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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523 WJL

Chapter 11

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE DEBTOR'S AMENDED DISCLOSURE STATEMENT

Judge: Hon. William J. Lafferty

Date: January 16, 2025
Time: 1:30 p.m. (Pacific Time)
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

[Re: Dkt. Nos. 1594 & 1595]

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The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtor**" or the "**Diocese**") files this objection (this "**Objection**") to the adequacy of the proposed *Amended Disclosure Statement for Debtor's Amended Plan of Reorganization* [Dkt. No. 1595] (the "**Amended Disclosure Statement**") describing *The Debtor's Amended Plan of Reorganization* [Dkt. No. 1594] (the "**Amended Plan**"). In support of this Objection, the Committee states: [1]

I.

INTRODUCTION

At the first hearing on the adequacy of the Disclosure Statement, this Court made clear that it expected the Debtor to meet and confer with the Committee before filing the Amended Disclosure Statement: "I don't have to order you guys to meet and confer. You're going to do that." *See* Hr'g Tr. of Dec. 18, 2024 Disclosure Statement Hearing ("**D.S. Hr'g Transcript**"), 154:11-13.[2] The Debtor agreed that "[w]e will do that." *Id.* at 154:14. But the Debtor did not. The Debtor did not provide the Committee with a draft of the Amended Disclosure Statement and did not solicit the Committee's comments on its proposed amendments before filing the Amended Disclosure Statement. The first time that the Committee saw the Amended Disclosure Statement was when it was filed with this Court on January 3, 2025.[3]

II.

PRELIMINARY STATEMENT

Through the Amended Disclosure Statement (and recently filed pleadings with this Court), the Debtor assures Abuse Claimants that the compensation they will receive under the Amended Plan is fair and equitable and that the Bishop has done everything within his power, both monetarily and otherwise, to achieve the best possible outcome for them. The Debtor, purportedly,

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[1] Capitalized terms not defined below have the meaning ascribed to them in the Amended Plan.

[2] The D.S. Hr'g Transcript is attached as **Exhibit A**.

[3] On Friday, December 27, 2024, Debtor's counsel sent Committee counsel drafts of the Survivors' Trust Agreement and the Survivors' Trust Distribution Plan. Counsel indicated that the drafts would likely be updated. Committee counsel was not invited to provide comments.

cannot understand why the Committee would oppose a plan of reorganization that putatively grants Abuse Claimants all that they want: one of the largest cash settlements from a diocesan bankruptcy estate and the right to pursue insurance claims. Unfortunately, the Amended Plan is not as advertised. While the Debtor presents itself to this Court as a nonprofit entity with dire liquidity constraints, the Diocese is a billion-dollar enterprise with hundreds of millions of dollars in cash and cash equivalents at its disposal and hundreds of millions of dollars of real estate in one of the most expensive real estate markets in the country. And the proposed insurance assignment that the Debtor lauds is unlawful, unworkable and unfair.

As highlighted in the Committee's prior objection to the Disclosure Statement, the most glaring, and easily decided, issue with the Amended Plan is that it facially fails the hypothetical liquidation test required for cramdown under section 1129(b)(2)(B) of the Bankruptcy Code. ***The Debtor, admittedly, does not include a substantial portion of its multi-million dollar real estate portfolio in its analysis.*** The Debtor has since done nothing to justify its failure to satisfy this test and therefore as set forth below, this Court should not permit the Amended Plan to be solicited when, as a matter of law, the Debtor cannot satisfy a threshold requirement for cramdown.

Further impeding the path to plan confirmation is that the Debtor and the Non-Settling Insurers do not agree on what constitutes Assigned Insurance Interests. At the January 8, 2025, hearing on the Committee's Lift Stay Motion, the Debtor represented that all of its insurance rights are being assigned to Abuse Claimants under the Amended Plan. But counsel to one of the Non-Settling Insurers asserted that the Amended Plan does ***not*** assign the Debtor's bad faith claims. The Non-Settling Insurers have made similar statements in other court filings. *See, e.g., Certain Insurers' Opp. To the Committee's Mot. (I) For Standing to Assert, Prosecute and Compromise all Claims and Causes of Action the Debtor and its Estate Hold Against the Insurers and (II) to be Substituted as the Named Plaintiff in the Insurance Coverage Action* [Dkt. No. 1584], at 14-16 (contending that Abuse Claimants will possess no bad faith rights post-confirmation because, among other reasons, "any confirmed plan will provide Debtor with a discharge and Debtor then will not be at any future risk of having to pay an excess-of-limits verdict."). If the Debtor and the Non-Settling Insurers have not reached agreement on what constitutes Assigned Insurance

Interests then all the applause given to the Non-Settling Insurers for reaching an agreement when it matters was premature. Rather, without a meeting of the minds, the Amended Plan is doomed to fail as both the Non-Settling Insurers and the Committee will object to the Amended Plan.

While the Committee appreciates that this Court may not be inclined to deny approval of the Amended Disclosure Statement based on the Amended Plan's patent unconfirmability, there remain a number of failings in the Amended Plan which must be remedied before solicitation may begin. Those flaws are identified in Section III below. In Section IV, the Committee identifies numerous deficiencies the Committee identified in its prior objection to the Disclosure Statement which remain uncured. *See* Dkt. No. 1518 (the "**First Disclosure Statement Objection**").[4] And in Section V, the Committee sets forth the wealth of information missing from the Debtor's hypothetical liquidation analysis.

III.

THE AMENDED PLAN CANNOT SATISFY SECTION 1129(A)(7) OF THE BANKRUPTCY CODE

In a transparent attempt to avoid disclosing the true size of its estate as required by the best interest test, the Debtor asserts that its First Amendment right to religious freedom justifies its refusal to include hundreds of millions of dollars of assets in its liquidation analysis. Ignoring the plain language of the Bankruptcy Code and the many courts overseeing diocesan bankruptcy cases requiring non-profit religious organizations to comply with, and meet, the hypothetical liquidation test, the Debtor argues that it need not comply with the test because the government may not require it to sell property.[5] The Debtor's argument is flawed for three reasons.

First, the Debtor is not being compelled to sell property. Section 1129(a)(7) of the Bankruptcy Code is a ***hypothetical*** test designed to ensure that creditors receive at least as much under the Amended Plan as they would if the Debtor was liquidated. The test is a hypothetical measuring device; it does not rest on whether the Debtor's assets could be involuntarily liquidated

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[4] Because the Debtor failed to address many of the inconsistencies, flaws and other issues identified by the Committee in the First Disclosure Statement Objection, it is attached as **Exhibit B** and incorporated herein by reference as if its contents were fully set forth herein.

[5] Attached as **Exhibit C** is a list of those cases.

under chapter 7.

In the *BSA* (formerly known as Boy Scouts of America) case, the debtor argued that a nonprofit need not meet the best interest test. But the *BSA* court found section 1129(a)(7) is a confirmation requirement and there is no exception for nonprofits, holding:

> Even if one could look beyond the plain language of the statute, there is nothing illogical about requiring a nonprofit to show that it can meet this requirement in order to obtain the benefits of a confirmed plan. A nonprofit has options if it is in financial distress. It can voluntarily file a bankruptcy case under either chapter 11 or chapter 7 or it can look to its state law alternatives. ***But, to obtain a discharge in bankruptcy, it must meet all applicable requirements of § 1129.***

In re BSA, 642 B.R. 504, 662 (Bankr. D. Del. 2022) (emphasis added).

Congress could have exempted nonprofit organizations from having to satisfy this prong of section 1129. Indeed, Congress knows how to include/exclude nonprofit organizations from compliance with Bankruptcy Code provisions when it so desires. *See* 11 U.S.C. § 1129(a)(16) (in confirming a plan, a court must find that all transfers of property under the plan are made in accordance with applicable nonbankruptcy law that governs the transfer of property by a nonprofit entity). There is no "nonprofit exception" to the best interest test. The Debtor must therefore prove that it has satisfied the best interest test, regardless of its religious nonprofit nature.

Second, the Debtor chose to avail itself of the Bankruptcy's Code's protections, which includes the right to a discharge. But to receive that discharge, the Debtor must comply with the Bankruptcy Code, including the best interest test set forth in section 1129(a)(7). As recognized by the United States Supreme Court in the *Purdue Pharma* case, "[t]o win a discharge, … the code generally requires the debtor to come forward with virtually all its assets. *Harrington v. Purdue Pharma L.P.*, 219 L. Ed. 2d 721, 736, 144 S. Ct. 2071 (2024).

Third, the cases cited by the Debtor in the Amended Disclosure Statement are inapt. In *Sec. Farms v. Gen. Teamsters, Warehousemen & Helpers Union, Local 890 (In re Gen. Teamsters, Warehousemen & Helpers Union, Local 890)*, the Ninth Circuit found that the debtor-union could not monetize its collective bargaining agreement because the National Labor Relations Act forbade such a sale, in bankruptcy or not. Therefore, the court held that this putative asset was correctly

omitted from the union's liquidation analysis because there was nothing to sell in a liquidation. 265 F.3d 869 (9th Cir. 2001). The Debtor tries to equate an asset that ***cannot*** be sold under non-bankruptcy law with real property that ***can*** be sold under non-bankruptcy and bankruptcy law alike. No law forbids the Debtor from selling its real estate. In fact, the Debtor asserts that it will voluntarily sell select (yet undisclosed) parcels of real estate to fund the Amended Plan. But the Debtor unilaterally withholds hundreds of millions of dollars of other real estate that it could sell if it so desired. If the Debtor's arguments were accepted, there would be nothing to stop it from asserting that all of its assets should be exempt from the best interests test because they are vital to its religious mission and demand a discharge without making any distribution to Abuse Claimants.

In *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, the Supreme Court held that a church could not be sued under the American with Disabilities Act (the "**ADA**") for unlawfully firing a minister. 565 U.S. 171 (2012). The Court's holding was predicated on the fact that there is a "ministerial exception" for religious organizations to have unfettered control over their relationships with their ordained employees—the government cannot dictate who is or is not a minister in a church because that is fundamental to a church's religious practice. But that was all the Court held: "Today we hold only that the ministerial exception bars such a suit [under the ADA]. We express no view on whether the exception bars other types of suits, including actions by employees alleging breach of contract or tortious conduct by their religious employers." *Id.* at 196. The Debtor seeks to expand on this narrow holding by attempting to equate control over who can serve as a minister with ownership of real estate and whether it, having voluntarily chosen to avail itself of the protections of the Bankruptcy Code, must comply with the best interest of creditors test for confirmation of its Amended Plan. Such a tortured reading of the case would have catastrophic consequences, essentially immunizing a religious entity from having to comply with countless civil laws. But courts consistently hold otherwise. *See, e.g., Presbyterian Church in the U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969) ("[N]ot every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion

merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded.").

Finally, given the fundamental disagreement between the Debtor and the Committee regarding the value of assets available for distribution to Abuse Claimants, this Court suggested that it would be useful to provide alternative hypothetical liquidation tests illustrating scenarios where the Debtor (i) does not liquidate its real estate (*e.g.*, real property associated with the Churches), and (ii) liquidates its real estate, accompanied by a statement that the Debtor it cannot be compelled to sell the Churches under the First Amendment. *See* D.S. Hr'g Transcript at 86:21 – 87:5; *see also id.* at 88, 96, 114-15. Despite this Court's wise suggestion, the Debtor made no such attempt in the Amended Disclosure Statement and left the liquidation analysis unchanged.

IV.

THE AMENDED DISCLOSURE STATEMENT CANNOT BE APPROVED BECAUSE THE AMENDED PLAN CONTAINS UNLAWFUL AND/ OR INHERENTLY FLAWED PROVISIONS

As shown in the First Disclosure Statement Objection, as supplemented by this Objection, the Committee maintains that the Amended Plan cannot be confirmed as a matter of law. In addition to its legal shortcomings, there are a number of broken mechanics which prevent the Amended Plan from working. Until the Amended Plan is amended to remedy these defects, it should not be put out for vote.

A. The Amended Plan Violates Applicable Law

First, the Amended Plan grants Non-Settling Insurers a non-consensual third-party release for any direct claims Abuse Claimants may hold against the insurers for an unreasonable, bad faith refusal to pay a judgment. *See* Amended Plan at 35 (barring Abuse Claimant from recovering from the Survivors' Trust or the Non-Settling Insurers an amount greater than the amount of the judgment that the Abuse Claimant obtains in a sexual abuse lawsuit). *See, e.g., Hand v. Farmers Ins. Exch*, 23 Cal App. 4th 1847, 1858 (Cal. Ct. App. 1994) ("[O]nce having secured a final judgment for damages, the plaintiff becomes a third party beneficiary of the policy, entitled to recover on the judgment on the policy. At that point the insurer's duty to pay runs contractually

to the plaintiff as well as the insured. And the plaintiff having also become a beneficiary of the covenant of good faith … the duty to exercise good faith in not withholding adjudicated damages necessarily is owing to the plaintiff also."). Not only does this plan provision violate California law but it violates the Bankruptcy Code because the Amended Plan releases direct claims of judgment creditors against third-party insurers without the consent of the claimants.

Second, the Amended Plan denies Abuse Claimants the right to bring separate bad faith claims against Non-Settling Insurers for other consequential harms flowing from the insurer's refusal to settle. An insurer may be liable in bad faith for consequential damages and harms to the insured even when there is no excess judgment. *See, e.g.*, *Howard v. Am. Nat'l Fire Ins.*, 115 Cal. Rptr. 3d 42, 68 (Cal. Ct. App. 2010) ("An insured may recover for bad faith failure to settle, despite the lack of an excess judgment, where the insurer's misconduct goes beyond a simple failure to settle within policy limits or the insured suffers consequential damages apart from an excess judgment"). These claims may be assigned to the Abuse Claimants where they are held by the Debtor, and they are not necessarily tied to the state court judgments. The Amended Plan, however, prevents Abuse Claimants from recovering these extra-contractual damages against the Non-Settling Insurers. *See* Amended Plan at 35 (barring any recovery beyond the state court abuse judgment).

Third, the Amended Plan risks depriving Abuse Claimants of the ability to hold Non-Settling Insurers liable for excess judgments based on the insurers' bad faith failure to promptly and fairly settle Abuse Claimants' claims against the Debtor. Under California law, the Debtor's right to recover an excess judgment against its insurer for failing to settle in good faith can be assigned to the Abuse Claimants. *See, e.g.*, *Hamilton v. Md. Cas. Co*., 27 Cal. 4th 718, 733, 117 Cal. Rptr. 2d 318, 329, 41 P.3d 128, 137 (2002) (holding that an insured may assign his cause of action for bad faith refusal to settle to the claimant in exchange for a covenant not to execute). But the Amended Plan appears to eliminate this right because the Debtor receives an immediate discharge against all abuse claims rather than a covenant not to execute. According to the Non-Settling Insurers, the result of this immediate discharge is that the Debtor will be unable to assign any bad faith excess judgments to Abuse Claimants. *See, e.g., Certain Insurers' Opp. to the*

Committee's Mot. (I) For Standing to Assert, Prosecute and Compromise all Claims and Causes of Action the Debtor and its Estate Hold against the Insurers and (II) to be Substituted as the Named Plaintiff in the Insurance Coverage Action [Dkt. No. 1584] at 14-16 (contending that survivors will possess no bad faith rights post-confirmation because, among other reasons, "any confirmed plan will provide Debtor with a discharge and Debtor then will not be at any future risk of having to pay an excess-of-limits verdict.").

Taken together, these provisions are some of the most problematic aspects of the Amended Plan from an insurance perspective because they eliminate any extra-contractual or "bad faith" exposure for the Non-Settling Insurers, meaning there will be no legal ramifications if they engage in unfair claims handling. Bad faith exposure incentivizes insurance companies to fairly, promptly and equitably pay claims. If they fail to do so, they are potentially liable for judgments in excess of policy limits or other consequential damages caused by their conduct. There are consequences for insurers if they do not live up to their obligations. But under the Amended Plan, these consequences are eliminated. This means that regardless of whether Non-Settling Insurers settle claims fairly or deny claims in bad faith, the most they will ever have to pay are their policy limits. The Amended Plan heavily stacks the deck in favor of the Non-Settling Insurers by removing the normal state-law tools that a claimant would have to ensure that insurers do not improperly engage in years of litigation in order to avoid liability.

Fourth, there are a number of other problematic provisions in regards to the Non-Settling Insurers:

(i) While the Debtor purports to assign all of its rights under the Non-Settling Insurer Policies to the Survivors' Trust, the Amended Plan prohibits the Survivors' Trustee from continuing the insurance declaratory judgment actions for the benefit of all Abuse Claimants. The Amended Plan provides that "any effort to collect from Abuse Insurance Policies issued by the Non-Settling Insurers to satisfy an Abuse Claim after Confirmation of the Plan shall be sought individually by the applicable Holder of an Abuse Claim after such Holder's Claim has been liquidated as provided herein." Amended Plan, § 8.3.13. As a result, common legal questions applicable to many claims will need to be decided through a multiplicity of wasteful, individual coverage lawsuits, rather than an efficient, omnibus coverage action.

(ii) The Amended Plan eliminates the Debtor's and Survivors' Trust's rights under California law to independent *Cumis* counsel in post-confirmation litigation. *See* Amended Plan, § 8.3.1. California law requires an insurer to provide the insured with independent "*Cumis*" counsel if insurer-controlled counsel might otherwise steer the defense of the claim to non-coverage aspects of the claim. *See* Cal. Civ. Code § 2860(a); *see also San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc.*, 162 Cal. App. 3d 358, 375, 208 Cal. Rptr. 494, 506 (Ct. App. 1984) ("[W]here there are divergent interests of the insured and the insurer brought about by the insurer's reservation of rights based on possible noncoverage under the insurance policy, the insurer must pay the reasonable cost for hiring independent counsel by the insured."). This is prejudicial to Abuse Claimants because defense counsel controlled entirely by the Non-Settling Insurers may be incentivized to "defend" the Abuse Claim in a way that improperly maximizes the Non-Settling Insurers' coverage defenses.

