or serve any request for payment of

such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c of the Plan.

C. BAR DATE FOR REJECTION DAMAGES CLAIMS.

Notwithstanding anything in the Bankruptcy Court's Order Establishing Bar Dates for Filing Proofs of Claim Other Than Asbestos Personal Injury Claims and Approving Related Relief [D.I. 553] to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C of the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, their respective successors or their properties unless a Proof of Claim is Filed with the Bankruptcy Court and served on the Reorganized Debtors at the addresses set forth in Section XI.K of the Plan, on the latter to occur of (i) sixty (60) days after the Effective Date and (ii) thirty (30) days after the date of the entry of an order rejecting such Executory Contract or Unexpired Lease.

III. APPROVAL OF EXECUTORY CONTRACT AND UNEXPIRED LEASE PROVISIONS AND RELATED PROCEDURES.

A. The Executory Contract and Unexpired Lease provisions of Article V of the Plan are hereby approved.

B. This Confirmation Order shall constitute an order of the Court approving the assumptions and rejections described in Sections V.A and V.C of the Plan, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date.

IV. MATTERS RELATING TO IMPLEMENTATION OF THE PLAN.

A. ACTIONS IN FURTHERANCE OF THE PLAN.

1. Pursuant to section 10-1008 of the Arizona Revised Statutes and section 55-14A-01 of the North Carolina Business Corporation Act and other comparable provisions of the laws of the States of Arizona and North Carolina or any other state governing corporations or other legal entities (collectively, the "State Reorganization Effectuation Statutes"), as applicable, and section 1142 of the Bankruptcy Code, without further action by this Court or the Bankruptcy Court or the respective stockholders or directors of any Debtor or Reorganized Debtor, the Debtors, the Reorganized Debtors and any officers of the appropriate Debtor or Reorganized Debtor (the "Responsible Officers"), are authorized to: (i) take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order and the transactions contemplated thereby or hereby, including those transactions identified in Article IV of the Plan and (ii) execute and deliver, adopt or amend, as the case may be, any contracts, instruments, releases and agreements necessary to implement, effectuate and consummate the Plan (collectively, the "Plan-Related Documents"), including those contracts, instruments, releases and agreements identified in Article IV of the Plan.

2. To the extent that, under applicable nonbankruptcy law, any of the foregoing actions would otherwise require the consent or approval of the stockholders or directors of any of the Debtors or Reorganized Debtors, this Confirmation Order shall, pursuant to section 1142 of the Bankruptcy Code and the

State Reorganization Effectuation Statutes, constitute such consent or approval, and such actions are deemed to have been taken by unanimous action of the stockholders or directors of the appropriate Debtor or Reorganized Debtor.

3. The approvals and authorizations specifically set forth in this Confirmation Order are nonexclusive and are not intended to limit the authority of any Debtor or Reorganized Debtor or Responsible Officer to take any and all actions necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby, subject to provisions in the Plan that require the Debtors or Reorganized Debtors to seek approval from other Parties. In addition to the authority to execute and deliver, adopt or amend, as the case may be, the contracts, instruments, releases and other agreements specifically approved in this Confirmation Order, each of the Debtors and the Reorganized Debtors is authorized and empowered, without further action by this Court or the Bankruptcy Court or such Debtors' or Reorganized Debtor's stockholders or directors, to take any and all such actions as any of its Responsible Officers may determine are necessary or appropriate to implement, effectuate and consummate the Plan, this Confirmation Order or the transactions contemplated thereby or hereby, subject to provisions in the Plan that require the Debtors or Reorganized Debtors to seek approval from other Parties.

B. CREATION OF ASBESTOS PERSONAL INJURY TRUST.

1. On the Effective Date, the Asbestos Personal Injury Trust shall be created in accordance with the Plan and the Asbestos Personal Injury Trust

Agreement. The Asbestos Personal Injury Trust and the Asbestos Personal Injury Trustee are authorized and empowered to receive the property to be transferred to the Asbestos Personal Injury Trust pursuant to Section IV.K of the Plan.

2. Pursuant to the State Reorganization Effectuation Statutes, as applicable, and other appropriate provisions of applicable state laws governing corporations and other legal Entities and section 1142(b) of the Bankruptcy Code, without further action by this Court or the Bankruptcy Court or the stockholders or directors of any Reorganized Debtor, the Reorganized Debtors are authorized and directed to execute, deliver and perform their obligations under the Asbestos Personal Injury Trust Agreement and to execute, deliver, file and record all such other contracts, instruments, agreements and documents and take all such other actions as any of the Responsible Officers of the Reorganized Debtors may determine are necessary, appropriate or desirable in connection therewith. The Asbestos Personal Injury Trust Agreement, as in effect on the Effective Date, shall be substantially in the form of Exhibit I.A.16 to the Plan. The Asbestos Personal Injury Trust Distribution Procedures shall be substantially in the form of Exhibits I.A.19 to the Plan. On the Effective Date, the acknowledgment and release requirements set forth in the Order Lifting the Automatic Stay as to Certain Asbestos Personal Injury Claims [D.I. 1108] (the "Stay Order") will be no longer applicable and parties shall comply with the Asbestos Personal Injury Trust Distribution Procedures; provided, however, any acknowledgement and release or related documents executed prior to the Effective Date pursuant to the Stay Order will remain in full force and effect as to the Protected Parties; provided further, however, that Uninsured Asbestos

Claims may be brought against the Asbestos Personal Injury Trust consistent with the Asbestos Personal Injury Trust Distribution Procedures.

C. TRANSFERS OF PROPERTY TO, AND ASSUMPTION OF CERTAIN LIABILITIES BY, THE ASBESTOS PERSONAL INJURY TRUST.

1. Transfer of Books and Records to the Asbestos Personal Injury Trust.

a. As described in Section IV.J of the Plan, prior to or on the Effective Date, the Debtors shall establish, or cause to be established, a repository containing all the Debtors' books and records that are necessary for the defense of Asbestos Personal Injury Claims, including, without limitation, the historical asbestos personal injury claims database maintained by the Debtors, deposition transcripts, product identification evidence, information regarding sale and use of the products, claims settlement and payment information, and indexes and summaries relating to any such documents, and shall make that repository available to the Entities that are responsible for the processing or defense of Asbestos Personal Injury Claims, and that are entitled to review, copy or use such documents.[8]

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[8] For the avoidance of doubt, the Asbestos Personal Injury Trust shall have access to materials in the repository only to the extent it is the Entity defending or processing (which term shall not include the mere payment of the deductible portion of an Asbestos Personal Injury Claim) an Uninsured Asbestos Claim or a particular Asbestos Personal Injury Claim, and such determination shall be made by the Reorganized Debtors on a claim-by-claim basis.

b. Pursuant to the Plan and this Confirmation Order, to the extent the Debtors or Reorganized Debtors, as applicable, provide the Asbestos Personal Injury Trust access to any privileged books and records, such access shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records. Further, pursuant to the Plan and this Confirmation Order, none of the Debtors, the Reorganized Debtors, Lehigh Hanson, or any of Lehigh Hanson's affiliates shall be liable for violating any confidentiality or privacy protections as a result of transferring the books and records to the Asbestos Personal Injury Trust, and the Asbestos Personal Injury Trust shall, upon receipt of the books and records, take appropriate steps to comply with any such applicable protections.

2. Funding the Asbestos Personal Injury Trust.

The Reorganized Debtors and/or Lehigh Hanson shall fund the Asbestos Personal Injury Trust in accordance with Section IV.K.2 of the Plan.

3. Assumption of Certain Liability and Responsibility by the Asbestos Personal Injury Trust.

Subject to the provisions of the Plan, on the Effective Date, upon creation of the Asbestos Personal Injury Trust, the Asbestos Personal Injury Trust, in consideration for the property transferred to the Asbestos Personal Injury Trust pursuant to Section IV.K of the Plan and in furtherance of the purposes of the Asbestos Personal Injury Trust and the Plan, shall assume all liability and responsibility, financial or otherwise, for all Asbestos Personal Injury Claims, and the Reorganized Debtors and the Protected Parties shall have

no liability or responsibility, financial or otherwise, therefor, except that Holders of Insured Asbestos Claims may bring actions against the Reorganized Debtors to obtain the benefit of insurance coverage as set forth in Plan IV.O.1 and no release or discharge of any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, shall diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

Except as otherwise provided in the Plan, the Asbestos Personal Injury Trust Agreement and the Asbestos Personal Injury Trust Distribution Procedures, the Asbestos Personal Injury Trust shall have all defenses, cross-claims, offsets, recoupments and rights of indemnification, contribution, subrogation and similar rights regarding such Asbestos Personal Injury Claims that the Debtors, the Reorganized Debtors or applicable Protected Parties have or would have had under applicable law.

4. Indemnification by the Asbestos Personal Injury Trust.

To the fullest extent provided in the Plan, the Asbestos Personal Injury Trust shall protect, defend, indemnify and hold harmless each Protected Party from and against any Asbestos Personal Injury Claim; provided, however, the sole and exclusive remedy for the Asbestos Personal Injury Trust's failure to satisfy the indemnification, defense and hold harmless obligations under this Section shall be the right of the

Protected Parties to assert money damage claims against the Asbestos Personal Injury Trust.

D. RELEASE OF ENCUMBRANCES.

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article VI of the Plan, all Encumbrances against the property of any Estate shall be fully released and discharged, and all of the right, title and interest of any holder of such Encumbrances, including any rights to any collateral thereunder, shall revert to the applicable Reorganized Debtor and its successors and assigns.

E. EXEMPTIONS FROM TAXATION.

Pursuant to section 1146(a) of the Bankruptcy Code, 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 and (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, 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.

V. SETTLEMENTS, RELEASES AND EXCULPATION PROVISIONS.

A. The Plan settlement, release, exculpation and injunction provisions as set forth in, among others, sections IV.R.2, IV.R.3, IX.B, XI.A and XI.C of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date without further action by this Court, the Bankruptcy Court, any of the parties to such provisions or any other party.

B. As of June 30, 2020, the Debtors held $2,881,300.27 of Insolvent Insurers Proceeds, which amount is held in a segregated bank account in accordance with the Bankruptcy Court's February 16, 2018 Order Approving Settlement of Claim Against Insolvent Insurers [D.I. 837]. At the Effective Date, an amount equal to 64.2% of such Insolvent Insurers Proceeds shall be allocated and distributed pursuant to the Excess CIP Agreement (with 50% of the Debtors' share under the Excess CIP Agreement distributed to the Trust and the remainder distributed to the Debtors or Reorganized Debtors), and the remainder shall be utilized to satisfy Allowed General Unsecured Claims pursuant to the Plan. In the event that the Debtors or Reorganized Debtors receive additional Insolvent Insurers Proceeds, 64.2% of such additional Insolvent Insurer Proceeds shall be allocated and distributed pursuant to the Excess CIP Agreement (with 100% of the Debtors or Reorganized Debtors' share under the Excess CIP Agreement distributed to the

Trust), and with the remaining proceeds to be distributed to the Reorganized Debtors.

VI. OBJECTIONS TO CONFIRMATION.

A. RESOLUTION OF THE INFORMAL OBJECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE.

1. The informal objection to Confirmation lodged by the United States Department of Justice, to the extent not satisfied by the Modifications, is hereby resolved on the terms and subject to the conditions set forth below. The compromise contemplated by such resolution is fair, equitable and reasonable, in the best interests of the Debtors and their respective Estates and creditors and expressly approved pursuant to Bankruptcy Rule 9019.

2. Nothing in this Confirmation Order or the Plan discharges, releases, precludes or enjoins: (i) any police or regulatory liability to a governmental unit as defined in 11 U.S.C. § 101(27) ("Governmental Unit") of the United States or of a State that is not a Claim as defined in section I.A.32 of the Plan; (ii) any Claim of a Governmental Unit of the United States arising on or after the Effective Date; (iii) any liability to a Governmental Unit of the United States or of a State under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the Effective Date; or (iv) any liability to a Governmental Unit on the part of any Person other than the Debtors or Reorganized Debtors. Nor shall anything in this Confirmation Order or the Plan enjoin or otherwise bar a Governmental Unit of the United States or of a State from asserting or enforcing, outside this Court, any liability described in the preceding sentence. Nothing in this

Confirmation Order or the Plan shall affect any valid setoff or recoupment rights of the United States. Nothing in this Confirmation Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Confirmation Order or the Plan or to adjudicate any defense asserted under this Confirmation Order or the Plan. Notwithstanding the foregoing, nothing in this paragraph will in any way limit or alter the terms of the Asbestos Permanent Channeling Injunction set forth in Article IX.B.2 of the Plan or the Environmental Injunction set forth in Article IX.B.3 of the Plan.

B. OVERRULING OF CERTAIN OBJECTIONS TO CONFIRMATION.

All objections not otherwise addressed herein or previously withdrawn are hereby overruled in their entirety.

1. Objection of Truck Insurance Exchange.

Truck objected to Confirmation on several grounds. The Court has considered the Truck Objection, the Truck Affidavits, the Memoranda of Law, the statements of counsel, briefs and all other testimony and evidence admitted as part of the Confirmation Hearing. For the reasons stated by the Bankruptcy Court on the record at the hearing of August 13, 2020, and set forth in the Findings and Conclusions, incorporated herein, the Court overrules Truck's objections in their entirety.

As reflected in the Findings and Conclusions, the Court has made the following findings and conclusions:[9]

a. Because the Plan is insurance neutral and returns Truck to the tort system exactly as it was prepetition, Truck does not have standing to advance confirmation issues such as contentions that: the Plan is collusive and not in good faith; the Debtors are not entitled to a discharge; or the elements of 11 U.S.C. § 524(g) are not met. Truck also lacks standing to object to the structure and funding of the Asbestos Personal Injury Trust because Truck has no interest in the trust and the trust will have no effect on its legal or pecuniary interests.

b. The Plan does not violate the spirit and purpose of section 524(g) of the Bankruptcy Code. The Court finds no requirement that all of a debtor's asbestos liabilities must be resolved by a section 524(g) trust, as opposed to being resolved in the tort system.

c. The Court rejects Truck's argument that resolving asbestos cases in the tort system is unfair or constitutes bad faith. This Court is concerned for the same reasons that the bankruptcy court was concerned in *Garlock*, but

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[9] Failure of this Order to restate or specifically address any other finding or conclusion contained in the Findings and Conclusions shall not affect the validity of enforceability of such finding or conclusion. Any finding of fact shall constitute a finding of fact even if it is referred to as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is referred to as a finding of fact.

this Court does not read *Garlock* as an indictment of the tort system or a ruling that a party cannot get a fair trial in state and federal courts. This Court is not inclined to indict its colleagues on the state benches, nor does the Court believe that a bankruptcy court in North Carolina is necessary to protect state courts from fraud. It is not within the province of this Court to mandate to state courts and other federal courts what kind of discovery is required in asbestos cases. The findings in *Garlock* have been widely debated, and indeed some state legislatures have taken steps to address these issues. State courts and litigants will obviously be alert to what has been proposed in this case and can take their own actions.

d. The Court has the jurisdiction and authority to make the finding at Plan art. VIII.A.3.u (the "Plan Finding"). The Plan Finding deals with core matters that arise under the Bankruptcy Code and could only arise in the context of a bankruptcy case, including findings and conclusions the Court must make regarding whether the Plan and the Plan Proponents have complied with the applicable provisions of the Bankruptcy Code under section 1129(a)(1) and (2); whether the Plan has an adequate means of implementation and was proposed in good faith and not by any means forbidden by law under sections 1123(a)(5) and 1129(a)(3); whether the Plan is feasible under section 1129(a)(11); and whether the Plan meets the requirements of section 524(g). These are all statutory-based confirmation matters that fall within the

jurisdiction of this Court under 28 U.S.C. § 1334 and that must be raised in the context of the Reorganization Cases.

e. The Plan Finding is proper. Truck's contention that the Plan impairs its contractual rights is based on a false premise: the notion that its contract gives it the right to collaterally attack elsewhere a confirmation ruling and make determinations of the propriety of the parties' conduct in the course of this case. Such rights never existed under the Truck Policies, and to the extent they did, they would be preempted by the Bankruptcy Code.

VII. DISCHARGE AND INJUNCTIONS.

A. DISCHARGE OF CLAIMS.

1. The Plan discharge provisions as set forth in Section IX.A of the Plan are approved in all respects, are incorporated herein in their entirety, are so ordered and shall be immediately effective on the Effective Date of the Plan without further action by this Court, the Bankruptcy Court or any other party.

2. To the extent set forth in the Plan, as of the Effective Date, pursuant to sections 524 and 1141 of the Bankruptcy Code, the Reorganized Debtors shall be discharged of all Claims and other debts and liabilities against the Debtors, in accordance with Section IX.A of the Plan. Notwithstanding the foregoing or anything else in the Plan or this Confirmation Order, no release or discharge of any of the Parties or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP

Lender, in each case acting in such capacity, shall diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

B. INJUNCTIONS.

1. Issuance of the Asbestos Permanent Channeling Injunction.

In connection with the creation of the Asbestos Personal Injury Trust, the Asbestos Permanent Channeling Injunction shall be, and hereby is, issued as of the Effective Date, pursuant to section 524(g) of the Bankruptcy Code.

2. Protected Parties Under the Asbestos Permanent Channeling Injunction.

In connection with the Asbestos Permanent Channeling Injunction, "Protected Party" means any of the following parties:

a. the Debtors;

b. the Reorganized Debtors;

c. the Protected Affiliates;

d. Lehigh Hanson;

e. current and former directors, officers, and employees of the Debtors, the Reorganized Debtors and the Protected Affiliates, including, without limitation, Lehigh Hanson, solely in their capacity as such;

f. as of February 15, 2018, current and former shareholders of the Debtors, the Reorganized Debtors and the Protected Affiliates, including, without limitation, Lehigh Hanson, solely in their capacity as such;

g. current and former in-house and outside attorneys, accountants, auditors, tax advisors and other professionals who have provided services to the Debtors, the Reorganized Debtors or the Protected Affiliates, including, without limitation, Lehigh Hanson, solely in their capacity as such;

h. Entities that, pursuant to the Plan or on or after the Effective Date, become a direct or indirect transferee of, or successor to, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent that liability is asserted to exist by reason of such Entity becoming such a transferee or successor;

i. Entities that, pursuant to the Plan or on or after the Effective Date, make a loan to any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust or to a successor to, or transferee of, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent that liability is asserted to exist by reason of it becoming such a lender;

j. Entities, other than Asbestos Insurers, that are alleged to be directly or indirectly liable for the conduct of, claims against, or Demands on any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, to the extent that such alleged liability arises by reason of one or more of the following:

(i) such Entity's ownership of a financial interest in any Debtor or Reorganized Debtor, or any past or present affiliate of any them, or any predecessor in interest of any of them;

(ii) such Entity's involvement in the management of any Debtor, Reorganized Debtor or any predecessor in interest of any of them;

(iii) such Entity's service as an officer, director or employee of any Debtor or Reorganized Debtor, any past or present affiliate of any of them, any predecessor in interest of any of them, or of any entity that owns or at any time has owned a financial interest in any Debtor or Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them;

(iv) such Entity's provision of insurance to any Debtor, Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them, or any entity that owns or at any time has owned a financial interest in any Debtor or Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them; and

(v) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of any Debtor, Reorganized Debtor, any past or present affiliate of any of them, any predecessor in interest of any of them, or any entity that owns or at any time has owned a financial interest in any Debtor or

Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them.

k. each Settling Asbestos Insurer.

3. The Asbestos Permanent Channeling Injunction.

Pursuant to section 524(g) of the Bankruptcy Code, all Entities shall be permanently and forever stayed, restrained and enjoined from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which shall be channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures, including:

a. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party;

b. enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against any Protected Party or any property or interests in property of any Protected Party;

c. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any

property or interests in property of any Protected Party;

d. setting off, seeking reimbursement of, contribution from or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

e. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Personal Injury Trust Documents, except in compliance therewith.

For the avoidance of doubt, (a) the Asbestos Permanent Channeling Injunction shall not affect any claims or causes of action under Sections IV.L.1. and IV.L.2. of the Plan and (a) no Entity shall be so stayed, enjoined, or restrained from initiating or continuing a suit or other proceeding against any Debtor in name only for the purpose of recovering on an Asbestos Personal Injury Claim from a Non-Settling Asbestos Insurer.

4. The Environmental Injunction.

In consideration of the undertakings of the Settled Environmental Insurers, and other consideration, and pursuant to their respective settlements with the Debtors and to preserve and promote further the agreements between and among the Debtors and any Settled Environmental Insurers, and pursuant to section 105 of the Bankruptcy Code:

a. any and all Environmental Claims shall be treated, administered, determined and resolved under the procedures and protocols under

the Plan as the sole and exclusive remedy with respect to Environmental Claims; and

b. all Entities are hereby permanently stayed, enjoined, barred and restrained from doing any of the following against the Settled Environmental Insurers:

(i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any Environmental Claim against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(ii) commencing or continuing in any manner any contribution, indemnity or other equitable action or other similar proceeding relating to the environmental settlements made in this bankruptcy case against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(iii) enforcing, attaching, collecting or recovering, by any manner or means, from any of the Settled Environmental Insurers, or the property of any of the Settled Environmental Insurers, any judgment, award, decree, payment or order relating to any Environmental Claim against any of the Settled Environmental Insurers; and

(iv) creating, perfecting or enforcing any lien of any kind relating to any Environmental Claim against any of the

Settled Environmental Insurers, or the property of the Settled Environmental Insurers.

The Environmental Injunction set forth in Section IX.B.3 of the Plan is an integral part of the Plan and is essential to the Plan's consummation and implementation. The Environmental Injunction shall inure to the benefit of the Settled Environmental Insurers, but shall not apply to any Debtor or Reorganized Debtor.

For the avoidance of doubt, the Environmental Injunction shall not apply to Asbestos Personal Injury Claims or to Asbestos Insurance Policy Claims arising from the payment of, or obligations arising from, Asbestos Personal Injury Claims.

5. General Injunctions Related to Discharge or Releases Granted Pursuant to the Plan.

a. **No Action on Account of Discharged Claims.**

In addition to the Asbestos Permanent Channeling Injunction and the Environmental Injunction set forth above, except as provided in the Plan or this Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged pursuant to the terms of the Plan shall be permanently enjoined from taking any of the following actions on account of any such discharged Claim, debt or liability: (i) commencing or continuing in any manner any action or other proceeding against any Debtor, Reorganized Debtor or any of its property, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting or recovering

in any manner any judgment, award, decree or order against the Debtors, the Reorganized Debtors or their respective property, other than as permitted pursuant to (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance against any Debtor or Reorganized Debtor, or any of its property; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any Debtor or Reorganized Debtor and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

b. **No Actions on Account of Released Claims.**

In addition to the Asbestos Permanent Channeling Injunction and the Environmental Injunction set forth above, except as provided in the Plan or this Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities that are released pursuant to the Plan shall be permanently enjoined from taking any of the following actions against any released Entity, or any of its property, on account of such released claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any released Entity and (v) commencing or continuing any action, in any

manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

VIII. DISSOLUTION OF THE ASBESTOS PERSONAL INJURY COMMITTEE AND DISCHARGE OF THE FUTURE CLAIMANTS' REPRESENTATIVE.

In accordance with Section XI.B of the Plan, on the Effective Date, the Asbestos Personal Injury Committee and the Creditors' Committee shall dissolve and the members of the Asbestos Personal Injury Committee and the Creditors' Committee shall be released and discharged from all duties and obligations arising from or related to the Reorganization Cases. Similarly, on the Effective Date, the Future Claimants' Representative shall be deemed released and discharged from all duties and obligations from or related to the Reorganization Cases. Subject to Section XI.B of the Plan, the Professionals retained by each of the Asbestos Personal Injury Committee and the members thereof, the Creditors' Committee and the members thereof and by the Future Claimants' Representative shall not be entitled to assert any Fee Claim for any services rendered or expenses incurred by them in their capacity as such after the Effective Date, except for services rendered and expenses incurred in connection with any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective Date pursuant to Section III.A.1.d.ii.A.

IX. RETENTION OF JURISDICTION.

A. RETENTION OF JURISDICTION BY THE BANKRUPTCY COURT.

Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, pursuant to Article X of the Plan, the Bankruptcy Court shall retain such jurisdiction over the Reorganization Cases after the Effective Date as is legally permissible, including jurisdiction over the matters described in Sections X.A.1 through X.A.17 of the Plan.

B. JURISDICTION RELATING TO ASBESTOS PERSONAL INJURY CLAIMS.

Notwithstanding anything to the contrary in Article X of the Plan, the resolution of Asbestos Personal Injury Claims and the forum in which such resolution will be determined shall be governed by and in accordance with the Asbestos Personal Injury Trust Distribution Procedures.