(iii) Section 8.3.10 of the Amended Plan requires that all disputes over a Non-Settling Insurer's liability for Abuse Claims and/or coverage therefor under any Abuse Insurance Policy be resolved in the District Court overseeing the Coverage Action or such other venue as the affected parties (including the Non-Settling Insurer(s)) may agree. That raises two problems. First, the Debtor contemplates dismissing the Coverage Action and second, the Non-Settling Insurers may not grant jurisdiction to the District Court over any such disputes. Rather, if an Abuse Claimant holds claims against a Non-Settling Insurer, it may commence an action in any court of competent jurisdiction.

(iv) Section 8.3.12 of the Amended Plan prohibits the Debtor (including the Estate and the Reorganized Debtor) and the Survivors' Trust from settling an Abuse Claim without the consent of all affected Non-Settling Insurers. But if the Non-Settling Insurers do not have that right under the relevant Abuse Insurance Policy, the Debtor may not grant the Non-Settling Insurer such right.

B. <u>The Amended Plan is Replete with Broken Mechanics</u>

The Amended Plan may not be solicited until the following issues are resolved:

First, the amended definition of "Allowed" may prevent Abuse Claimants from ever being a beneficiary of the Survivors' Trust under certain circumstances. For example, an Abuse Claimant electing the Litigation Option may now only hold an Allowed Claim under a "final judgment pursuant to a Final Order by a non-bankruptcy court of competent jurisdiction …"). Amended Plan, § 1.1.11. But, if the Survivors' Trustee enters into an Insurance Settlement Agreement, an Abuse Claimant having elected the Litigation Option and commenced an Abuse Claim Litigation against the relevant insurer must dismiss his or her suit, in which case, a Final Order will never be issued and in turn, the underlying claim can never be "Allowed." The Abuse Claimant can thus never be the beneficiary of the Survivors' Trust under Section 4.4.2 of the Amended Plan, which provides that the Survivors' Trust is created to fund "payments to Holders of ***Allowed*** Abuse Claims …" *Id.* at 4.4.2 (emphasis added).

Second, Section 5.2.3 of the Amended Plan allows any party in interest to object to any Claim through the closing of the Chapter 11 Case. But the Amended Plan channels all Abuse Claims to the Survivors' Trust and the Survivors' Trust Distribution Plan provides the sole process for allowance and valuation of Abuse Claims. Because the Amended Plan provides that the Survivors' Trust shall be solely liable for channeled Abuse Claims, the Survivors' Trust should be solely responsible for allowing or disallowing Abuse Claims. In all circumstances, holders of Abuse Claims should not be subject to two processes for allowance of their Claims.

Third, the Amended Plan appears to allow Non-Settling Insurers the right to object to Abuse Claims at any time. Non-Settling Insurers have no pecuniary interest in whether an Abuse Claim is allowed against the Survivors' Trust. Under the Amended Plan, Non-Settling Insurers can only be held liable under a Non-Settling Insurer Policy by an Abuse Claimant who elects the Litigation Option. And the Amended Plan preserves all of the Non-Settling Insurers' rights and defenses in any such litigation. Accordingly, this claims objection right needs to be removed.

Fourth, section 5.4 of the Amended Plan disallows all Proofs of Claim that are not Filed on or before the applicable Claims Bar Date or otherwise deemed timely and/or Allowed by order of the Court. But this provision seemingly disallows Unknown Claims and in all events, given that the Reorganized Debtor will not be liable for Abuse Claims, the Survivors' Trust should be responsible for the allowance or disallowance of any Proofs of Claim that are not Filed on or before the applicable Claims Bar Date.

V.

THE AMENDED DISCLOSURE STATEMENT STILL FAILS TO PROVIDE ADEQUATE INFORMATION

Even if the Debtor remedies the Amended Plan's defects, the Amended Disclosure Statement lacks some of the same information or explanations that the Committee previously identified as missing.

(i) Lack of Easy-to-Understand Plain English Summary of the Amended Plan

The *Diocese of Rochester* court recently approved two competing disclosure statements accompanied by a brief summary of the plans. The easy-to-understand description addressed, in

layman's terms, survivor's rights under the plan, including whether survivors could continue litigating claims against non-debtor entities and the risks associated with the plan.[6]

The Debtor should sharpen its "plain English" explanation of the Amended Plan mechanics to provide Abuse Claimants with similar information in a similar format. At a minimum, the information appended to the debtor's disclosure statement in *The Diocese of Rochester* case should be added, along with a simple explanation of the effect of choosing the Distribution Option or Litigation Option and a summary of the relevant portions of the Survivors' Trust Documents so that Abuse Claimants are not forced to review multiple documents to understand how their claims will be treated. In addition, the Debtor should prominently direct readers to the Committee's Letter in the Executive Summary to make clear that its assertions are subject to vehement disagreement.[7]

(ii) No Explanation for the Proposed Grant of a Release or Exculpation

The Committee previously established there were fatal flaws in the Amended Plan's release and exculpation provisions. *See* First Disclosure Statement Objection, Section II.A.(i) and (iii). This Court acknowledged those issues and directed that the Debtor provide a basis for why certain parties were entitled to an exculpation and release. *See* D.S. Hr'g Transcript, 71:1-10. The Debtor did not comply. And the substantive problems with the release and exculpation provisions remain.

Section 1.1.93 of the Amended Plan defines the "Released Parties." While the definition was amended to remove certain parties, it remains far too broad. First, because the Debtor concedes Churches are not separate legal entities under California law, they should be removed from the definition. Second, the Debtor's current and former directors serve in similar capacities for other non-Debtor entities. Any release of the Debtor's current and former directors should be limited to their role at the Diocese. Third, inclusion of the Debtor's "predecessors" as receiving a release could extend as far as the Holy See and must be circumscribed. Fourth, "agents" and "representatives" are terms without limits. If an agent or representative of the Debtor seeks a

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[6] The approved plain English summaries are attached as **Exhibit D**.

[7] Likewise, if this Court is inclined to permit the Debtor to seek to justify the adequacy of its distribution to Abuse Claimants based on a comparison to distributions made to survivors in other diocesan debtor cases, the Committee should be permitted to include its own comparisons on the same page as the Debtor's.

release, it should be identified.

The Debtor was expected to justify the legality of granting a lengthy list of affiliates an exculpation. *See* D.S. Hr'g Transcript, 70:11-20 ("Because the Ninth Circuit has made such a big deal about the difference between releases and exculpations, I think a quick statement about why an exculpation is appropriate is a good idea, not just the language of the exculpation, but just participating in this process may -- in good faith may entitle one to ask for an exculpation so that one's good-faith actions taken in connection with the creation proposal, blah blah blah, of a plan and the reorganization process. Those actions may be protected. So the following types of entities may ask for that."). It did not. Rather, the Amended Plan's definition of "Exculpated Parties" includes all of the same parties with no explanation on how each are fiduciaries to the Debtor's estate. Accordingly, the exculpation provision may not be approved and the Amended Plan cannot be confirmed. *See, e.g.*, Order Denying Approval of the Disclosure Statement in Support of Fourth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse Dated Sept. 13, 2024, at 12, *In re The Roman Cath. Diocese of Syracuse*, No. 20-30663 (Bankr. N.D.N.Y. Nov. 14, 2024), Dkt. No. 2308 (holding that the "Exculpation and Release Provisions" were too broad, could not extend to "related persons of the Persons and Entities" and that the exculpation provision should be limited to estate fiduciaries and their professionals, the Committee and its members, the mediators, and Debtor's officers and directors who participated in the Chapter 11 process from the Petition Date to the Effective Date).

(iii) The Debtor Still Fails to Justify its Valuation of the Livermore Property

In the Amended Disclosure Statement, the Debtor values the Livermore property between $43 million and up to approximately $81 million but provides no justification for its valuation. The Debtor must explain its valuation and alert Abuse Claimants to the significant and numerous risks that may prevent this valuation from being achieved.

(iv) No Information Supporting Valuation of Abuse Claims

In the First Disclosure Statement Objection, the Committee argued that the Diocese failed to explain how it calculated the total value of Abuse Claims at $98 million. Abuse Claimants were thus unable to understand whether the amount being paid to Abuse Claimants is fair and equitable.

At the prior hearing, the Debtor conceded it did not value Abuse Claims. *See* D.S. Hr'g Transcript, 152:1-3 ("And we've been very explicit in our plan that we've not attempted a valuation because these unliquidated tort claims are by nature unliquidated."). Without a valuation, it is impossible for an Abuse Claimant to even begin to understand whether the proposed treatment of its claim is fair and equitable.

In lieu of valuing Abuse Claims, the Debtor seeks to justify the fairness of its distribution to Abuse Claimants by comparing its proposed payment to other Catholic diocese bankruptcy case distributions. Not surprisingly, the Debtor's comparisons (i) include certain precedents that support the Debtor's purported valuation and omit other precedents that do not support the Debtor's view and (ii) fail to disclose critical information necessary for any meaningful comparison, such as the applicable law and statute of limitations governing claims in the bankruptcy case, the debtor's assets, the availability of insurance, the severity of the claims being settled and the average amount paid to survivors in or about 2002, when the statute of limitations was previously opened.

The Debtor's analysis of certain self-selected bankruptcy settlements does not provide a proper benchmark for determining the appropriate amount to be paid to Abuse Claimants in this case. Rather, the appropriate amount to be paid to Abuse Claimants should be determined by considering:

1. The value of Abuse Claims in this case. *See Off. Comm. of Unsecured Creditors v. Hancock Park Cap. II, L.P. (In re Fitness Holdings Int'l, Inc.)*, 714 F.3d 1141, 1146 (9th Cir. 2013) ("Supreme Court precedent establishes that, unless Congress has spoken, the nature and scope of a right to payment is determined by state law.").

2. The amount of solvent, available insurance coverage in this case; and

3. The amount of Debtor and Debtor-affiliate assets in this case.

Even if the amounts paid to survivors in other cases had relevancy—they do not—the Debtor notably failed to include settlements that took place outside of the bankruptcy context to derive Abuse Claim values. These datapoints are a better indication of claim value—what a claim is worth—which is the relevant starting question (before consideration of the availability of Debtor and insurance assets in this case). Indeed, settlements outside the bankruptcy context are typically

resolved via an arm's length negotiation and such claim values are not limited by the Debtor's ability to pay or restrained by the amount of insurance or cooperation and contribution from the insurers. *See, e.g.*, Tony Perry, Abuse claims are settled for $198 million, LOS ANGELES TIMES (Sept. 8, 2007, 12:00 AM PT), https://www.latimes.com/archives/la-xpm-2007-sep-08-me-priest8-story.html. ("San Diego diocese lawyers initially had insisted that, unlike Los Angeles, the diocese here did not have the insurance coverage or assets to make a larger settlement without crippling the church's spiritual and social service efforts. But that position may have changed late last month when ***Bankruptcy Judge Louise De Carl Adler said the diocese offer of $95 million was "far below the historic statewide average" of payments made to victims of clergy***.").

Even if other bankruptcy settlements had any bearing on the value of Abuse Claims and the fairness of the proposed treatment, there are two California diocesan bankruptcy settlements, neither of which was included on the Debtor's list: Diocese of San Diego and Diocese of Stockton.

- During its chapter 11 proceeding, the Diocese of San Diego reached a settlement with survivors under which it agreed to pay $198 million to 144 survivors, equaling $1.375 million per claimant, or $2,055,366 on an inflation-adjusted basis.[8] If the Committee accepted the Debtor's "Comparable Case" methodology, but used the San Diego settlement as a comparable case, ***the 345 survivor claimants holding facially valid claims here would need to be paid $709 million.***

- The Diocese of Stockton Plan of Reorganization was confirmed in 2017 and claims filed within statute of limitations resulted in a $3.25 million per claim average, or $4,204,715 on an inflation-adjusted basis. If the Committee accepted the Debtor's "Comparable Case" methodology, but used the Stockton settlement as a comparable case, ***the 345 Abuse Claimants holding facially valid claims here would need to be paid $1.450 billion***.

(v) The Debtor's Estimate of an Abuse Claimant's Projected Recovery is Highly Misleading

The Amended Disclosure Statement now provides an example of how points awarded to an Abuse Claimant under the Survivors' Trust Distribution Plan are translated into dollars. But the figures used by the Debtor in its example are highly misleading; they overstate the value of the Survivors' Trust and understate the number of Allowed Abuse Claims. *See* Amended Disclosure Statement at 8.

[8] The Diocese of San Diego's bankruptcy was dismissed subsequent to the settlement with survivors.

In its example, the Debtor projects 250 Allowed Abuse Claims instead of its own number of 345. The Debtor then, without any analysis, estimates the Survivors' Trust Assets' value at $150 million. The Debtor's hypothetical goes on to assume that:

- There are 250 claimants holding Trust Claims with an average score of 50 points per claim;
- 50 points per claim multiplied by 250 claims yields 12,500 total points;
- A total distributable amount of $150 million is available, meaning each point would be valued at $12,000 ($150 million divided by 12,500 points); and thus
- Trust Claims assigned 25, 50 and 75 points would receive projected total recoveries of $300,000, $600,000 and $900,000 from the Survivor's Trust, respectively.

But if the Debtor used 345 claims and assumed Survivors' Trust Assets of $113 million ($103 million in cash plus $10 million for the Livermore Property), the projections would look drastically different. With these assumptions:

- Total distributable cash of $113 million would be available, meaning each point would be valued at $6,550 ($113 million divided by 17,250 points); and thus
- Trust Claims assigned 25, 50 and 75 points would receive projected total recoveries of $163,768, $327,500 and $491,304 from the Survivor's Trust, respectively.

At a minimum, the Committee should be permitted to insert its projections next to the Debtor's.

On a related note, Abuse Claimants are expected to decide whether to take a distribution from the Survivors' Trust or pursue the Litigation Option based on the Initial Determination. Under section 9.8.1 of the Amended Plan, each Holder of a Trust Claim will receive a notice containing the Initial Determination, which the Amended Disclosure Statement states "will include a projected total recovery for the Trust Claimant based on the anticipated Survivors' Trust Assets available for distribution." Amended Disclosure Statement at 7. But this calculation will be inaccurate by definition. The calculation will be dependent on (i) three future Diocese payments, (ii) the amount, if any, that Settling Insurers may pay to the Survivors' Trust, (iii) whether Litigation Claimants will be forced back into the Survivors' Trust if the Survivors' Trust settles with Non-Settling Insurers and (iv) the undetermined value of the Livermore property. It will thus be almost impossible to make an accurate estimate of the "Initial Determination" for many years after the Effective Date.

The Debtor's effort to clarify this uncertainty falls short, as the Amended Disclosure Statement merely provides that "actual distributions may change." *Id.* at 7.

(vi) Omitted Information Regarding Unknown Abuse Claims

The Amended Disclosure Statement still lacks any analysis or reasonable basis for determining the amount to be set aside for Unknown Abuse Claims. There is neither a projection of the number of Unknown Abuse Claims which may be filed nor any valuation of those claims, making it impossible to determine whether the Survivors' Trust will be adequately funded to fairly compensate Unknown Abuse Claims.

(vii) Omitted Information Regarding Non-Abuse Claim Valuation

The Amended Disclosure Statement still fails to provide the estimated value of Claims in each Class. Without such information, it is impossible for a Class to determine whether their treatment under the Amended Plan is fair and equitable. *See, e.g.*, *In re Arnold*, 471 B.R. 578, 585-86 (Bankr. C.D. Cal. 2012) (holding that the debtor's disclosure statement failed to provide adequate disclosures because it "d[id] not contain adequate information with respect to the total amount owed to General Unsecured Creditors.").

(viii) Confusing Litigation Option Language

While the Debtor attempted to remedy some of the confusion and inconsistencies that this Court acknowledged the Disclosure Statement suffered from when describing the Litigation Option, the process remains murky, at best. *See* D.S. Hr'g Transcript, 79:19-20 ("I want to let -- I had some confusion myself about some of the logistics, particularly the litigation option.")

First, it remains unclear whether an Abuse Claimant who elects the Litigation Option may receive a distribution from the Survivors' Trust. The Amended Disclosure Statement indicates that the Survivors' Trust may be liable to a Trust Claimant who elects the Litigation Option up to the Reserved Amount. *See* Amended Disclosure Statement at 55. But the Amended Plan appears to prohibit recovery from the Survivor's Trust if the Litigation Option is selected. Section 8.1 of the Amended Plan provides that "[u]pon the assignment of the Assigned Insurance Interests to the Survivors' Trust, Holders of Abuse Claims, and only such Holders, shall have the right to ***either*** receive a distribution of their individual allocable shares of contributions to the Survivors' Trust

or to pursue all available insurance coverage and remedies for Coverage Claims under the Non-Settling Insurer Policies pursuant to, and in accordance with, applicable law and the terms of the Non-Settling Insurer Policies." Amended Plan at 34 (emphasis added). Similarly, section 8.2.2 of the Amended Plan provides that "[a]fter the expiration of ninety (90) days following the filing of such written statement [electing the Litigation Option], such Holder of an Abuse Claim may continue to pursue such Claim in a separate action filed in a non-bankruptcy court of competent jurisdiction as determined by applicable law, ***solely to seek a recovery from Abuse Insurance Policies***." *Id.* at 36 (emphasis added).

Second, an Abuse Claimants' recovery from the Survivors' Trust, if any, appears to be capped at the amount of the Final Determination, regardless of the judgment amount awarded to an Abuse Claimant. *See* Amended Plan, section 9.8.4.2 ("The liability, if any, of the Survivors' Trust to a Trust Claimant who elects the Litigation Option shall be limited to the Reserved Amount for such Trust Claimant, even if the Trust Claimant obtains a judgment by a Final Order through the Abuse Claim Litigation (the 'Litigation Judgment') that is higher than the Reserved Amount."). While the scenario under which an Abuse Claimant could recover from the Survivors' Trust and from the Non-Settling Insurers is unclear, if that were to be the case, the Litigation Option would be rendered a nullity because it would never be considered when determining an Abuse Claimant's recovery from the Survivors' Trust.

Making matters worse, if a Trust Claimant obtains a Litigation Judgment that is lower than the Reserved Amount, the distribution from the Survivors' Trust to such Trust Claimant is capped at the amount of the Litigation Judgment. *See* Amended Plan, section 9.8.4.3. The Debtor has rigged the system such that, if an Abuse Claimant electing the Litigation Option has a right to a distribution from the Survivors' Trust, the Abuse Claimant is compelled to accept the lower of the Reserved Amount or the amount of a Litigation Judgment.

Third, there is no explanation in the Amended Disclosure Statement that choosing the Litigation Option might be rendered moot if the Survivors' Trustee settles with a Non-Settling Insurer at any time post-Effective Date, requiring the Abuse Claimant's litigation to be dismissed. *See* Amended Disclosure Statement at 55.

(ix) No Information Regarding Potential Avoidance Actions

Although the Debtor has included information in the Amended Disclosure Statement describing the Committee's adversary proceedings and avoidance actions as directed by this Court, there is still no information about any other potential avoidance actions. If there are none that the Debtor is aware of, the Committee requests that the Debtor say as much. This Court agreed. *See* D.S. Hr'g Transcript, 78:20-23 ("[T]o the extent [the Debtor] is aware of any [avoidance actions] with any particularity, they ought to be described. If [the Debtor] is not aware of them with particularity, [it] can say so.").

(x) Miscellaneous Issues

- The Amended Disclosure Statement states that "[a]ll holders of Abuse Claims who vote to accept or reject the Plan, ***or*** who do not affirmatively opt out of the releases provided by the Plan by checking the appropriate box on the Ballot . . . will be bound by the Third-Party Releases and Third-Party Permanent Injunctions." Amended Disclosure Statement at 19 (emphasis added). This appears to be a scrivener's error: the italicized text should read "*and*."

- The Amended Disclosure Statement provides that the "Debtor shall transfer $63 million in good and available funds to the Survivors' Trust … (the "Initial Debtor Contribution")." Amended Disclosure Statement at 51. But then says "[t]he Initial Debtor Contribution will consist of (i) approximately $63 million in Cash received through the Exit Facility … and (ii) approximately $10 million in non-restricted Cash held by the Debtor." *Id.* These numbers are inconsistent and must be reconciled.

- Article VII.L. of the Amended Disclosure Statement provides that any remaining Assets in the Survivors' Trust shall be transferred to the Reorganized Debtor. *See* Amended Disclosure Statement at 57. But Article I.C. states that the Survivors' Trustee will make the Final Distribution, "which shall be comprised of such Trust Claimant's pro-rata share of ***all*** remaining Survivors' Trust Assets, including reserves." *Id.* at 9 (emphasis added). If all remaining Survivors' Trust Assets have been distributed to the Trust Claimants, nothing should remain to be transferred to the Reorganized Debtor.

  Relatedly, Section 9.8.3.4 of the Amended Plan should be revised as follows: "After (i) the final resolution of all Trust Claims, including with respect to the Trust Claimants who selected the Litigation Option, and (ii) all Survivors' Trust Assets are monetized, the Survivors' Trustee shall make a final distribution to all ~~the~~ Trust Claimants ~~who elected (or who are deemed to have elected) the Distribution Option~~ (the "Final Distribution"), which shall include previously withheld reserves and any reallocated funds. ~~If, after 180 days from the date of the Final Distribution, there are any funds which are not claimed by the Trust Claimant, such unclaimed funds shall be returned to the Reorganized Debtor.~~

  As the section is written, a final distribution is set to turn on the resolution of claims. That is only half of the equation; the Survivors' Trust's assets must be fully monetized as well.

In addition, because the Survivors' Trustee is directed to distribute all Survivors' Trust Assets, there should be no unclaimed funds.

- Section 9.3.7 of the Amended Plan eliminates the Survivors' Trust's ability to use funds to pursue Coverage Actions or other actions to recover from Non-Settling Insurers. This is arguably inconsistent with Section 9.3.5 of the Amended Plan which grants the Survivors' Trust the power to enter settlement agreements with the Non-Settling Insurers. Given that the distinction between these two actions may be blurry, these provisions should be reconciled.

- Section 9.8.2 of the Amended Plan and section 3.4 of the Survivors' Trust Distribution Plan provide a right to appeal of the Initial Determination to a neutral decisionmaker. But neither document indicates (i) the standard of review which will be used and (ii) whether the Neutral may compare the amount of points awarded to one Abuse Claimant to another to understand how the value of claims compare to one another.

VI.

THE DEBTOR'S LIQUIDATION ANALYSIS LACKS ADEQUATE INFORMATION

Given the importance of determining whether the Amended Plan is fair and equitable, the ample amount of information missing from the Debtor's liquidation analysis must be provided.

At the initial hearing on the adequacy of the Debtor's Disclosure Statement, this Court directed the Debtor to articulate the principles guiding its position that certain assets are available for distribution to Abuse Claimants in a hypothetical liquidation and other assets are not (*e.g.,* the hundreds of millions of dollars of real property associated with the Churches which the Debtor contends cannot be used as part of a hypothetical liquidation test). *See* D.S. Hr'g Transcript, 79:3-10 (THE COURT: "I think that some explanation of what the debtor's principle is that's guiding what's being contributed and what's contributable and what isn't, not -- and again, not that we're all going to agree on the numbers at this point. We're certainly not. But I think a better understanding of where the debtor is coming from and what's the principle guiding that I think is going to be very helpful, okay?") and 31:9-25, 32:1-2. Counsel for the Debtor agreed to provide this additional information. *See* D.S. Hr'g Transcript, 92:1-13 (MR. MOORE: "And you've already said that we need to provide the why of that. How did we get to those numbers? What do we believe is or is not to be included and why? And we hear you. That is something that we can do in a revision to the disclosure statement.").

In connection therewith, this Court directed the Debtor to explain why it concluded the

hypothetical liquidation test did not apply and warn claimants that the case may be dismissed if it is wrong. *See* D.S. Hr'g Transcript, 114:4-11 (THE COURT: "I think the debtor should say something along the lines of there is a material risk that if the Court does not agree with the debtor about this limitation and the debtor is not able otherwise to make assets available and satisfy what the debtor -- what the committee will say is the hard-and-fast liquidation analysis. We may not be able to confirm a plan in this case. Period. End of story. The case may have to be dismissed. I think it's just about that stark.")

Given the fundamental disagreement between the Debtor and the Committee regarding the value of assets available for distribution to Abuse Claimants, this Court also suggested that it might be useful to provide alternative hypothetical liquidation tests illustrating scenarios where the Debtor (i) does not liquidate its real estate (*e.g.*, real property associated with the Churches) and (ii) liquidates its real estate, accompanied by a statement that the Debtor believes it cannot be compelled to sell the Churches under the First Amendment. *See* D.S. Hr'g Transcript, 86, 21-25; 87:1-5 ("Okay. Let me give you another version of it, see if this makes any more sense. They could file – they could put together liquidation analysis says look, but for our arguments re the First Amendment and we can't be liquidated, the value of the real estate minus any existing debt is X. The debtor's position is they'll never be -- they will never be compelled to do that, but just so if you want a number, here's a number. But there will be a disagreement at confirmation about what's fair and equitable and what is required of an entity in this scenario."). Despite this Court's suggestion, the Debtor left the liquidation analysis unchanged. But the Debtor has apparently conducted an analysis of its real estate assets, including how each asset contributes to its mission and measures that would need to be taken to make those assets salable. *See* Amended Disclosure Statement at 3 ("The Plan reflects the Debtor's careful analysis of its real estate assets, including how each asset contributes to the Debtor's mission and measures that would need to be taken to make those each asset salable, and inherently depends on the sale or encumbering of certain real estate."). But that analysis is not disclosed or discussed in any detail.

Even if the liquidation analysis provided by the Debtor was considered sufficient, its figures are problematic. The Debtor's liquidation analysis reflects a value range for Property,

Plant & Equipment (net) of about $64.3 million to $80.4 million. *See* Amended Disclosure Statement at Exhibit B, p. 11. Footnote F of the Liquidation Analysis states: "proceeds from certain vacant land and the properties serving as collateral for the secured RCC loan are included as liquidation proceeds herein."

The indication is the Debtor has only valued a subset of its real estate assets. At the same time, the Amended Disclosure Statement provides no additional description or detail that would enable creditors to understand the real estate assets that constitute those valued in the context of the liquidation analysis. Detailed disclosure relating to the subset of real estate assets included in the Debtor's Liquidation Analysis and the value assigned to each of those real property assets is critical to creditors when evaluating the Amended Plan.

Footnote K of the Liquidation Analysis fails to disclose the assets that are held by a telecommunications network that the Debtor has in interest in ("**CTN**") as well as the fact that the Debtor has received approximately $2 million per year from CTN every year for at least the last 10 years. Disclosure relating to the assets held by CTN and the amount of annual payments

/ / /

historically made from CTN to the Debtor is critical to creditors when assessing the Amended Plan.

The Amended Disclosure Statement provides no financial information relating to non-Debtor entities that are seeking a release under the Amended Plan. At a minimum, non-Debtor affiliates that are seeking a release should provide the following financial information for the previous five years:

1. Cash and investments;
2. Other assets, including receivables;
3. Total assets;
4. Deposit and loan fund obligations;
5. Total liabilities;
6. Total revenue;
7. Total operating expenses:

8. Net operating surplus / (deficit); and

9. A detailed listing of all real property held by the entities seeking a release.

Such a listing should include, but not be limited to, the current use of any real property and a designation of whether or not the property is considered central to the mission of the Diocese and / or the entity seeking a release.

VII.

IF THE AMENDED DISCLOSURE STATEMENT WILL BE APPROVED, THE DEBTOR SHOULD ALLOW THE COMMITTEE TO INSERT ITS POSITION IMMEDIATELY AFTER THE DEBTOR'S IN CERTAIN PLACES

The Amended Disclosure Statement regularly refers to the Committee Letter which will set forth the Committee's position on the Amended Plan. But, given that the solicitation package will be well over 300 pages, Abuse Claimants should not be required to flip between the Amended Disclosure Statement, the Amended Plan and the Committee Letter to determine where the parties' differences lie. Accordingly, the Committee's position should be included in the text of the Amended Disclosure Statement in certain places, including in the Executive Summary where the Debtor uses graphs which the Committee believes are highly misleading.

VIII.

THE CONFIRMATION SCHEDULE SHOULD PROVIDE ADEQUATE TIME TO PREPARE FOR A CONTESTED CONFIRMATION TRIAL

If the Amended Disclosure Statement is approved, this Court will need to set a confirmation schedule that allows for discovery into the many issues relating to confirmation, including document demands (and any disputes relating thereto), identification of fact and expert witnesses, fact and expert witness depositions, the exchange of expert reports and pre-trial discovery motions in addition to briefing and exhibit designations.

While it is the Debtor's burden to prove it has satisfied the requirements for confirmation, and therefore the Committee cannot definitively list the discovery that will be required leading up to confirmation, the Committee expects factual and expert discovery relating to, among other things: (i) what assets constitute property of the estate, including whether assets may be shielded from creditors' reach, and the value of all the Debtor's assets; (ii) the value of the Livermore

property and the timing, cost and likelihood of converting the property into residential use; (iii) the value of Abuse Claims; (iv) the relationship between the Debtor and non-Debtor affiliates and (v) the Debtor's good faith in promulgating the Amended Plan. The Committee requests that it be permitted no less than six months to complete all of this discovery and preparation.

On average, courts have granted parties about 4 months to prepare for contested confirmation proceedings in diocesan bankruptcy cases. *See* Order Setting Confirmation Hr'g Schedule for the Fifth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse, *In re The Roman Cath. Diocese of Syracuse*, No. 20-30663-5-wak (Bankr. N.D.N.Y. Dec. 20, 2024), Dkt. No. 2397 (***126 days*** between approval of the disclosure statement and start of confirmation hearing); Stipulation and Order Regarding Confirmation Hr'g Schedule, *In re The Diocese of Rochester*, No. 2-19-20905-PRW (Bankr. W.D.N.Y. May 13, 2024), Dkt. No. 2625 (***140 days*** between approval of the disclosure statement and start of confirmation hearing); Amended Order (I) Scheduling Certain Dates and Deadlines in Connection with Confirmation of the Eighth Amended Plan of Reorganization, (II) Establishing Certain Protocols and (III) Granting Related Relief, *In re The Diocese of Camden*, No. 20-21257-JNP (Bankr. D.N.J. Sept. 1, 2022), Dkt. No. 2352 (***108 days*** between approval of disclosure statement and start of confirmation hearing); Scheduling Order, *In re The Archdiocese of Saint Paul and Minneapolis*, No. 15-30125 (Bankr. D. Minn. June 15, 2017), Dkt. No. 1090 (***243 days*** between approval of disclosure statement and start of confirmation hearing).

But in each of the aforementioned cases other than *The Archdiocese of Saint Paul and Minneapolis* case, the debtor and committee agreed on the plan and the primary objectors were the insurers. Here, like in *Saint Paul*, discovery and confirmation preparation will necessarily take longer than when the insurers were the primary objectors because the objections historically raised by the insurers tended to be more discrete and narrower in scope.

IX.

RESERVATION OF RIGHTS

If any objection, in whole or in part, contained in this Objection is considered an objection to confirmation of the Amended Plan rather than, or besides, an objection to the adequacy of

the Amended Disclosure Statement, the Committee reserves its right to assert such objection, as well as any other objections, to confirmation of the Amended Plan. The Committee also reserves the right to raise further and other objections to the Amended Disclosure Statement before or at the hearing on it.

WHEREFORE, the Committee requests that this Court deny approval of the Amended Disclosure Statement and grant the Committee such other and further relief as this Court deems just and proper.

Dated: January 10, 2025

LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP
BURNS BAIR LLP

By: */s/ Gabrielle L. Albert*
Tobias S. Keller
Gabrielle L. Albert

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Timothy W. Burns
Jesse J. Bair
Nathan M. Kuenzi

Special Insurance Counsel for the Official Committee of Unsecured Creditors

EXHIBIT A

December 18, 2024, Disclosure Statement Hearing Transcript

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re:	) Case No. 23-40523
	) Chapter 11
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	) Wednesday, December 18, 2024
Debtor.	) 11:36 AM
_____	)
	1. DEBTOR'S MOTION FOR ORDER (I) APPROVING DISCLOSURE STATEMENT; AND (II) ESTABLISHING PROCEDURES FOR PLAN SOLICITATION FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 1453)
	4. MOTION FOR ENTRY OF AN ORDER APPOINTING A LEGAL REPRESENTATIVE FOR UNKNOWN ABUSE CLAIMANTS FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND (DOC. 1503)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J. LAFFERTY
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording; transcript provided by transcription service

OAKLAND, CALIFORNIA WEDNESDAY, DECEMBER 18, 2024 11:36 A.M.

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THE CLERK: Calling line item number 10 for the Roman Catholic Bishop of Oakland, Case Number 23-40523.

THE COURT: Okay. Let's start with appearances in the courtroom, please.

MS. UETZ: From the table is okay, Your Honor, or --

THE COURT: For now.

MS. UETZ: Thanks. Ann Marie Uetz of Foley & Lardner on behalf of the debtor.

THE COURT: Okay.

MS. UETZ: I have with me Bishop Barber, as well as Attila Bartos, our chief financial officer, with me in Court as well.

THE COURT: Very good. Okay. Thank you so much. Okay. And you're presenting the argument?

MS. UETZ: I'm presenting the argument, Your Honor. I'm going to request that I share parts of it with my partners, but I'll address that with the Court when I can.

THE COURT: Well, do you want to -- should they state their appearances now?

MS. UETZ: Oh, they -- I would like them to, yes.

THE COURT: Okay. Are they on the Zoom or are they here?

MS. UETZ: They're here.

THE COURT: Okay.

MS. UETZ: Thank you.

THE COURT: They can go ahead and do that.

MR. MOORE: Your Honor, Mark Moore and Matt Lee from Foley & Lardner on behalf of the Roman Catholic Bishop of Oakland.

THE COURT: Okay.

MS. UETZ: Also with us is Shane Moses.

THE COURT: I see Mr. Lee lurking in the shadows there. Okay.

MR. LEE: Thank you, Your Honor.

THE COURT: All right. Hi, Mr. Moses. Nice to see you.

Okay. Other side of the room?

MS. ALBERT: Good morning, Your Honor. Gabrielle Albert, Keller Benvenutti Kim, on behalf of the committee.

THE COURT: Okay.

MS. ALBERT: I will let Mr. Lowenstein introduce himself.

THE COURT: Mr. Lowenstein? Now that is a field promotion, right? Mr. Lowenstein. That's rare.

MR. WEISENBERG: Your Honor, I'll --

UNIDENTIFIED SPEAKER: If Mr. Lowenstein wasn't here today --

MS. ALBERT: I just caught that.

THE COURT: I've always wanted to be Mr. Jerry Falk (phonetic), but it never happened that way. So too bad. Okay.

MR. WEISENBERG: Having been a name partner, I'm now going to retire.

THE COURT: Yeah.

MR. WEISENBERG: And I'll leave Mr. Prol to argue.

Your Honor, Brent Weisenberg of Lowenstein Sandler on behalf of the committee. Your Honor, we also would ask your indulgence to allow myself and Mr. Prol, as well as Mr. Burns and Mr. Bair in the event insurance issues come up.

THE COURT: Sure. Thank you.

MR. WEISENBERG:

THE COURT: Sure, sure, sure. Okay.