X. NOTICE OF ENTRY OF CONFIRMATION ORDER.

A. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Reorganized Debtors are directed to serve, within twenty (20) business days after the occurrence of the Effective Date, a notice of the entry of this Confirmation Order, which shall include notice of the Bar Dates established by the Plan and this Confirmation Order and notice of the Effective Date, substantially in the form attached hereto as Exhibit C and incorporated herein by reference (the "Confirmation Notice"), on all parties that received notice of the Confirmation Hearing; provided, however, that, with respect to Asbestos Personal Injury Claims, the Reorganized Debtors shall be obligated to serve the Confirmation Notice only on counsel to holders of Asbestos

Personal Injury Claims, to the extent that the holders of such Claims are represented by known counsel, unless such counsel requests otherwise in writing within ten (10) days of service of the Confirmation Notice.

B. As soon as practicable after the entry of this Confirmation Order, the Reorganized Debtors shall make copies of this Confirmation Order and the Confirmation Notice available on the website established by Prime Clerk for these Reorganization Cases, available at https://cases.primeclerk.com/kaisergypsum/.

C. No later than twenty (20) Business Days after the Effective Date, the Reorganized Debtors are directed to publish the version of the Confirmation Notice attached hereto as Exhibit D once in (i) the national editions of *The Wall Street Journal and USA Today* and (ii) various regional newspapers.[10]

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[10] The regional newspapers are: Arizona Republic (Arizona); Honolulu Star-Advertiser (Hawaii); San Antonio Express News (Texas); Dallas Morning News (Texas); Seattle Times (Washington); San Jose Mercury News (California); Pittsburgh Post-Gazette (Pennsylvania); Austin American-Statesman (Texas); Portland Oregonian (Oregon); Orange County Register (California); San Bernardino Sun (California); Florida Times-Union (Florida); Spokesman-Review (Washington); Alaska Dispatch News (Alaska); Helena Independent Record (Montana); Camden Courier Post (New Jersey); Burlington County Times (New Jersey); Bellingham Herald (Washington); Bismarck Tribune (North Dakota); Columbian (Washington); Daily Review (California); East County Times (California); Eureka Times Standard (California); Fairbanks Daily News-Miner (Alaska); Idaho State Journal (Idaho); Kodiak Daily Mirror (Alaska); Meridian Press (Idaho); St. Helens Chronicle (Oregon); Tacoma News Tribune (Washington); Times Journal (Oregon); Tri-City Herald (Washington); Tyler Morning Telegraph (Texas); Whittier Daily News (California); Los Angeles Times (California); Albuquerque Journal (New Mexico) and WamPinRock News (Oregon).

XI. ORDER OF THE COURT.

The Plan is hereby confirmed in its entirety pursuant to section 1129 of the Bankruptcy Code, and the Asbestos Permanent Channeling Injunction and Environmental Injunction are hereby issued pursuant to section 524(g) of the Bankruptcy Code.

THIS ORDER IS HEREBY DECLARED TO BE IN RECORDABLE FORM AND SHALL BE ACCEPTED BY ANY RECORDING OFFICER FOR FILING AND RECORDING PURPOSES WITHOUT FURTHER OR ADDITIONAL ORDERS, CERTIFICATIONS OR OTHER SUPPORTING DOCUMENTS.

Signed: July 27, 2021

/s/ Graham C. Mullen
Graham C. Mullen
United States District Judge

EXHIBIT A

JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: **Kaiser Gypsum Company, Inc., *et al.*,** **Debtors.**	Chapter 11 Case No. 16-31602 (JCW) (Jointly Administered) Case No. 16-31602 (JCW) Case No. 16-31614 (JCW)
Kaiser Gypsum Company, Inc. **Hanson Permanente Cement, Inc.**	**THIRD AMENDED JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.**

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Dated: July 20, 2020

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[1] To the extent not attached to and Filed with the Plan, Plan Exhibits shall be Filed and made available for review on the web site of Prime Clerk LLC ("Prime Clerk"), the Debtors' claims and noticing agent, at https://cases.primeclerk.com/kaisergypsum no later than ten (10) days before the deadline to object to confirmation of the Plan. The Debtors also will serve such Exhibits on their then current Bankruptcy Rule 2002 service list no later than ten (10) days before the deadline to object to confirmation of the Plan. The Debtors reserve the right to modify, amend, supplement, restate or withdraw any of the Exhibits after they are Filed. The Debtors shall File and shall make available on Prime Clerk's web site all modified, amended, supplemented or restated Exhibits as promptly as possible.

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INTRODUCTION

The Parties propose the following joint plan of reorganization for the resolution of the outstanding claims and demands against and equity interests in the Debtors pursuant to sections 524(g) and 1121(a) of title 11 of the United States Code. The Parties are co-proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code, and the Plan is supported by the following principal stakeholders, or representatives of such stakeholders, in the chapter 11 cases: the Debtors, the Debtors' indirect parent company, Lehigh Hanson, Inc., the Asbestos Personal Injury Committee and the Future Claimants' Representative. Reference is made to the Debtors' disclosure statement, filed contemporaneously with the Plan, for a discussion of the history, businesses, results of operations, historical financial information, projections and properties of the Debtors, and for a summary and analysis of the Plan. There also are other agreements and documents, which are or will be Filed with the Bankruptcy Court, that are referenced in the Plan or the Debtors' Disclosure Statement and that will be available for review.

ARTICLE I

DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

A. Defined Terms

As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, has the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1. "Administrative Claim" means a Claim for costs and expenses of administration allowed under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the respective Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for leased equipment and premises), including Claims under the DIP Credit Agreement; (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a), 331 or 503 of the Bankruptcy Code, including Fee Claims; and (c) all fees and charges assessed against the Estates under chapter 123 of title 28, United States Code, 28 U.S.C. §§ 1911-1930.

2. "Affiliate" means an "affiliate," as defined in section 101(2)(B) of the Bankruptcy Code, of the Debtors.

3. "Allowed Claim" means:

a. a Claim (other than an Asbestos Personal Injury Claim) that (i) has been listed by a particular Debtor on its Schedules as other than disputed, contingent or unliquidated and (ii) is not a Disputed Claim;

b. a Timely Claim (other than an Asbestos Personal Injury Claim) that is not a Disputed Claim;

c. a Timely Claim (other than an Asbestos Personal Injury Claim) that is liquidated and allowed: (i) in any Stipulation of Amount and Nature of Claim executed by the Debtors or Reorganized Debtors and Claim holder; (ii) in any contract, instrument or other agreement entered into

in connection with the Plan and, if prior to the Effective Date, approved by the Bankruptcy Court; (iii) in a Final Order; or (iv) pursuant to the terms of the Plan; or

d. a Claim (other than an Asbestos Personal Injury Claim) listed by a particular Debtor on its Schedules as other than disputed, contingent or unliquidated or a Timely Claim that the Debtors or Reorganized Debtors determine prior to the Claims Objection Bar Date (i) will not be subject to an objection or to an amendment to the Schedules and (ii) will be satisfied in accordance with the terms of the Plan on or after the Effective Date.

4. "Allowed . . . Claim" means an Allowed Claim in the particular Class or category specified.

5. "Asbestos Coverage Litigation" means the case captioned *Truck Insurance Exchange v. Kaiser Cement and Gypsum Corporation*, Court of Appeal of the State of California, Second Appellate District, Court of Appeal No. B278091, Superior Court No. BC249550.

6. "Asbestos Insurance Policies" means those insurance policies alleged by HPCI or any other party in the Asbestos Coverage Litigation and described on Exhibit I.A.6, as well as any other insurance policy of the Debtors providing, or potentially providing, for coverage for Asbestos Personal Injury Claims.

7. "Asbestos Insurance Policy Claim" means any claim against any Asbestos Insurer based on, arising under, or related to any Asbestos Insurance Policy or settlement related to any Asbestos Insurance Policy, including any claim for contribution,

reimbursement, indemnity or subrogation, or bad faith refusal to settle related to any Asbestos Insurance Policy.

8. "Asbestos Insurer" means any Entity that has issued an Asbestos Insurance Policy and each of its affiliates, predecessors in interest, and agents, but only in relation to such Asbestos Insurance Policies, including those insurers who issued, subscribed to, or have acquired the obligations of an issuing or subscribing insurer through assignment, conveyance, merger, acquisition or other legal theory.

9. "Asbestos Insurer Cooperation Obligations" means, collectively, the Assistance and Cooperation, Inspection and Audit, and Notice of Occurrence provisions set out in the Asbestos Insurance Policies.

10. "Asbestos Permanent Channeling Injunction" means an order or orders of the Bankruptcy Court or the District Court, or the Bankruptcy Court and the District Court acting jointly and, if the Confirmation Order is entered by the Bankruptcy Court, affirmed by the District Court, in accordance with, and pursuant to, section 524(g) of the Bankruptcy Code permanently and forever staying, restraining and enjoining any Entity from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which shall be channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures.

11. "Asbestos Personal Injury Claim" means any and all Debtor Claims on account of or relating to death, bodily injury, sickness, disease, emotional distress, fear of cancer, medical monitoring or other personal injuries whatsoever (whether physical, emotional or otherwise) arising out of, based upon or resulting from, directly or indirectly, in whole or in part, Conduct, to the extent arising, directly or indirectly, from Conduct (including Conduct of any other Entity for whose Conduct the Debtors have or are alleged to have liability, but in all cases only to the extent of any of the Debtors' liability for such Conduct), including without limitation (a) any and all Asbestos Personal Injury Indirect Claims and (b) any and all Debtor Claims under agreements entered into by or on behalf of the Debtors prior to the Petition Date in settlement of Asbestos Personal Injury Claims. For the purpose of this definition, Asbestos Personal Injury Claims shall not include any claim by any present or former employee of any of the Debtors for benefits under a policy of workers' compensation insurance or for benefits under any state or federal workers' compensation statute or other statute providing compensation to an employee from an employer. For avoidance of doubt, an Asbestos Personal Injury Claim excludes any liability of the Protected Parties that is not liability of the Debtors, including, but not limited to, any liability of the Protected Parties (other than the Debtors) for their own asbestos or asbestos-containing products.

12. "Asbestos Personal Injury Committee" means the Official Committee of Asbestos Personal Injury Claimants appointed pursuant to an order of the Bankruptcy Court entered on October 19, 2016 in the Reorganization Cases pursuant to section 1102 of the Bankruptcy Code and any duly appointed successors, as the same may be reconstituted from time to

time. The members as of the date of the Plan are: Cleophus Rice, c/o Armand J. Volta, Jr., The Law Offices of Peter G. Angelos; Larry Eugene Watson, c/o Alan R. Brayton, Brayton Purcell LLP; Jerry Gabrel, c/o John D. Cooney, Cooney & Conway; Bernard Kunes, II, Individually and as Special Administrator of the Estate of Bernard Kunes, Deceased, c/o Beth Gori, Gori Julian & Associates, P.C.; Margaret Tocco, Individually and as Special Administrator of the Estate of Peter Tocco, Deceased, c/o Perry J. Browder, Simmons Hanly Conroy LLC; Ronald Earl Auen and Sherrie Auen, c/o Steven Kazan, Kazan, McClain, Satterley & Greenwood; Stanley J. Anderson c/o Connie J. Anderson – POA, c/o James L. Ferraro, Kelley & Ferraro, LLP; Lauren Lougher, as Administratrix of the Estate of John Lougher, Deceased, c/o Joseph W. Belluck, Belluck & Fox, LLP; Marta Poling-Goldenne, As Successor-In-Interest to David Poling-Goldenne, Deceased c/o Peter A. Kraus, Waters & Kraus, LLP; Patricia Hoff, Individually and as Personal Representative of David Hoff, Deceased, c/o Matthew P. Bergman, Bergman Draper Ladenburg, PLLC; Lois Annette Beach, c/o Joseph F. Rice, Motley Rice LLC. The committee is chaired by Mr. Cooney.

13. "Asbestos Personal Injury Indirect Claim" means any and all Debtor Claims asserted by a party that is not an Asbestos Insurer for contribution, reimbursement, subrogation or indemnification, or any other indirect or derivative recovery, on account of or with respect to any Asbestos Personal Injury Claim. Notwithstanding the foregoing, any Protected Party Indemnification Claim shall not be deemed to be or treated as an Asbestos Personal Injury Indirect Claim or an Asbestos Personal Injury Claim, and the Asbestos Personal Injury Trust shall pay such claims in accordance with the terms of the

Asbestos Personal Injury Trust Documents and the Plan.

14. "Asbestos Personal Injury Insurance Assets" means (a) all of the Debtors' rights related to or arising under their Asbestos Insurance Policies (but not the policies themselves) to the fullest extent that those rights are related to coverage for Asbestos Personal Injury Claims, and (b) all claims and causes of action that the Debtors or Reorganized Debtors have, or may have in the future, against any Asbestos Insurer that are related to the Debtors' asbestos-containing products or the Asbestos Personal Injury Claims, including, but not limited to, claims or causes of action for a bad-faith refusal to settle. For the avoidance of doubt, Asbestos Personal Injury Insurance Assets include all rights to coverage and insurance proceeds under the Asbestos Insurance Policies that are related to coverage for Asbestos Personal Injury Claims, together with all rights to insurance coverage and insurance proceeds related to Asbestos Personal Injury Claims under any settlement agreements and/or other agreements or stipulations, including without limitation the Excess CIP Agreement, as well as the right, on behalf of the Debtors, to compromise with or grant a full release to one or more of the Asbestos Insurers of any such insurance rights, whether under any such policy or settlement agreement.

15. "Asbestos Personal Injury Trust" means the trust that is to be established pursuant to section 524(g) of the Bankruptcy Code and in accordance with the Plan, the Confirmation Order and the Asbestos Personal Injury Trust Agreement, which trust will satisfy the requirements of section 524(g) of the Bankruptcy Code and section 468B of the Internal Revenue

Code and the Treasury Regulations promulgated thereunder.

16. "Asbestos Personal Injury Trust Agreement" means that certain Asbestos Personal Injury Trust Agreement, executed by the Debtors and the Asbestos Personal Injury Trustee, substantially in the form of Exhibit I.A.16.

17. "Asbestos Personal Injury Trust Appellate Costs" means if the Asbestos Personal Injury Trust determines to continue pursuing the Phase 1 Claims following the entry of a decision by the California Court of Appeal or, if there is a remand by that court, the Superior Court, completely resolving the Phase 1 Claims in favor of Truck, including through any further appeals or post-decision motions, all costs of pursuing the Phase 1 Appeal, including reasonable attorneys' fees and expenses incurred by the Asbestos Personal Injury Trust from that point forward.

18. "Asbestos Personal Injury Trust Assets" means, collectively: (a) $49.0 million in cash; (b) the Payment Note; (c) the Phase 1 Claims; and (d) the Asbestos Personal Injury Insurance Assets.

19. "Asbestos Personal Injury Trust Distribution Procedures" means the Asbestos Personal Injury Trust Distribution Procedures, to be implemented by the Asbestos Personal Injury Trust pursuant to the terms and conditions of the Plan and the Asbestos Personal Injury Trust Agreement governing the resolution of Asbestos Personal Injury Claims, substantially in the form of Exhibit I.A.19.

20. "Asbestos Personal Injury Trust Documents" means, collectively: (a) the Asbestos Personal Injury Trust Agreement; (b) the Asbestos Personal Injury Trust Distribution Procedures; and (c) the other

agreements, instruments and documents governing the establishment and administration of the Asbestos Personal Injury Trust, as the same may be amended or modified from time to time, in accordance with the terms thereof.

21. "Asbestos Personal Injury Trust Expenses" means, as to the Asbestos Personal Injury Trust, all costs, Taxes and expenses of or imposed on such trust, including but not limited to: (a) compensation expenses of such trust; (b) legal, accounting and other professional fees and expenses of such trust; (c) other disbursements and expenses relating to the implementation and operation of such trust; and (d) Asbestos Personal Injury Trust Appellate Costs.

22. "Asbestos Personal Injury Trust Termination Date" means the date on which the Asbestos Personal Injury Trust terminates as set forth in the Asbestos Personal Injury Trust Agreement.

23. "Asbestos Personal Injury Trustee" means the person appointed to serve as trustee of the Asbestos Personal Injury Trust to administer Asbestos Personal Injury Claims pursuant to the terms of the Asbestos Personal Injury Trust Agreement, or as subsequently may be appointed pursuant to the terms of the Asbestos Personal Injury Trust Agreement.

24. "Bankruptcy Administrator" means the Bankruptcy Administrator for the Western District of North Carolina.

25. "Bankruptcy Code" means title 11 of the United States Code, as in effect on the Petition Date or thereafter amended with retroactive applicability to the Reorganization Cases.

26. "Bankruptcy Court" means the United States Bankruptcy Court for the Western District of

North Carolina having jurisdiction over the Reorganization Cases.

27. "Bankruptcy Rules" means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended with retroactive applicability to the Reorganization Cases.

28. "Bar Date" means the applicable bar date by which a proof of Claim or a request for payment of an Administrative Claim must be or must have been Filed, as established by an order of the Bankruptcy Court, including the Confirmation Order.

29. "Business Day" means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)), the day after Thanksgiving and any date on which the Bankruptcy Court is closed by law or order.

30. "By-Laws" means, with respect to a Reorganized Debtor, the by-laws, regulations or other comparable document of such Reorganized Debtor, to be amended and restated in accordance with Section IV.D.1.

31. "Certificate of Incorporation" means, with respect to any Reorganized Debtor, the articles or certificate of incorporation or other comparable document of such Reorganized Debtor, to be amended and restated in accordance with Section IV.D.1.

32. "Claim" means a "claim," as defined in section 101(5) of the Bankruptcy Code, against any Debtor.

33. "Claims Objection Bar Date" means, for all Claims (other than Asbestos Personal Injury Claims) the latest of: (a) 120 days after the Effective

Date; (b) 60 days after the Filing of a proof of Claim for such Claim; and (c) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules or an order of the Bankruptcy Court.

34. "Class" means a class of Claims or Interests, as described in Article II, pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

35. "Conduct" means the presence of or exposure to asbestos or asbestos containing products or things alleged to have been designed, marketed, manufactured, fabricated, constructed, sold, supplied, produced, installed, maintained, serviced, specified, selected, repaired, removed, replaced, released, distributed, or in any other way made available, or present at any premises owned, leased, occupied or operated, by either of the Debtors or any other Entity for whose products, acts, omissions, business, or operations either of the Debtors has liability or is alleged to have liability.

36. "Confirmation" means the entry of the Confirmation Order on the docket of the District Court.

37. "Confirmation Date" means the date on which the Bankruptcy Court and the District Court acting jointly, or the District Court enters the Confirmation Order on its docket.

38. "Confirmation Hearing" means, collectively, the hearing or hearings held by the Bankruptcy Court or the District Court on Confirmation of the Plan, as such hearing or hearings may be continued from time to time.

39. "Confirmation Order" means the order of the District Court, the Bankruptcy Court and the District Court acting jointly, or, if an order is entered by

the Bankruptcy Court, the order of the District Court affirming the Bankruptcy Court's order, that confirms the Plan pursuant to section 1129 of the Bankruptcy Code.

40. "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to an order of the Bankruptcy Court entered on October 14, 2016 in the Reorganization Cases pursuant to section 1102 of the Bankruptcy Code and any duly appointed successors, as the same may be reconstituted from time to time. The members as of the date of the Plan are: The Boeing Company and Ash Grove Cement Company.

41. "Cure Amount Claim" means a Claim based upon a Debtor's defaults pursuant to an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by that Debtor under section 365 of the Bankruptcy Code.

42. "Debtor Appellate Costs" means the Truck Appeal Costs together with the First Stage Costs.

43. "Debtor Claims" means any and all claims, commitments, obligations, suits, judgments, damages (whether compensatory, exemplary, punitive or otherwise), Demands, debts, causes of action and liabilities of any kind or nature, of or against the Debtors or any Protected Party, to the full extent, but only to the extent, of the Debtors' liability, whether liquidated or unliquidated, fixed or contingent, direct or indirect, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, equity or otherwise, including, without limitation, under any legal or equitable theory. whatsoever, including without limitation piercing the corporate veil, alter ego, successor

liability, fraudulent conveyance, fraudulent concealment, conspiracy, enterprise liability, market share, joint venture, loss of consortium, medical monitoring, negligence, failure to warn, wrongful death, survivorship, or any other legal or equitable theory.

44. "Debtors" means, together, the above-captioned debtors and debtors in possession identified on the cover page to this Plan.

45. "Deductible" means (a) $5,000 per paid Asbestos Personal Injury Claim for all paid claims with a first exposure date on or before December 31, 1975; (b) $50,000 per paid Asbestos Personal Injury Claim for all paid claims with a first exposure date between January 1, 1976 and March 31, 1981, inclusive; and (c) $100,000 per paid Asbestos Personal Injury Claim for all claims with a first exposure date between April 1, 1981 and March 31, 1983, inclusive.

46. "Deficiency Claim" means a General Unsecured Claim for the difference between (a) the aggregate amount of an Allowed Claim and (b) the value received on account of the portion of such Allowed Claim that is a Secured Claim.

47. "Delaware Trustee" means the Entity or Entities appointed to serve as the "Delaware Trustee" for the Asbestos Personal Injury Trust pursuant to Section IV.H and the terms of the Asbestos Personal Injury Trust Agreement, as identified in Exhibit I.A.47, or as subsequently may be appointed pursuant to the terms of the Asbestos Personal Injury Trust Agreement.

48. "Demand" means a "demand," as defined in section 524(g)(5) of the Bankruptcy Code, against any Debtor.

49. "DEQ" means the Oregon Department of Environmental Quality.

50. "DEQ Settlement" means the settlement among the Debtors, Lehigh Hanson and DEQ as approved by the DEQ Settlement Order and further documented in the Consent Judgment entered in the Circuit Court of the State of Oregon for the County of Columbia; provided that the DEQ Settlement shall be subject to and governed by the terms and conditions of the Consent Judgment and the Term Sheet, and that all conditions to the effectiveness of the DEQ Settlement set forth therein shall have been satisfied or waived in writing; and, provided further, that in the event of any inconsistency between the terms of the DEQ Settlement, as so defined, and the DEQ Settlement Order, the terms and conditions of the DEQ Settlement shall govern.

51. "DEQ Settlement Order" means the Order Approving Settlement with the Oregon Department of Environmental Quality entered by the Bankruptcy Court on May 7, 2019.

52. "DIP Credit Agreement" means, collectively: (a) that Debtor-in-Possession Loan and Security Agreement; (b) all amendments thereto and extensions thereof; and (c) all security, guaranty and other documents and agreements related to the documents identified in (a) and (b), including, without limitation, any termination letters.

53. "DIP Lender" means Lehigh Hanson, Inc., a Delaware corporation, as the lender under the DIP Credit Agreement.

54. "Disbursing Agent" means any of the Reorganized Debtors, in their capacity as a disbursing agent pursuant to Section VI.C., or any Third Party

Disbursing Agent, but shall not include any disbursing agent for or with respect to the Asbestos Personal Injury Trust.

55. "Disclosure Statement" means the written disclosure statement that relates to the Plan, including the exhibits thereto, approved by the Bankruptcy Court as containing adequate information pursuant to section 1125 of the Bankruptcy Code and Rule 3017 of the Bankruptcy Rules, as such disclosure statement may be amended, modified, or supplemented from time to time.

56. "Disputed Claim" means (other than with respect to an Asbestos Personal Injury Claim):

a. if no proof of Claim has been Filed by the applicable Bar Date or has otherwise been deemed timely Filed under applicable law, (i) a Claim that is listed on a Debtor's Schedules as disputed, contingent or unliquidated or (ii) a Claim that is not listed on a Debtor's Schedules; or

b. if a Timely Claim, a Claim for which an objection, complaint or request for estimation has been Filed by the applicable Debtor, Reorganized Debtor or, prior to the Confirmation Date, any other party in interest, by the Claims Objection Bar Date, and such objection has not been withdrawn or denied by a Final Order.

57. "Distribution" means one or more payments or distributions under the Plan of cash, notes, interests or other property, as applicable, to the holders of Allowed Claims (other than Asbestos Personal Injury Claims or distributions made to the Asbestos Personal Injury Trust).

58. "Distribution Record Date" means the Confirmation Date.

59. "District Court" means the United States District Court for the Western District of North Carolina having jurisdiction over these Reorganization Cases.

60. "Dual Policies" means those insurance policies described on Exhibit I.A.60 which provide or may provide coverage for Asbestos Personal Injury Claims and Environmental Claims under a shared combined aggregate limit.

61. "Effective Date" means the earliest possible date, as determined by the Debtors, the Asbestos Personal Injury Committee and the Future Claimants' Representative, that is a Business Day on or after the date on which all conditions to the effective date in Section VIII.B. have been met or waived pursuant to Section VIII.C.

62. "Encumbrance" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, assignment or encumbrance of any kind or nature in respect of such asset (including any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

63. "Entity" means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization or government or any political subdivision thereof, or other person or entity.