MR. PROL: Good morning, Your Honor. Jeff Prol of Lowenstein Sandler also for the committee.

THE COURT: Okay.

MR. BAIR: Good morning, Your Honor. Jesse Bair, Burns Bair, special insurance counsel for the committee.

THE COURT: Okay.

MR. BURNS: Good morning, Your Honor. I'm Tim Burns.

THE COURT: Okay. Anybody else in the gallery who expects to make a presentation today?

MS. UETZ: Excuse me, Your Honor. I would note that we have Matthew Kemner here as well. Who is counsel to the

bishop. We don't expect he'll make a --

THE COURT: Not. Not for Foley & Lardner.

MS. UETZ: Want to highlight him. Correct.

MR. KEMNER: Good morning, Your Honor. Matthew Kemner.

THE COURT: Okay.

MR. PLEVIN: Good morning, Your Honor. I don't know if I'll be saying anything, but Mark Levi, on behalf of Continental Insurance Company.

THE COURT: Okay, great. Nice to see you.

MR. PLEVIN: Thank you.

THE COURT: Thank you.

MR. JACOBS: Good morning, Your Honor. Nice to see you again. Todd Jacobs on behalf of Westport Insurance Corporation. And I'm here with my partner, Harris Ginsberg.

THE COURT: Okay. Good morning.

MR. JACOBS: And Blaise Curet.

THE COURT: Okay. Very good.

MR. JACOBS: I don't know if we'll have anything to say today or not.

THE COURT: Okay.

MR. JACOBS: We'll see.

THE COURT: Okay.

MR. JACOBS: Oh, you bet. Okay.

MR. SCHIAVONI: Judge, Tanc Schiavoni for Pacific.

And I have my partner, Steve Warren.

THE COURT: Right.

MR. SCHIAVONI: I don't think I'm going to say anything. But the one thing I would like to say is just to express our appreciation to the mediator judge who worked so hard on this.

THE COURT: Okay. Thank you very much. Okay. All right. Anybody else in the courtroom? Okay.

How about on the Zoom?

MS. LUU: Good morning, Your Honor. Betty Luu on behalf of the certain London market insurers.

THE COURT: Okay.

MR. BLUMBERG: Good morning, Your Honor. Jason Blumberg for the United States Trustee.

THE COURT: Okay. All right.

Well, Ms. Uetz, it's your motion. If there's something that you want to begin by way of an opening statement, I'm happy to hear it. I have some thoughts. And I'm happy to go second. So if there's anything you want to lead off with, feel free.

MS. UETZ: Your Honor, if it please the Court, my comments may be informed by yours. And so I'm happy to go second.

THE COURT: Okay. All right. Okay.

MS. UETZ: It's your show. Thank you.

THE COURT: Well, no, it's all of our show.

MS. UETZ: Well, it's all of us.

THE COURT: Okay.

MS. UETZ: But we take direction from you.

THE COURT: Thank you.

MS. UETZ: Thank you so much.

THE COURT: Let me make the following comments. And this -- when we had the discussion, the sort of scheduling discussion a few weeks ago in light of the committee's request that I consider matters that they believe to be quite important, and I'm sure they believe to be not just important in the progress of the case but also related to disclosure statement issues, I did separate them out. And I did indicate that I wanted to begin with this as a disclosure statement hearing.

Having said that, everybody in this room has been through enough disclosure statement hearings to know that in a process as complicated and dynamic and iterative as the bankruptcy confirmation process, there are a lot of different ways to, shall we say, handle a disclosure statement here. There are a lot of things that can come up in connection with this beginning of this process. And for me, it is the beginning. You've all been at this a long time. You know what your negotiations have been like. You know what accommodations have been made and haven't been able to be made yet. And you

probably have an idea of where you think this ends up in a month or two or three. But this is the beginning of the process for me.

So let me give you the following thoughts. Well, let me let me begin with a point that I want to get out there not because I'm cynical, but because I think these cases are a little different. To the extent that a disclosure statement is a document prepared by the proponent of a plan that is to aid people voting on the plan in making an intelligent decision about this, without meaning to be too cynical, these cases may play out a little bit differently in the sense that we could -- my guess is, on some level, we could have a vote tomorrow. And the people who are here know how they're going to vote.

So part of this reality is, this is not as much about convincing people who are unsure what to do as it is in some ways about making sure that everybody who cares about this has a chance to contextualize this process in a way that they think is important so that the information is out there, whether it necessarily changes their mind or not. I think that there is a perfectly valid purpose to a disclosure statement that is supplemental to am I going to convince somebody to vote one way or the other. I think we are making a record in all kinds of ways with this, beginning with the disclosure statement. And I think that's important.

So even though one could say, do you really need to

add that because the committee has formed a conclusion about the plan that isn't favorable, and if we voted on it, I know how they vote? Okay, you could say that. I still think that it's important enough to begin this process and continue this process in as comprehensive a way as we can so that, to the extent it's necessary to the process that all voices are heard, all voices are heard. So I hope that's sensible as a beginning of a contextualization.

So if we treated this -- if indulging that notion, we, for lack of a better word, treated this as a disclosure statement hearing, it seems to me there's typically three buckets that you put things in. The first bucket is somebody says you really need more information about X or Y or Z or the description isn't clear or we need to clarify something, or sometimes and it may be very relevant here, there is a very important constituency here that has a very different view of something and that should be -- that view should be exposed as well as the proponents view. So there's a bucket of issues that fall into that. And there are a few of those today.

There are sometimes matters that are so clearly not going to work that you don't want people going to the trouble of soliciting acceptances or rejections based on something that you flat out know or the judge believes is not going to be an appropriate approach or one that's going to be consistent with 1129(a)(1) et seq., as interpreted by the case law.

And then there's the third piece. And the third piece is things that people feel very passionately about and are convinced they're going to win an argument about factually and legally at confirmation. But you don't look at it as today it's a showstopper. If they're right, yeah, it is. But between the robustness of that third category, which is not quite you could never get there but there could be some serious problems here, between that and the notion that this is a dynamic situation and that a lot of things could happen here, including there could be further conversations, including that I may -- I'm not trying to give anybody a heart attack, I may well grant a motion for relief from stay in two weeks to start testing some of the things that are being discussed here, I may well require there to be considerably more disclosure about some of the transactions that predated the bankruptcy, which may lead to further discovery issues, may lead to further litigation issues.

And I would certainly want to take account of how I fold in is another question. I certainly want to take account of the committee's idea that they simply have a very different idea about this case and what the principles are that should be guiding what the assets are available and what the claims are to be paid.

All of that, I think, is part of a dynamic that even if I don't say I'm going to stop the presses right now because

of those disagreements, I think they have to be in the front of our minds the whole time.

So that's my sense of this. Now, where we -- my recollection is that the exclusivity re solicitation is through January 8th. All right.

Look, it's not -- let me throw another idea out there. If it turns out that we don't approve a disclosure statement today, and I think probably we're looking at some amendments and some clarifications and we're coming back at some point is my sense, but we'll see, if we don't there's a big difference to me between extending out somewhat the solicitation deadline so that we get to an agreement about what this thing ought to look like for solicitation purposes and when we have a confirmation hearing. Those things don't have to be linked up by twenty-eight or thirty-five days. There's a lot of play in the joints there as far as I'm concerned. Once we get to -- if we get to a angle of repose on what the disclosure statement ought to look like, we can time a lot of other things according to what the parties need to do and what they think I need to be mindful of and the possibility of further discussion and all the other things you're already knowing I'm not saying, okay?

So that's where I begin this process. Is that helpful? Okay. Doesn't surprise you?

MS. UETZ: No.

THE COURT: Other than I may not approve it today.

MS. UETZ: Not surprised by that.

THE COURT: Well, no, you're entitled to say I'm shocked by that, Judge. Okay. All right.

How would you folks like to proceed? I mean, I don't want to interfere in the way you want to present the motion. But in my mind, we can start with any one of those three buckets, or you can organize it differently in your own mind. If you need a few minutes, given what I've said, to think, we can take five minutes. Up to you.

MS. UETZ: Your Honor, if it pleases the Court, I have about six minutes of an opening statement that I would like to make --

THE COURT: Sure, sure.

MS. UETZ: -- that touches on some of what you said.

THE COURT: Yeah, I'm not surprised.

MS. UETZ: And then I will land with your last question.

THE COURT: Okay. All right.

MS. UETZ: Is that okay?

THE COURT: Are you ready now?

MS. UETZ: I am.

THE COURT: Okay. Come on up.

MS. UETZ: Thank you.

THE COURT: Um-hum. If I were timing you.

MS. UETZ: Well, Mr. Lee kept interrupting me when I

was practicing, so it was between six and seven minutes. All right.

THE COURT: All right. We'll allow you to go over budget by ten percent. Okay.

MS. UETZ: Thank you, Your Honor.

THE COURT: All right. No problem.

MS. UETZ: Thank you very much.

And good morning. It's still morning.

THE COURT: Yeah. It's still morning.

MS. UETZ: May it please the Court?

THE COURT: Yeah.

MS. UETZ: Just a quick note. We are here today on actually two motions that are scheduled. It's the motion to approve the disclosure statement as well as the debtor's motion to appoint a legal representative --

THE COURT: Right, right, right, right.

MS. UETZ: -- for unknown abuse claimants.

THE COURT: Right.

MS. UETZ: It goes without saying, but I will say it, Your Honor, today represents a critically important milestone for the parties and stakeholders in this Chapter 11 case.

Since filing this case some nineteen months ago, the debtor has been consistent in pursuit of its stated goal. And I've stated this goal repeatedly: One, to provide a fair and equitable compensation for survivors of sexual abuse; and two,

to reorganize the debtor to enable it to continue its mission to do its charitable work and serve the needs of the faithful, including parishioners and including the poor, within the Diocese of Oakland and the counties which it serves, Alameda and Contra Costa primarily.

These two prongs are the focal point of the plan that the debtor filed with this Court. The committee complains that Bishop Barber did not propose the plan in good faith. We believe this is belied not just by his actions throughout this Chapter 11 case, some of which you have seen firsthand, some of which will be described to the Court during this process. It is also belied by Bishop Barber's actions before we filed Chapter 11, through his leadership and work to prevent future abuse of minors and to help ensure child protection, reconciliation and healing for sexual abuse survivors. Bishop Barber is attempting to do here what the diocese can do in accordance with the Bankruptcy Code to achieve the two goals that we have repeatedly described.

We believe the disclosure statement adequately describes a plan which establishes a survivor's trust funded by the debtor and non-debtor contributing entities. Of course, the debtor believes the plan is fair and equitable and that the payment to the survivors trust is significant, meaningful, and fair, and compares favorably to already confirmed plans and other diocese cases.

Your Honor, I've previously expressed to this Court, I think I do it nearly every time I'm here, that it is our strong preference to reach a global settlement in this case. And that remains the debtor's preference. But we are where we are.

The debtor worked tirelessly with the committee and the insurers toward a global settlement during mediation sessions throughout 2024. Bishop Barber has been committed to the debtor's goals in this Chapter 11 and to that process to try to reach a global resolution. Unlike some of the members of the committee and some employees of the insurers, Bishop Barber attended mediation sessions in person. He wasn't required to by the mediators. He was there trying to reach agreement, trying to get consensus for a plan.

Bishop Barber has been transparent throughout this case. He approved the production of information and documents requested by the committee. And you've repeatedly heard about that. What the committee now complains about, and as just one example, the transfer of assets to the Oakland Parochial Fund prior to the filing, which funded the administrative costs of this Chapter 11, the burn of about 1.2 to 1.3 million dollars per month to pay professionals and other costs for this Chapter 11, that was fully disclosed since day 1. That's just one example, Your Honor.

THE COURT: Well, it wasn't described in the disclosure statement. Now maybe you thought, well, it's been

discussed elsewhere. But the rationale for it wasn't described.

MS. UETZ: And --

THE COURT: That's a point that we may pause on later, okay?

MS. UETZ: To Your Honor --

THE COURT: And by the way, none of this suggests I think there's something nefarious here. The disclosure is always sort of in the eye of the disclosure, right?

MS. UETZ: Sure.

THE COURT: Okay.

MS. UETZ: And to your point earlier -- and look, we're under no illusion.

THE COURT: Yeah.

MS. UETZ: Based on your comments and based on our experience, there will be changes to the disclosure statement --

THE COURT: I bet there will.

MS. UETZ: -- before it goes out.

THE COURT: I bet there will.

MS. UETZ: Right?

THE COURT: Yep.

MS. UETZ: Better than my Lions bet last weekend, one of which I made by mistake and the second one which --

THE COURT: Well, did you have the over or the under?

MS. UETZ: I mistakenly pushed under, Your Honor. It was a disaster.

THE COURT: It was a bad bet. Yeah, it was a bad bet.

MS. UETZ: Your Honor, Bishop Barbour agreed to the -- again, consistent with trying to move toward resolution, and then I'll move on, he agreed to the committee's request for the two survivor conferences which have been conducted. He didn't have to do that. We embraced it. We cooperated with it. And he was here. And he expressed his sincere and unequivocal sorrow and regret to the survivors.

Again, unfortunately, we are where we are with the committee for a variety of reasons. But nonetheless, we are in Chapter 11. And Bishop Barber has been able to propose a plan which pays abuse survivors in line with other dioceses, Chapter 11 cases. And it provides with the agreement of the insurers, which was reached in mediation the day before we filed, November 7th, for the complete assignment of insurance rights for the benefit of the survivors of sexual abuse through a transfer to the trust of the rights and obligations of the debtor to its insurance policies and providing a direct right of action to the claimholder to each survivor to decide for him or herself. It is the survivor's choice under this plan, not the committee's, not the trustee of the survivors trust, not anyone's choice but the individual survivor, so that under the plan, if a survivor wants to have his or her day in court, they

can. We've heard that repeatedly through this case. They don't have to, but they can.

THE COURT: I have to say, it's not as if any part of the disclosure statement was tossed off lightly. But the provisions about the litigation option and about the continuing rights of the nonsettling insurers, I thought without indicating approval or not, because that's not important right now, they were very, very, very clearly thought through with enormous detail. And I get that. And everybody will comment on that. But it was -- that was a particular place where it was clear people were spending a lot of time thinking that through, because I think, among other things, there have been cases where when those issues have not been so carefully thought through and things come up post-confirmation, it's never a good result. So just an observation. Nothing more than that.

MS. UETZ: Your Honor, we've heard loud and clear throughout this case that the rights of the survivors are very important. And we felt it very important in this provision to give that choice to the survivors. And I will say we thank Judge Newsome and Mr. Gallagher who were extraordinary in bringing some of the parties together on those points.

THE COURT: Well, I know the committee probably has a different idea. And we'll certainly hear that too. So that's fine. Okay.

MS. UETZ: Your Honor, the plan does not -- this is what it does not do. Plan does not pay sexual abuse survivors the amounts the committee claims might be awarded by state court juries in California or elsewhere, nor do we purport to do so. We are a debtor in a Chapter 11 case administered pursuant to the Federal Bankruptcy Code. And in accordance with the requirements of the Federal Bankruptcy Code, the debtor's plan in this Chapter 11 case, we believe, provides fair and equitable compensation for survivors of sexual abuse and reorganizes the Roman Catholic Bishop of Oakland to enable it to continue to serve the needs of the faithful and to continue its mission within the community.

Much of the committee's objection to the disclosure statement is premised on really three things. We think whether the plan is fair and equitable, whether it was proposed in good faith, whether the debtor can satisfy the best interest test. And we'll get to the committee's other objections.

But in short, Your Honor, I think even the committee would agree with me that their objection is that the debtor is not giving enough.

Your Honor, added to that is that despite the committee's repeated statements to this Court from the earliest days in this case that it wanted for its constituents an assignment of the debtor's insurance rights, it now objects to that when we've given the choice to the survivors themselves.

Your Honor, there will be a day when this Court decides whether the debtor has given enough and whether the insurance assignment, which has been which has been confirmed in other cases, is appropriate here. Of course, that day will come.

But first we need to get the disclosure statement approved. We need creditors to vote on the plan. And ultimately, as the judge in this case, you will decide whether the debtor has met the requirements for confirmation.

The committee's objection filed with this Court, we believe, can really be distilled into two buckets. One is specific objections to specific statements, kind of like one of your buckets, Your Honor, about statements that are either included or not included in the disclosure statement. And we've addressed those in our reply in a chart we attached as an appendix and incorporated into the reply.

The committee also, I put this in the second bucket, makes broad objections to the plan, arguing essentially it's patently unconfirmable.

Additionally, and this touches on some of what Your Honor mentioned in your remarks, through its objection, the committee -- Your Honor didn't say this. That might have been a poor choice of an intro, but it relates I think. The committee toward the end of its objection I think in the final section seeks to delay the schedule for confirmation of the

plan. And of course, that doesn't need to be decided today. But I would just note that it appears that the schedule that the committee is suggesting in light of the lift stay and six state court cases going to trial in state court is two-plus years.

Of course, this isn't a disclosure statement objection. It may or may not be a plan objection. We do believe that it's a pretty transparent attempt by the committee to leverage the debtor and the insurers into a better plan, into a better deal. And I get that.

The issue, and I've been plain about this more so recently, is one of time we don't have the money to pay the burn to stay in Chapter 11. We've shared the cash forecast with the parties. And we are running out of money. And that will be something that's addressed before this Court in fairly short order as well in more detail. So when we get to talking about the schedule and what lies ahead, if the plan is to run out the clock on the debtor's ability to pay the Chapter 11 administrative expenses associated with this case, that may happen.

Finally, Your Honor, not to be overlooked, the United States Trustee has filed its objection to the disclosure statement. We believe that many of those objections are really plan objections and not disclosure statement objections. And we don't think that the UST's objection rise to the patently

unconfirmable level, nor do we think the committee's do.

There are some technical objections which the United States Trustee has made which, I believe, can be worked through, so to speak. And I don't think that they would be an ultimate bar to approval of the disclosure statement.