64. "**Environmental Claim**" means a Claim of any Entity against any Debtor: (a) relating to alleged violations of, or noncompliance with, or liability arising under any federal or state environmental laws or regulations; or (b) relating to Pollution (defined as

actual, alleged, or threatened pollution, contamination, damage, injury, or harm to any land, soil, watercourse, surface water, ground water, body of water, the air and/or atmosphere and/or any other tangible thing, or to any person or other living thing, relating to the actual, alleged, or threatened release, discharge, disposal, application, distribution, use or escape (including emission or seepage) of smoke, vapor, soot, fumes, acids, alkalis, chemicals, liquids, gases, waste materials, oil, petroleum or petroleum derivatives, other irritants, contaminants or pollutants from any facility, structure, vehicle, premises, landfill, disposal site or other property owned or operated by the Debtors or at or to which such substances were generated, stored, transported, distributed, sold, produced, or disposed of by the Debtors or for which the Debtors may be liable by contract or by statute, or otherwise, including all sites or locations referenced in the actions pending in California state court and Oregon state court to determine insurance coverage, regardless of whether substances were known to be, or, in fact, were hazardous, contaminating or polluting substances at any particular time), including: (i) any Claim of actual, alleged, threatened, or feared personal injury, bodily injury, sickness, or disease; (ii) any Claim of actual, alleged, threatened, or feared property damage, including damage, destruction, loss of use, diminished value or any economic loss; (iii) any Claim relating to actual, alleged, threatened, or feared damage to, destruction of, or limitation or loss of use of natural resources; (iv) any Claim seeking to compel (through injunctive or equitable relief or otherwise), the enforcement of federal, state or local statutes, rules, regulations, ordinance or government directive or the testing, study, investigation, prevention or remediation of actual, alleged, threatened, or

feared Pollution or any Claim for such costs; (v) any Claim for nuisance, trespass, interference with quiet enjoyment of property, bad faith, sanctions, punitive or exemplary damages, statutory fines, or penalties; or (vi) any Claim for costs or expenses incurred by any Entity for the testing study, investigation, prevention, or remediation of actual, alleged, threatened, or feared Pollution, or incurred in order to comply with any environmental statute, rule, regulation, ordinance, or government directive. For the avoidance of doubt, Asbestos Personal Injury Claims and Asbestos Insurance Policy Claims do not fall within the definition of Environmental Claims.

65. "Estate" means, as to each Debtor, the estate created for that Debtor in its Reorganization Case pursuant to section 541 of the Bankruptcy Code.

66. "Escrow Agent" means the escrow agent designated to administer and make distributions from the General Unsecured Claims Escrows.

67. "Executory Contract and Unexpired Lease" and "Executory Contract or Unexpired Lease" means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code and the Confirmation Order.

68. "Excess CIP Agreement" means that certain December 2013 Excess Coverage In Place Settlement Agreement.

69. "Fee Claim" means a Claim under sections 330(a), 331, 503 or 1103 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Reorganization Cases.

70. "Fee Order" means the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals entered by the Bankruptcy Court on November 7, 2016.

71. "File," "Filed" or "Filing" means file, filed or filing with the Bankruptcy Court, the District Court or their authorized designees, as applicable, in the Reorganization Cases.

72. "Final Fee Application" means an application for final allowance of the Professional's aggregate Fee Claim as described in Section III.A.1.d.ii.A.

73. "Final Order" means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction that has been entered on the docket in any Reorganization Case or the docket of any other court of competent jurisdiction, and has not been reversed, stayed, modified or amended, and as to which (a) the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or (b) any appeal that has been taken or any petition for certiorari that has been filed timely has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied.

74. "First Stage Costs" means all costs of pursuing the Phase 1 Claims, including reasonable attorneys' fees and expenses, incurred by the plaintiff until the earlier of (a) the entry of a decision by the California Court of Appeal in the Phase 1 Appeal or, if there is a remand by that court, the California Superior

Court, resolving the Phase 1 Claims or (b) a settlement of the Phase 1 Claims.

75. "Future Claimants' Representative" means Lawrence Fitzpatrick (or any court appointed alternative or successor), the legal representative for persons who might subsequently assert Demands against any of the Debtors, who was appointed pursuant to order of the Bankruptcy Court dated October 19, 2016.

76. "General Unsecured Claim" means a Deficiency Claim and any Claim that is not a Cure Amount Claim, Administrative Claim, Priority Tax Claim, Priority Claim, Secured Claim, Asbestos Personal Injury Claim, or Intercompany Claim.

77. "General Unsecured Claims Escrows" means two escrow accounts funded through (a) settlement amounts paid by Settled Environmental Insurers and (b) the Lehigh Hanson General Unsecured Claim Contribution held by the Escrow Agent to facilitate distributions to holders of Allowed General Unsecured Claims. On the Effective Date, the funds deposited into the General Unsecured Claims Escrows will total the aggregate amount of all Allowed General Unsecured Claims as of the Effective Date.

78. "**HeidelbergCement"** means HeidelbergCement AG.

79. "HPCI" means Debtor Hanson Permanente Cement, Inc., an Arizona corporation.

80. "Insolvent Insurers Proceeds" means the proceeds of the Debtors' claims for insurance coverage against OIC Run-Off Limited (formerly The Orion Insurance Company plc) and The London and Overseas Insurance Company Limited (formerly The London and Overseas Company plc), which proceeds are being

or will be held by the Debtors in a separate bank account.

81. "Insolvent Insurers Proceeds Dispute" means the dispute among the Asbestos Personal Injury Committee, the Future Claimants' Representative, certain insurers and the Creditors' Committee regarding to what extent the Debtors or other parties are entitled to the Insolvent Insurers Proceeds.

82. "Insurance Policies" means the insurance policies covering or potentially covering the Asbestos Personal Injury Claims and the Environmental Claims, as described in Exhibits I.A.6, I.A.60, I.A.119, IV.M.3 and IV.M.4.

83. "Insured Asbestos Claim" means an Asbestos Personal Injury Claim that is covered by any Asbestos Insurance Policy.

84. "Insurer Coverage Defenses" means all defenses at law or in equity that any Asbestos Insurer may have under applicable non-bankruptcy law to provide insurance coverage to or for Asbestos Personal Injury Claims that have been channeled to and assumed by the Asbestos Personal Injury Trust pursuant to the Plan, except for (a) any defense that the transfer of the Debtors' rights as to Asbestos Personal Injury Insurance Assets pursuant to the Plan is invalid or unenforceable or otherwise breaches the terms of such coverage and (b) any defense that the drafting, proposing, confirmation or consummation of a plan of reorganization (as opposed to the terms, operation, effect or unreasonableness of any of the Plan or the Exhibits to the Plan) and/or the discharge and/or release of the Debtors from liability for Asbestos Personal Injury Claims pursuant to the Plan operates to, or otherwise results in, the elimination of or the reduction

in any obligation such insurers may have under such transferred rights as to the Asbestos Personal Injury Insurance Assets.

85. "Intercompany Claim" means any Claim, including an Administrative Claim, by HeidelbergCement or any direct or indirect subsidiary of HeidelbergCement, including a Debtor, against a Debtor.

86. "Interest" means the rights of any holder of the stock of any Debtor and the rights of any Entity to purchase or demand the issuance of any of the stock of any Debtor, including: (a) redemption, conversion, exchange, voting, participation and dividend rights; (b) liquidation preferences; and (c) rights under stock options and warrants.

87. "Inter-Insurer rights" means the rights of one Asbestos Insurer to recover from any other Asbestos Insurer based on theories of contribution, indemnity, subrogation or other right to reimbursement, whether those rights are based upon contract, statute, equity or case law.

88. "Internal Revenue Code" means title 26 of the United States Code, 26 U.S.C. § 1 *et seq*.

89. "IRS" means the Internal Revenue Service of the United States of America.

90. "Kaiser Gypsum" means Debtor Kaiser Gypsum Company, Inc., a North Carolina corporation.

91. "Lehigh Hanson" means Lehigh Hanson, Inc., a Delaware corporation.

92. "Lehigh Hanson General Unsecured Claim Contribution" means a payment of Lehigh Hanson into the General Unsecured Claims Escrows in an amount no less than the total amount of all Allowed General Unsecured Claims as of the Effective

Date, less the amount contributed to the General Unsecured Claims Escrows by the Settled Environmental Insurers, less any amount contributed to the General Unsecured Claims Escrows by the Debtors, but not to exceed the amount specified in Section IV.E of this Plan.

93. "Non-Settling Asbestos Insurer" means any Asbestos Insurer who is not a Settling Asbestos Insurer.

94. "Objecting Excess Insurers" means Certain Underwriters at Lloyd's, London, Certain London Market Companies, Columbia Casualty Company, National Fire Insurance Company of Hartford, The Continental Insurance Company, Granite State Insurance Company, Lexington Insurance Company, The Insurance Company of the State of Pennsylvania, Evanston Insurance Company, TIG Insurance Company, Allstate Insurance Company, solely as successor in interest to Northbrook Excess & Surplus Insurance Company, formerly Northbrook Insurance Company, First State Insurance Company, New England Reinsurance Company, Allianz Underwriters Insurance Company, Fireman's Fund Insurance Company, and Westchester Fire Insurance Company.

95. "Objecting Excess Insurers' Objections" means the Plan objections and motions to dismiss, set out in docket numbers 919, 1053, 2066, 2067, 2069, 2071, 2073 and 2075 of the Bankruptcy Court docket, and any objections to any post-confirmation settlement with Truck.

96. "Parties" means, collectively, the Debtors, Lehigh Hanson, the Asbestos Personal Injury Committee and the Future Claimants' Representative.

97. "Payment Default" means the failure by the Reorganized Debtors to pay the Payment Note in full on or before the fifth anniversary of the Effective Date.

98. "Payment Note" means a note, issued to the Asbestos Personal Injury Trust by the Reorganized Debtors as co-obligors in the principal amount of $1.0 million, in substantially the form of Exhibit I.A.98. As reflected in Exhibit I.A.98, the Payment Note will (a) beginning on the second anniversary of the Effective Date, bear interest at a rate of 10 percent per annum; (b) mature on the fifth anniversary of the Effective Date; (c) be secured by the Pledge; and (d) provide for payment in full of the principal amount of the Payment Note on or before the Payment Note's maturity date. As further reflected in Exhibit I.A.98, upon the occurrence of a Payment Default, the Asbestos Personal Injury Trust may, upon written notice to the Reorganized Debtors, foreclose on the Pledge. During the period in which the Payment Default has occurred and is continuing interest will accrue at a per annum rate of 10 percent on the amount of the unpaid principal. A Payment Default shall not provide a basis for the Asbestos Personal Injury Trust to contend that a material breach of the Plan has occurred or that any Protected Party is no longer entitled to the protections provided to such Protected Party pursuant to the Plan, including without limitation the protections of the Asbestos Permanent Channeling Injunction, the related indemnification by the Asbestos Personal Injury Trust, and the settlement of the Estates' claims.

99. "Permanente Property" means HPCI's cement plant, rock plant and quarry (including the minerals) located in Santa Clara County, California.

100. "Petition Date" means September 30, 2016.

101. "Phase 1 Appeal" means HPCI's appeal of the January 5, 2015 Statement of Decision in the Asbestos Coverage Litigation that is pending in the California Court of Appeal under Case No. B278091.

102. "Phase 1 Claims" means those claims of HPCI (asserted on its own and on Kaiser Gypsum's behalf) against Truck for Truck's withholding of deductible amounts in July 2007, as alleged by HPCI in its Cross-Complaint against Truck in the Asbestos Coverage Litigation, and as tried to the court in November 2014 and reflected in a January 5, 2015 Statement of Decision, and as encompassed within the Phase 1 Appeal.

103. "Plan" means this joint plan of reorganization for the Debtors and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

104. "Pledge" means 100 percent of the equity of each Reorganized Debtor.

105. "Priority Claim" means a Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

106. "Priority Tax Claim" means a Claim that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

107. "Professional" means any professional employed in the Reorganization Cases pursuant to sections 327, 328 or 1103 of the Bankruptcy Code or any professional or other Entity seeking compensation or reimbursement of expenses in connection with

the Reorganization Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

108.“Protected Affiliates” means the parties identified on Exhibit I.A.108.

109. “Protected Party” means any of the following parties:

a. the Debtors;

b. the Reorganized Debtors;

c. the Protected Affiliates;

d. Lehigh Hanson;

e. current and former directors, officers, and employees of the Debtors, the Reorganized Debtors and the Protected Affiliates, including without limitation Lehigh Hanson, solely in their capacity as such;

f. as of February 15, 2018, current and former shareholders of the Debtors, the Reorganized Debtors and the Protected Affiliates, including without limitation Lehigh Hanson, solely in their capacity as such;

g. current and former in-house and outside attorneys, accountants, auditors, tax advisors and other professionals who have provided services to the Debtors, the Reorganized Debtors and the Protected Affiliates, including without limitation Lehigh Hanson, solely in their capacity as such;

h. Entities that, pursuant to the Plan or on or after the Effective Date, become a direct or indirect transferee of, or successor to, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent

that liability is asserted to exist by reason of such Entity becoming such a transferee or successor;

i. Entities that, pursuant to the Plan or on or after the Effective Date, make a loan to any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust or to a successor to, or transferee of, any assets of any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, but only to the extent that liability is asserted to exist by reason of it becoming such a lender;

j. Entities, other than Asbestos Insurers, that are alleged to be directly or indirectly liable for the conduct of, claims against, or Demands on any Debtor or Reorganized Debtor, or the Asbestos Personal Injury Trust, to the extent that such alleged liability arises by reason of one or more of the following:

1. such Entity's ownership of a financial interest in any Debtor or Reorganized Debtor, or any past or present affiliate of any them, or any predecessor in interest of any of them;

2. such Entity's involvement in the management of any Debtor, Reorganized Debtor or any predecessor in interest of any of them;

3. such Entity's service as an officer, director or employee of any Debtor or Reorganized Debtor, any past or present affiliate of any of them, any predecessor in interest of any of them, or of any entity that owns or at any time has owned a financial interest in any Debtor or Reorganized Debtor, any past or

present affiliate of any of them, or any predecessor in interest of any of them;

4. such Entity's provision of insurance to any Debtor, Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them, or any entity that owns or at any time has owned a financial interest in any Debtor or Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them; and

5. such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of any Debtor, Reorganized Debtor, any past or present affiliate of any of them, any predecessor in interest of any of them, or any entity that owns or at any time has owned a financial interest in any Debtor or Reorganized Debtor, any past or present affiliate of any of them, or any predecessor in interest of any of them.

k. each Settling Asbestos Insurer.

110. "Protected Party Indemnification Claims" mean any and all claims, including claims for related fees and costs, of a Protected Party under the indemnification described in Section IV.K.4.

111. "Quarterly Distribution Date" means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within forty-five (45) days of the end of a calendar quarter, the first Quarterly Distribution Date shall be the last Business Day of the month following the end of the

first calendar quarter after the calendar quarter including the Effective Date.

112. "**Recovery Actions**" means, collectively and individually, preference actions, fraudulent conveyance actions and other claims or causes of action under sections 510, 544, 547, 548, 549, 550 and 553(b) of the Bankruptcy Code and other similar state law claims and causes of action.

113. "Reinstated" or **"Reinstatement"** means the treatment of a Claim or Interest, at the applicable Reorganized Debtor's sole discretion, in accordance with one of the following:

a. The legal, equitable and contractual rights to which such Claim or Interest entitles the holder will be unaltered; or

b. Notwithstanding any contractual provision or applicable law that entitles the holder of such Claim or Interest to demand or receive accelerated payment of such Claim or Interest after the occurrence of a default:

i. any such default that occurred before the applicable Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured;

ii. the maturity of such Claim or Interest as such maturity existed before such default will be reinstated;

iii. the holder of such Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

iv. the legal, equitable or contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest will not otherwise be altered.

114. "Reorganization Case" means: (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor in the Bankruptcy Court; and (b) when used with reference to all Debtors, the chapter 11 cases pending for the Debtors in the Bankruptcy Court.

115. "Reorganized . . ." means, when used in reference to a particular Debtor, such Debtor on and after the Effective Date.

116. "Restructuring Transactions" means, collectively, those mergers, consolidations, restructurings, dispositions, liquidations, dissolutions or other transactions that the Debtors or Reorganized Debtors determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or otherwise to simplify the overall corporate structure and intercompany arrangements of the Reorganized Debtors, including without limitation the Restructuring Transactions set forth on Exhibit IV.B.

117. "Schedules" means the schedules of assets and liabilities and the statements of financial affairs Filed by the Debtors, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, restated, modified or supplemented.

118. "Secured Claim" means a Claim (other than an Asbestos Personal Injury Claim) that is secured by a lien on property in which an Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the applicable Estate's

interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to sections 506(a) and, if applicable, 1129(b) of the Bankruptcy Code.

119. "Separate Limit Policies" means those insurance policies described on Exhibit I.A.119 that provide or may provide coverage for Asbestos Personal Injury Claims and Environmental Claims under separate limits applicable to Asbestos Personal Injury Claims and Environmental Claims.

120. "Settling Asbestos Insurer" means each Asbestos Insurer listed on Exhibit I.A.120 and any Asbestos Insurer that, after the Confirmation Hearing, enters into a settlement with the Asbestos Personal Injury Trust that (a), in the determination of the Asbestos Personal Injury Trust, the TAC and the Future Claimants' Representative, justifies treating such Asbestos Insurer as a Protected Party and (b) is approved by the Bankruptcy Court.

121. "Settled Environmental Insurers" means any Entity that has subscribed or issued an insurance policy that provides coverage for Environmental Claims, which has bought back such coverage from the Debtors pursuant to a settlement agreement approved by the Bankruptcy Court, and is protected by the environmental injunction as set forth in Section IX.B.3 and a bar order under section 363 of the Bankruptcy Code.

122. "Stock Interests of . . ." means, when used with reference to a particular Debtor, the Interests issued by such Debtor.

123. "Stipulation of Amount and Nature of Claim" means a stipulation or other agreement between the applicable Debtor or Reorganized Debtor

and a holder of a Claim (other than an Asbestos Personal Injury Claim) or Interest establishing the allowed amount or nature of such Claim or Interest that is (a) entered into in accordance with any Claim settlement procedures established in these Reorganization Cases; (b) permitted or contemplated by the Plan or (c) approved by order of the Bankruptcy Court.

124. "Surety Bond Claims" means, collectively, (a) proof of Claim number 4 filed by Zurich American Insurance Company; (b) proof of Claim number 5 filed by Fidelity & Deposit Company of Maryland; and (c) proof of Claim numbers 22 and 25 filed by Lexon Insurance Company and Bond Safeguard Company.

125. "Surety Bond Program" means, collectively, the (a) Debtors' surety bonds maintained in the ordinary course of business; (b) surety payment and indemnity agreements, setting forth a surety's rights against the Debtors, and the Debtors' obligations to pay and indemnify such surety from any loss, cost, or expense that the surety may incur, in each case, on account of the issuance of any surety bonds on behalf of the Debtors; (c) surety collateral agreements governing collateral, if any, in connection with the Debtors' surety bonds; and/or (d) ordinary course premium payments to the sureties for the Debtors' surety bonds.

126. "Surety Bond Obligations" means all the Debtors' obligations arising under the Surety Bond Program.

127. "TAC" means the Trust Advisory Committee for the Asbestos Personal Injury Trust.

128. "Tax" means: (a) any net income, alternative or add-on minimum, gross income, gross receipts,

sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental, withholding or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other Entity.

129. "Third Party Disbursing Agent" means an Entity designated by Reorganized HPCI to act as a Disbursing Agent pursuant to Section VI.C.

130. "Timely Claim" means a Claim (other than an Asbestos Personal Injury Claim) for which a proof of Claim or request for payment of Administrative Claim was Filed by the applicable Bar Date or is otherwise determined to be timely Filed by a Final Order of the Bankruptcy Court.

131. "Truck" means Truck Insurance Exchange.

132. "**Truck Appeal Costs"** means if Truck continues litigation in respect of the Phase 1 Claims following the entry of a decision by the California Court of Appeal, or if there is a remand by that court, the Superior Court, resolving the Phase 1 Claims in favor of the plaintiff, in whole or part, all costs of pursuing the Phase 1 Claims, including reasonable attorneys' fees and expenses, until such litigation is finally resolved either by (a) a court decision or (b) settlement.

133. "**Uninsured Asbestos Claim**" means an Asbestos Personal Injury Claim for which there is no coverage provided by any Asbestos Insurance Policy.

B. Rules of Interpretation and Computation of Time

1. Rules of Interpretation

For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or Exhibit Filed or to be Filed means such document or Exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan or Confirmation Order; (d) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (f) the words "herein," "hereunder" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) the words "includes" or "including" are not limiting; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (i) subject to the provisions of any contract, certificate of incorporation, by-laws, or similar constituent document, instrument, release or other agreement or document entered into or delivered in connection with the

Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; and (j) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

2. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II

CLASSES OF CLAIMS AND INTERESTS

Claims and Interests, except Administrative Claims, and Priority Tax Claims, are placed in Classes as follows:

Class	**Claims or Interests**
Class 1	Priority Claims
Class 2	Secured Claims
Class 3	General Unsecured Claims
Class 4	Asbestos Personal Injury Claims
Class 5	Surety Bond Claims
Class 6	Intercompany Claims
Class 7	Stock Interests

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, and Priority Tax Claims, as described in Section III.A., have not been classified and thus are excluded from the foregoing Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest

qualifies within the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

A. Unclassified Claims

1. Payment of Administrative Claims

a. Administrative Claims in General

Except as specified in this Section III.A.1., and subject to the bar date provisions herein, unless otherwise agreed by the holder of an Administrative Claim and the applicable Debtor or Reorganized Debtor, 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 (i) as soon as practicable after the Effective Date or (ii) if the Administrative Claim is not allowed as of the Effective Date, thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the applicable Reorganized Debtor and the holder of the Administrative Claim.

b. Statutory Fees

On or before the Effective Date, Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930, as determined at the Confirmation Hearing by the Bankruptcy Court or the District Court, as applicable, shall be paid in cash equal to the amount of such Administrative Claims. All fees payable pursuant to 28 U.S.C. § 1930 shall be paid by the Reorganized Debtors in accordance therewith until the closing of the

Reorganization Cases pursuant to section 350(a) of the Bankruptcy Code.

c. Ordinary Course Liabilities

Allowed Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business (including any Intercompany Claims that are Administrative Claims, Administrative Claims of governmental units for Taxes and Administrative Claims arising from those contracts and leases of the kind described in Section V.E.) shall be satisfied by the applicable Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims or further approval of the Bankruptcy Court.

d. Bar Dates for Administrative Claims

i. General Bar Date Provisions

Except as otherwise provided in Section III.A.1.d.ii., unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than sixty (60) days after the Effective Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the

requesting party no later than 120 days after the Effective Date.

ii. Bar Dates for Certain Administrative Claims

A. Professional Compensation

Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than (ninety) 90 days after the Effective Date. A Professional may include any outstanding, non-Filed monthly or interim request for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be Filed and served on the Reorganized Debtors and the requesting party by the later of (1) eighty (80) days after the Effective Date or (2) thirty (30) days after the Filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, Filed interim requests for a Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

B. Ordinary Course Liabilities

Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including any Intercompany Claims that are Administrative Claims, Administrative Claims of

governmental units for Taxes and Administrative Claims arising from those contracts and leases of the kind described in Section V.E., shall not be required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c.

2. Payment of Priority Tax Claims

a. Priority Tax Claims in General

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the applicable Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction of its Priority Tax Claim, payment in full of the allowed amount of the Priority Tax Claim on the later of the Effective Date or as soon as practicable after the date when such Claim becomes an Allowed Claim.

b. Other Provisions Concerning Treatment of Priority Tax Claims

Notwithstanding the provisions of Section III.A.2.a., any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the holder for actual pecuniary loss shall be treated as a Class 3 Claim, and the holder (other than as the holder of a Class 3 Claim) may not assess or attempt to collect such penalty from the Reorganized Debtors or their respective property.

B. Classified Claims

1. Class 1 Claims (Priority Claims) are unimpaired. On the Effective Date, each holder of an Allowed Claim in Class 1 shall receive cash in an amount equal to such Allowed Claim unless the holder

of such Claim agrees to less favorable treatment.**2. Class 2 Claims (Secured Claims) are unimpaired.** On the Effective Date, unless otherwise agreed by the holder of an Allowed Claim in Class 2 and the applicable Debtor or Reorganized Debtor, each holder of a Claim in Class 2 shall receive treatment in accordance with Option A or B below, at the option of the applicable Debtor or Reorganized Debtor. Any Allowed Deficiency Claim of a holder of an Allowed Secured Claim shall be entitled to treatment as an Allowed Class 3 Claim.**Option A:** Claims in Class 2 that are Allowed Claims and with respect to which the applicable Debtor or Reorganized Debtor elects Option A shall be paid in full in cash.