And of course, the UST, as expected and projected, objects to the opt-out third-party releases, arguing they are non-consensual and they violate the Supreme Court's decision in Purdue. We believe the law supports the debtor's position on that issue in a way that will support approval of the disclosure statement as we work through that argument with the Court.

In terms of how to proceed, Your Honor, in light of what you've described and our own thoughts one idea -- and we could put this over if the Court prefers, but one idea is to just get through the motion to appoint the future claims rep because he's on the Zoom, and it probably won't take long. I don't believe there have been any objections to that motion, if my memory is accurate And then address the committee's specific objections regarding what the disclosure statement does and does not state, the chart if you will, then proceed to the committee's broader objections, and then to the United States Trustee's objections because some of those we believe will have been addressed through our discussion about the committee.

And finally, Your Honor, as I mentioned earlier, if it please the Court, I will need the help of my partners in these arguments. So I have Mr. Lee, Mr. Moore, and Mr. Moses here. I also have my insurance partner or partners, I'm not sure, available by Zoom.

And Your Honor, with that, we truly thank the parties, all of the parties, and the Court for your and for their consideration.

THE COURT: Okay. Thank you.

Would it make sense to have the committee make a similar opening statement? Do you want to do that for theme purposes? Mr. Weisenberg, it's up to you.

MR. WEISENBERG: Sure. Your Honor. typically I --

THE COURT: if you want to defer it and have us take up the --

MR. WEISENBERG: Your Honor, Brent Weisenberg on behalf of the committee.

I think it will be helpful. Typically, I enjoy when Your Honor asks questions and we can think through problems collectively. But I do believe that, given some of the comments that were made, a retort is required. I will not go point by point.

THE COURT: Sure. Okay.

MR. WEISENBERG: I will do my best to stick with why we're here today.

THE COURT: Okay. And if it's okay, I don't want to -- because I think there should be some immediacy between the two statements. If at that point we want to take up the probably unopposed motion with the rep, that's fine, okay? Does that work for folks? Okay. But I don't want to delay you. Go ahead.

MR. WEISENBERG: Thank you, Your Honor.

Let me start in reverse order, such that I believe we should use the initial part of today's hearing to determine whether the plan is confirmable. We've set forth in great detail that we believe the plan is dead on arrival. Whether that be because of the definition of release or exculpation or the admitted failure not to follow the hypothetical liquidation test, any one of those three reasons makes the plan, within its four corners today, unconfirmable. And so there's no reason to go through what is or is not missing in the disclosure statement, what may be misleading. We'd prefer to focus on the plan.

And Your Honor, that kind of ties in to our case vision. And that has been used against us in many ways, as if it's nefarious, that we have an idea about how this case should unfold. Your Honor, we want this case to unfold logically and linearly. What do I mean by that? We have fundamental disputes with the debtor about what is and is not assets of the estate. We have fundamental disputes about the value of

claims. We do not believe this case can move forward, decisions can be made until those issues are resolved.

It ties into the entire problem with the disclosure statement. Like Your Honor has already observed, there is no discussion in the disclosure statement about 106-million-dollar transfer on the eve of bankruptcy. Until Your Honor has an opportunity to decide that, we don't know if those funds are property of the estate and potentially available to pay creditors or they're not.

The same issue lies with respect to the relationship between the non-debtor entities and the debtor. We're talking about hundreds of millions of dollars that essentially divide us regarding what's available to pay creditors. And so we're continually tagged with the notion that we're running out the clock, we're trying to drive expenses. Nothing could be further from the truth, Your Honor. In every one of our pleadings -- not every one, but we'll say half, we make mention of the fact that every day, survivors' memory fades and survivors pass away. We want resolution immediately, but we want a fair and equitable resolution for all survivors.

And Your Honor, fair and equitable doesn't mean what the debtor tells us what it means. And that's what this plan is. The debtor has said we filed this case to treat survivors fairly and equitably, and we've decided that this plan is fair and equitable. They say that at the same time by saying that

two fundamental protections that the Bankruptcy Code provides, the absolute priority rule and the hypothetical liquidation test, are inapplicable to this case. So think about that. The two fundamental protections that prevent a debtor from unilaterally deciding what it could pay creditors in this case would be removed. The ramifications of allowing that, Your Honor, would essentially allow a debtor to determine what it thinks is fair and deprive creditors of those vital protections.

And so, Your Honor, we think it's important that we go through this case, again, logically and linearly. Let's talk about what is and is not asset to the estate. And through the lift stay, let's find out what these cases are really worth. The insurers and the debtor and the committee have vehement disagreement about that.

Well, how do we solve for that? Why don't we allow an actual jury to determine what these cases may be worth or may not be? And so if that's going to be tagged with the notion that we're running out the clock, then so be it, Your Honor. But we would submit that it's a better path forward than if we stay on this course and in three, four, or five months from now, you find the plan is not confirmable for any number of reasons, what have we achieved? We haven't figured out what are assets to the estate. We haven't figured out the valuation of claims. And so we're starting from scratch. That seems to

make little sense.

We would submit that our way, our proposed way, actually drives this case to resolution, because once Your Honor makes a decision about these fulcrum issues, the parties are going to know what the playing field is. And they'll be able to mediate within those confines. But standing here today, we have diametrically opposed views.

THE COURT: Can I make an observation?

MR. WEISENBERG: Of course.

THE COURT: This is probably very simplistic, but it strikes me that there's two pieces to what you just said. One piece is a complicated legal question of whether entities that are separately incorporated really should be deemed to be -- I mean, I don't want to say liable for these claims, but there should be a world in which we think of them as essentially owning assets that are available to pay or should be made to be available to pay claims. Okay? That's the lawsuit, right? That's the adversary proceeding?

MR. WEISENBERG: Correct, Your Honor.

THE COURT: Okay. That's complicated. And we'll talk about how that might play out.

The other piece of this where I'm kind of searching for how to articulate it best, to the extent that the diocese says we are the diocese, within the diocese, there are churches there are different sorts of entities for purposes other than

whether our assets are theirs -- I don't think there's not an explicit disagreement that a church asset is a diocese asset. But within that, we're making a decision how much of that is available. And I think part of that -- I mean, that goes to the question of, well, if you couldn't liquidate us because we're a nonprofit and you couldn't replace the bishop for First Amendment reasons, does that mean we have no obligation to make these assets available?

What I'm searching for is a world in which the debtor tells us why that's the case. What is the rationale for why this is available? And that is, what is the limit? And there's a lot of ways they could express that. And just to get this on the table, I'm not seeing that in the disclosure statement yet. And maybe the debtor can tell me if they think that's totally inappropriate. But it seems to me at a minimum, some articulation of why on a principled basis X is available and Y isn't is something that I think we need to know because you're not going to agree -- we need to know why we disagree about that. So, I mean, that's just an observation. We'll get into that when we get into the particular objections, okay? Does that distinction make sense?

MR. WEISENBERG: Your Honor nailed it for two reasons. Number 1, if the debtor's argument is correct, today they can take every last dollar of cash, buy a piece of property, improve it with a church and say, under the First Amendment,

you cannot compel us to sell a church, ergo we don't need to make any payment to creditors, or taken a step further, they can say every last dollar within the diocese is in furtherance of our religious purposes and therefore we don't need to pay anything, because if you could -- if you try to compel me to pay one cent, you're violating my First Amendment, right?

THE COURT: But my --

MR. WEISENBERG: That can't be the answer.

THE COURT: No. But my point, I think you agree with me, is that what we need is that articulated. What is the basis for that? And then we can agree with it or disagree with it. The debtor can say not another penny because X, Y, and Z, or the debtor can say, well, this asset is different from that asset, and here's why.

But the point of a disclosure statement ought to be, among other things, to give the debtor, the proponent, the ability to articulate why they're doing what they're doing, what you're going to get, and why that's fair and legally supportable. And I think there's -=- my sense is there's a void there right now. I have a sense -- I may guess what the debtor is thinking, but I think that's a point where some articulation would be helpful.

And I mean -- and I'm at the moment indifferent to the answer. I mean, whatever they say, you're probably going to take a different position. That's fine. But I think for

today's purposes, what we need is to have them tell us more clearly what that means. Does that make sense?

MR. WEISENBERG: Your Honor, it does. Suffice it to say that our position is a debtor does not get to pick and choose what is and is not part of its estate and available to pay creditors and survivors. We think, again --

THE COURT: Well --

MR. WEISENBERG: -- the fundamental protection of the Bankruptcy Code was this hypothetical liquidation test. Let's think about from a --

THE COURT: Can I --

MS. UETZ: -- drafter's perspective.

THE COURT: Can I agree with you real fast? Because it is hypothetical, that's the point, because it is hypothetical.

Having said that, they have a point that they cannot be liquidated, and we're not going to replace the bishop. But I don't have to confirm a plan either, right? I mean, that's the stark reality here. So I mean, somewhere in there, there has to be some articulation of what their theory is, and you have to be able to say we disagree with it because. Fair?

MR. WEISENBERG: Your Honor will not be the first person to be asked this question. The court in Boy Scouts was asked this question.

THE COURT: Yeah.

MR. WEISENBERG: The court in Camden was asked this question.

THE COURT: I'm glad I'm in good company.

MR. WEISENBERG: And in our papers, we put forth at least six or seven cases in which going through the 1129 factors, every one of those courts made a decision about whether the plan was confirmable based upon whether the plan proponent fulfilled this test. So, Your Honor, suffice it to say, I think we see it very closely to the way you see it.

THE COURT: But having said that, it may also be true that I think that the purpose of today and whatever continued hearings we have is to get the debtor to articulate that, not to decide whether it's enough or not, right? Whether it's enough or not is a -- in my view now, subject to your brilliant arguments, whether it's enough or not is a confirmation issue.

MR. WEISENBERG: Your Honor, it's the first time I've ever been accused of a brilliant argument. But with that aside --

THE COURT: You got to get out more.

MR. WEISENBERG: Your Honor, we will submit that the hypothetical liquidation test as proposed by the debtor makes the plan patently confirmable.

THE COURT: Okay. All right. Okay.

MR. WEISENBERG: Okay.

THE COURT: Okay.

MR. WEISENBERG: Just a few more points, Your Honor.

THE COURT: No, no. I'm not trying to rush you. I'm just trying to make sure that you understand where I'm coming from, okay?

MR. WEISENBERG: I'm going to get a little out of my depth by addressing the insurance assignment. And I know that I have great counsel behind me if I get it wrong.

THE COURT: Okay. Okay.

MR. WEISENBERG: But the bottom line is this, Your Honor. The debtor stands up and says the committee has always wanted this. That may or not -- may or not be true. However, I'll tell you what we don't want. We don't want an assignment that increases the rights of the insurers and decreases the rights of the survivors, okay?

The fact that all the insurers are here today, Your Honor, that should tell you everything you need to know about this plan and how it's viewed between the debtor and the insurers and the committee, okay? If past is prologue, the insurers typically do not stand in favor of an assignment that is not insurance-neutral, okay? In this case, we'd submit it actually impairs the rights of survivors in the state courts. And so whether or not we want an assignment, I can tell you this. We don't want one that hurts survivors' rights.

THE COURT: I know we'll get into this. Is that because of the sort of, for lack of a better word, the credits

and the offsets that are available or the limitations on the recovery, or what's the --

MR. WEISENBERG: Your Honor, I'm going to --

THE COURT: Just thematically, what's the font of that?

MR. WEISENBERG: I want to answer your question, but then I also would like my colleagues to answer.

THE COURT: Yeah.

MR. WEISENBERG: We do make an argument, and again, this is a patently unconfirmable argument, that the plan as drafted allows the insurers an offset for any amount that a survivor may have received from the debtor. However, the plan provides the debtor is paying survivors for the uninsured exposure that they may have for any claim. And so

THE COURT: So those are apples and oranges.

MR. WEISENBERG: Exactly. Under California law, that simply -- the insurers are not entitled to an offset.

THE COURT: Okay. I got it. I got it. I got it. Okay. I don't need more now unless you guys are dying to tell me, okay? All right. Okay.

MR. WEISENBERG: Let me end in this way, Your Honor. Maybe this is the good news. We share the debtor's desire to consensually resolve this case. We earnestly do. And everything we've done so far has been towards that goal.

THE COURT: Yep.

MR. WEISENBERG: It's unfortunate that sometimes the debtor doesn't see it that way. For example, we truly believe that the survivor status conferences were vital to bringing survivors under the tent. And hopefully they will support a consensual plan. Okay? So that's the good news. We want to continue to work there. But given our vehement disagreements about fundamental problems, we just submit there's a better, more economic way.

THE COURT: Okay. I appreciate it.

MR. WEISENBERG: Thank you, Your Honor.

THE COURT: Thank you very much.

Can I make a suggestion? Just so we don't keep anybody who could otherwise be off doing something more fun, do you want to take up appointment issue?

MS. UETZ: We'd like to take up the appointment issue and then suggest we break, Your Honor.

THE COURT: I'm thinking the same thing. And before we break, I want to give you an idea of where I'd like to start when we come back, okay?

MS. UETZ: That would be helpful.

THE COURT: Great.

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Okay. Come on up, Ms. Lee.

MR. LEE: Thank you, Your Honor.

Good afternoon, Judge Hogan.

We're here today on the debtor's motion to appoint -- in addition to all the disclosure statement talk we're going to have, we're here on the motion to appoint Judge Michael Hogan as the unknown abuse claims representative in this case. The motion was filed on December 9th as docket number 1503, supported by declarations at dockets 1504 and 1505. Your Honor agreed to hear it on short notice.

THE COURT: Yep.

MR. LEE: Sorry, short notice, with the consent of the committee and the U.S. Trustee. Objections were due on December 13th. None have been filed.

This motion acknowledges, as has been done in many other dioceses in Chapter 11 bankruptcies, that there may be individuals who have abuse-related claims against this particular debtor whose claims have not legally accrued under California law or, for whatever reason, have not had notice of these proceedings. This would be related to abuse that occurred or is alleged to have occurred before the effective date of the plan and in which case is appropriately dealt with in these proceedings.

Recognizing that holders of current known abuse claims may have slightly different interests than holders of claims who either don't know they have a claim under California law or don't have -- haven't had a chance to assert that claim in this bankruptcy, the debtor proposes to appoint Judge Hogan as a

representative for those unknown abuse claimants in this Chapter 11 case. Judge Hogan is very experienced in this role. He served in over a dozen diocesan bankruptcies.

THE COURT: In the same role.

MR. LEE: In the same role. Yes, Your Honor.

THE COURT: Okay.

MR. LEE: He's a former federal judge. He currently has a mediation practice that's active. He has proposed to charge 850 dollars an hour to the estate, with a cap of 100,000 total dollars, all in.

THE COURT: Even post Post-effective date?

MR. LEE: I believe that's correct.

THE COURT: Okay.

MR. LEE: He has no conflicts that would prevent his disinterestedness under Section 101 -- sorry, Section 101.14 of the Bankruptcy code.

THE COURT: Okay.

MR. LEE: And after all, this is -- at bottom, it's at 327(a) representation. He would be representing not the debtor, but he would be representing a constituency of the estate. And therefore I think it's appropriate to proceed under 327(a).

THE COURT: I'm guessing he's probably dealt with a lot of the same parties, but that's not -- I mean, that's not even a connection you would tell me, right, within the

disclosure requirements?

MR. LEE: I believe he's dealt with the same -- he's been involved in cases with --

THE COURT: It would make sense that he had. Yeah. Okay.

MR. LEE: Yes. Yes, Your Honor.

THE COURT: Okay.

MR. LEE: His tasks are outlined specifically in the motion.

THE COURT: Yeah.

MR. LEE: I can go through them if you like. But I do know that he's able and willing to do all of this immediately upon entry of the order we've proposed to Your Honor.

THE COURT: Okay.

MR. LEE: If you have questions for me or for Judge Hogan, I would invite you to ask them.

THE COURT: Yeah, This may be one of those questions that can't be answered, but just given that he's -- Judge Hogan, given that you've done this a number of times before, empirically, when do these issues arise? I mean, are there people that you would be identifying now or be aware of now Who would be your constituents or your flock, or is that something that's going to develop over time, It's not a now issue?

MR. HOGAN: Develops over time. We don't know who those people are yet.

THE COURT: Yeah. Okay. All right. And Judge Hogan, obviously, you've read the application. And you're familiar with the presentation. Anything you want to add at this point?

MR. HOGAN: Well, the only other thing I would like to do is apologize for my dress today.

THE COURT: I've been known to let people know that without a tie, I'm not hearing them the same way. But go ahead. That's all right.

MR. HOGAN: My finest rodeo vest.

THE COURT: Okay. I appreciate that. I appreciate that. All right. Thank you.

MR. HOGAN: I'll dress in big boys after close-out.

THE COURT: All right. Thank you very much. Well, listen, you may be perfectly well attired for most of what you're going to be doing, which won't be talking to me. Lucky you. Okay? Yeah. All right. All right.

Does anybody want to be heard on the application with respect to Judge Hogan's appointment? I think the understanding was the given it was shortened time, if someone had a comment, I wouldn't stop them from the lectern, okay?

MR. PROL: Good afternoon, Your Honor. Jeff Prol, Lowenstein Sandler, for the committee.

THE COURT: Good afternoon.

MR. PROL: Judge, the committee has no objection to the application for the retention of Judge Hogan. Judge Hogan

and unknown claim representatives have been instrumental in other cases in driving consensus. And we're hopeful that that by him coming and being involved, that that will be a result here.

We do, however, object to the proposed use of Judge Hogan in the plan as it presently stands. And I could address that now, or I can address that later.

THE COURT: I read your papers. Does that cover it?

MR. PROL: Yes, Your Honor.

THE COURT: I got it. Thank you.

MR. PROL: Okay. Great.

THE COURT: Thank you very much.

MR. PROL: Thank you, Your Honor.

THE COURT: Okay. You're welcome.

Okay. Anybody else want to be heard? Okay. Then the debtor is proposing the appointment of a Judge Hogan as the unknown abuse survivors representative, correct? Okay. Hearing no objection and hearing from Judge Hogan -- thank you very much for participating today -- and hearing from the debtor's representative and counsel, that's approved. Okay? Thank you very much.

MR. HOGAN: Thank you for your time.

THE COURT: All right. Yeah. Okay. I hope to see you again. Okay. Thank you.

We'll take a break. But when we come back, you may

not agree with me, but one thing I do want to address fairly early on is the release opt-in, opt-out question, because I think that's a big part of how we're going to solicit or not hear. So I think that's a big deal. And I have some -- I have some thoughts about that, okay? And I will give you those thoughts. We can have a conversation. I will leave -- I will, I suspect, leave open something for somebody to inform me slightly better on. But you're going to -- you're going to get where I'm coming from, I promise you, okay?

After that, I have probably -- I've probably condensed and hopefully not dumbed down categories where I think some expectation, amendment, amplification is probably a good idea. And that would include the possibility for the committee, if appropriate, to just say we have a different view. Here's appendix A, this is our view. And we'll talk about those, okay? That's how I would like to start the afternoon session. And that's subject to anybody having a better idea. And I mean that sincerely. If anybody thinks there's something we need to do first, that's fine. But that's how I'd get going if it's okay, all right?

How long do you folks want?

MS. UETZ: Thirty minutes.

THE COURT: That's all. Seriously? Does anybody want longer than that?

MS. UETZ: Well, that's all I want. But if other

people want more --

THE COURT: Okay. No. I mean, I will leave it -- I'll leave it to you guys.

UNIDENTIFIED SPEAKER: Judge, I think we'll defer to you. Your staff is obviously here, and you folks need lunch as well. And whatever you typically do --

THE COURT: How about 1:15?

UNIDENTIFIED SPEAKER: -- that would be fine with us.

THE COURT: How is 1:15, okay?

MS. UETZ: Thank you, Your Honor.

THE COURT: 1:15. All right. Thank you very much. Thank you.

(Recess from 12:27 p.m., until 1:16 p.m.)

THE COURT: Okay. Please be seated.

So one housekeeping note. I don't want to predict that we will go this long, but I think 5 was going to be a hard stop for us, okay? So if we can -- not that that's something to shoot for, but it is a limit.

I also will note, echoing I think everybody's comments about the relentless goodwill that has prevailed in this case, that this case is the furthest advanced of the diocese cases in ND Cal

I'll tell you a secret. Montali complains all the time that nobody argues about anything in his case. He doesn't know what to do with himself. It's a very quiet case

apparently, in his view at least. And Santa Rosa, I think, is mediating but not yet to a plan. And you probably -- many of you probably know this better than I do. And my case, Franciscan Friars, is not close to a plan, I don't think.

So somebody has their hand up. It looks like -- is it Mr. Manz (phonetic)?

MR. MANZ: It is, Your Honor. Good afternoon.

THE COURT: Good afternoon. Something you want to tell me?

MR. MANZ: Just to make a note of an appearance, Your Honor.

THE COURT: Sure.

MR. MANZ: I had an issue making an appearance at the outset. I represent RCC and RCWC.

THE COURT: Okay.

MR. MANZ: Thank you.

THE COURT: Thank you so much. Okay.

MR. MANZ: Thank you to your chambers as well.

THE COURT: You bet. Okay.

If there's anything that you guys need to tell me from a housekeeping or order progression standpoint, now is the time. Otherwise, we'll segue to one issue that I think we should just deal with and largely dispose of, which is the opt-in release, opt-out release question, okay?

So I'm prepared to -- I think the committee may have

something to say about this. I wouldn't say it was their prime focus, but they may well have some comments. But certainly the principal objection came from the U.S. Trustee. So I would let them kick us off on this.

MR. BLUMBERG: Thank you, Your Honor. Jason Blumberg for the United States trustee.

Our objection -- our primary objection in our papers is that the third-party release and the channeling injunction is not consensual because of the opt-out procedure. And under the opt out-procedure, as I understand it, creditors would be deemed to consent if they don't respond to the solicitation package for whatever reason. Creditors would also be deemed to consent if they fail to execute an opt-out form even if they reject the plan. So from our perspective, what the debtor is proposing is that silence or inaction will be deemed consent to a third party release in this case.

Now the debtor's reply brief, excuse me, acknowledges that there is a case to support every view on this issue. I can't disagree with that. But what I did not see in the debtors papers was any Ninth Circuit authority permitting opt-out releases.

It's the United States Trustee's position that the Bankruptcy Code does not deal with third-party releases, consensual or otherwise, or how parties actually consent to a release. Thus, as we set forth in our objection, it's our

position that whether a release is consensual or not should look to state contract law. And under that law, which is well developed, except in exceptional circumstances, an offeree has no duty to respond to an offer -- excuse me, respond to an offer.

So the first bucket of creditors or releases that we would have take issue with are those who don't vote and don't return --

THE COURT: Can I put a thought in there before we get to the particulars?

MR. BLUMBERG: Of course, Your Honor.

THE COURT: I mean, some people have also commented that the contract scenario is arguably different because there's a difference between acceptance and consent. So if you want to at some point address that, I'd be grateful.

MR. BLUMBERG: Sure. Your Honor, as I mentioned, there's a case to support every view. The cases that we relied upon, the Smallhold case, the Sun Energy case, and the case out of the Northern District of New York, the Tonawanda Coke case, they defaulted to contract principles. We think that's the appropriate result because there is nothing in the Bankruptcy Code that deals with this issue.

And in essence, a plan is a contract between the debtor and between the creditors that resolves the debts between those two parties. This is a separate piece of the

plan. This is essentially a contract between the non-debtor and the creditors. So it could exist outside of the plan entirely.

THE COURT: Well, okay. But it's the debtor that's the proponent and is going to get the benefit of getting a confirmed plan if this plays out the way they like.

I don't know that -- also, I hear you on some courts adopting the contract theory. I don't know that that's how I would have characterized Goldblatt's opinion. I think it's a little different. But you can convince me why I'm wrong about that one.

MR. BLUMBERG: Well, I respect Your Honor's take on the Smallhold case. But I would just note that Judge Goldblatt, I think, did at least refer to the contract principles in determining that --

THE COURT: Okay.

MR. BLUMBERG: -- silence can't be consent --

THE COURT: Right.

MR. BLUMBERG: -- with creditors who don't participate in the plan.

THE COURT: Well, yeah. I mean, the place where I think he really balked was this notion that if you don't respond at all, you're agreeing to whatever I say. I mean, you're going to -- unless you give me this form back, you're going to pay for my college education I think it was this hypo,

right?

MR. BLUMBERG: That's correct, Your Honor.

THE COURT: Right. Which I think speaks to a lot here. He would -- if I read him correctly, he would be in accord with this form that the debtor is suggesting but for the notion that if you don't respond at all, you are deemed to consent, right? I think he drew the line there.

MR. BLUMBERG: Agreed, Your Honor. He would --

THE COURT: Okay, Your Honor.

MR. BLUMBERG: Agreed, Your Honor.

THE COURT: Okay. So if you want to -- if you want to -- I don't mean to derail you. If you want to tell me why the contract theory in all its robustness is the right one, I'm all ears. I don't think -- that's not the way I read about Goldblatt was doing it. I usually find him pretty persuasive on issues like this. So go ahead.

MR. BLUMBERG: Well, Your Honor, I would just note that there are other cases that we cited --

THE COURT: Yeah.

MR. BLUMBERG: -- the contract theory --

THE COURT: I agree. You're right. There are. Okay.

MR. BLUMBERG: And just taking the buckets of creditors who would be deemed to consent, I think the easier case are those who just don't participate in the process at all. And set forth in our objection, there's no duty for a

creditor to vote on a plan. Moreover, we cited a BAP case called Long M. Arabians (sic), which is 103 B.R. 211. It's an old BAP decision, but there the BAP held that a creditor's silence or failure to vote is not the equivalent of the acceptance of a plan. And so if a creditor's failure to vote or decision not to vote is not acceptance of a plan, it can't be acceptance of a release in that plan.

THE COURT: Okay. Anything else?

MR. BLUMBERG: Well, just the more difficult bucket are the folks that do vote --

THE COURT: Yeah.

MR. BLUMBERG: -- that do vote.

THE COURT: Okay. How do you -- did you address whether it's appropriate to have the release be part of the ballot or whether a separate document is better or worse?

MR. BLUMBERG: We did, Your Honor. We did in the context of creditors who vote to reject the plan but don't execute the opt-out. In our view, there's case law that suggests -- I think it was the Chassix case that suggests if you have someone who rejects the plan, imposing the additional requirement of an opt-out is nothing more than a trap for the unwary or inattentive creditor. In our view, that issue is magnified here because the ballot is a separate document.

THE COURT: Okay.

MR. BLUMBERG: Easy to overlook in that circumstance.

THE COURT: Okay. I appreciate it. Thank you. Okay. Why don't I -- why don't I let the committee -- I don't think this is their principal objection, but they may have some thoughts. And they may be anticipating some of the things you're going to say about why this is -- given the number of counsel involved for the victims, they may have a thought about whether they agree with you that this is not so God awful a scenario, for lack of a better word, okay?

Okay. Mr. Weisenberg or Mr. Prol, you want to give me your thoughts?

MR. WEISENBERG: Brent Weisenberg on behalf of the committee.

Generally speaking, Your Honor, we have not weighed in on this issue with a caveat -- well, two caveats. Number 1, in the context of this plan, which is nonconsensual, we don't believe that the form that the debtor has chosen is appropriate. That is not to say in a fully consensual plan under different facts, the answer might be different.

THE COURT: Okay.

MR. WEISENBERG: Number 2, Your Honor --

THE COURT: Can I -- Okay. You finish, and I'll ask you a question.

MR. WEISENBERG: Number 2, Your Honor, you always chart your own path. And that's been very beneficial. But I do want to let you know what happened in Syracuse.

THE COURT: Okay.

MR. WEISENBERG: In Syracuse --

THE COURT: Is that Judge Kinsella's case?

MR. WEISENBERG: Yes.

THE COURT: Yeah.

MR. WEISENBERG: And in that case --

THE COURT: We've spoken.

MR. WEISENBERG: Okay. And so we would submit that that's the better course of action for the same reasons we've been telling you, which is if we get five months down the road and ultimately you issue your decision which makes the debtor's plan unconfirmable, we won't have made any progress. And so isn't it better to know now what the rules of the game are, and then we can engage with creditors in that fashion?

THE COURT: Okay. I was wondering if you were going to pick up on her rule 23 points.

MR. WEISENBERG: I was not, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: I wasn't going to get into that depth. I was just talking procedurally.

THE COURT: Okay. Okay. As in we should cross this bridge now?

MR. WEISENBERG: Exactly.

THE COURT: I agree with you. Okay. Thank you very much.

Okay. Mr. Moses, come on up and --

MR. MOSES: Can I ask one quick point of clarification, was that we should cross this bridge now or we should not cross this bridge now?

THE COURT: We should.

MR. MOSES: Yes. Okay.

THE COURT: I think it's an important issue. I think it's discrete enough that it can be dealt with now. I think that the options are also limited enough that we can deal with it now, although I'm thinking to hold something -- potentially hold something open for you to further convince me on one point. I haven't made up my mind about that.

But I think that if we're talking about going out to solicitation sometime around January, if we are lucky enough to be doing that, I don't want to solicit in a form that someone is going to tell me later we never should have done. So that's my thinking, okay?

MR. MOSES: Certainly, Your Honor. And I think to start with that point, this really breaks down into sort of two kind of distinct issues. One is -- and especially when you look at it in terms of what the solicitation look like, one of those issues is can opt-out -- can an opt-out be deemed consensual, or is opt-in the -- as the U.S. Trustee argues the only possible means of consent?

And then the second question is if the Court agrees

with, know what at least one bankruptcy court, the Robertshaw court said was the overwhelming majority of cases that at least in some circumstances as to some creditors opt-out as appropriate, what is the extent of that? In other words, does it apply to creditors who vote against the plan and don't opt out? And does it apply to creditors who do not respond?

THE COURT: To what extent am I limited in Robertshaw by Lopez's opening comment that the Supreme Court didn't change a darn thing about how we look at this in the Fifth Circuit? And I have an interpretation of that history in the Fifth Circuit. And therefore, I come to the following conclusion.

MR. MOSES: Well, I think there is some relevance there in that -- and we discussed this a little bit in our papers, that the Supreme Court was very clear that this was not intended, that its decision in Purdue was not intended to call into question or to address the question of what is deemed consent. And the argument that the U.S. Trustee is making here that consent specifically requires an opt-in, an affirmative opt-in, would mean -- the effect of that is that now Purdue would result in the erasing of all of that precedent on all of those prior decisions. I think Robertshaw says hundreds of plans have been confirmed in the Fifth Circuit on this basis.

THE COURT: I don't know that he took that seriously when he said it. But anyway --

MR. MOSES: I don't know. I doubt he counted.

THE COURT: Yeah.

MR. MOSES: But I think it's fair to say a substantial amount of --

THE COURT: Well, no. I mean, whether you got --

MR. MOSES: Yeah.

THE COURT: -- a hundred plans or not, it is something to say this is inconsistent with the result of hundreds of cases. That is enough to pause, right?

MR. MOSES: Right.

THE COURT: Okay.

MR. MOSES: And I think what both Robertshaw and to some extent, the LaVie Care Centers case --

THE COURT: Yeah.

MR. MOSES: -- both suggest is that if we take this argument that opt-out is -- opt-in is required to its conclusion, then the result is Purdue does something that the Supreme Court in Purdue specifically said it wasn't doing, which was to upset current law on what is consensual and what's not consensual.

THE COURT: Or if you're putting this on a spectrum, to weigh in on what you might think of as the most onerous end of the spectrum, right?

MR. MOSES: Correct.

THE COURT: If they're saying we're not commenting on this, it wouldn't follow that, oh, and you have to do the most

difficult thing in order to get to consent, right?

MR. MOSES: Right, exactly.

THE COURT: Okay.

MR. MOSES: Exactly.

THE COURT: Yeah.

MR. MOSES: I do -- to sort of with regard to that spectrum, the decision that we really do have to resolve, not if the hearings continue today, but at this stage, is what does the form look like that we send out. Is it appropriate to send out an opt-out form? The question that Your Honor could decide at this stage, but does not have to, is whether or not the release would apply to creditors. So if it's balloted, solicited as an opt-out plan, whether or not the release would apply to creditors who simply don't respond, right? In the Smallhold decision, that was decided actually post-confirmation. We point to a couple of other cases where that was decided at least at the confirmation stage because it doesn't affect the solicitation. It just affects the nature of the release.

THE COURT: Well --

MR. MOSES: I'm sorry, the nature of the form.

THE COURT: Okay. I might argue with that --

MR. MOSES: Yeah.

THE COURT: -- in a minute, but okay.

MR. MOSES: Okay. I would like to -- and I think

that's -- Smallhold recognizes I think in addressing that issue that there's a little bit of a distinction between the procedure and the substance --

THE COURT: Oh, yeah.

MR. MOSES: -- of the release, right?

THE COURT: Oh, yeah. Oh, yeah. Yeah.

MR. MOSES: And so the procedural question is essential to solicitation. The substance in some ways may not be. That that's my only point. But I'm happy to address it all.

THE COURT: Okay.

MR. MOSES: Before we get to -- there's sort of a fundamental issue of what the correct legal framework is. Is the correct legal framework contract? Is it something else? But a number of the cases also address that there is a contextual question. And this is what I think Your Honor mentioned earlier. The contextual question in a specific case of what might be appropriately deemed consent in that case.

And in particular, one of the -- the Tonawanda Coke case that the U.S. Trustee references -- no, I think it was actually the Chassix case, they raise this issue of there is a high likelihood of inadvertence. Is there a trap for the unwary here? And the circumstances of this case are very distinct there in that, as we point out, approximately ninety-nine of these claimants are represented by counsel. Their

claims were filed by counsel. There were four claims, one of which was untimely, that were not filed by counsel.

So these notices are going to their counsel. There is almost no chance of inadvertence or a trap for the unwary or, frankly, of someone not responding because they simply don't understand the question because they have counsel to address that for them.

And although, as Your Honor mentioned, the Spokane case, it addresses the Rule 23 question. It also specifically makes that point as well, that one of the bases for an opt-out being appropriate is the fact that in that case, it was ninety-four of the creditors were represented by counsel. So I think it's just important to contextualize this.

THE COURT: Yeah. No, no, no.

MR. MOSES: And I think the LaVie Care Centers case makes that point as well.

THE COURT: Okay.

MR. MOSES: That the context is important in deciding whether or not there was consent.

THE COURT: Okay. And just as I remember it, what Judge Goldblatt said was, look, I can see this as a principle. I don't know that it's really relevant here or not based on what I have in front of me. And Judge Kinsella, I thought, was a little more convinced that it was a vibrant concept in her case. Is that fair?

MR. MOSES: I think that's fair.

THE COURT: Okay.

MR. MOSES: Yeah.

THE COURT: And is there another case that you think advances that theory beyond that, or is there another case that is more robust than its acceptance of Rule 23?

MR. MOSES: I don't --

THE COURT: I don't think so. Okay.

MR. MOSES: I don't think so, no.

THE COURT: And what are we -- what are we -- if that's something I should be worried about, is there a -- is there a order of proof that I need to be thinking of along those lines? Or what do I -- what do I do? I'm thinking about that.

MR. MOSES: Well, I don't think I'm really arguing the Rule 23 point as a basis.

THE COURT: Well let me -- can I interrupt --

MR. MOSES: Sure.