Option B: Claims in Class 2 that are Timely Claims and with respect to which the applicable Debtor or Reorganized Debtor elects Option B shall be Reinstated.

3. Class 3 Claims (General Unsecured Claims) are unimpaired. On the Effective Date, each holder of an Allowed Claim in Class 3 shall receive cash in an amount equal to such Allowed Claim including any post-petition interest as ordered by the Bankruptcy Court unless the holder of such Claim agrees to less favorable treatment.**4. Class 4 Claims (Asbestos Personal Injury Claims) are impaired.** On the Effective Date, all Asbestos Personal Injury Claims shall be channeled to the Asbestos Personal Injury Trust, which shall be funded pursuant to Section IV.K.2. All Asbestos Personal Injury Claims shall be resolved pursuant to the terms of Section IV.O.1 and Section IV.O.2., the Asbestos Personal Injury Trust Agreement, the Asbestos Personal Injury Trust Distribution Procedures and any other Asbestos Personal Injury Trust Document. Except as provided

in Section IV.O.1, pursuant to section 524(g) of the Bankruptcy Code, the Plan and the Confirmation Order shall permanently and forever stay, restrain and enjoin any Entity from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which shall be channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures, including permanently and forever staying, restraining and enjoining any Entity from any of the following, with respect to Asbestos Personal Injury Claims:**a.** commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party;

b. enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against any Protected Party or any property or interests in property of any Protected Party;

c. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

d. setting off, seeking reimbursement of, contribution from or subrogation against, or otherwise recouping in any manner, directly or

indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

e. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Personal Injury Trust Documents, except in compliance therewith.

For the avoidance of doubt, no Entity shall be so stayed, enjoined, or restrained from initiating or continuing a suit or other proceeding against any Debtor in name only for the purpose of recovering on an Asbestos Personal Injury Claim from a Non-Settling Asbestos Insurer.

5. Class 5 Claims (Surety Bond Claims) are unimpaired. On the Effective Date, each Surety Bond Claim in Class 5 shall be Reinstated.**6. Class 6 Claims (Intercompany Claims) are unimpaired.** On the Effective Date, each Intercompany Claim in Class 6 shall be Reinstated.**7. Class 7 Interests (Stock Interests) are unimpaired.** On the Effective Date, Stock Interests of the Debtors shall be Reinstated, and holders of such Stock Interests shall retain such Interests, subject to the Restructuring Transactions provisions of Section IV.B.**ARTICLE IV**

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Continued Corporate Existence and Vesting of Assets in the Reorganized Debtors

Except as otherwise provided herein (and subject to the Restructuring Transactions provisions of Section IV.B.), each Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate corporate or other legal Entity, with all the powers of

a corporation or other legal Entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. Except as otherwise provided herein (and subject to the Restructuring Transactions provisions of Section IV.B.), as of the Effective Date, all property of the respective Estates of the Debtors, and any property acquired by a Debtor or Reorganized Debtor under the Plan, will vest in the applicable Reorganized Debtor, free and clear of all Claims, Encumbrances and Interests. For the avoidance of doubt, the funds deposited into the General Unsecured Claims Escrows will be used solely to make distributions to holders of Allowed General Unsecured Claims, and the Debtors and Reorganized Debtors will not hold any legal or equitable interest in such funds deposited in the General Unsecured Claims Escrows, in accordance with Section VI.B, below. On and after the Effective Date, each Reorganized Debtor may operate its businesses and may use, acquire and dispose of property and compromise or settle any Claims without supervision or approval by 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 the Confirmation Order. Without limiting the foregoing, each Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including fees and expenses relating to the preparation of Professional fee applications) without application to the Bankruptcy Court.

B. Restructuring Transactions

On or after the Confirmation Date, the applicable Debtor or Reorganized Debtor may take such actions

as the Debtors or Reorganized Debtors determine to be necessary or appropriate to effectuate, implement and consummate the Restructuring Transactions, including without limitation the Restructuring Transactions set forth on Exhibit IV.B.; provided, however, that no Restructuring Transactions other than the Restructuring Transactions set forth on Exhibit IV.B. shall be implemented prior to the Effective Date without the written consent of the Asbestos Personal Injury Committee and the Future Claimants' Representative, which consent shall not be unreasonably withheld. The actions to effectuate, implement and consummate the Restructuring Transactions may include: (1) the execution and delivery of appropriate agreements or other documents that carry out the provisions of the Plan and that satisfy the applicable requirements of applicable state law; and (2) the filing of appropriate instruments pursuant to applicable state law.

C. Transfers and Lease Transactions

On or after the Confirmation Date, non-debtor Lehigh Cement Company LLC will transfer its interest in certain real property located in Kosse, Limestone County, Texas and Kunkletown, Monroe County, Pennsylvania (together, the "Real Properties"), together with its rights under certain leases related to the Real Properties, to Kaiser Gypsum. The actions to effectuate, implement and consummate these transactions may include: (1) the execution and delivery of appropriate agreements or other documents containing terms that are consistent with the provisions of the Plan and that satisfy the applicable requirements of applicable state law; and (2) the filing of appropriate instruments pursuant to applicable state law.

D. Corporate Governance, Directors and Officers, Employment-Related Agreements and Compensation Programs and Corporate Action

1. Certificates of Incorporation and By-Laws of the Reorganized Debtors

As of the Effective Date, the Certificate of Incorporation and the By-Laws of each Reorganized Debtor will be in such form as the Debtors may determine. The initial Certificate of Incorporation and By-Laws of each Reorganized Debtor, among other things, shall prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date, each such Entity shall be permitted to amend and restate its Certificate of Incorporation or By-Laws pursuant to applicable state law and the terms and conditions of such constituent documents.

2. Directors and Officers of the Reorganized Debtors

Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial directors and officers of each Reorganized Debtor shall be the directors and officers of such Debtor immediately prior to the Effective Date. Each such director and officer shall serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until his or her earlier death, resignation or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the relevant Reorganized Debtor (as the same may be amended after the Effective Date) and applicable state law.

3. Employee Arrangements of the Reorganized Debtors

As of the Effective Date, the Reorganized Debtors shall be authorized to: (a) maintain, amend or revise existing employment, indemnification and other arrangements with their active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, indemnification and other arrangements with active and retired directors, officers and employees; all as determined by the board of directors of the applicable Reorganized Debtor.

4. Corporate Action

Pursuant to section 1142 of the Bankruptcy Code, section 10-1008 of the Arizona Revised Statutes and section 55-14A-01 of the North Carolina Business Corporation Act, the following (which shall occur and be deemed effective as of the date specified in the documents effectuating the same or, if no date is so specified, the Effective Date) shall be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of any of the Debtors or the Reorganized Debtors or by any other Entity: (a) the initial Certificates of Incorporation and By-Laws of the Reorganized Debtors; (b) the initial directors and officers of the Reorganized Debtors; (c) the Distribution of cash pursuant to the Plan; (d) the creation of the Asbestos Personal Injury Trust, and the funding thereof; (e) other corporate actions that are necessary or appropriate to effectuate, implement and consummate the provisions of the Plan, including the Restructuring Transactions provisions of Section IV.B.; and (f) the adoption, execution, delivery and performance of all contracts, instruments, releases and other agreements and

documents related to any of the foregoing (including the Asbestos Personal Injury Trust Agreement and the Payment Note).

E. Obtaining Cash for Plan Distributions

All cash payments to be made pursuant to the Plan shall be funded by the applicable Reorganized Debtor. All cash necessary for a Reorganized Debtor to fund such cash payments pursuant to the Plan shall be obtained through a combination of one or more of the following: (1) such Reorganized Debtor's cash balances and cash generated by the operations of such Reorganized Debtor; (2) any Tax refunds actually received by such Reorganized Debtor; (3) contributions to or on behalf of such Reorganized Debtor by Lehigh Hanson; (4) proceeds of certain of the Debtors' insurance policies or (5) such other means of financing or funding as determined by the board of directors of such Reorganized Debtor.

On the Effective Date, Lehigh Hanson shall contribute to the Reorganized Debtors, as necessary to satisfy Allowed General Unsecured Claims, up to $28.15 million in cash minus the amount of the Insolvent Insurers Proceeds to which the Debtors are entitled.

F. Creation of Asbestos Personal Injury Trust

As of the Effective Date, the Asbestos Personal Injury Trust shall be created. The Asbestos Personal Injury Trust is intended to be one or more "qualified settlement funds" within the meaning of the Treasury Regulations issued under section 468B of the Internal Revenue Code. The purpose of the Asbestos Personal Injury Trust shall be to, among other things: (1) resolve all asserted Asbestos Personal Injury Claims in accordance with the Plan, Asbestos Personal Injury

Trust Agreement, the Asbestos Personal Injury Trust Distribution Procedures and the Confirmation Order; (2) preserve, hold, manage, maximize and liquidate the assets of the Asbestos Personal Injury Trust for use in resolving Asbestos Personal Injury Claims; and (3) qualify at all times as one or more qualified settlement funds. On the Effective Date, all right, title, and interest in and to the Asbestos Personal Injury Trust Assets, and any proceeds thereof, will be transferred to, and vested in, the Asbestos Personal Injury Trust, free and clear of all Claims, Demands, Stock Interests, Encumbrances, and other interests of any Entity, without any further action of the Bankruptcy Court or any Entity.

G. Authority of the Asbestos Personal Injury Trust

As of the Effective Date, without any further action of the Bankruptcy Court or any Entity, except as otherwise expressly set forth in the Plan, the Asbestos Personal Injury Trust shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to or arising from any asset, liability, or responsibility of the Asbestos Personal Injury Trust, including but not limited to any actions arising from or related to the Asbestos Personal Injury Insurance Assets and the Phase 1 Claims.

H. Appointment of Asbestos Personal Injury Trustee and Delaware Trustee

On the Confirmation Date, effective as of the Effective Date, in accordance with the Asbestos Personal Injury Trust Agreement and the Asbestos Personal Injury Trust Distribution Procedures, the Entities selected jointly by the Asbestos Personal Injury Committee and the Future Claimants' Representative to

serve as the Asbestos Personal Injury Trustee (as identified in Exhibit IV.H) and the Delaware Trustee shall be appointed to serve as the Asbestos Personal Injury Trustee for the Asbestos Personal Injury Trust. All subsequent Asbestos Personal Injury Trustees and Delaware Trustees shall be appointed in accordance with the terms of the Asbestos Personal Injury Trust Agreement.

I. Appointment of Future Claimants' Representative and TAC Members

The Future Claimants' Representative shall serve as the legal representative for the purpose of protecting the shared interests of holders of Demands pursuant to the terms of the Asbestos Personal Injury Trust Agreement, on and after the Effective Date, and shall have the functions and rights provided in the Asbestos Personal Injury Trust Documents. The initial members of the TAC will be identified in the Asbestos Personal Injury Trust Agreement.

J. Document Repository

Prior to or on the Effective Date, the Debtors shall establish a repository containing all the books and records of the Debtors that are necessary for the defense of Asbestos Personal Injury Claims, including without limitation the historical asbestos personal injury claims database maintained by the Debtors, deposition transcripts, product identification evidence, information regarding sale and use of the products, claims settlement and payment information, and indexes and summaries relating to any such documents, and shall make that repository available to the Entities that are responsible for the processing or defense of Asbestos Personal Injury Claims, and that are entitled to review, copy or use such documents. For the

avoidance of doubt, the Asbestos Personal Injury Trust shall have access to materials in this repository only to the extent it is the Entity defending or processing (which term shall not include the mere payment of the deductible portion of an Asbestos Personal Injury Claim) an Uninsured Asbestos Claim or a particular Asbestos Personal Injury Claim, and such determination shall be made by the Reorganized Debtors on a claim-by-claim basis. Any dispute over whether the Asbestos Personal Injury Trust shall have access to the materials in this repository shall be resolved by the Bankruptcy Court. Notwithstanding anything to the contrary herein, holders of Asbestos Personal Injury Claims may pursue and obtain information stored in this repository through discovery to the full extent permitted by applicable law. The Asbestos Personal Injury Trust shall be obligated to compensate the Reorganized Debtors for all out-of-pocket costs reasonably incurred after the Effective Date in connection with establishing and maintaining the repository.

Notwithstanding the foregoing or any other provisions of the Plan, the sole and exclusive remedy for the Asbestos Personal Injury Trust's failure to reimburse such out-of-pocket costs, or for its failure to pay any other amounts due to the Reorganized Debtors, shall be the right of the Reorganized Debtors to assert money damage claims against the Asbestos Personal Injury Trust, and such failure shall not relieve the Reorganized Debtors of any of their obligations hereunder, or otherwise, to the extent such obligations exist.

Pursuant to the Plan and the Confirmation Order, to the extent the Debtors or Reorganized Debtors, as applicable, provide access to the Asbestos Personal Injury Trust to any privileged books and records, such

access shall not result in the destruction or waiver of any applicable privileges pertaining to such books and records. If the preservation of privilege pertaining to such books and records is challenged or disapproved by the Bankruptcy Court or the District Court and if the Asbestos Personal Injury Trust determines that it needs access to such information, the Reorganized Debtors will, at the sole cost and expense of the Asbestos Personal Injury Trust (which cost and expense shall be reasonable), enter into arrangements to permit the Asbestos Personal Injury Trust to have access to such books and records, to the extent such access does not result in the destruction or waiver of any applicable privileges. Further, pursuant to the Plan and the Confirmation Order, none of the Debtors, the Reorganized Debtors, Lehigh Hanson, or any Affiliates shall be liable for violating any confidentiality or privacy protections as a result of providing the Asbestos Personal Injury Trust access to the books and records, and the Asbestos Personal Injury Trust shall take appropriate steps to comply with any such applicable protections.

K. Transfers of Property to and Assumption of Certain Liabilities by the Asbestos Personal Injury Trust

1. Expenses of the Asbestos Personal Injury Trust

The Asbestos Personal Injury Trust shall pay all Asbestos Personal Injury Trust Expenses. The Reorganized Debtors shall have no obligation to pay such expenses, except for Debtor Appellate Costs.

2. Funding the Asbestos Personal Injury Trust

On the Effective Date, the Reorganized Debtors and/or Lehigh Hanson, as applicable, shall transfer to the Asbestos Personal Injury Trust the Asbestos Personal Injury Trust Assets as follows:

a. Initial Payment

One or more of the Reorganized Debtors and/or Lehigh Hanson on behalf of and as a contribution to such Reorganized Debtors will pay an aggregate of $49.0 million in cash to the Asbestos Personal Injury Trust.

b. Payment Note

The Reorganized Debtors, as co-obligors, shall issue the Payment Note to the Asbestos Personal Injury Trust.

c. Phase 1 Claims

The Reorganized Debtors shall transfer to the Asbestos Personal Injury Trust the Phase 1 Claims, free and clear of any liens, claims or encumbrances, including any rights of setoff based on any liability of the Debtors. The Debtors or the Reorganized Debtors shall pay all Debtor Appellate Costs. The Asbestos

Personal Injury Trust shall pay all Asbestos Personal Injury Trust Appellate Costs. If the Asbestos Personal Injury Trust ultimately obtains any recovery with respect to Phase 1 Claims, whether as a result of settlement or judgment that exceeds $12 million, the Asbestos Personal Injury Trust shall remit to the Debtors or the Reorganized Debtors any amounts remaining, in excess of $12 million, after the Asbestos Personal Injury Trust Appellate Costs have been deducted from the full recovery amount.

d. Asbestos Personal Injury Insurance Assets

The Reorganized Debtors shall transfer to the Asbestos Personal Injury Trust the Asbestos Personal Injury Insurance Assets.

3. Assumption of Certain Liability and Responsibility by the Asbestos Personal Injury Trust

Subject to the provisions of the Plan, and in consideration for the transfer of the Asbestos Personal Injury Trust Assets to the Asbestos Personal Injury Trust pursuant to Section IV.K.2. and in furtherance of the purposes of the Asbestos Personal Injury Trust and the Plan, the Asbestos Personal Injury Trust shall assume liability and responsibility, financial and otherwise, for all Asbestos Personal Injury Claims. The Asbestos Personal Injury Trust shall have all defenses, cross-claims, offsets and recoupment rights, as well as rights of indemnification, contribution, subrogation and similar rights, and any other rights regarding Uninsured Asbestos Claims that any Debtor, Reorganized Debtor or Protected Party has or would have had under applicable law.

4. Indemnification by the Asbestos Personal Injury Trust

The Asbestos Personal Injury Trust shall protect, defend, indemnify and hold harmless each Protected Party from and against any Asbestos Personal Injury Claim; provided, however, the sole and exclusive remedy for the Asbestos Personal Injury Trust's failure to satisfy the indemnification, defense and hold harmless obligations under this Section shall be the right of the Protected Parties to assert money damage claims against the Asbestos Personal Injury Trust.

5. Authority of the Debtors

Effective on the Confirmation Date, the Debtors shall be empowered and authorized to take or cause to be taken, prior to the Effective Date, all actions necessary or appropriate to enable the Reorganized Debtors to implement effectively the provisions of the Plan and the Asbestos Personal Injury Trust Agreement.

L. Cooperation with Respect to Insurance Matters

1. Obligation to Cooperate with Respect to Insurance Matters

The Reorganized Debtors will cooperate with the Asbestos Personal Injury Trust and use reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things that the Asbestos Personal Injury Trust may reasonably consider necessary to effectuate the transfer of the Asbestos Personal Injury Insurance Assets to the Asbestos Personal Injury Trust. By way of illustration and not limitation, the Reorganized Debtors will be obligated: (a) to provide the Asbestos Personal Injury Trust with copies of insurance policies and settlement agreements included within or relating to the Asbestos Personal Injury

Insurance Assets; (b) to provide the Asbestos Personal Injury Trust with other information in the Reorganized Debtors' possession, custody or control that is reasonably necessary to the Asbestos Personal Injury Trust's efforts with respect to insurance coverage for Asbestos Personal Injury Claims; (c) to execute further assignments or allow the Asbestos Personal Injury Trust to pursue claims relating to the Asbestos Personal Injury Insurance Assets in a Reorganized Debtor's name (subject to appropriate disclosure of the fact that the Asbestos Personal Injury Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings or litigation; and (d) to facilitate actions to enforce judgments obtained by the claimants or the Asbestos Personal Injury Trust against Asbestos Insurers, if necessary.

To the extent that any transfer or portion of a transfer of the Asbestos Personal Injury Insurance Assets to the Asbestos Personal Injury Trust is determined to be invalid by a court of competent jurisdiction, upon request of the Asbestos Personal Injury Trust and at the cost of the Asbestos Personal Injury Trust, the Reorganized Debtors shall: (a) take all reasonable actions, including those as may be requested by the Asbestos Personal Injury Trust, with respect to such assets, including, but not limited to, prosecution of any insurance coverage and/or breach of contract action or other action, for the benefit of, and to the extent reasonably requested by, the Asbestos Personal Injury Trust; and (b) immediately transfer any amounts recovered under or on account of any such assets to the Asbestos Personal Injury Trust. The Asbestos Personal Injury Trust will be obligated to compensate the Reorganized Debtors for all out-of-pocket costs reasonably incurred on or after the Effective

Date in connection with providing assistance to the Asbestos Personal Injury Trust pursuant to this Section, including without limitation out-of-pocket costs and expenses, consultant and expert fees, and attorneys' fees. Any acts taken pursuant to this Section shall not be deemed to waive and shall not constitute a waiver of any applicable privilege, confidence, or work product protection as against any third party. The Reorganized Debtors shall have a continuing obligation to satisfy the Assistance and Cooperation, Inspection and Audit, and Notice of Occurrence Provisions set out in the Asbestos Insurance Policies. Any out-of-pocket costs incurred by the Reorganized Debtors in carrying out such obligations shall be reimbursed by the Asbestos Personal Injury Trust. The sole and exclusive remedy for the Asbestos Personal Injury Trust's failure to reimburse such out-of-pocket costs shall be the right of the Reorganized Debtors to assert money damage claims against the Asbestos Personal Injury Trust.

2. Enforcement of Reorganized Debtors' Obligations to Cooperate with Respect to Insurance Matters

a. The Reorganized Debtors shall have a continuing obligation to satisfy the Asbestos Insurer Cooperation Obligations. Any out-of-pocket costs incurred by the Reorganized Debtors in carrying out the Asbestos Insurer Cooperation Obligations shall be reimbursed by the Asbestos Personal Injury Trust. The Reorganized Debtors' obligations under this provision shall be ongoing until such time when all Asbestos Insurance Policies have either been settled or exhausted.

b. If an Asbestos Personal Injury Insurance Asset does not provide coverage for an Asbestos

Personal Injury Claim pursued against the Reorganized Debtors in the tort system pursuant to Section IV.O.1. because a court determines in a Final Order that the Reorganized Debtors failed to satisfy or otherwise perform any of the Asbestos Insurer Cooperation Obligations, the Asbestos Personal Injury Trust, the TAC, the Future Claimants' Representative, and the holder (the "Denied Asbestos Personal Injury Claimant") of the applicable Asbestos Personal Injury Claim (the "Denied Asbestos Personal Injury Claim"), each individually or in any combination jointly, may seek (1) specific performance directing the Reorganized Debtors to cure their breach of the Asbestos Insurer Cooperation Obligations, and/or (2) payment from the Reorganized Debtors for the judgment or settlement amount of the Denied Asbestos Personal Injury Claim. Regardless of which remedy is sought, the party may also seek payment from the Reorganized Debtors for reasonable attorneys' fees expended in pursuing such relief from the Reorganized Debtors.

c. Within forty-five (45) calendar days of receiving notice that an Asbestos Insurer contests coverage for an Asbestos Personal Injury Claim asserted against the Reorganized Debtors because the Reorganized Debtors are alleged to have failed to satisfy or otherwise perform the Asbestos Insurer Cooperation Obligations (a "Notice"), the Asbestos Personal Injury Trust and the holder of such Asbestos Personal Injury Claim shall provide to the Reorganized Debtors any documents or information they respectively received from the Asbestos Insurer denying, rejecting or disclaiming coverage. If such information is not provided to the Reorganized Debtors within forty-five (45)

days of receipt, then the Reorganized Debtors shall have no obligations under Section IV.L.2 with respect to such Asbestos Personal Injury Claim, unless the failure to provide such information as required did not unfairly prejudice the Reorganized Debtors.

d. Within forty-five (45) calendar days of receiving a Notice, the Reorganized Debtors shall provide to the Asbestos Personal Injury Trust and the holder of the applicable Asbestos Personal Injury Claim (1) any documents or information they received from the Asbestos Insurer denying, rejecting or disclaiming coverage and (2) any documentation or other information they have within their possession, custody, or control regarding the Reorganized Debtors' efforts to satisfy any of the Asbestos Insurer Cooperation Obligations in respect of the applicable Asbestos Personal Injury Claim. The Asbestos Personal Injury Trust or the holder of the Asbestos Personal Injury Claim or both may assert an action against the Asbestos Insurer seeking coverage for the Asbestos Personal Injury Claim, and shall provide timely notice to the Reorganized Debtors of any action seeking such coverage. The Reorganized Debtors agree that a finding that they failed to satisfy or otherwise perform any of the Asbestos Insurer Cooperation Obligations may be made regardless of whether they are a named party in any such action and agree to be bound by any such finding in a Final Order. In the event that the action brought against the Asbestos Insurer pursuant to this Section IV.L.2.d results in a Final Order providing that the Asbestos Insurer does not have a coverage obligation for the Asbestos Personal Injury Claim and the basis for the finding that

there is no such coverage obligation may be because the Reorganized Debtors failed to satisfy or otherwise perform any of the Asbestos Insurer Cooperation Obligations, then the Asbestos Personal Injury Trust or the holder of the Asbestos Personal Injury Claim or both may bring a subsequent direct action against the Reorganized Debtors for the sole purpose of seeking the finding described in Section IV.L.2.b.

e. In the event any of the parties identified in Section IV.L.2.b as having rights with respect to a Denied Asbestos Personal Injury Claim seeks payment or specific performance related to a Denied Asbestos Personal Injury Claim, the Reorganized Debtors shall, within thirty (30) calendar days of receiving notice of the Denied Asbestos Personal Injury Claim, either (a) remit payment of (i) the judgment or settlement amount of the Denied Asbestos Personal Injury Claim to the Asbestos Personal Injury Trust or the Denied Asbestos Personal Injury Claimant, as applicable, and if payment of the amount of the Denied Asbestos Personal Injury Claim is made to the Asbestos Personal Injury Trust, the Asbestos Personal Injury Trust shall in turn remit payment to the Denied Asbestos Personal Injury Claimant, and (ii) reasonable attorneys' fees expended in enforcing the rights provided in Section IV.L.2, except for any attorneys' fees expended in connection with a direct action against the Reorganized Debtors permitted by Section IV.L.2.d (collectively, the "Legal Fees") to the appropriate party, or (b) attempt to cure the breach of the Asbestos Insurer Cooperation Obligations. If the Reorganized Debtors successfully cure their breach such that the Asbestos Insurer reverses its previous denial

of coverage and pays the Denied Asbestos Personal Injury Claim in full, the Reorganized Debtors shall have no obligation to pay the Denied Asbestos Personal Injury Claim; the Reorganized Debtors shall, however, remain liable for paying the Legal Fees, and shall remit payment of such Legal Fees to the appropriate party. If the Reorganized Debtors are unable to cure their breach of the Asbestos Insurer Cooperation Obligations, the Reorganized Debtors shall pay to the Asbestos Personal Injury Trust or the Denied Asbestos Personal Injury Claimant, as applicable, the judgment or settlement amount of the Denied Asbestos Personal Injury Claim and shall remit the Legal Fees to the appropriate party.

f. Lehigh Hanson shall fully guarantee the Reorganized Debtors' performance of any payment obligations they incur with respect to the Asbestos Insurance Policies, including, but not limited to, any obligations the Reorganized Debtors incur under Section IV.L.2 and shall pay directly to the Reorganized Debtors, within fourteen (14) calendar days of receiving notice of the Reorganized Debtors' failure to pay a Denied Asbestos Personal Injury Claim and related Legal Fees or otherwise, the amount of any such payment obligation so that the Reorganized Debtors may distribute the funds. Notwithstanding the foregoing, payment obligations of the Reorganized Debtors under this paragraph shall not include any obligation the Asbestos Personal Injury Trust has expressly assumed hereunder, including the Deductibles and any obligations for which the Asbestos Personal Injury Trust has agreed hereunder to reimburse the Reorganized Debtors.

g. Nothing in Section IV.L.2 is intended to preclude, limit, or otherwise impair, any other claims, causes of action, or remedies that may be available to the Asbestos Personal Injury Trust, the TAC, the Future Claimants' Representative, or any holders of Asbestos Personal Injury Claims, under otherwise applicable non-bankruptcy law or the Plan and its Exhibits, related to Asbestos Personal Injury Claims. In particular, nothing in Section IV.L.2 is intended to bar or preclude holders of Asbestos Personal Injury Claims from pursuing any action directly against Asbestos Insurers related to Asbestos Personal Injury Claims or Denied Asbestos Personal Injury Claims, including actions under Section 11580 of the California Insurance Code and its subdivisions, or any related or similar statute in any jurisdiction.

M. Compromise of Insurance Policies

1. Dual Policies

The Reorganized Debtors or their assignee(s) shall not compromise any part of the Dual Policies absent the prior written consent of the TAC, the Future Claimants' Representative and the Asbestos Personal Injury Trust, such consent not to be unreasonably withheld, and the Asbestos Personal Injury Trust (conditioned on the express consent of the TAC and the Future Claimants' Representative) shall not compromise any part of the Dual Policies absent the prior written consent of the Reorganized Debtors or their assignee(s), such consent not to be unreasonably withheld. If a dispute arises as to whether a party's lack of consent is reasonable, such dispute may be presented to the Bankruptcy Court for resolution. After the Effective Date, should the Bankruptcy Court or

appellate court, if applicable, find in favor of the party withholding consent, the other party shall pay the reasonable attorneys' fees and costs of the party withholding consent.

2. Separate Limit Policies

The Reorganized Debtors or their assignee(s) are entitled to settle that portion of the Separate Limit Policies that does not provide coverage for Asbestos Personal Injury Claims. The TAC, Future Claimants' Representative and the Asbestos Personal Injury Trust are entitled to notice and review of any proposed settlement but may only object on the grounds that the proposed settlement releases or otherwise impairs coverage for Asbestos Personal Injury Claims. Also with respect to Separate Limit Policies, the Asbestos Personal Injury Trust (conditioned on the express consent of the TAC and the Future Claimants' Representative) is entitled to settle that portion of the Separate Limit Policies that does not provide coverage for Environmental Claims. The Reorganized Debtors or their assignee(s) are entitled to notice and review of any proposed settlement but may object only on the grounds that the proposed settlement releases or otherwise impairs coverage for Environmental Claims. If a dispute arises as to whether a proposed settlement releases or otherwise impairs coverage for Asbestos Personal Injury Claims, or Environmental Claims, as applicable, such dispute may be presented to the Bankruptcy Court for resolution. After the Effective Date, should the Bankruptcy Court, or appellate court if applicable, find in favor of the objecting party, the other party shall pay the reasonable attorneys' fees and costs of the objecting party.

3. Insurance Policies that Provide Coverage for Asbestos Personal Injury Claims but not for Environmental Claims

With respect to insurance policies that provide coverage for Asbestos Personal Injury Claims but not for Environmental Claims (a list of such policies is attached as Exhibit IV.M.3), and also any policies that may provide coverage for Asbestos Personal Injury Claims, but not for Environmental Claims that are not included on Exhibits I.A.60, I.A.119, IV.M.3 and IV.M.4, the Asbestos Personal Injury Trust (conditioned on the express consent of the TAC and the Future Claimants' Representative) may settle such Asbestos Personal Injury Insurance Assets and the Reorganized Debtors or their assignee(s) shall have no standing to object.

a. Settlement with Truck

If the Asbestos Personal Injury Trust seeks approval of a settlement with Truck, the Objecting Excess Insurers may object to approval of such settlement (notice, hearing, and the Court's approval of which are required before Truck may become a "Settling Asbestos Insurer"). The Objecting Excess Insurers may object to the settlement to the same extent and on the same grounds that they could have objected (a) to the settlement if the settlement had been reached, and approval of it had been sought before Confirmation and (b) to the Plan had such a settlement been set forth in the Plan; without limiting the foregoing, any objections based on projections with respect to events that had not occurred as of the Confirmation Hearing shall be based on information that was known or knowable as of the Confirmation Hearing. The Objecting Excess Insurers may not argue that either the Bankruptcy Court or the District Court

lacked jurisdiction to confirm the Plan; provided, however, for the avoidance of doubt, the objections set forth in the preceding sentence are preserved. The Asbestos Personal Injury Trust may oppose the Objecting Excess Insurers' Objections and assert any additional arguments or bases for opposition to such objections on any ground, including grounds that were or could have been advanced by the Debtors, the Asbestos Personal Injury Committee or the Future Claimants' Representative in opposition to the Objecting Excess Insurers' Objections. The relief available to the Objecting Excess Insurers, if one or more of them prevails on one or more such objection(s), shall be limited, to (a) denying the motion to approve the settlement with Truck; (b) granting the Objecting Excess Insurers adequate protection of their Inter-Insurer Rights, if any, against Truck; and/or (c) modifying the Asbestos Permanent Channeling Injunction to exclude any restriction on the Objecting Excess Insurers' pursuing their Inter-Insurer Rights, if any, against Truck, in all cases subject to the Court's determination that such relief is appropriate under principles of law and equity. For the avoidance of doubt, and not by way of limitation, none of the Objecting Excess Insurers' Objections will be deemed moot because of substantial consummation of the Plan, Confirmation of the Plan, the Plan becoming final and non-appealable, or the closing of the Reorganization Cases. For the avoidance of doubt, the Objecting Excess Insurers shall not be entitled to, and shall not seek, any other relief with respect to a settlement with Truck against the Debtors, the Reorganized Debtors, Lehigh Hanson or any of their affiliates, nor any relief with respect to the implementation, effectiveness, or consummation of the Plan (as long as the Plan is not materially altered before Confirmation). The Objecting

Excess Insurers' agreement not to seek such relief, however, shall not operate to limit the relief that may be available to the Objecting Excess Insurers against the Asbestos Personal Injury Trust, or to the Asbestos Personal Injury Trust.

Upon the filing by the Asbestos Personal Injury Trust of a motion to approve a settlement with Truck, the Asbestos Personal Injury Trust shall move the Court to set a status conference on such motion on a date that is no less than twenty (20) days after the filing of such motion, or such other date as directed by the Court, without prejudice to the rights of any party to seek a longer or shorter period of time based upon the facts and circumstances that might then exist. At the status conference, any party may request that the Court set a briefing schedule for any objections to the motion, set an evidentiary hearing to consider the merits of the motion and any objections thereto (unless no party requests an evidentiary hearing), establish a schedule for discovery relating to the motion and any objections thereto, and any other party may object to such request.

Any settlement between the Asbestos Personal Injury Trust and Truck shall not contain any provision that excuses Truck from its obligation to continue to defend the underlying asbestos personal injury cases until such time as any order approving such settlement (if any such order is entered) has become a Final Order. Further, and notwithstanding anything else contained in the Plan or the Confirmation Order, unless and until the Court enters an order (which has become a Final Order) approving a Truck settlement that might provide otherwise (and without prejudice to the rights of the Objecting Excess Insurers' rights to object to the entry of such an order as provided

above), the Objecting Excess Insurers' rights under the law, the Excess CIP Agreement, and the Asbestos Insurance Policies that relate to the defense of the underlying asbestos claims are preserved against Truck if it ceases defending any of the underlying asbestos cases.

4. Insurance Policies that Provide Coverage for Environmental Claims but not for Asbestos Personal Injury Claims

With respect to insurance policies that provide coverage for Environmental Claims but not for Asbestos Personal Injury Claims (a list of such policies is attached as Exhibit IV.M.4) and any policies that may provide coverage for Environmental Claims but not for Asbestos Personal Injury Claims that are not included on Exhibits I.A.60, I.A.119, IV.M.3 and IV.M.4, the Reorganized Debtors or their assignee(s) may settle such policies and the TAC, Future Claimants' Representative and the Asbestos Personal Injury Trust shall have no standing to object.

5. Amendment of Insurance Policy Exhibits

If a dispute regarding the lists of Dual Policies and Separate Limit Policies arises after the Confirmation Hearing, it may be presented to the Bankruptcy Court. After the Confirmation Hearing, Exhibits I.A.60, I.A.119, IV.M.3 and IV.M.4 may only be amended by written agreement of the Parties, or if after the Effective Date, the Asbestos Personal Injury Trust, the Reorganized Debtors and Lehigh Hanson. For any Insurance Policy not previously included as an Exhibit to this Plan that the Asbestos Personal Injury Trust, the Reorganized Debtors or Lehigh Hanson contend should be added to Exhibits I.A.60,

I.A.119, IV.M.3 and IV.M.4 after Confirmation, and about which there is a dispute among such parties, such dispute may be presented to the Bankruptcy Court for resolution.

N. Truck Obligations Regarding Deductibles

Notwithstanding any provision in any Asbestos Insurance Policy to the contrary, Truck shall have no obligation to pay, and shall not pay, any Deductible under any applicable Asbestos Insurance Policy to holders of Asbestos Personal Injury Claims or any other Entity. The Asbestos Personal Injury Trust shall satisfy such Deductible to holders of Insured Asbestos Claims in accordance with the terms, provisions and procedures of the Asbestos Personal Injury Trust Agreement and the Asbestos Personal Injury Trust Distribution Procedures. Other than with respect to Deductibles, the Asbestos Personal Injury Trust shall not assume responsibility pursuant to the Plan for any other expenses owed to Truck, or that may become owed to Truck in the future, in connection with Asbestos Personal Injury Claims.

O. Liquidation of Asbestos Personal Injury Claims

1. Insured Asbestos Claims

Holders of Insured Asbestos Claims may initiate, continue and/or prosecute suit against the Reorganized Debtors in the tort system to obtain the benefit of insurance coverage under the Asbestos Insurance Policies, unless and until the Asbestos Personal Injury Trust, with the consent of the TAC and the Future Claimants' Representative, has settled (other than pursuant to the Excess CIP Agreement) all rights to coverage for Asbestos Personal Injury Claims applicable to the Asbestos Personal Injury Claim of a

particular holder, in which event such holder shall pursue payment of its Asbestos Personal Injury Claim from the Asbestos Personal Injury Trust in accordance with the Asbestos Personal Injury Trust Distribution Procedures. In the event that a holder of an Insured Asbestos Claim commences such an action, the complaint may name the applicable Reorganized Debtor(s) as a defendant(s) and shall be deemed by operation of law to be an action against the applicable Reorganized Debtor(s). Notwithstanding the foregoing, the Reorganized Debtors shall have no obligation to answer, appear or otherwise participate in the action in any respect other than as set forth in this Plan and as may be necessary to maintain coverage under the Asbestos Insurance Policies, and any judgment that may be obtained in the action cannot be enforced against the assets of the Reorganized Debtors, other than from the Asbestos Insurance Policies. Such actions may be filed in any court where the applicable Debtor would have been subject to in personam jurisdiction as of the Petition Date or any other court of competent jurisdiction and process may be served upon a person or entity appointed by the Reorganized Debtors to serve as agent, who shall tender such actions to Truck or, if appropriate, to any other applicable Asbestos Insurers in compliance with the notice provisions of the applicable Asbestos Insurance Policies. Nothing in this Section IV.O. is intended to affect any cause of action or right to bring a cause of action held by any holder of an Asbestos Personal Injury Claim directly against any Asbestos Insurer. The portion of any Insured Asbestos Claim that is not covered by any Asbestos Insurance Policy shall be paid in accordance with the terms, provisions and procedures of the Asbestos Personal Injury Trust Agreement and

the Asbestos Personal Injury Trust Distribution Procedures.

2. Uninsured Asbestos Claims

Each Uninsured Asbestos Claim will be determined and paid in accordance with the terms, provisions and procedures of the Asbestos Personal Injury Trust Agreement and the Asbestos Personal Injury Trust Distribution Procedures. The sole recourse of a holder of an Uninsured Asbestos Claim on account of such Claim will be to the Asbestos Personal Injury Trust and such holder will have no right whatsoever at any time to assert its Uninsured Asbestos Claim against any Protected Party.

P. Limitations On Judgment Recovery From Non-Settling Asbestos Insurers

To the extent that any Non-Settling Asbestos Insurer has an Asbestos Insurance Policy Claim against one or more Settling Asbestos Insurers with respect to an Asbestos Personal Injury Claim that it could have asserted against such Settling Asbestos Insurers but for the Asbestos Permanent Channeling Injunction provided under the Plan (hereafter, "Contribution Claims"), the judgment liability (if any) of the Non-Settling Asbestos Insurer to the holder of such Asbestos Personal Injury Claim shall be reduced dollar-for-dollar by the amount (if any) of the Contribution Claims established pursuant to this Section IV.P. The court hearing the Asbestos Personal Injury Claim shall employ such procedures as that court determines are appropriate to determine prior to entry of judgment the validity and amount of any Contribution Claims (and the corresponding reduction in the amount of the holder's recovery) as if, and to the same extent, they were asserted against the Settling

Asbestos Insurers. The holder of the Asbestos Personal Injury Claim may assert the legal or equitable rights, if any, of the Settling Asbestos Insurers in the action. The Bankruptcy Court may modify this judgment reduction provision or grant such other relief in any order approving a settlement with any Asbestos Insurer as appropriate and necessary to adequately protect the Inter-Insurer Rights, if any, of any Non-Settling Asbestos Insurer.

Q. Insurance Neutrality

Nothing in the Plan, any Exhibit to the Plan, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the Confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order shall limit the right of any Asbestos Insurer to assert any Insurer Coverage Defense; provided, however, that (a) the transfer of rights in and under the Asbestos Personal Injury Insurance Assets to the Asbestos Personal Injury Trust is valid and enforceable and transfers such rights under the Asbestos Personal Injury Insurance Assets as the Debtors may have, and that such transfer shall not affect the liability of any Asbestos Insurer, and (b) the discharge and release of the Debtors and Reorganized Debtors from all Claims and the injunctive protection provided to the Debtors, Reorganized Debtors and Protected Parties with respect to Claims as provided herein shall not affect the liability of any Asbestos Insurer, except to the extent that any such Asbestos Insurer is also a Settling Asbestos Insurer. Notwithstanding anything in this Section IV.Q. to the contrary, nothing in this Section IV.Q. shall affect or limit, or be construed as affecting or limiting, (a) the binding effect of the Plan and the Confirmation Order on the Debtors, the Reorganized Debtors, the Asbestos

Personal Injury Trust or the beneficiaries of the Asbestos Personal Injury Trust or (b) the protection afforded to any Settling Asbestos Insurer by the Asbestos Permanent Channeling Injunction. Further, nothing in this Section IV.Q. is intended or shall be construed to preclude otherwise applicable principles of res judicata or collateral estoppel from being applied against any Asbestos Insurer with respect to any issue that is actually litigated by such Asbestos Insurer as part of its objections to Confirmation of the Plan.

R. Preservation of Rights of Action; Settlement of Claims and Releases

1. Preservation of Rights of Action by the Reorganized Debtors

Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, the Reorganized Debtors shall retain and may enforce, and shall have the right to enforce, any claims, demands, rights and causes of action that any Debtor or Estate may hold against any Entity, including any Recovery Actions. The Reorganized Debtors or their successors or assignees may pursue such retained claims, demands, rights or causes of action, as appropriate, in accordance with the best interests of the Reorganized Debtors or their successors or assignees holding such claims, demands, rights or causes of action. Further, the Reorganized Debtors retain their right to File and pursue, and shall have the sole right to File and pursue, any adversary proceedings against any trade creditor or vendor related to debit balances or deposits owed to any Debtor.

2. Settlement of Certain Estate Claims

a. Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, any and all claims against the Protected Parties that are or would have been property of the Debtors' Estates or could have been brought by the Debtors' Estates, including without limitation Recovery Actions and any claims based upon a legal or equitable theory of liability in the nature of veil piercing, alter ego, successor liability, vicarious liability, fraudulent transfer, malpractice, breach of fiduciary duty, waste, fraud or conspiracy, except for Intercompany Claims, shall be deemed settled, released and extinguished. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

b. Pursuant to Bankruptcy Rule 9019 and in consideration for the releases and other benefits provided under the Plan, any and all claims against the holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), that are or would have been property of any of the Debtors' Estates or could

have been brought by any of the Debtors' Estates or any Protected Party, including without limitation Recovery Actions, and any claims based upon a legal or equitable theory of liability, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to the Petition Date, shall be deemed settled, released and extinguished. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, the Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

3. Releases

a. General Releases of Debtors and Reorganized Debtors

Except as otherwise expressly set forth in the Plan, and except to the extent it would diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset, as of the Effective Date, the Debtors and the Reorganized Debtors are released from all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any

act, omission, transaction or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the releases set forth in this paragraph will not become effective with respect to holders of General Unsecured Claims until the General Unsecured Claims Escrows have been funded as set forth herein.

b. Release by the Debtors, Reorganized Debtors and Lehigh Hanson

1. Without limiting any other provision of the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against each of the present and former directors, officers, employees, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents of the Debtors, the DIP Lender and DEQ, in each case acting in such capacity, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date with respect to the Reorganization Cases, the Plan or the DEQ Settlement, except for the liability of any Entity that would otherwise result from any such act or omission to the extent

that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

2. Without limiting any other provision of the Plan, as of the Effective Date, the Debtors, the Reorganized Debtors and Lehigh Hanson, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, shall be deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), including without limitation Recovery Actions, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date.

c. General Releases by Holders of Claims or Interests

Without limiting any other provision of the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for, among other things, the obligations of the Debtors and the Reorganized Debtors under the

Plan, each holder of a Claim or Interest that votes in favor of the Plan or is deemed to accept the Plan shall be deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date and in any way relating to the Reorganization Cases or the Plan (which release shall be in addition to the discharge of Claims provided herein and under the Confirmation Order and the Bankruptcy Code) Notwithstanding the foregoing, no release or discharge of any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, shall diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

d. Injunction Related to Releases

Except as otherwise expressly provided in the Plan, including in Section IV.O.1., the Confirmation Order shall permanently enjoin the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities released pursuant to the Plan.

S. Release of Encumbrances

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article VI, all Encumbrances against the property of any Estate shall be fully released and discharged, and all of the right, title and interest of any holder of such Encumbrances, including any rights to any collateral thereunder, shall revert to the applicable Reorganized Debtor and its successors and assigns.

T. Effectuating Documents; Further Transactions; Exemption from Certain Transfer Taxes

Each officer of each Debtor and Reorganized Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements and documents and take such actions as may be necessary or appropriate to effect and implement the provisions of the Plan, including the Restructuring Transactions provisions of Section IV.B. The secretary or any assistant secretary of each Debtor or Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions.

Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp Tax or similar Tax: (1) the creation of any Encumbrances; (2) the making or assignment of any lease or sublease; (3) 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; (4) any Restructuring Transaction; or (5) 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.

U. Determination of the Insolvent Insurers Proceeds Dispute

The Confirmation Order shall approve the agreed resolution of the Insolvent Insurers Proceeds Dispute.

V. Compliance with QSF Regulations

The Debtors and the Reorganized Debtors shall take all actions required of them as "transferor," and the Asbestos Personal Injury Trustees shall take all actions required of them as "administrator," pursuant to Treasury Regulations promulgated under section 468B of the Internal Revenue Code. Pursuant to such Treasury Regulations, the Asbestos Personal Injury Trustees as "administrator" shall be responsible for all tax reporting and withholding requirements in respect of distributions made from the Asbestos Personal Injury Trust.

W. Surety Bond Obligations

Notwithstanding any other provisions of the Plan, on the Effective Date, all rights of any party related to the Surety Bond Program shall not be altered by the Plan. The applicable Reorganized Debtor hereby reaffirms and ratifies the Surety Bond Obligations arising under the Each Executory Contract or Unexpired Lease assumed under Section V.A.1. shall include any modifications, amendments, supplements or restatements to such contract or lease. Surety Bond Program, which shall continue to be in full force and effect, and the Surety Bond Obligations are not discharged or released by the Plan in any way. On the Effective Date, all liens and security interests, if any, granted pursuant to or in connection with the Surety Bond Program shall have the priorities established in respect thereof under applicable non-bankruptcy law, and shall not be enjoined or subject to discharge, impairment, release, avoidance, recharacterization, or subordination pursuant to the Plan or the Confirmation Order. The Surety Bond Program and all Surety Bond Obligations shall be treated by the Reorganized Debtors in the ordinary course of business as if the Reorganization Cases had not been commenced. For the avoidance of any doubt, and with a reservation of rights to all parties, any agreements related to the Surety Bond Program to which a Debtor is party will vest in the applicable Reorganized Debtor, and to the extent such agreements are considered to be executory contracts, then, notwithstanding anything contained in Article V to the contrary, the Plan will constitute a motion to assume such agreements, and, subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code. Nothing in the Plan shall affect in

any way any surety's rights against any non-debtor, or any non-debtor's rights against a surety, including under the Surety Bond Program or with regard to the Surety Bond Obligations.

ARTICLE V

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Executory Contracts and Unexpired Leases to Be Assumed

1. Assumption Generally

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into in connection with the Plan, including the Restructuring Transactions provisions of Section IV.B., on the Effective Date, pursuant to section 365 of the Bankruptcy Code, the applicable Debtor or Reorganized Debtor shall assume each of its respective Executory Contracts and Unexpired Leases other than those listed on Exhibit V.C; provided, however, that the Debtors reserve the right, at any time prior to the Effective Date, to amend Exhibit V.C to: (a) delete any Executory Contract or Unexpired Lease listed therein, thus providing for its assumption pursuant hereto; or (b) add any Executory Contract or Unexpired Lease to Exhibit V.C, thus providing for its rejection pursuant to this Section V.A.1. The Debtors shall provide notice of any amendments to Exhibit V.C to the parties to the Executory Contracts or Unexpired Leases affected thereby and to the parties on the then-applicable service list in the Reorganization Cases. Nothing herein shall constitute an admission by a Debtor or Reorganized Debtor that any contract or lease is an Executory Contract or Unexpired Lease or

that a Debtor or Reorganized Debtor has any liability thereunder.

2. Assumptions of Executory Contracts and Unexpired Leases

Each Executory Contract or Unexpired Lease assumed under Section V.A.1. shall include any modifications, amendments, supplements or restatements to such contract or lease.