THE COURT: -- and tell you that my very strong inclination is to agree with Judge Goldblatt and I think you. But at the point that one has engaged on this and has participated enough to deal with a ballot, I think that is -- I will agree with Judge Goldblatt that the failure to check an opt-out at that point is hard to describe as anything other than you didn't want to do it, although you might -- there

might be some inadvertence there. But I think his argument that that's very different from the if you don't respond, you're paying for my college tuition. And it is consensual enough that one has participated enough to engage with the ballot, that -- I think I'm with you that I would agree that somebody returning a ballot, not checking the opt-out under the arguments advanced in Smallhold I would think is going to be sufficient.

Where I'm going to disagree with you, subject to whether we need to have some sort of evidentiary basis for this, is what I'll call the Rule 23 principle, that it just is not -- if what we're guarding here is purely inadvertence, I'm not sure that's right. But if we are, that there should be some argument based on -- I'm not sure what yet, but you can help me with that, when we get to that point in our next hearing on this, if you want to expand and engage with the committee whether -- basically because of the high level of representation here, I shouldn't be as worried about ballots simply not returned. I'm willing to keep that crack open, but I'm not -- I'm dubious about the notion.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: And I think there is a little bit of a distinction, Your Honor, that in the Spokane decision, the court focused in the Rule 23 argument on the notion of the

creditors' committee as the equivalent of a class representative.

THE COURT: Yeah.

MR. MOSES: But I think --

THE COURT: Well, and they can respond to that and say we are or we aren't.

MR. MOSES: Right.

THE COURT: I haven't heard from them yet, so we'll see.

MR. MOSES: But there is a slightly distinct that the court in Spokane also addressed the question of simply these creditors are represented by their state court counsel who can identify this issue, make sure they don't miss it, explain --

THE COURT: Well, so you --

MR. MOSES: -- to them what it means.

THE COURT: You've kind of hit on this, but I don't know that we're -- if I should be looking at this in terms of making findings and so on. I don't think I'm in a position to do that if it presents that way, okay?

MR. MOSES: Okay.

THE COURT: Sensible?

MR. MOSES: Right.

THE COURT: I agree with you it doesn't have to be an opt-in. I'm going to agree with that.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: I think the point I would want to identify with regard to Smallhold and where I think the LaVie Care Centers does, I agree with the point that is made there with regard to -- and with regard to Smallhold is Judge Goldblatt seemed, I think, to have the sticking point of what is the limiting principle of this.

THE COURT: Yeah.

MR. MOSES: And that's where the college tuition comes in. And the LaVie Care Centers directly addresses that and says there are limiting principles that can apply to that, right? There is -- for one thing, that is an agreement, the example of the college tuition, this sort of -- the extreme example is an agreement to an affirmative act to contribute money to this college fund. What we're talking about is effectively a waiver of a right, a waiver of the right to pursue this claim, which in many cases can be accomplished through inaction, can result from inaction.

And the other point is that there is always backstops of fair and equitable and good faith for any plan. I don't think there's any bankruptcy court in the country that would say -- require people to contribute to the CEO's college tuitions --

THE COURT: Well, I -- in good faith.

MR. MOSES: Right?

THE COURT: I agree. No. I think what Goldblatt was trying to recognize was it's contractual in the sense that you have to -- there has to be some manifestation of something that you call assent. But we all know that when we're dealing with courts, rights are highlighted, notice is given, and you've got to do something.

MR. MOSES: Yeah.

THE COURT: So there's got to be a balance between those concepts. But that's where I think he was trying to get to in my view.

MR. MOSES: Right, right.

THE COURT: Okay.

MR. MOSES: And I guess I do want to make -- sort of identify -- there's a question. The U.S. Trustee raised this issue of whether or not it needs to be a separate -- should be a separate form or whether or not it should be part of the ballot that, to the extent the Court is approving, the opt-out concept does need to be addressed.

THE COURT: Yeah.

MR. MOSES: We proposed it as a separate form because, frankly, we thought that was more conspicuous to have a separate form that says do you or do you not consent to this?

THE COURT: Yeah.

MR. MOSES: And it's called out in the ballot. If the Court disagrees with that and thinks it's more appropriate to

put it in the --

THE COURT: I do.

MR. MOSES: Okay.

THE COURT: I mean, I think one could conspicuously highlight the title, ballot and form of release, as in don't forget that. There are ways to handle that. But I think one document is -- I mean, by the logic of where Goldblatt ended up, I think one form is better than two.

MR. MOSES: Okay.

THE COURT: Okay?

MR. MOSES: And so I guess I understand -- do I understand where the Court is on this, that --

THE COURT: Opt-in is not required.

MR. MOSES: Okay.

THE COURT: Opt-out is okay. Where I -- returning a ballot without indicating the opt-out, at the moment at least, I'm agreeing with Goldblatt that that's enough engagement to count. And that where I'm differing from you at the moment is no action whatsoever equals opt-out. I'm not with you there. Okay?

But if you -- I mean, if you think that something Rule 23ish and some sort of proof about that or argument about that is appropriate, I think it's really only been kind of preliminarily raised here. If you think that that's ripe for discussion, more ripe for discussion when we come back to talk

about the disclosure statement, I'm not opposed to that, okay?

MR. MOSES: Understood, Your Honor.

THE COURT: Because I think the committee really needs to be heard about that if we're going to -- if we're going to sharpen that question. I'm not going to decide that. I'm leaning against no responses as a yes, but, well we can explore that further, okay?

MR. MOSES: Okay.

THE COURT: All right.

MR. MOSES: Understood. Now --

THE COURT: Thank you.

MR. MOSES: I guess my question, there are a number of other objections in the U.S. Trustee --

THE COURT: Yeah. I mean, if you want --

MR. MOSES: It might make more sense to sort of tackle the other larger issues and come back to that, but I'm flexible.

THE COURT: Well, my inclination on the derivative fee question is that that's -- we can argue about that at confirmation. That's not going to be ripe until you got a plan to confirm and monies to pay. And it seems as if there are decent arguments on both sides of that. I don't think that should long detain us right now. I'd certainly hear the U.S. Trustee. And I expect you both -- you can raise it further then. You can amplify your arguments then. We can get to that

then. I don't think it's something we have to decide now. It's not a showstopper for disclosure statement purposes in my mind.

MR. MOSES: I agree, Your Honor. I think it's completely appropriate to address that at confirmation.

THE COURT: Yeah.

MR. MOSES: We might come to some narrowing --

THE COURT: That's fine.

MR. MOSES: -- or agreement. You never know.

THE COURT: That's fine. That's fine. Was there another issue?

MR. MOSES: Okay. There were a couple of other. Well, those that was the other patently unconfirmed argument.

THE COURT: I remember it, yeah.

MR. MOSES: There were a couple of other small -- well, not necessarily small, but a couple of other disclosure issues. There were the question of whether we disclosed sufficient information regarding the churches and the basis for the discharge of the churches. That I think might tie --

THE COURT: We're going to get -- we're going to get there.

MR. MOSES: Whether we provided adequate information regarding the survivors trust --

THE COURT: That we're going to get to.

MR. MOSES: -- that I think we might get to. Then

there was whether we provided adequate disclosure of who the recipients of the release are.

THE COURT: We're going to get there too.

MR. MOSES: So we're going to get there.

THE COURT: We're going to get to those.

MR. MOSES: And then finally, there was an objection that we didn't identify the obligation for post-confirmation reporting in the planner disclosure statement. I don't think that really needs, frankly, Your Honor, to be in the disclosure statement. We acknowledged that we'd be happy to put that in the plan --

THE COURT: Yeah.

MR. MOSES: -- the next time the plan is revised.

THE COURT: That's what I expected you'd say.

MR. MOSES: Okay.

THE COURT: Okay. Thank you.

MR. MOSES: Thank you, Your Honor.

THE COURT: All right. Appreciate it.

Okay. Mr. Blumberg, anything else? I think I'm with you on a major point there, and you're hearing me. And we can -- we'll take -- if we need to take up the no response issue again, we can, but I'm with you on that one, okay?

MR. BLUMBERG: I appreciate, Your Honor. And I would just note very quickly on the Rule 23 issue that obviously Rule 23 doesn't -- applies in adversary proceedings but doesn't --

THE COURT: Yeah. I agree. I agree.

MR. BLUMBERG: And in the (indiscernible) case, the committee was a plan proponent. So I don't think we're even at the stage --

THE COURT: Okay.

MR. BLUMBERG: -- actually where that could work.

THE COURT: Okay, okay. Fair enough. Okay. All right.

I thought the next step would be some version of going down matters where I think we're talking about amplification amendment, putting things in the disclosure statement that aren't there right now, or giving the committee a chance to draft their own version of what they believe on some of these points. If anybody wants to proceed differently, tell me.

MS. UETZ: Not proceed differently, Your Honor. I'd just like to make one comment to the Court if I may.

THE COURT: Um-hum.

MS. UETZ: Thanks, Your Honor. Ann Marie Uetz on behalf of the debtor.

The debtor -- well, we're going to -- we're going to receive Your Honor's direction. But I just want to make clear, debtor supports and is fine with the committee attaching its appendix A as you suggested. And we'll be talking --

THE COURT: Well, that's just one idea.

MS. UETZ: That's just one. But I just want to say

we're fine with that.

THE COURT: Yeah.

MS. UETZ: I would also just comment that as to at least some of the things that you mentioned this morning and some of what we anticipate in terms of amendment, we have already prepared some version of that. And we will, following this hearing, share it with the committee and other stakeholders here and try to bring some consensus around those issues. So I just -- we're prepared to make those amendments. Some of them are already drafted, ready to go. And I just wanted to offer that to the Court.

THE COURT: Okay. Well, would it be most efficient to start with those?

MS. UETZ: I mean, the two that really come to mind, they're kind of easy ones I think, is litigation that's been filed since we filed the disclosure statement. We've got that ready to go.

Another one that occurred to me during the break was the subject of OPS. And you said that the transaction that was completed pre-petition wasn't disclosed. And we have that. So those are the two that really come to mind. And I just wanted to kind of convey the spirit to the Court and to the others in the courtroom.

THE COURT: Okay. Thank you very much.

MS. UETZ: You're welcome.

THE COURT: Should we just proceed with the objections by Mr. Weisenberg and your responses?

MS. UETZ: Well, I was -- if there are other areas of amplification that the Court was willing to direct on, we would love to hear that --

THE COURT: Yeah.

MS. UETZ: -- because I think that will help with the argument back and forth and --

THE COURT: Yeah.

MS. UETZ: That's always helpful.

THE COURT: Yeah. Okay.

MS. UETZ: Thank you.

THE COURT: Can I give you -- can I give you some thoughts? Is that okay?

MR. WEISENBERG: Sure.

THE COURT: Okay. Some of these are -- I'm going to try not to overstate them, okay? To the extent we are writing to an audience of abuse survivors, I realize we're writing to their lawyers too, but I very much appreciated the initial description of the plan in what was I think intended to be relatively easy-to-understand language.

I do think that there was a little bit of a mix-up in the beginning between and among the exculpation release and channeling injunction concepts. And I think you can tell that when you look at the language of who's getting what, I think

it's a little jumbled. It might be helpful to just tell people who don't otherwise know what this stuff means that in some circumstances, parties may make contributions that are beyond the debtor's resources. And those parties may want to be released, okay? And that's the thesis. That's the basis for this, is those parties have done something that is helpful, increases the distribution allegedly. I mean, maybe there are fights about whether it's material or not. And that on that basis, it's not inappropriate to ask parties to consent to a release.

Because the Ninth Circuit has made such a big deal about the difference between releases and exculpations, I think a quick statement about why an exculpation is appropriate is a good idea, not just the language of the exculpation, but just participating in this process may -- in good faith may entitle one to ask for an exculpation so that one's good-faith actions taken in connection with the creation proposal, blah blah blah, of a plan and the reorganization process. Those actions may be protected. So the following types of entities may ask for that.

Because I think we do get into some -- I don't think this was intentional, but when we start talking about affiliates and entities of that type, we do start giving some purchase, I think, to the committee's concept that this is way broader than it ought to be, okay? And then we have to be very

careful about that. But I think step 1 is just explaining in a paragraph why there's a basis for a release, why there's a basis for exculpation, who's entitled to that maybe, and what you're going to be asked to do about, you, creditor, are going to be asked to do about that, okay?

I think the channeling injunction is -- I don't know that you can describe it any clearer than it is. The idea is that once this becomes effective, the request is that all requests for relief go strictly to that source and no other, okay?

MS. UETZ: And, Your Honor, if I may.

THE COURT: Yeah, um-hum.

MS. UETZ: You were highlighting at the beginning of your statement the -- I'll call it the introductory executive summary.

THE COURT: Yeah, yeah.

MS. UETZ: We also have an FAQ.

THE COURT: Yes.

MS. UETZ: And I just mentioned that because it could go in both. It could go in one or the other.

THE COURT: I think it should go in both.

MS. UETZ: Okay. Thank you.

THE COURT: Okay? I think it should go on both. So that's -- again, I'm going to hear -- the committee will have more to say about this than I am. But these are my 10,000-foot

areas where I think we could do a little good here, okay? I do think -- again, I think the scope of the relief with respect to the release and the exculpation can be described a little more precisely than it is.

Now I'm going to get into a big subject here, which is the survivor trust documents. I'm going to hear from both of you, but I think it's going to help enormously if those can be ready by the time we're soliciting, okay? Do you want to address it now.

MS. UETZ: We have a draft that we can share with everybody to work toward that, Your Honor.

THE COURT: Okay. Well, no. If that was -- if you were to tell me that's completely --

MS. UETZ: Just (indiscernible) --

THE COURT: -- unrealistic, I'm happy to hear it.

MS. UETZ: -- to everybody else.

THE COURT: Okay. Okay. All right. This is going to sort of cover a couple of different concepts, but the debtor, to their credit, set forth, for lack of a better word, benchmarks in terms of what they think the overall claim aggregate is going to be.

I think there's two concepts there. One is from the committee's standpoint, those were your choices. They would make different ones. I would leave open the possibility either that the committee -- that that's appendix A, that the

committee says, well, wait a minute, if you really want to look more comprehensively at where cases have turned out or what the realistic, estimable values are, we think the following cases are more helpful than the ones the debtor has suggested. And they can also go on to say, and by the way, we're asking the Court to grant relief from stay so we can get a more particular handle on this so people know that that's a distinct possibility.

Now, we may have to be updated. Depending on what I do on the 8th, we may update that further. But I think the I think the committee ought to be heard in that sense that they just do not agree with the frame the debtor has put on this, and their frame would be very different, and they can say what it is.

Similarly, I think that, although I think there was an admirable effort to make the valuation process clear, I don't know if you can say anything more about what you think the basis for the evaluators, both the initial one and then the neutral -- if you have any idea about on what they're going to be basing that, I think you could say so.

MR. MOORE: So, Your Honor, Mark Moore, on behalf of our RCBO.

This is one of the things that's actually governed almost exclusively by the survivor trust documents, which may solve that problem.

THE COURT: Well, at least it'll tell me what you think.

MR. MOORE: Right, because part of the survivor trust documents is going to be the trust distribution protocol.

THE COURT: Okay.

MR. MOORE: And that will set out the exact --

THE COURT: Okay, okay.

MR. MOORE: -- here's the scoring metrics.

THE COURT: Yeah.

MR. MOORE: Here's the possible things taken into consideration.

THE COURT: Yeah. I mean, I don't want to get ahead of myself here. You may believe that plans have been confirmed or disclosure statements have been approved without that. As I look at this from the perspective of an abuse survivor, I just think it's going to be enormously helpful to have that information.

MR. MOORE: As Ms. Uetz said, this is something we've been working on. We are prepared in the next day, week, however long, to be able to share that with the committee.

THE COURT: Okay. Okay.

MR. MOORE: Part of the reason that we did not previously is that typically the survivors trustee has a pretty significant amount of --

THE COURT: Sure, sure.

MR. MOORE: -- input into that.
THE COURT: Sure.
MR. MOORE: As does the claims reviewer, which is a different --
THE COURT: Is there somebody identified yet?
MR. MOORE: We have not.
THE COURT: Okay.
MR. MOORE: That's typically something that's done in connection with the committee.
THE COURT: Okay.
MR. MOORE: Obviously, we haven't reached that step.
THE COURT: Yeah, I would hope so. Okay.
MR. MOORE: And so we can put those documents together with the understanding that it establishes a framework pursuant to the plan and disclosure statement but may be subject to a little bit of change.
THE COURT: Okay. All right. And again, this is not meant to steal the committee's thunder on these. These are my large-scale concerns, okay?
MS. UETZ: Your Honor, can I just ask a question about the one before this?
THE COURT: Yes.
MS. UETZ: Just to clarify what you said or what I heard.
THE COURT: Sure.

MS. UETZ: For the benchmarks in the other cases the debtor has described in the disclosure statement, are you saying that the committee's sort of counter to that can go in in appendix A?

THE COURT: That was my thinking. I mean, we don't have --

MS. UETZ: Okay. That's what I thought --

THE COURT: We don't have to do it --

MS. UETZ: -- I heard you say.

THE COURT: -- that way.

MS. UETZ: I just wasn't certain.

THE COURT: But I'm assuming they have a different universe.

MR. WEISENBERG: Your Honor, we're going to have a lot to say about those charts.

THE COURT: Okay.

MS. UETZ: Okay. Thank you.

THE COURT: Okay. Appreciate it.

The most contentious disclosure statement I ever dealt with as a lawyer was PG&E 1. And there were 75 objections. And we got to the point where -- I'm not trying to be funny here. Judge Montali just said, for God's sake, put it in. If that's what they want, put it in, and we'll figure it out later.

So I'm not trying to make light of this, but there is

a point at which, if we're going to go down this road and we're going to take this seriously as a disclosure statement, where we know there is just a fundamental disagreement, there is nothing wrong with indicating what the basis of that disagreement is and what the other reality is, okay? And maybe -- well, we'll see where we end up. But I think that's a concept we can readily employ.