3. Approval of Assumptions and Assumption Procedures

The Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions described in Section V.A.1., pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. The procedures for assumption of an Executory Contract or Unexpired Lease are as follows:

a. After the entry of the Confirmation Order, the Debtors shall serve upon each party to an Executory Contract or Unexpired Lease being assumed pursuant to the Plan notice of: (i) the contract or lease being assumed or assumed and assigned; (ii) the Cure Amount Claim, if any, that the applicable Debtor believes it would be obligated to pay in connection with such assumption; and (iii) the procedures for such party to object to the assumption or assumption and assignment of the applicable contract or lease or the amount of the proposed Cure Amount Claim.

b. Any Entity wishing to object to (i) the proposed assumption of an Executory Contract or Unexpired Lease under the Plan or (ii) the proposed amount of the related Cure Amount Claim must File and serve on counsel to the Debtors a written objection setting forth the basis for the

objection within twenty (20) days of service of the notice described in Section V.A.3.a.

c. If no objection to the proposed assumption or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (i) the proposed assumption of the Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court; and (ii) the Cure Amount Claim identified by the Debtors in the notice shall be fixed and shall be paid in accordance with the Plan on or after the Effective Date, without further action of the Bankruptcy Court, to the appropriate contract or lease party identified on the notice.

d. If an objection to the proposed assumption or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtors or Reorganized Debtors, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

e. If an objection to the proposed assumption or Cure Amount Claim is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection: (i) the Debtors or Reorganized Debtors may File a reply to such objection no later than thirty (30) days after the Filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the particular objection and the related

reply at an appropriate time; or (ii) the Debtors or Reorganized Debtors, as applicable, may designate the Executory Contract or Unexpired Lease underlying such objection for rejection pursuant to Section V.C. and amend Exhibit V.C. accordingly.

B. Payments Related to the Assumption of Executory Contracts and Unexpired Leases

To the extent that a Cure Amount Claim constitutes a monetary default, such Cure Amount Claim associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or Reorganized Debtor assuming such contract or lease or the assignee of such Debtor or Reorganized Debtor, if any: (1) by payment of the Cure Amount Claim in cash on the Effective Date or (2) on such other terms as are agreed to by the parties to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is a dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the applicable Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption. For assumptions of Executory Contracts or Unexpired Leases between Debtors, the Reorganized

Debtor assuming such contract may cure any monetary default (1) by treating such amount as either a direct or indirect contribution to capital or Distribution (as appropriate) or (2) through an intercompany account balance in lieu of payment in cash.

C. Executory Contracts and Unexpired Leases to Be Rejected and Rejection Procedures

On the Effective Date, each Executory Contract and Unexpired Lease listed on Exhibit V.C shall be rejected pursuant to section 365 of the Bankruptcy Code. Each contract and lease listed on Exhibit V.C shall be rejected only to the extent that any such contract or lease constitutes an Executory Contract or Unexpired Lease. Listing a contract or lease on Exhibit V.C shall not constitute an admission by a Debtor or Reorganized Debtor that such contract or lease is an Executory Contract or Unexpired Lease or that a Debtor or Reorganized Debtor has any liability thereunder. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. The appropriate procedures for rejection of an Executory Contract or Unexpired Lease are as follows:

1. After the entry of the Confirmation Order, the Debtors shall serve upon each party to an Executory Contract or Unexpired Lease being rejected pursuant to the Plan notice of such proposed rejection.

2. Any Entity wishing to object to the proposed rejection of an Executory Contract or Unexpired Lease under the Plan must File and serve on counsel to the Debtors a written objection setting forth the basis for

the objection within twenty (20) days of service of the notice described in Section V.C.1.

3. If no objection to the proposed rejection is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the proposed rejection of the applicable Executory Contract or Unexpired Lease shall be approved in accordance with the Plan and the Confirmation Order, effective as of the Effective Date, without further action of the Bankruptcy Court.

4. If an objection to the proposed rejection is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtors or Reorganized Debtors, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

5. If an objection to the proposed rejection is properly Filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection, the Debtors or Reorganized Debtors, as applicable, may File a reply to such objection no later than thirty (30) days after the Filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the particular objection and the related reply at an appropriate time.

D. Obligations to Indemnify Directors, Officers and Employees

The obligations of each Debtor or Reorganized Debtor to indemnify any individual serving as one of its directors, officers or employees prior to or following the Petition Date by reason of such individual's prior or future service in such a capacity or as a director,

officer or employee of any Debtor or other Entity, to the extent provided in the applicable Certificate of Incorporation or By-Laws, by statutory law or by written agreement, policies or procedures of or with such Debtor, shall be deemed and treated as executory contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and section 365 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification obligations shall survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification is owed for an act or event occurring before or after the Petition Date.

E. Contracts and Leases Entered Into After the Petition Date

Notwithstanding any other provision of the Plan, and subject to the Restructuring Transactions provisions of Section IV.B., contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, shall be performed by the Debtor or Reorganized Debtor liable thereunder in accordance with the terms and conditions of such contracts and leases in the ordinary course of its business. Accordingly, such contracts and leases and other obligations (including any assumed Executory Contracts and Unexpired Leases) shall survive and remain unaffected by entry of the Confirmation Order.

F. Insurance Policies

1. Assumed Insurance Policies

The Debtors do not believe that the insurance policies issued to any Debtor, including the Insurance Policies, prior to the Petition Date constitute

executory contracts. To the extent such insurance policies are considered to be executory contracts, then, notwithstanding anything contained in Article V to the contrary, the Plan will constitute a motion to assume such insurance policies, which include but are not limited to the Debtors' workers' compensation and liability, product and property insurance policies maintained by The Home Insurance Company, and authorize the Reorganized Debtors to pay all future obligations, if any, in respect thereof. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order will constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Bankruptcy Court that each such assumption is in the best interest of the Debtors, their respective estates and all parties in interest in the Reorganization Cases. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective date, no payments are required to cure any defaults of any Debtor existing as of the Confirmation Date with respect to each such insurance policy.

2. Reservation of Rights

Nothing contained in the Plan will constitute a waiver of any claim, right or cause of action that a Debtor, a Reorganized Debtor or the Asbestos Personal Injury Trust, as the case may be, may hold against the insurer under any policy of insurance or insurance agreement, except to the extent the insurer is a Settling Asbestos Insurer.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

A. Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan, Distributions to be made on the Effective Date to holders of Claims that are Allowed Claims as of the Effective Date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) sixty (60) days after the Effective Date or (2) such later date when the applicable conditions of Section V.B. (regarding cure payments for Executory Contracts and Unexpired Leases being assumed), Section VI.E.2. (regarding undeliverable Distributions) or Section VI.G.3. (regarding compliance with Tax requirements) are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date shall be made pursuant to Section VI.H.2. Any Claim that is disallowed by order of the Bankruptcy Court (or the District Court) prior to the Effective Date shall be deemed expunged (to the extent not already expunged) as of the Effective Date without the necessity for further Bankruptcy Court approval and the holder of any such Claim shall not be entitled to any Distribution under the Plan.

B. General Unsecured Claims Escrows

On the Effective Date, the General Unsecured Claims Escrows shall be fully funded. The Debtors and Reorganized Debtors will not hold any legal or equitable interest in the funds deposited in the General Unsecured Claims Escrows and such funds shall not be considered property of the Reorganized Debtors and any liens, charges, Claims, Encumbrances and

Interests granted under the Plan shall not extend to an interest in the funds held in the General Unsecured Claims Escrow. The funds in the General Unsecured Claims Escrow shall be reserved solely for the benefit of the holders of Class 3 General Unsecured Claims, including any General Unsecured Claims that are Disputed Claims, pending determination of their entitlement thereto under the terms of the Plan. To the extent there are funds remaining in any General Unsecured Claims Escrow after payment in full of all Allowed General Unsecured Claims in accordance with the Plan (the "Remaining Funds"), Lehigh Hanson shall hold an interest in those funds and may request one or more distributions from the Escrow Agent for payment of the Remaining Funds.

C. Method of Distributions to Holders of Claims

The Reorganized Debtors or Third Party Disbursing Agents as the Reorganized Debtors may employ in their sole discretion shall make all Distributions of cash and other instruments or documents required under the Plan. Each Disbursing Agent shall serve without bond, and any Disbursing Agent may employ or contract with other Entities to assist in or make the Distributions required by the Plan.

D. Compensation and Reimbursement for Services Related to Distributions

Each Third Party Disbursing Agent providing services related to Distributions pursuant to the Plan shall receive from the Reorganized Debtors, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services. These payments shall be made on

terms agreed to with the Reorganized Debtors and shall not be deducted from Distributions to be made pursuant to the Plan to holders of Allowed Claims receiving Distributions.

E. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions

Distributions to holders of Allowed Claims (other than Asbestos Personal Injury Claims) shall be made by a Disbursing Agent (a) at the addresses set forth on the respective proofs of Claim Filed by holders of such Claims, (b) at the addresses set forth in any written certification of address change delivered to the Disbursing Agent (including pursuant to a letter of transmittal delivered to a Disbursing Agent) after the date of Filing of any related proof of Claim, or (c) at the addresses reflected in the applicable Debtor's Schedules if no proof of Claim has been Filed and the Disbursing Agent has not received a written notice of a change of address.

2. Undeliverable Distributions Held by Disbursing Agents

a. Holding and Investment of Undeliverable Distributions

If any Distribution to a holder of an Allowed Claim is returned to a Disbursing Agent as undeliverable, no further Distributions shall be made to such holder unless and until the applicable Disbursing Agent is notified by written certification of such holder's then-current address. Undeliverable Distributions shall remain in the possession of the applicable Disbursing Agent pursuant to this Section VI.E.2.a. until such time as a Distribution becomes deliverable. Undeliverable cash shall be held in segregated bank accounts

in the name of the applicable Disbursing Agent for the benefit of the potential claimants of such funds. Any Disbursing Agent holding undeliverable cash shall invest such cash in a manner consistent with the Reorganized Debtors' investment and deposit guidelines.

b. After Distributions Become Deliverable

On each Quarterly Distribution Date, the applicable Disbursing Agent shall make all Distributions that become deliverable to holders of Allowed Claims (other than Asbestos Personal Injury Claims) during the preceding calendar quarter, to the extent not distributed earlier at the discretion of the applicable Disbursing Agent.

c. Failure to Claim Undeliverable Distributions

Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by a Disbursing Agent within one year after the later of (i) the Effective Date and (ii) the last date on which a Distribution was attempted to be made to such holder shall have its claim for such undeliverable Distribution discharged and shall be forever barred from asserting any such claim against the Reorganized Debtors or their respective property. Unclaimed Distributions shall become property of the respective Reorganized Debtor, free of any restrictions thereon, including the right of any state or other government to escheat such property, and any such Distributions held by a Third Party Disbursing Agent shall be returned to the applicable Reorganized Debtor. Nothing contained in the Plan shall require any Debtor, Reorganized Debtor or

Disbursing Agent to attempt to locate any holder of an Allowed Claim.

F. Distribution Record Date

1. No Recognition of Transfers after the Distribution Record Date

A Disbursing Agent shall have no obligation to recognize the transfer or sale of any interest or participation in, any Claim that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date.

2. Treatment of Certain Transfers

Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date shall be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

G. Means of Cash Payments

Except as otherwise specified herein, cash payments made pursuant to the Plan to holders of Claims shall be in United States currency by checks drawn on a domestic bank selected by the Reorganized Debtors or Lehigh Hanson, as applicable, or, at the option of the Reorganized Debtors or Lehigh Hanson, as applicable, by wire transfer from a domestic bank; provided, however, that cash payments to foreign holders of Allowed Claims may be made, at the option of the

Reorganized Debtors or Lehigh Hanson, as applicable, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

H. Timing and Calculation of Amounts to Be Distributed

1. Timing of Distributions Under the Plan

Any Distribution to be made by any Debtor or Reorganized Debtor pursuant to the Plan shall be deemed to have been timely made if made within sixty (60) days after the time therefor specified in the Plan. Except as otherwise provided in the Plan, no interest shall accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the Effective Date. However, and for the avoidance of doubt, the funding of (a) the Asbestos Personal Injury Trust pursuant to Section IV.K.2 and (b) the General Unsecured Claims Escrows pursuant to Section VI.B shall occur on the Effective Date.

2. Allowed Claims

On the Effective Date, each holder of an Allowed Claim (other than an Asbestos Personal Injury Claim) shall receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Quarterly Distribution Date, Distributions also shall be made pursuant to Section VII.C. to holders of Disputed Claims in any such Class that were allowed during the preceding calendar quarter, to the extent not distributed earlier at the discretion of the applicable Disbursing Agent. Such quarterly Distributions also shall be in the full amount that the Plan provides for Allowed Claims in the applicable Class.

3. Compliance with Tax Requirements

a. Withholding and Reporting

In connection with the Plan, to the extent applicable, each Disbursing Agent shall comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision of the Plan to the contrary, each Disbursing Agent shall be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including applying a portion of any cash Distribution to be made under the Plan to pay applicable Tax withholding, requiring Claim holders to submit appropriate certifications or establishing other mechanisms such Disbursing Agent believes are reasonable and appropriate. To the extent that any Claim holder fails to submit appropriate certifications required by a Disbursing Agent or to comply with any other mechanism established by a Disbursing Agent to comply with Tax withholding requirements, such Claim holder's Distribution may, in such Disbursing Agent's reasonable discretion, be deemed undeliverable and subject to Section VI.E.2.

b. Backup Withholding

Without limiting the generality of the foregoing, in accordance with the Internal Revenue Code's backup withholding rules, a holder of a Claim may be subject to backup withholding with respect to Distributions made pursuant to the Plan, unless the holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides at the

applicable Disbursing Agent's request a completed IRS Form W-9 (or substitute therefor) on which the holder includes a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Among other things, to receive any post-petition interest, if requested by a Disbursing Agent, a holder of an Allowed Claim shall be required to establish an exemption from backup withholding or to make arrangements with respect to the payment of backup withholding. Non-U.S. Allowed Claim holders may be required by the applicable Disbursing Agent to provide a completed IRS Form W-8BEN or W-8BEN-E, as applicable (or other applicable Form W-8 or successor form), to establish an exemption from or a treaty-reduced rate of withholding on interest distributed pursuant to the Plan. Unless a Disbursing Agent, in its discretion, determines otherwise, no Distributions on account of post-petition interest shall be made to a holder of an Allowed Claim until such time as the holder of such Claim establishes exemption from withholding or provides the applicable IRS Form.

c. Obligations of Distribution Recipients

Notwithstanding any other provision of the Plan, each Entity receiving a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such Distribution, including income, withholding and other Tax obligations.

I. Setoffs

Except with respect to claims of a Debtor or Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Reorganized Debtors or, as instructed by the applicable Reorganized Debtor, a Third Party Disbursing Agent may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Claim (before any Distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the applicable Debtor or Reorganized Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the applicable Debtor or Reorganized Debtor of any claim, right or cause of action that the Debtor or Reorganized Debtor may possess against such a Claim holder.

J. Allocation of Payments

Amounts paid to holders of Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess being allocated to accrued but unpaid interest on such Claims.

ARTICLE VII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Prosecution of Objections to Claims

1. Objections to Claims

Objections to Claims (other than Asbestos Personal Injury Claims) must be Filed and served on the holders of such Claims by the Claims Objection Bar Date, and, if Filed prior to the Effective Date, such objections will be served on the parties on the then-applicable service list in the Reorganization Cases. If an objection has not been Filed to a proof of Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Bar Date, the Claim to which the proof of Claim or Schedules relates will be treated as an Allowed Claim if such Claim has not been earlier allowed.

2. Authority to Prosecute Objections

After the Effective Date, the Reorganized Debtors shall have the authority to File (if applicable), settle, compromise, withdraw or litigate to judgment objections to all Claims (other than Asbestos Personal Injury Claims), including pursuant to any alternative dispute resolution or similar procedures approved by the Bankruptcy Court. After the Effective Date, the Reorganized Debtors may settle, compromise or otherwise resolve any Disputed Claim or any objection or controversy relating to any Claim without approval of the Bankruptcy Court.

3. Authority to Amend Schedules

The Debtors or the Reorganized Debtors shall have the authority to amend the Schedules with respect to any Claim (other than Asbestos Personal

Injury Claims) and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of or changes the nature or priority of such Claim, the Debtor or Reorganized Debtor shall provide the holder of such Claim with notice of such amendment and such holder shall have twenty (20) days to File an objection to such amendment with the Bankruptcy Court. If no such objection is Filed, the Debtor or Reorganized Debtor may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

B. Treatment of Disputed Claims

Notwithstanding any other provision of the Plan, no payments or Distributions shall be made on account of a Disputed Claim until such Claim becomes an Allowed Claim.

C. Distributions on Account of Disputed Claims Once Allowed

On each Quarterly Distribution Date, the applicable Disbursing Agent shall make all Distributions on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter, to the extent not distributed earlier at the discretion of the applicable Disbursing Agent. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class.

ARTICLE VIII

CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions to Confirmation

The following shall be conditions to Confirmation unless such conditions shall have been duly waived pursuant to Section VIII.C.:

1. The Confirmation Order shall have been entered by the Bankruptcy Court and the District Court acting jointly, or by the Bankruptcy Court or the District Court acting separately (and, if the Confirmation Order is entered separately by the Bankruptcy Court, shall have been fully affirmed by the District Court), and shall be reasonably acceptable in form and substance to the Parties.

2. The Plan shall be acceptable in all respects to the Parties, and all Exhibits to the Plan shall be (a) acceptable in all respects to the Parties and (b) consistent with section 524(g) of the Bankruptcy Code and the terms of the Plan.

3. The Bankruptcy Court and the District Court acting jointly, or the Bankruptcy Court or the District Court acting separately shall have made the following findings, each of which shall be contained in the Confirmation Order and each of which, if the Confirmation Order is entered separately by the Bankruptcy Court, shall be fully affirmed by the District Court:

   a. The Asbestos Permanent Channeling Injunction is to be implemented in connection with the Plan and the Asbestos Personal Injury Trust.

   b. The Asbestos Personal Injury Trust, as of the Effective Date, shall assume all liability and

responsibility, financial and otherwise, for all Asbestos Personal Injury Claims, and, upon such assumption, no Protected Party shall have any liability or responsibility, financial or otherwise, therefor.

c. As of the Petition Date, each Debtor had been named as a defendant in a personal injury or wrongful death action seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products.

d. The Asbestos Personal Injury Trust will be funded in whole or in part by securities of the Reorganized Debtors and by the obligation of the Reorganized Debtors to make future payments, which payments may be funded by contributions from Lehigh Hanson to the Reorganized Debtors.

e. The Asbestos Personal Injury Trust, by the exercise of rights granted under the Plan, would be entitled to own, if specified contingencies occur, a majority of the voting shares of each of the Reorganized Debtors.

f. The Asbestos Personal Injury Trust shall use its assets or income to pay Asbestos Personal Injury Claims, including Demands.

g. Each of the Debtors 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 Asbestos Permanent Channeling Injunction.

h. The actual amounts, numbers and timing of such future Demands cannot be determined.

i. Pursuit of such Demands outside the procedures prescribed by the Plan is likely to

threaten the Plan's purpose to deal equitably with Claims and future Demands.

j. The terms of the Asbestos Permanent Channeling Injunction, including any provisions barring actions against third parties pursuant to section 524(g)(4)(A) of the Bankruptcy Code, are set out in the Plan.

k. The Plan establishes, in Class 4 (Asbestos Personal Injury Claims), a separate class of the claimants whose Claims are to be addressed by the Asbestos Personal Injury Trust.

l. At least two-thirds (2/3) in amount and 75% in number of those voting Claims in Class 4 (Asbestos Personal Injury Claims) have voted in favor of the Plan.

m. Pursuant to court orders or otherwise, the Asbestos Personal Injury Trust shall 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 Asbestos Personal Injury Claims, that provide reasonable assurance that the Asbestos Personal Injury Trust shall value, and be in a financial position to pay, Asbestos Personal Injury Claims, including Demands, in substantially the same manner.

n. Each Protected Party is identifiable from the terms of the Asbestos Permanent Channeling Injunction by name or as part of an identifiable group, and each Protected Party is or may be alleged to be directly or indirectly liable for the conduct of, Claims against or Demands on a Debtor to the extent that such alleged liability arises by reason of one or more of the following:

(i) such Entity's ownership of a financial interest in any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor;

(ii) such Entity's involvement in the management of any Debtor, Reorganized Debtor or predecessor in interest of any Debtor or Reorganized Debtor;

(iii) such Entity's service as an officer, director or employee of any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor or Entity that owns or at any time has owned a financial interest in any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor; or

(iv) such Entity's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, any predecessor in interest of any Debtor or Reorganized Debtor or of an Entity that owns or at any time has owned a financial interest in any Debtor, Reorganized Debtor, any past or present Affiliate of any Debtor or Reorganized Debtor, or any predecessor in interest of any Debtor or Reorganized Debtor, including (A) involvement in providing financing (debt or equity) or advice to an Entity involved in

such a transaction or (B) acquiring or selling a financial interest in any Entity as part of such transaction.

o. The Future Claimants' Representative was appointed as part of the 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 any Debtor an Asbestos Personal Injury Claim that is a Demand addressed in the Asbestos Permanent Channeling Injunction and channeled to the Asbestos Personal Injury Trust.

p. Identifying each Protected Party (by name or as part of an identifiable group, as applicable) in the Asbestos Permanent Channeling Injunction is fair and equitable with respect to individuals that might subsequently assert Demands against each such Protected Party, in light of the benefits provided, or to be provided, to the Asbestos Personal Injury Trust by or on behalf of any such Protected Party.

q. The Plan and the Asbestos Personal Injury Trust Documents comply with section 524(g) of the Bankruptcy Code in all respects.

r. The Plan and its Exhibits are a fair, equitable and reasonable resolution of the liability of the Debtors for the Asbestos Personal Injury Claims.

s. The Future Claimants' Representative has adequately and completely fulfilled his duties, responsibilities and obligations as the representative for the individuals referred to in the finding

set forth in Section VIII.A.3.o. above in accordance with section 524(g) of the Bankruptcy Code.

t. Adequate and sufficient notice of the Plan and the Confirmation Hearing, as well as all deadlines for objecting to the Plan, has been given to (i) all known creditors and holders of Interests, (ii) parties that requested notice in accordance with Bankruptcy Rule 2002 (including the Asbestos Personal Injury Committee and the Future Claimants' Representative), (iii) all parties to Executory Contracts and Unexpired Leases, (iv) all taxing authorities listed on the Debtors' Schedules or in the Debtors' Claims database, in each case, (v) the Department of the Treasury by service upon the District Director of the IRS, (vi) state attorney generals and state departments of revenue for states in which any of the Debtors have conducted business, and (vii) the Securities and Exchange Commission, (A) in accordance with the solicitation procedures governing such service and (B) in substantial compliance with Bankruptcy Rules 2002(b), 3017 and 3020(b). Such transmittal and service were adequate and sufficient to bind, among other parties, any holder of an Asbestos Personal Injury Claim, and no other or further notice is or shall be required.

u. The Debtors' conduct in connection with and throughout these Reorganization Cases, including, but not limited to, their negotiations with the ad hoc committee of asbestos personal injury claimants and the pre-petition future claimants' representative, and the commencement of these Reorganization Cases, as well as the drafting, negotiation, proposing, confirmation, and

consummation of the Plan, and their opposition to any other plan of reorganization, does not and has not violated any Asbestos Insurer Cooperation Obligations contained in any Asbestos Insurance Policies, nor was such conduct a breach of any express or implied covenant of good faith and fair dealing. The Objecting Excess Insurers' consent to this finding in the particular facts and circumstances of these Reorganization Cases is expressly without prejudice to the rights of any party to contend that such a finding is or is not appropriate in any subsequent bankruptcy case not involving these Debtors.

4. The Bankruptcy Court and the District Court, as required, shall have entered the Asbestos Permanent Channeling Injunction, which may be included in the Confirmation Order, and the Asbestos Permanent Channeling Injunction and the Confirmation Order are reasonably acceptable to the Parties.

5. The settlement with the United States, on behalf of the Environmental Protection Agency and the United States Department of Interior, acting through the U.S. Fish and Wildlife Service, and the United States Department of Commerce, acting through the National Oceanic and Atmospheric Administration, the DEQ Settlement and the agreements with certain insurers related to such Claims have been approved by the Bankruptcy Court.

B. Conditions to the Effective Date

The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section VIII.C.

1. The District Court or the Bankruptcy Court and the District Court acting jointly shall have entered an order (contemplated to be part of the Confirmation Order) in form and substance reasonably acceptable to the Parties approving and authorizing the Debtors and the Reorganized Debtors to take all actions necessary or appropriate to effectuate, implement and consummate the Plan and the Restructuring Transactions, including the execution, delivery and performance of contracts, instruments, releases and other agreements or documents created in connection with the Plan and the Restructuring Transactions.

2. The Confirmation Order shall have been entered by the Bankruptcy Court and the District Court acting jointly, or by the Bankruptcy Court or the District Court acting separately (and, if the Confirmation Order is separately entered by the Bankruptcy Court, has been fully affirmed by the District Court) and shall have become a Final Order.

3. No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending.

4. The Confirmation Order and the Asbestos Permanent Channeling Injunction shall be in full force and effect.

5. No fact or circumstance shall prevent the Asbestos Personal Injury Trust from receiving the Asbestos Personal Injury Trust Assets upon occurrence of the Effective Date.

6. The Asbestos Personal Injury Trustees shall have been selected and shall have executed and delivered the Asbestos Personal Injury Trust Agreement.

7. The Asbestos Personal Injury Trust shall have been funded in accordance with Section IV.K.2.

8. Each of the documents and agreements contemplated by the provisions and Exhibits of the Plan to be executed and delivered as of the Effective Date shall have been fully executed and delivered in form and substance acceptable to the Debtors and to the Asbestos Personal Injury Committee and Future Claimants' Representative and shall be fully enforceable in accordance with their terms.

9. A settlement agreement in a form acceptable to the Debtors regarding the Lower Duwamish Waterway site and a consent judgment in a form acceptable to the Debtors regarding Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in the St. Helens site have each been approved by a court with jurisdiction to approve such settlement agreement or enter such consent judgment.

10. All terms and conditions to the effectiveness of the DEQ Settlement, other than the occurrence of the Effective Date, shall have been satisfied or waived in writing.

The Effective Date shall occur as of 12:01 a.m., prevailing Eastern Time on the date that the Debtors or Reorganized Debtors file a notice with the Bankruptcy Court stating that the Effective Date has occurred because each of the conditions to the Effective Date has been satisfied or waived in accordance with the Plan.

C. Waiver of Conditions to Confirmation or the Effective Date

The conditions to Confirmation set forth in Section VIII.A. and the conditions to the Effective Date set forth in Section VIII.B. may be waived in whole or part in writing by the Debtors, subject to the consent of Lehigh Hanson, the Asbestos Personal Injury Committee and the Future Claimants' Representative, at any time without an order of the Bankruptcy Court or the District Court; provided, however, waiver of the condition to the Effective Date set forth in Section VIII.B.10. also requires the DEQ's consent. Confirmation and the Effective Date will occur irrespective of whether any claims allowance process or related litigation has been completed.

D. Effect of Nonoccurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Section VIII.C., then upon motion by the Debtors, Lehigh Hanson, the Asbestos Personal Injury Committee and/or the Future Claimants' Representative made before the time that each such condition has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order shall be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the Filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section VIII.D., (1) the Plan shall be null and void in all respects, including with respect to the discharge of Claims; and (2) nothing contained in the

Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtors or (b) prejudice in any manner the rights, including any claims or defenses, of the Parties or any other party in interest.

ARTICLE IX

DISCHARGE, INJUNCTION AND SUBORDINATION RIGHTS

A. Discharge of Claims

Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan shall be in exchange for and in complete satisfaction and discharge of all Claims, and including any interest accrued on Claims from the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation shall, as of the Effective Date, discharge the Debtors from all Claims or other liabilities that arose on or before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (a) a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (b) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (c) the holder of a Claim based on such debt has accepted the Plan.

In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination, as of the Effective Date, of a discharge of all Claims and other debts and liabilities against the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against a Debtor at any time, to the extent that such

judgment relates to a discharged Claim, debt or liability. Nothing contained in the foregoing discharge shall, to the full extent provided under section 524(e) of the Bankruptcy Code, affect the liability of any other Entity on, or the property of any other Entity for, any debt of the Debtors that is discharged under this Plan.

Notwithstanding any provision of the Plan to the contrary, Confirmation shall not discharge (1) the Debtors from any debt of a kind specified in 11 U.S.C. § 1141(d)(6) or (2) the Debtors' obligations under their settlement agreements with the Settled Environmental Insurers.

B. Injunctions

1. General Injunctions

a. No Actions on Account of Discharged Claims

Except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged pursuant to the terms of the Plan shall be permanently enjoined from taking any of the following actions on account of any such discharged Claim, debt or liability: (i) commencing or continuing in any manner any action or other proceeding against any Debtor or Reorganized Debtor, or any of its property, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against any Debtor or Reorganized Debtor, or any of its property, other than as permitted pursuant to (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance against any

Debtor or Reorganized Debtor, or any of its property; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any Debtor or Reorganized Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

b. No Actions on Account of Released Claims

Except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities that are released pursuant to the Plan shall be permanently enjoined from taking any of the following actions against any released Entity, or any of its property, on account of such released claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any released Entity; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

c. Recipients of Distribution Deemed to Consent

By accepting Distributions pursuant to the Plan, each holder of an Allowed Claim receiving Distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in Section IX.B.

2. Asbestos Permanent Channeling Injunction

a. Asbestos Permanent Channeling Injunction

Pursuant to section 524(g) of the Bankruptcy Code, and except as otherwise provided in the Plan, including Section IV.O.1., the Plan and the Confirmation Order shall permanently and forever stay, restrain and enjoin any Entity from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which shall be channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures, including permanently and forever staying, restraining and enjoining any Entity from any of the following:

1. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party;

2. enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise

recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against any Protected Party or any property or interests in property of any Protected Party;

3. creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

4. setting off, seeking reimbursement of, contribution from or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

5. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Personal Injury Trust Documents, except in compliance therewith.

For the avoidance of doubt, the Asbestos Permanent Channeling Injunction shall not affect any claims or causes of action under Sections IV.L.1. and IV.L.2. hereof.

3. Environmental Injunction

In consideration of the undertakings of the Settled Environmental Insurers, and other consideration, and pursuant to their respective settlements with the Debtors and to preserve and promote further the agreements between and among the Debtors and any Settled Environmental Insurers, and pursuant to section 105 of the Bankruptcy Code:

a. any and all Environmental Claims shall be treated, administered, determined and resolved under the procedures and protocols under

the Plan as the sole and exclusive remedy with respect to Environmental Claims; and

b. all Entities are hereby permanently stayed, enjoined, barred and restrained from doing any of the following against the Settled Environmental Insurers:

(i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any Environmental Claim against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(ii) commencing or continuing in any manner any contribution, indemnity or other equitable action or other similar proceeding relating to the environmental settlements made in this bankruptcy case against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(iii) enforcing, attaching, collecting or recovering, by any manner or means, from any of the Settled Environmental Insurers, or the property of any of the Settled Environmental Insurers, any judgment, award, decree, payment or order relating to any Environmental Claim against any of the Settled Environmental Insurers; and

(iv) creating, perfecting or enforcing any lien of any kind relating to any Environmental Claim against any of the Settled Environmental Insurers, or the property of the Settled Environmental Insurers.

The injunction set forth set forth in this Section IX.B.3 (the "Environmental Injunction") is an integral part of the Plan and is essential to the Plan's consummation and implementation. The Environmental Injunction shall inure to the benefit of the Settled Environmental Insurers, but shall not apply to any Debtor or Reorganized Debtor.

For the avoidance of doubt, the Environmental Injunction shall not apply to Asbestos Personal Injury Claims, or to Asbestos Insurance Policy Claims arising from the payment of, or obligations arising from, Asbestos Personal Injury Claims.

C. Subordination Rights

The classification and manner of satisfying Claims and Interests under the Plan does not take into consideration subordination rights, and nothing in the Plan or Confirmation Order shall affect any subordination rights that a holder of a Claim may have with respect to any Distribution to be made pursuant to the Plan, whether arising under general principles of equitable subordination, contract, section 510(c) of the Bankruptcy Code or otherwise.

ARTICLE X

RETENTION OF JURISDICTION

A. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Reorganization Cases after the Effective Date as is legally permissible, including jurisdiction to:

1. Hear and determine any proceeding that involves the validity, applicability, construction, enforceability or modification of the Asbestos Permanent

Channeling Injunction or the application of section 524(g) of the Bankruptcy Code to the Asbestos Permanent Channeling Injunction;

2. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim (other than Asbestos Personal Injury Claims) or Interest, including the resolution of any request for payment of any Administrative Claim or the resolution of any objections to the allowance, priority or classification of Claims (other than Asbestos Personal Injury Claims) or Interests;

3. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

4. Resolve any matters related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which any Debtor is a party or with respect to which any Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

5. Ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

6. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any application, involving the Debtors that may be pending on the Effective Date or brought thereafter, including issues related to the Insolvent Insurers Proceeds Dispute;

7. Enter such orders as may be necessary or appropriate to effectuate, implement or consummate the provisions of the Plan and all contracts, instruments,

releases and other agreements and documents entered into or delivered in connection with the Plan or the Confirmation Order;

8. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;

9. Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code;

10. Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the effectuation, implementation, consummation or enforcement of the Plan or the Confirmation Order;

11. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

12. Determine any other matters that may arise in connection with or relate to the Plan, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan or the Confirmation Order;

13. Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505

and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes;

14. Adjudicate any claims or causes of action under Section IV.L.2;

15. Enforce remedies upon any default under the Plan;

16. Hear and determine any other matters not inconsistent with the Bankruptcy Code; and

17. Enter a final decree closing the Reorganization Cases.

B. Consent to Jurisdiction

Upon default under the Plan, the Parties consent to the jurisdiction of the Bankruptcy Court, and agree that it shall be the preferred forum for all proceedings relating to any such default.

C. Jurisdiction of Litigating Asbestos Personal Injury Claims

Notwithstanding anything to the contrary in this Article X, the resolution of Asbestos Personal Injury Claims and the forum in which such claims will be litigated shall be governed by and in accordance with the Asbestos Personal Injury Trust Distribution Procedures.

ARTICLE XI

MISCELLANEOUS PROVISIONS

A. DEQ Settlement

The DEQ Settlement, as defined herein and subject to the terms and conditions thereof, is incorporated in full in the Plan and shall remain in full force and effect following entry of the Confirmation Order, including the mutual general release among DEQ,

Lehigh Hanson, certain affiliates of Lehigh Hanson and the Debtors. For the avoidance of doubt, in the event of any inconsistency between the DEQ Settlement, as defined herein, and any other provision of the Plan, the terms and conditions of the DEQ Settlement shall govern.

B. Dissolution of the Creditors' Committee and the Asbestos Personal Injury Committee

On the Effective Date, the Creditors' Committee and the Asbestos Personal Injury Committee shall dissolve and the respective members of such committees shall be released and discharged from all duties and obligations arising from or related to the Reorganization Cases. The members of and the Professionals retained by the Creditors' Committee or the Asbestos Personal Injury Committee or by the Future Claimants' Representative shall not be entitled to assert any Fee Claim for any services rendered or expenses incurred after the Effective Date, except for services rendered and expenses incurred in connection with (i) any applications for allowance of compensation and reimbursement of expenses pending on the Effective Date or Filed and served after the Effective Date pursuant to Section III.A.1.d.ii.A and (ii) participation in an appeal from the Confirmation Order, but only to the extent the appeal raises issues specific to the treatment of creditors represented by the respective committee or Future Claimants' Representative.

Effective as of the Effective Date, the TAC shall succeed to, and exclusively hold, the attorney-client privilege and any other privilege held by the Asbestos Personal Injury Committee and shall enjoy the work product protections that were applicable or available to the Asbestos Personal Injury Committee before its

dissolution. Further, the TAC shall be a party in interest on and after the Effective Date within the meaning of section 1109(b) of the Bankruptcy Code.

C. Limitation of Liability

1. Liability for Actions in Connection with the Reorganization Cases

The Debtors, the Reorganized Debtors, the Future Claimants' Representative, the Asbestos Personal Injury Committee, the Creditors' Committee, the DIP Lender, Lehigh Hanson, DEQ, and their respective directors, officers, employees, affiliates, subsidiaries, predecessors, successors, members, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, acting in such capacity, shall neither have nor incur any liability to any Entity for any act taken or omitted to be taken in connection with, related to or arising out of the Reorganization Cases or the consideration, formulation, preparation, dissemination, Confirmation, effectuation, implementation or consummation of the Plan or Exhibits or any transaction proposed in connection with the Reorganization Cases or any contract, instrument, release or other agreement or document entered into or delivered, or any other act taken or omitted to be taken, in connection therewith; provided, however, that the foregoing provisions of this Section XI.C.1. shall have no effect on: (a) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; or (b) the liability of any Entity that would otherwise result from any such act or omission to the extent that such act or omission is

determined in a Final Order to have constituted gross negligence or willful misconduct.

2. Rights of Action in Connection with the Reorganization Cases

Notwithstanding any other provision of this Plan, no holder of a Claim or Interest, no other party in interest and none of their respective directors, officers, employees, affiliates, subsidiaries, predecessors, successors, members, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives or agents shall have any right of action against any of the Debtors, the Reorganized Debtors, the Creditors' Committee, the Future Claimants' Representative, the Asbestos Personal Injury Committee, the DIP Lender, Lehigh Hanson, and DEQ or any of their respective directors, officers, employees, affiliates, subsidiaries, predecessors, successors, members, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, acting in such capacity, for any act or omission in connection with, relating to or arising out of the Reorganization Cases or the consideration, formulation, preparation, dissemination, Confirmation, effectuation, implementation or consummation of the Plan or any transaction or document created or entered into, or any other act taken or omitted to be taken, in connection therewith, except for: (a) the liability of any Entity that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan; or (b) the liability of any Entity that would otherwise result from any such act or omission to the extent that such act or omission is

determined in a Final Order to have constituted gross negligence or willful misconduct.

D. Modification of the Plan and Exhibits

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Parties reserve the right to alter, amend or modify the Plan and the Exhibits to the Plan at any time before its substantial consummation.

E. Headings

The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the construction of the provisions of the Plan.

F. Severability

After the Effective Date, any provision of the Plan, any Exhibit hereto, any instrument, agreement or other document executed in connection with the Plan, or the Confirmation Order, that is determined to be prohibited, unenforceable, or invalid by a court of competent jurisdiction or any other governmental Entity with appropriate jurisdiction may be deemed ineffective as to any jurisdiction in which such provision is prohibited, unenforceable, or invalidated to the extent of such prohibition, unenforceability, or invalidation, without invalidating the effectiveness of the remaining provisions of the Plan, the Plan Exhibits, any instruments, agreements, or other documents executed in connection with the Plan, or the Confirmation Order or affecting the validity or enforceability of such provision and such remaining provisions in any other jurisdiction.

G. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

H. Service of Certain Plan Exhibits

Certain Exhibits are not being Filed or served with copies of the Plan. The Debtors shall File such Exhibits no later than ten (10) days before the deadline to object to Confirmation. Once Filed, the Debtors shall make available for review the relevant Exhibits on their web site at https://cases.primeclerk.com/kaisergypsum.

I. Effective Date Actions Simultaneous

Unless the Plan or the Confirmation Order provides otherwise, actions required to be taken on the Effective Date shall take place and be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. Actions required to be taken after the Effective Date or as soon as thereafter as is reasonably practicable shall be deemed to have been taken on the Effective Date.

J. Asbestos Personal Injury Trust Annual Report

Notwithstanding the closing of the Reorganization Cases under section 350 of the Bankruptcy Code, the Clerk of the Bankruptcy Court shall accept for filing the Asbestos Personal Injury Trust's annual report without the requirement that any party in interest file a request to reopen the case.

K. Service of Documents

Any pleading, notice or other document required by the Plan or Confirmation Order to be served on or delivered to the Debtors, the Reorganized Debtors, the Creditors' Committee, the Future Claimants' Representative, the Asbestos Personal Injury Committee or the Bankruptcy Administrator must be sent by overnight delivery service, courier service or messenger to:

1. The Debtors and the Reorganized Debtors

C. Richard Rayburn, Jr.
John R. Miller, Jr.
RAYBURN COOPER & DURHAM, P.A.
1200 Carillon
227 West Trade Street
Charlotte, North Carolina 28202

-and-

Gregory M. Gordon
Amanda Rush
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201

-and-

Paul M. Green
JONES DAY
717 Texas, Suite 3300
Houston, Texas 77002

2. Future Claimants' Representative

Edwin Harron
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801

-and-

Felton Parrish
HULL & CHANDLER
001 Morehead Square Drive, Suite 450
Charlotte, North Carolina 28203

3. The Asbestos Personal Injury Committee

Kevin Maclay
Todd E. Phillips
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle N.W., Suite 1100
Washington, D.C. 2000

-and-

Sally Higgins
HIGGINS & OWENS
524 East Boulevard
Charlotte, North Carolina 28203

4. The Creditors' Committee

Ira L. Herman

BLANK ROME LLP
1271 Avenue of the Americas
New York, New York 10020

-and-

Jeffrey Rhodes
BLANK ROME LLP
1825 Eye Street NW
Washington, DC 20006

-and-

Andrew T. Houston
MOON WRIGHT & HOUSTON, PLLC,
121 W. Trade Street, Suite 1950
Charlotte, North Carolina 28202

5. The Bankruptcy Administrator for the Western District of North Carolina

Alexandria Kenny
402 West Trade Street, Suite #200
Charlotte, North Carolina 28202

6. Lehigh Hanson, Inc.

Ben Hawfield, Jr.
Hillary B. Crabtree
MOORE &VAN ALLEN
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202

Dated: July 20, 2020 Respectfully submitted,

HANSON PERMANENTE CEMENT COMPANY

/s/ Charles E. McChesney II
Charles E. McChesney II
Vice President, Secretary and Director

ASBESTOS PERSONAL INJURY COMMITTEE

/s/ Alan R. Brayton
Alan R. Brayton

FUTURE CLAIMANTS REPRESENTATIVE

/s/ Lawrence Fitzpatrick
Lawrence Fitzpatrick

KAISER GYPSUM COMPANY, INC.

/s/ Charles E. McChesney II

Charles E. McChesney II
Vice President, Secretary and Director

LEHIGH HANSON, INC.

/s/ Carol L. Lowry
Coral L. Lowry
Vice President and General Counsel

EXHIBIT B

MODIFICATIONS TO THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.

(INTENTIONALLY OMITTED)

EXHIBIT C
CONFIRMATION NOTICE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re KAISER GYPSUM COMPANY, INC., *et al*.,[1] Debtors.	Chapter 11 Case No. 16-31602 (JCW) (Jointly Administered)

NOTICE OF (I) ENTRY OF ORDER CONFIRMING THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.; (II) EFFECTIVE DATE AND (III) BAR DATE FOR CERTAIN ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS AND REJECTION DAMAGES CLAIMS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Confirmation of the Plan. On [_____], 2020, the United States Bankruptcy Court for the Western District of North Carolina entered an order (the "Confirmation Order") confirming the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., dated July 20, 2020 (as modified by the Confirmation Order, the

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313). The Debtors' address is 300 E. John Carpenter Freeway, Irving, Texas 75062.

"Plan") filed by the above-captioned debtors (together, the "Debtors"). The Confirmation Order was subsequently affirmed by the United States District Court for the Western District of North Carolina. Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order.

2. Effective Date. Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the Effective Date occurred, on [_____], 2020.

3. Settlement of Claims.

(a) Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, any and all claims against the Protected Parties that are or would have been property of the Debtors' Estates or could have been brought by the Debtors' Estates, including without limitation Recovery Actions and any claims based upon a legal or equitable theory of liability in the nature of veil piercing, alter ego, successor liability, vicarious liability, fraudulent transfer, malpractice, breach of fiduciary duty, waste, fraud or conspiracy, except for Intercompany Claims, are deemed settled, released and extinguished. The entry of the Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

(b) Pursuant to Bankruptcy Rule 9019 and in consideration for the releases and other benefits provided under the Plan, any and all claims against the holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), that are or would have been property of any of the Debtors' Estates or could have been brought by any of the Debtors' Estates or any Protected Party, including without limitation Recovery Actions, and any claims based upon a legal or equitable theory of liability, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to the Petition Date, are deemed settled, released and extinguished. The entry of the Confirmation Order constitutes the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims and the Bankruptcy Court's finding that such compromise or settlement is in the best interest of the Debtors, the Reorganized Debtors and their respective Claim and Interest holders and is fair, equitable and reasonable.

4. Releases.

(a) General Releases of Debtors and Reorganized Debtors. Except as otherwise expressly set forth in the Plan, and except to the extent it would diminish, reduce or eliminate the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset, as of the Effective Date, the Debtors and the Reorganized Debtors are released from all

claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, know or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date. Notwithstanding the foregoing, the releases set forth in this paragraph will not become effective with respect to holders of General Unsecured Claims until the General Unsecured Claims Escrows have been funded as set forth in Section IV.R.3.a. of the Plan.

(b) Release by the Debtors, Reorganized Debtors and Lehigh Hanson.

(i) Without limiting any other provision of the Plan, as of the Effective Date, the Debtors and the Reorganized Debtors, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, are deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against each of the present and former directors, officers, employees, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents of the Debtors, the DIP Lender and DEQ, in each case acting in such capacity, arising

out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date with respect to the Reorganization Cases, the Plan or the DEQ Settlement, except for the liability of any Entity that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted gross negligence or willful misconduct.

(ii) Without limiting any other provision of the Plan, as of the Effective Date, the Debtors, the Reorganized Debtors and Lehigh Hanson, on behalf of themselves and their respective affiliates, Estates and successors and assigns, and any and all Entities who may purport to claim by, through, for or because of them, are deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against holders of Asbestos Personal Injury Claims who received payments in respect of their claims from the Debtors, Lehigh Hanson, or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date, and their professionals (but only with respect to their representation of or work for such holders in connection with such payments), including without limitation Recovery Actions, in each case arising out of, based upon or resulting from payments to holders of Asbestos Personal Injury Claims from the Debtors, Lehigh Hanson or any predecessor or affiliate of the Debtors or Lehigh Hanson prior to Petition Date.

(c) General Releases by Holders of Claims or Interests. Without limiting any other provision of the Plan or the Bankruptcy Code, as of the Effective Date, in consideration for, among other things, the obligations of the Debtors and the Reorganized Debtors under the Plan, each holder of a Claim or Interest that voted in favor of the Plan or was deemed to have accepted the Plan is deemed to forever release, waive and discharge all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, against any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case acting in such capacity, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date and in any way relating to the Reorganization Cases or the Plan (which release is in addition to the discharge of Claims provided herein and under the Confirmation Order and the Bankruptcy Code). Notwithstanding the foregoing, no release or discharge of any of the Parties, the Creditors' Committee or any Reorganized Debtor, or any of their respective present or former directors, officers, employees, members, subsidiaries, predecessors, successors, attorneys, accountants, investment bankers, financial advisors, appraisers, representatives and agents, or the DIP Lender, in each case

acting in such capacity, diminishes, reduces or eliminates the duties or obligations of any Asbestos Insurer under any Asbestos Personal Injury Insurance Asset.

(d) Injunction Related to Releases. Except as otherwise expressly provided in the Plan, including in Section IV.O.1., the Confirmation Order permanently enjoins the commencement or prosecution by any Entity, whether directly, derivatively or otherwise, of any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities released pursuant to the Plan.

5. Discharge of Claims.

(a) Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction and discharge of all Claims, and including any interest accrued on Claims from the Petition Date. Except as provided in the Plan or in the Confirmation Order, Confirmation, as of the Effective Date, discharges the Debtors from all Claims or other liabilities that arose on or before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (ii) a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code or (iii) the holder of a Claim based on such debt has accepted the Plan.

(b) In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order is a judicial determination, as of the Effective Date, of a discharge of all Claims and other debts and liabilities against the Debtors,

pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge voids any judgment obtained against a Debtor at any time, to the extent that such judgment relates to a discharged Claim, debt or liability. Nothing contained in the foregoing discharge, to the full extent provided under section 524(e) of the Bankruptcy Code, affects the liability of any other Entity on, or the property of any other Entity for, any debt of the Debtors that is discharged under the Plan.

(c) Notwithstanding any provision of the Plan or the Confirmation Order to the contrary, Confirmation does not discharge (i) the Debtors from any debt of a kind specified in 11 U.S.C. § 1141(d)(6) or (ii) the Debtors' obligations under the settlement agreements with the Settled Environmental Insurers.

6. Asbestos Permanent Channeling Injunctions.

(a) Pursuant to section 524(g) of the Bankruptcy Code, and except as otherwise provided in the Plan, including Section IV.O.1., the Plan and the Confirmation Order permanently and forever stays, restrains and enjoins any Entity from taking any actions against any Protected Party for the purpose of, directly or indirectly, collecting, recovering or receiving payment of, on or with respect to any Asbestos Personal Injury Claim, all of which are channeled to the Asbestos Personal Injury Trust for resolution as set forth in the Asbestos Personal Injury Trust Agreement and the related Asbestos Personal Injury Trust Distribution Procedures, including permanently and forever staying, restraining and enjoining any Entity from any of the following:

(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against any Protected Party or any property or interests in property of any Protected Party;

(ii) enforcing, levying, attaching (including any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree or other order against any Protected Party or any property or interests in property of any Protected Party;

(iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any Encumbrance against any Protected Party or any property or interests in property of any Protected Party;

(iv) setting off, seeking reimbursement of, contribution from or subrogation against, or otherwise recouping in any manner, directly or indirectly, any amount against any liability owed to any Protected Party or any property or interests in property of any Protected Party; and

(v) proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the Asbestos Personal Injury Trust Documents, except in compliance therewith.

(b) For the avoidance of doubt, the Asbestos Permanent Channeling Injunction shall not affect any claims or causes of action under Sections IV.L.1. and IV.L.2. of the Plan.

7. Environmental Injunctions.

(a) In consideration of the undertaking of the Settled Environmental Insurers, and other

consideration, and pursuant to their respective settlements with the Debtors and to preserve and promote further the agreements between and among the Debtors and any Settled Environmental Insurers, and pursuant to section 105 of the Bankruptcy Code:

(i) any and all Environmental Claims shall be treated, administered, determined and resolved under the procedures and protocols under the Plan as the sole and exclusive remedy with respect to Environmental Claims; and

(ii) all Entities are hereby permanently stayed, enjoined, barred and restrained from doing any of the following against the Settled Environmental Insurers:

(A) commencing or continuing in any manner any action or other proceeding of any kind with respect to any Environmental Claim against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(B) commencing or continuing in any manner any contribution, indemnity or other equitable action or other similar proceeding relating to the environmental settlements made in this bankruptcy case against any of the Settled Environmental Insurers or against the property of any of Settled Environmental Insurers;

(C) enforcing, attaching, collecting or recovering, by any manner or means, from any of the Settled Environmental Insurers, or the property of any of the Settled Environmental Insurers, any judgment, award, decree, payment or order relating to any Environmental Claim against any of the Settled Environmental Insurers; and

(D) creating, perfecting or enforcing any lien of any kind relating to any Environmental Claim against any of the Settled Environmental Insurers, or the property of the Settled Environmental Insurers.

(b) The injunction set forth set forth in Section IX.B.3 of the Plan is an integral part of the Plan and is essential to the Plan's consummation and implementation. The Environmental Injunction shall inure to the benefit of the Settled Environmental Insurers, but shall not apply to any Debtor or Reorganized Debtor.

(c) For the avoidance of doubt, the Environmental Injunction shall not apply to Asbestos Personal Injury Claims, or to Asbestos Insurance Policy Claims arising from the payment of, or obligations arising from, Asbestos Personal Injury Claims.

8. General Injunctions.

(a) No Actions on Account of Discharged Claims. In addition to the Asbestos Permanent Channeling Injunctions and the Environmental Injunctions set forth above, except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold a Claim or other debt or liability that is discharged pursuant to the terms of the Plan is permanently enjoined from taking any of the following actions on account of any such discharged Claim, debt or liability: (i) commencing or continuing in any manner any action or other proceeding against any Debtor or Reorganized Debtor, or any of its property, other than to enforce any right to a Distribution pursuant to the Plan; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree

or order against any Debtor or Reorganized Debtor, or any of its property, other than as permitted pursuant to (i) above; (iii) creating, perfecting or enforcing any lien or encumbrance against any Debtor or Reorganized Debtor, or any of its property; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any Debtor or Reorganized Debtor; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

(b) No Actions on Account of Released Claims. In addition to the Asbestos Permanent Channeling Injunctions and the Environmental Injunctions set forth above, except as provided in the Plan, including in Section IV.O.1., or the Confirmation Order, as of the Effective Date, all Entities that have held, currently hold or may hold any claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities that are released pursuant to the Plan are permanently enjoined from taking any of the following actions against any released Entity, or any of its property, on account of such released claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action or liabilities: (i) commencing or continuing in any manner any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any Encumbrance; (iv) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to any released Entity; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of the Plan.

(c) Recipients of Distributions Deemed to Consent. By accepting Distributions pursuant to the Plan, each holder of an Allowed Claim receiving Distributions pursuant to the Plan is deemed to have specifically consented to the injunctions set forth in Section IX.B of the Plan.

9. Bar Dates.

(a) Bar Dates for Administrative Claims. Except as otherwise provided in Section III.A.1.d.ii. of the Plan and section 9(b) below, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors, at the addresses set forth in Section XI.K of the Plan, no later than sixty (60) days after the Effective Date (i.e., [_____], 2020). Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the requesting party no later than 120 days after the Effective Date (i.e., [_____], 2020).

(b) Bar Dates for Professional Compensation. With certain limited exceptions, Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than ninety (90) days after the Effective Date (i.e.,

[___], 2020). A Professional may include any outstanding, non-Filed monthly or interim request for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be Filed and served on the Reorganized Debtors and the requesting party by the later of (i) eighty (80) days after the Effective Date or (ii) thirty (30) days after the Filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, Filed interim requests for a Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

(c) Ordinary Course Labilities. Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including any Intercompany Claims that are Administrative Claims, Administrative Claims of governmental units for Taxes and Administrative Claims arising from those contracts and leases of the kind described in Section V.E. of the Plan, are not required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c. of the Plan.

(d) Rejection Damage Claims. Notwithstanding anything in the Bankruptcy Court's Order Establishing Bar Dates for Filing Proofs of Claim Other Than Asbestos Personal Injury Claims and Approving Related Relief [D.I. 553] to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C of the Plan gives rise to a Claim by

the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, their respective successors or their properties unless a proof of Claim is Filed and served on the Reorganized Debtors at the addresses set forth in Section XI.K of the Plan, on the latter to occur of (i) sixty (60) days after the Effective Date or (ii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease.

10. Bankruptcy Court Address. For purposes of Filing requests for payment of Administrative Claims, applications for allowance of Fee Claims or other documents, the address of the Bankruptcy Court is 401 West Trade Street, Room 111, Charlotte, North Carolina 28202.

11. Claims Agent Address. For purposes of Filing proofs of Claim arising from the rejection of Executory Contracts or Unexpired Leases, Prime Clerk LLC's address is 55 East 52nd Street, 31st Floor, New York, New York 10055.

12. Copies of Confirmation Order. Copies of the Confirmation Order may be obtained free of charge at www.primeclerk.com/kaisergypsum or by sending a request, in writing, to Prime Clerk, LLC, 55 East 52nd Street, 31st Floor, New York, New York 10055 (Attn: Kaiser Gypsum Company, Inc.).

Dated: _____, 2020 BY ORDER OF THE COURT

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
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1200 Carillon
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ATTORNEYS FOR THE REORGANIZED DEBTORS

EXHIBIT D

**CONFIRMATION NOTICE —
PUBLICATION VERSION**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re KAISER GYPSUM COMPANY, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 16-31602 (JCW) (Jointly Administered)

NOTICE OF (I) ENTRY OF ORDER CONFIRMING THE JOINT PLAN OF REORGANIZATION OF KAISER GYPSUM COMPANY, INC. AND HANSON PERMANENTE CEMENT, INC.; (II) EFFECTIVE DATE AND (III) BAR DATE FOR CERTAIN ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS AND REJECTION DAMAGES CLAIMS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. Confirmation of the Plan. On [___], 2020, the United States Bankruptcy Court for the Western District of North Carolina entered an order (the "Confirmation Order") confirming the Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., dated July 20, 2020 (as modified by the Confirmation Order, the "Plan") filed by the above-captioned debtors (together, the "Debtors"). The Confirmation Order was subsequently

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Kaiser Gypsum Company, Inc. (0188) and Hanson Permanente Cement, Inc. (7313). The Debtors' address is 300 E. John Carpenter Freeway, Irving, Texas 75062.

affirmed by the United States District Court for the Western District of North Carolina. Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order.

2. Effective Date. Pursuant to the Confirmation Order, the Debtors hereby certify and give notice that the Plan became effective in accordance with its terms, and the Effective Date occurred, on [_____], 2020.

3. Releases. The confirmed Plan provides for various debtor and non-debtor releases that became effective as of the Effective Date. Except as otherwise expressly set forth in the Plan, the Debtors and the Reorganized Debtors are released from all claims, commitments, obligations, suits, judgments, damages, demands, debts, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, arising out of, based upon or resulting from, directly or indirectly, in whole or in part, any act, omission, transaction or other occurrence taking place on or prior to the Effective Date. In addition, the Plan contains broad releases in favor of identified, non-debtor third parties granted by (a) the holders of Claims or Interests that voted in favor of the Plan or were deemed to accept the Plan and (b) the Debtors and the Reorganized Debtors, on behalf of themselves and their affiliates, Estates and their respective successors, assigns and any and all Entities who may purport to claim by, through, for or because of them.

4. Discharge of Claims.

a. Pursuant to the Confirmation Order, with certain limited exceptions, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction, discharge and release of all Claims arising on or before the Effective Date. With certain limited exceptions, Confirmation of the Plan will, as of the Effective Date, discharge the Debtors from all Claims, other liabilities or debts that arose on or before the Effective Date.

b. In accordance with the foregoing, with certain limited exceptions, the Confirmation Order, as of the Effective Date, discharges all Claims, debts and other liabilities against the Debtors, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge will void any judgment obtained against a Debtor at any time, to the extent that such judgment relates to a discharged Claim, debt or liability.

5. Injunctions Issued Pursuant to the Confirmation Order.

a. Asbestos Permanent Channeling Injunctions. Pursuant to the Confirmation Order, an injunction was issued, applicable to all persons and entities, that permanently channels to a trust established pursuant to section 524(g) of the Bankruptcy Code for resolution of all claims, remedies, liabilities or demands against the Debtors or certain other protected parties for death or personal injuries caused directly or indirectly by the presence of, or exposure to, asbestos, including any claims or demands for reimbursement, indemnification, subrogation or contribution.

b. Environmental Injunction. Pursuant to the Confirmation Order, an injunction was issued

(i) requiring that all Environmental Claims be treated, administered, determined and resolved under the procedures and protocols set forth in the Plan and (ii) enjoining all persons or entities from taking broad categories of actions against the Settled Environmental Insurers or their respective property.

c. Other Injunctions. Pursuant to the Confirmation Order, in addition to the injunctions described above, an injunction was issued enjoining all persons and entities from taking broad categories of actions in the pursuit of (i) any Claim against or Interest in the Debtors, the Reorganizing Debtors, or any of their respective property to the extent that such Claim or Interest was discharged, released, waived, settled or deemed satisfied in accordance with the Plan (other than to enforce any right to a Distribution under the Plan) and (ii) any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities against third parties that were released pursuant to the Plan.

6. For the specific terms and conditions of these injunctions and releases and the precise scope of the claims and demands to be channeled, please refer to the specific terms of the Plan, which can be obtained free of charge at www.primeclerk.com/kaisergypsum or by sending a request, in writing, to Prime Clerk, LLC, 55 East 52nd Street, 31st Floor, New York, New York 10055 (Attn: Kaiser Gypsum Company, Inc.).

7. Bar Dates.

a. Bar Dates for Administrative Claims. Except as otherwise provided in Section III.A.1.d.ii. of the Plan and section 7.b below, unless previously Filed, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtors at the

addresses set forth in Section XI.K of the Plan, no later than sixty (60) days after the Effective Date (i.e., [_____], 2020). Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims and that do not File and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtors, the Reorganized Debtors or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the requesting party no later than 120 days after the Effective Date (i.e., [_____], 2020).

b. Bar Dates for Professional Compensation. With certain limited exceptions, Professionals or other Entities asserting a Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtors and certain other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than (ninety) 90 days after the Effective Date (i.e., [_____], 2020). A Professional may include any outstanding, non-Filed monthly or interim request for payment of a Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be Filed and served on the Reorganized Debtors and the requesting party by the later of (i) eighty (80) days after the Effective Date or (ii) thirty (30) days after the Filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Fee Claims. Any pending, Filed interim requests for a Fee

Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

c. Ordinary Course Labilities. Holders of Administrative Claims based on liabilities incurred by a Debtor in the ordinary course of its business, including any Intercompany Claims that are Administrative Claims, Administrative Claims of governmental units for Taxes and Administrative Claims arising from those contracts and leases of the kind described in Section V.E. of the Plan, are not required to File or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section III.A.1.c. of the Plan.

d. Rejection Damage Claims. Notwithstanding anything in the Bankruptcy Court's Order Establishing Bar Dates for Filing Proofs of Claim Other Than Asbestos Personal Injury Claims and Approving Related Relief [D.I. 553] to the contrary, if the rejection of an Executory Contract or Unexpired Lease pursuant to Section V.C of the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Reorganized Debtors, their respective successors or their properties unless a proof of Claim is Filed and served on the Reorganized Debtors at the addresses set forth in Section XI.K of the Plan, on the latter to occur of (i) sixty (60) days after the Effective Date or (ii) thirty (30) days after the effective date of rejection of such Executory Contract or Unexpired Lease.

8. Copies of Confirmation Order. Copies of the Confirmation Order may be obtained free of charge at www.primeclerk.com/kaisergypsum or by

sending a request, in writing, to Prime Clerk, LLC, 55 East 52nd Street, 31st Floor, New York, New York 10055 (Attn: Kaiser Gypsum Company, Inc.).

Dated: _____, 2020 BY ORDER OF THE COURT

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ATTORNEYS FOR THE REORGANIZED DEBTORS

APPENDIX D

STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 101. Definitions

In this title the following definitions shall apply:

(1) The term "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) The term "affiliate" means—

(A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities—

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) The term "assisted person" means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000.

(4) The term "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) The term "bankruptcy assistance" means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, un-liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an

equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) The term "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) The term "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

(7A) The term "commercial fishing operation" means—

(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).

(7B) The term "commercial fishing vessel" means a vessel used by a family fisherman to carry out a commercial fishing operation.

(8) The term "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose.

(9) The term "corporation"—

(A) includes—

(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;

(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;

(iii) joint-stock company;

(iv) unincorporated company or association; or

(v) business trust; but

(B) does not include limited partnership.

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or

(C) entity that has a community claim.

(10A) The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the

schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent); and

(ii) excludes—

(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism;

(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of

retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title; and

(V) Payments made under Federal law relating to the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the coronavirus disease 2019 (COVID-19).

(11) The term "custodian" means—

(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;

(B) assignee under a general assignment for the benefit of the debtor's creditors; or

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term "debt" means liability on a claim.

(12A) The term "debt relief agency" means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

(13A) The term "debtor's principal residence"—

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

(14) The term "disinterested person" means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term "domestic support obligation" means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable non-bankruptcy law notwithstanding any other provision of this title, that is—

(A) owed to or recoverable by—

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable non-bankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) The term "entity" includes person, estate, trust, governmental unit, and United States trustee.

(16) The term "equity security" means—

(A) share in a corporation, whether or not transferable or denominated "stock", or similar security;

(B) interest of a limited partner in a limited partnership; or

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) The term "equity security holder" means holder of an equity security of the debt-or.

(18) The term "family farmer" means—

(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $10,000,000 and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal

residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for—

(i) the taxable year preceding; or

(ii) each of the 2d and 3d taxable years preceding;

the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

(ii) its aggregate debts do not exceed $10,000,000 and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation

owned or operated by such corporation or such partnership; and

(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term "family fisherman" means—

(A) an individual or individual and spouse engaged in a commercial fishing operation—

(i) whose aggregate debts do not exceed $1,500,0001 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term "family fisherman with regular annual income" means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) The term "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such

person was commenced from a farming operation owned or operated by such person.

(21) The term "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term "farmout agreement" means a written agreement in which—

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) The term "Federal depository institutions regulatory agency" means—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);

(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;

(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

(22) The term "financial institution" means—

(A) Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a "customer", as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or

(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

(22A) The term "financial participant" means—

(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total

gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or

(B) clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).

(23) The term "foreign proceeding" means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

(24) The term "foreign representative" means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

(25) The term "forward contract" means—

(A) a contract (other than a commodity contract, as defined in section 761) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or

in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a "repurchase agreement", as defined in this section) consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in

connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562.

(26) The term "forward contract merchant" means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.

(27) The term "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

(27A) The term "health care business"—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any—

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in sub-clause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any—

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in sub-clause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

(27B) The term "incidental property" means, with respect to a debtor's principal residence—

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas

rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

(28) The term "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor.

(29) The term "indenture trustee" means trustee under an indenture.

(30) The term "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term "insider" includes—

(A) if the debtor is an individual—

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and

(F) managing agent of the debtor.

(32) The term "insolvent" means—

(A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of—

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title;

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation—

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's non-partnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's non-partnership debts; and

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) The term "institution-affiliated party"—

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) The term "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) The term "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection).

(35A) The term "intellectual property" means—

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable non-bankruptcy law.

(36) The term "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(37) The term "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation.

(38) The term "margin payment" means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other

property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments.

(38A) The term "master netting agreement"—

(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term "master netting agreement participant" means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) The term "mask work" has the meaning given it in section 901(a)(2) of title 17.

(39A) The term "median family income" means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year.

(40) The term "municipality" means political subdivision or public agency or instrumentality of a State.

(40A) The term "patient" means any individual who obtains or receives services from a health care business.

(40B) The term "patient records" means any record relating to a patient, including a written document or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) acquires an asset from a person—

(i) as a result of the operation of a loan guarantee agreement; or

(ii) as receiver or liquidating agent of a person;

(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(41A) The term "personally identifiable information" means—

(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) an electronic address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

(42) The term "petition" means petition lied under section 301, 302, 303 and 1504 of this title, as the case may be, commencing a case under this title.

(42A) The term "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) The term "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee.

(44) The term "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) The term "relative" means individual related by affinity or consanguinity within the third degree as

determined by the common law, or individual in a step or adoptive relationship within such third degree.

(46) The term "repo participant" means an entity that, at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.

(47) The term "repurchase agreement" (which definition also applies to a reverse re-purchase agreement)—

(A) means—

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year

after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) The term "securities clearing agency" means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission, or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.

(48A) The term "securities self regulatory organization" means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934.

(49) The term "security"—

(A) includes—

(i) note;

(ii) stock;

(iii) treasury stock;

(iv) bond;

(v) debenture;

(vi) collateral trust certificate;

(vii) pre-organization certificate or subscription;

(viii) transferable share;

(ix) voting-trust certificate;

(x) certificate of deposit;

(xi) certificate of deposit for security;

(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;

(xiv) other claim or interest commonly known as "security"; and

(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include—

(i) currency, check, draft, bill of exchange, or bank letter of credit;

(ii) leverage transaction, as defined in section 761 of this title;

(iii) commodity futures contract or forward contract;

(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;

(v) option to purchase or sell a commodity;

(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of

a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term "security agreement" means agreement that creates or provides for a security interest.

(51) The term "security interest" means lien created by an agreement.

(51A) The term "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor and has not elected that subchapter V of chapter 11 of this title shall apply.

(51D) The term "small business debtor"—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,000,0001 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include—

(i) any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders);

(ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78*o*(d)); or

(iii) any debtor that is an affiliate of an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)).

(52) The term "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or

judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term "stockbroker" means person—

(A) with respect to which there is a customer, as defined in section 741 of this title; and

(B) that is engaged in the business of effecting transactions in securities—

(i) for the account of others; or

(ii) with members of the general public, from or for such person's own account.

(53B) The term "swap agreement"—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign ex-change, precious metals, or other commodity agreement;

(III) a currency swap, option, future, or forward agreement;

(IV) an equity index or equity swap, option, future, or forward agreement;

(V) a debt index or debt swap, option, future, or forward agreement;

(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

(VII) a commodity index or a commodity swap, option, future, or forward agreement;

(VIII) a weather swap, option, future, or forward agreement;

(IX) an emissions swap, option, future, or forward agreement; or

(X) an inflation swap, option, future, or forward agreement;

(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the

Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(53C) The term "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(56A) The term "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term "transfer" means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption; or

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) property; or

(ii) an interest in property.

(54A) The term "uninsured State member bank" The following shall be conditions to Confirmation unless such conditions shall have been duly waived pursuant to means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

11 U.S.C. § 524. Effect of discharge

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

(b) Subsection (a)(3) of this section does not apply if—

(1)(A) the debtor's spouse is a debtor in a case under this title, or a bankrupt or a debtor in a case under the Bankruptcy Act, commenced within six years of the date of the filing of the petition in the case concerning the debtor; and

(B) the court does not grant the debtor's spouse a discharge in such case concerning the debtor's spouse; or

(2)(A) the court would not grant the debtor's spouse a discharge in a case under chapter 7 of this title concerning such spouse commenced on the date of the filing of the petition in the case concerning the debtor; and

(B) a determination that the court would not so grant such discharge is made by the bankruptcy court within the time and in the manner provided for a determination under section 727 of this title of whether a debtor is granted a discharge.

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1192, 1228, or 1328 of this title;

(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(5) the provisions of subsection (d) of this section have been complied with; and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as—

(i) not imposing an undue hardship on the debtor or a dependent of the debtor; and

(ii) in the best interest of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1192, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section and was not represented by an attorney during the course of negotiating such agreement, then the court shall hold a hearing at which the debtor shall appear in person and at such hearing the court shall—

(1) inform the debtor—

(A) that such an agreement is not required under this title, under non-bankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and

(B) of the legal effect and consequences of—

(i) an agreement of the kind specified in subsection (c) of this section; and

(ii) a default under such an agreement; and

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if

the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor.

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin 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, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered, and such court shall have exclusive jurisdiction

over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief 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) is to be funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends;

(III) is to 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—

(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; and

(ii) subject to subsection (h), the court determines that—

(I) 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;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) 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;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) 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; and

(V) subject to subsection (h), pursuant to court orders or otherwise, 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.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in sub-paragraph (A)(ii) or (iii) would, if this para-graph were not applicable, necessarily be liable to any entity by reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an 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—

(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.

(iii) As used in this subparagraph, the term "related party" means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor

or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph 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.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

(h) APPLICATION TO EXISTING INJUNCTIONS.—For purposes of subsection (g)—

(1) subject to paragraph (2), if an injunction of the kind described in subsection (g)(1)(B) was issued before the date of the enactment of this Act, as part of a plan of reorganization confirmed by an order entered before such date, then the injunction shall be considered to meet the requirements of subsection (g)(2)(B) for purposes of subsection (g)(2)(A), and to satisfy subsection (g)(4)(A)(ii), if—

(A) the court determined at the time the plan was confirmed that the plan was fair and equitable in accordance with the requirements of section 1129(b);

(B) as part of the proceedings leading to issuance of such injunction and confirmation of such plan, the court had appointed a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands described in subsection (g)(4)(B) with respect to such plan; and

(C) such legal representative did not object to confirmation of such plan or issuance of such injunction; and

(2) for purposes of paragraph (1), if a trust described in subsection (g)(2)(B)(i) is subject to a court order on the date of the enactment of this

Act staying such trust from settling or paying further claims—

(A) the requirements of subsection (g)(2)(B)(ii)(V) shall not apply with respect to such trust until such stay is lifted or dissolved; and

(B) if such trust meets such requirements on the date such stay is lifted or dissolved, such trust shall be considered to have met such requirements continuously from the date of the enactment of this Act.

(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

(2) such act is in the ordinary course of business between the creditor and the debtor; and

(3) such act is limited to seeking or obtaining periodic payments associated with a valid

security interest in lieu of pursuit of in rem relief to enforce the lien.

(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms "Amount Reaffirmed" and "Annual Percentage Rate" shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases "Before agreeing to reaffirm a debt, review these important disclosures" and "Summary of Reaffirmation Agreement" may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms "Amount Reaffirmed" and "Annual Percentage Rate" must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

(A) The statement: "Part A: Before agreeing to reaffirm a debt, review these important disclosures:";

(B) Under the heading "Summary of Reaffirmation Agreement", the statement: "This Summary is made pursuant to the requirements of the Bankruptcy Code";

(C) The "Amount Reaffirmed", using that term, which shall be—

(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the "Amount Reaffirmed", the statements—

(i) "The amount of debt you have agreed to reaffirm"; and

(ii) "Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.".

(E) The "Annual Percentage Rate", using that term, which shall be disclosed as—

(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6

months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II); or

(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms "credit" and "open end credit plan" are defined in section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such dis-closure statement was given to the debtor, the annual percentage rate as it

would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating "The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.".

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money

security interest then listing by items or types and the original amount of the loan.

(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: "Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.", and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: "Your payment schedule will be:", and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

(I) The following statement: "Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt

when the hearing on the reaffirmation agreement is held.".

(J)(i) The following additional statements:

"Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation

agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

"Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

"What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be

determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the property securing the lien if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you must make a single payment to the creditor equal to the amount of the allowed secured claim, as agreed by the parties or determined by the court.".

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation

agreement, your reaffirmation agreement becomes effective upon filing with the court.".

(4) The form of such agreement required under this paragraph shall consist of the following:

"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

"Brief description of credit agreement:

"Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:".

(5) The declaration shall consist of the following:

(A) The following certification:

"Part C: Certification by Debtor's Attorney (If Any).

"I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"Signature of Debtor's Attorney: Date:".

(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that, in the opinion

of the attorney, the debtor is able to make the payment.

(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

(6)(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____ , and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____ , leaving $_____to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation

agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.".

(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

"I am not represented by an attorney in connection with this reaffirmation agreement.

"I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

"Therefore, I ask the court for an order approving this reaffirmation agreement.".

(8) The court order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.".

(*l*) Notwithstanding any other provision of this title the following shall apply:

(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as

defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.

11 U.S.C. § 1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) 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.