MS. UETZ: Your Honor. It reminds me of some of the CMC statements that we filed with this Court and the district court where we each have our own --

THE COURT: Yeah.

MS. UETZ: -- the debtor beliefs --

THE COURT: Well, and --

MS. UETZ: -- the insurers' beliefs --

THE COURT: And to that -- yeah. I mean, to that point, I think obviously updates on litigation -- and to the extent that the insurance litigation -- insurance coverage litigation, the description is not up to date in the disclosure statement, it should be up to date.

MS. UETZ: Of course.

THE COURT: Okay. There is also a motion by the committee, I think, to play a more prominent role there, right?

MS. UETZ: That's the understatement of the day, Your Honor.

THE COURT: Okay. S

MS. UETZ: Forgive me but --

THE COURT: All right. Well --

MS. UETZ: I couldn't resist.

THE COURT: I'll forgive myself for understanding that one. Okay. Thank you.

Did you want -- did you want to say something? I'm sorry.

MR. WEISENBERG: Your Honor, I -- no. I was going to say yes to your question.

THE COURT: Yeah.

MR. WEISENBERG: And we'll wait to address all the --

THE COURT: I appreciate it. Okay. Thank you.

I think to the extent that there are particular assets that the committee would identify as, for lack of a better word, pursuable, I think either they can identify those and/or the debtor can say we have chosen not to pursue A, B, C, or D because. And there may be perfectly good reasons why in the debtor's mind, okay?

To a similar end, there is a reservation of rights for a potential avoiding powers causes of action. I think to the extent you are aware of any of those with any particularity, they ought to be described. If you're not aware of them with particularity, you can say so. Maybe the committee is. And that could be another point of disagreement.

We talked about this before, but the general concept

of what's going to be available from the debtor's side, including the churches and other, for lack of a better word, entities within the diocese frame, I think that some explanation of what the debtor's principle is that's guiding what's being contributed and what's contributable and what isn't, not -- and again, not that we're all going to agree on the numbers at this point. We're certainly not. But I think a better understanding of where the debtor is coming from and what's the principle guiding that I think is going to be very helpful, okay?

I know there's a disclosure of the transfer of the cathedral property, but you might want to include some explanation about why. I mean, there's -- it's a fairly significant amount of debt. Maybe in the diocese's mind it's completely awash and no harm, no foul. But if you wanted to describe that, my sense is the committee is going to take a different view of that. And we might as well -- might as well sharpen that up a little bit.

I want to let -- I had some confusion myself about some of the logistics, particularly the litigation option. I think really the committee is probably more all over that than I am. I think my concerns are probably relatively -- they're not as precise, so I'll let them address those. Although I will agree that I got a little lost in the weeds there too in terms of what someone's going to end up with and what's

offsetting against what. But I'll let Mr. Weisenberg and others present that and try to -- I'll try to clarify it in my own head. But it struck me that needed a little bit of help in terms of the explanation.

MS. UETZ: May I make a comment, your Honor?

THE COURT: Yeah, of course.

MS. UETZ: In terms of the objection concerning specifically the offset --

THE COURT: Yeah.

MS. UETZ: -- we've talked with at least some of the insurers during the break. And we expect to be able to resolve that hopefully to the satisfaction of the --

THE COURT: That's a language issue or something else?

MS. UETZ: Probably by withdrawing that offending offset provision.

THE COURT: Okay.

MS. UETZ: So I just want to preview that. And we're going to be having hopefully some discussion about that.

THE COURT: Okay.

MS. UETZ: Almost, like, put a pin in it. But --

THE COURT: That's okay.

MS. UETZ: It'll hopefully not be of the pin for very long.

THE COURT: Okay. So those are in a very big picture my thoughts about where I know we're going to need a little

help here, okay? And that's not to take any of the thunder out of Mr. Weisberg's presentation. But that's just -- as somebody who has not lived with this as much as you guys have, this case and this document, those are my thoughts.

So do you want to come on up and kick us off here?

MR. WEISENBERG: Thank you, Your Honor. Brent Weisberg on behalf of the committee.

Your Honor, we would suggest to proceed differently.

THE COURT: Okay.

MR. WEISENBERG: And it's consistent with the mantra that we've said many times today, which is there are gating issues that this Court needs to decide.

THE COURT: Okay.

MR. WEISENBERG: And if ultimately you agree with us, then there is no sense moving forward.

The easiest two examples, although easily solvable admittedly, is the definition of a release and exculpated party. It was not hyperbole, Your Honor, when we said if you read the release --

THE COURT: Right, as that --

MR. WEISENBERG: -- as written --

THE COURT: Yeah.

MR. WEISENBERG: -- the San Francisco Archdiocese will be released and the Holy See will be released. I suspect that is not what the debtor intended, and so they need to fix that,

okay?

With exculpation, it's a little more challenging. Your Honor. There is a Ninth Circuit decision which provides that parties who are integral in the plan promulgation process are entitled to an exculpation. Yet the debtor lists four or five entities, their brothers, sisters and aunts, all of whom are entitled to an exculpation. That is inconsistent with Ninth Circuit law. And so as drafted, the plan cannot be confirmed.

THE COURT: Okay. Now because these things can be a moving target and fixable, is your request that I address that in terms of what I believe my answer would be or something else?

MR. WEISENBERG: Your Honor, again, we want to be constructive.

THE COURT: Well, I appreciate that.

MR. WEISENBERG: And so --

THE COURT: That's why I'm asking in the same spirit.

MR. WEISENBERG: Yeah. And if Your Honor agrees with us and says I would like the debtor do this, that, and the other thing, of course, we'd like to see them do that now.

THE COURT: Okay.

MR. WEISENBERG: I think the trickier piece, Your Honor, and I think you and I may have been talking over one another, is when we're talking about the liquidation analysis.

I think there's two issues there. There's not just a disclosure issue, which is the debtor believes it does not need to contribute these assets because. The other issue, the more fundamental issue, is we don't believe the debtor has a right to make that decision.

Like we said before, this is a fundamental protection, in fact, one of the only protections that a group of creditors who doesn't agree to a plan has. And under the debtor's worldview, they can pick and choose how that analysis is done. And that just can't be the intent of the drafters. The intent of the drafters provided two vital protections to make sure that creditors who did not consent to a plan were nonetheless protected. The absolute priority rule, which we understand also, the debtor argues we're a nonprofit, that does not govern us, and the hypothetical liquidation test.

And so if the debtor is permitted to say you can never compel us to sell our churches because that would be a First Amendment violation, it obviously greatly skews what are the assets of the estate. In turn, it greatly skews what's fair and equitable. And so we need Your Honor to give us guidance today or before the disclosure statement could ever be approved about whether that liquidation analysis is accurate, because if it's not, creditors are going to pick up the disclosure statement and say wow, I'm doing better than if this were liquidated. We don't believe that's the case. We believe that

Your Honor needs to determine what is and is not assets of the estate.

THE COURT: Can I ask you a question? I think I know what the answer is, but you're going to help me out. Could I find both that the debtor could not be forced to sell all the churches and the plan isn't fair and equitable?

MR. WEISENBERG: Yes.

THE COURT: Okay. I mean, that's where I'm kind of headed here, okay? Because look, it's a hypothetical test. And there's a point at which -- can we make them sell this church? Maybe not. Should we be in a Chapter 11 and confirming a plan? Maybe not. Makes sense?

MR. WEISENBERG: It does, Your Honor. But I think the quibble I would have with your analysis is if we move forward in that paradigm, it makes it easier for you to find that the plan is fair and equitable because we're not using an accurate liquidation test. What we're arguing is on its face, this plan fails that test.

If we go your route, there's a lot more subjectivity as to whether the plan is fair and equitable because they may satisfy that test on its face because you've determined, okay, I'll agree with you guys, for the time being, you can never be compelled to sell your churches. The churches -- conservatively, the real property 400 to 700 million dollars, Your Honor. Okay? This is a billion-dollar real estate

enterprise.

Again, getting back to the intent of the drafters of the code, it cannot be the intent that an entity rich in real estate, arguably poor in cash, can get away with paying pennies on the dollar and saying -- folding their arms and saying you can't compel me to sell my real estate. And, Your Honor, no one's saying that you have to. All you have to do is say I cannot confirm this plan. You're not -- no one is asking you to compel them to sell churches.

And again, like Your Honor just said, it is a hypothetical test. The Boy Scouts court recognized that.

THE COURT: And would I be wrong in your mind to say if there's a limiting principle here, the debtor needs to tell us what it is, and we can -- I can agree with it or not?

MR. WEISENBERG: I would love to hear, Your Honor, what the validity is. And I'd also like to --

THE COURT: Well, I would too. That's why --

MR. WEISENBERG: I would like --

THE COURT: That's what I'm asking for.

MR. WEISENBERG: Yeah. But I'd also like the ability to challenge their assertions.

THE COURT: Of course.

MR. WEISENBERG: We know -- listen, we know what the assertion is going to be.

THE COURT: Yeah.

MR. WEISENBERG: The assertion is going to be you violate my First Amendment right by compelling me to sell churches.

THE COURT: Yeah. But my --

MR. WEISENBERG: It is a hypothetical test.

THE COURT: Okay.

MR. WEISENBERG: It can never happen.

THE COURT: Okay. But my point is, for disclosure statement purposes, is it enough for them to articulate whatever that basis is and then we argue about that at confirmation?

MR. WEISENBERG: I don't think so, Your Honor.

THE COURT: Okay.

MR. WEISENBERG: Again, I think you are skewing a creditors' view of the fairness of the plan even with descriptions that say the debtor asserts this, the committee asserts this. I think that's very different from providing an accurate liquidation analysis, which a creditor is entitled to, where they can look at the plan, look what they're receiving, and compare it to a Chapter 7.

THE COURT: Okay. Let me give you another version of it, see if this makes any more sense. They could file -- they could put together liquidation analysis says look, but for our arguments re the First Amendment and we can't be liquidated, the value of the real estate minus any existing debt is X. The

debtor's position is they'll never be -- they will never be compelled to do that, but just so if you want a number, here's a number. But there will be a disagreement at confirmation about what's fair and equitable and what is required of an entity in this scenario.

MR. WEISENBERG: I'm not sure that solves our problem, Your Honor, for the reasons we've been explaining, which is if ultimately we are correct at plan confirmation, what have we achieved? We --

THE COURT: Well, we know we're not going to confirm a plan.

MR. WEISENBERG: Right.

THE COURT: I think, right?

MR. WEISENBERG: Well, that's correct.

THE COURT: Okay.

MR. WEISENBERG: But we haven't addressed other gating issues, right, which is through the plan, Your Honor, the debtor essentially seeks to gloss over the most meaningful issues of this case, what are its assets, what are its liabilities, okay? We have complaints on file and a motion on file to get those answers. If we go the plan route and you do not hold that it's confirmable for any number of reasons, but right now for our dialog it's because the plan does not comport with the Chapter 7 liquidation, we don't have any answers to those questions.

And so isn't it better now in the same way you want to address the third-party release issue to know the rules of the game so that when a creditor picks it up, they have an accurate analysis? That's what we're afraid of, is you could punt any issue down the road, but is it actually economical?

THE COURT: Well, to me -- I'm not trying to -- I'm not trying to argue with you. But there's a difference in punting and if there is a scenario in which some debtors cannot be compelled ultimately to do the thing that is the test. You could say the test is this, this is the number. Just so you know, if this were any other kind of case, it's 700 million dollars. The debtor contends that it will never be in that position. And it offers as a principled answer to that question that the following is available and the following isn't available. I mean, to me, that's not punting the question. That's articulating what the difference is in the opinions between your side and their side.

MR. WEISENBERG: I was about to say, with all due respect, but I think we know in --

THE COURT: In my humble opinion. I know. I know.

MR. WEISENBERG: We know that as off limits.

THE COURT: No, it's never off limits. I get to say in my humble opinion.

MR. WEISENBERG: With all sincerity --

THE COURT: Yeah. That's --

MR. WEISENBERG: -- I still find that solution problematic because Your Honor can decide this as a matter of law. I don't think it's fact-based, okay? It's an interpretation of the Bankruptcy Code and the test. And so again, I would agree with you if there are factual issues that needed to be determined.

THE COURT: Okay. Then let me ask you this. Should I determine now that there's no First Amendment issue here and no liquidating a nonprofit? Should I determine that right now?

MR. WEISENBERG: I think you would need briefing, Your Honor. It's a very, very important point. As you can tell, we are making a lot of it because it's one of the fundamental protections. So humbly we'd suggest that we both be allowed to brief the issue.

THE COURT: Okay. Do you want to pause for a minute? Because this is a biggie. Okay. And let me hear from whoever -- one or more of the worthy counsel.

MS. UETZ: Your Honor, I think it's going to be Mr. Moore and Mr. Lee --

THE COURT: Okay.

MS. UETZ: -- if it is okay with the Court.

THE COURT: I don't mind. Mr. Weisenberg, are you okay with that?

MR. WEISENBERG: Of course, Your Honor.

THE COURT: Okay. Can we start with some of the

less -- well, maybe the less contentious matters, the language of the release and the exculpation?

MR. MOORE: Thank you, Your Honor. Mark Moore on behalf of RCBO.

And I'm going to defer to Mr. Lee as we get into arguments about what is patently unconfirmable versus what isn't because that was going to be how we kind of broke this up.

THE COURT: Okay.

MR. MOORE: I do think that the Court has already somewhat solved both of these issues. And by both I mean the hypothetical liquidation analysis test, whatever you want to call it, and the releases because we've already heard the Court say that we need more precision, frankly, on who's getting exculpated and why, who's getting released and why --

THE COURT: Yeah.

MR. MOORE: -- what the implications of those things would be. And so we hear that. And we will make those alterations --

THE COURT: Okay.

MR. MOORE: -- in both the executive summary and in our FAQ-like formulation.

THE COURT: All right. Do you have any doubt about what the tension points are?

MR. MOORE: No, Your Honor.

THE COURT: You've heard it.

MR. MOORE: and I think we can be absolutely certain that we didn't intend to provide for a release of the Archdiocese of San Francisco, for example.

THE COURT: Okay. All right.

MR. MOORE: And that kind of illustrates why we may need a little bit more precision.

THE COURT: Montali would be so upset if you did.

MR. MOORE: Well --

THE COURT: He'd have nothing to do.

MR. MOORE: I think you'd have a lot more lawyers in the room probably. So that's just one example of how that issue can be resolved through more disclosure and more precision.

THE COURT: Yeah. But I agree that's a now issue. You do too, right?

MR. MOORE: I'm sorry?

THE COURT: That's a now issue, let's fix that now, right?

MR. MOORE: In the disclosure statement, yeah.

THE COURT: Yes.

MR. MOORE: Absolutely, Your Honor.

THE COURT: Yes.

MR. MOORE: The second issue, to the extent that we need to talk about what the argument is, I'm going to defer to

Mr. Lee. But I think that the Court actually paved the way for the resolution of that issue as well, because the Court already indicated that we need to provide you with the why, the why of the debtor's, for lack of a better way to put it, business judgment in proposing the plan and putting out what is conservatively, we think about 160 million dollars, maybe 150 million dollars from the debtor alone. That's not pennies on the dollar. That's a significant and meaningful contribution.

And you've already said that we need to provide the why of that. How did we get to those numbers? What do we believe is or is not to be included and why? And we hear you. That is something that we can do in a revision to the disclosure statement.

THE COURT: And I'm not trying to be cynical when I say this. I don't know what's the chicken and what's the egg here between we think this is fair and we think the claims are worth this much.

MR. MOORE: Absolutely.

THE COURT: I don't know which -- I don't know where you're starting, if you're starting with the claims analysis or you're starting with what you think is available, and those are just magically syncing up.

MR. MOORE: Well, I think --

THE COURT: I don't mean -- that sounded way more cynical than I meant it to sound.

MR. MOORE: I think that it's appropriate in the context of your prior comments where you said we need to understand where you start, debtor, because you are the plan proponent.

THE COURT: Yep.

MR. MOORE: And you need to provide a little bit more information about that --

THE COURT: Yeah.

MR. MOORE: -- about how you get there, why you get there, what the arguments are, which we can do.

I think the Court has also given the committee an opportunity, and we've agreed to it, to provide their view and provide their appendix A or their committee letter or whatever you want to describe it, which is where if they believe that there's real estate that should be available that's worth 400 to 700 million dollars, they can say that and they can say why, and they can say what they rely on for that. I think that the Court has already given kind of that link that maybe solves that problem.

But then finally, Your Honor, and this is where Mr. Lee can maybe take over for me, these are ultimately confirmation issues. These are ultimately your discretion to approve or not approve the plan if we get to the point where claimants vote it down. Where we are right now, Your Honor, is that we don't actually know what claimants believe. We know

what counsel says that they'll probably believe, but we don't really know. And we do believe that the disclosure statement, as directed to be amended by you, will provide them with a meaningful opportunity to tell us. And at that point, we'll be much more informed about what they think about all of this.

And it, frankly, sounds a little bit like the committee saying, well, they may think that this is a good idea and that's helpful or it's not. But ultimately, what you're describing is a confirmation issue where the Court is going to have to make a decision.

THE COURT: How do you react to the suggestion that we maybe brief this question of whether you could be compelled to sell all assets and possibly liquidate, for lack of a better word.

MR. MOORE: Your Honor, I think it's part and parcel of what the Court will ultimately determine in confirmation. So we're very much aware that that is going to be a contested legal issue. I'm not sure that it should be, but I think that the time for briefing of that will come. I don't think the time for briefing for that is now.

THE COURT: So help me out here. I think I know the answer to this. Just read from the language of the Code, I think Mr. Weisenberg is not wrong that there is some very direct language about the best interest tests. It's a big deal to protect creditors. And your argument is that there's a

superseding principle here or because it's a hypothetical test, even if we gave you a number, it would be useful only in some sort of fair-and-equitable context that's arguably different and must be adjudicated as part of a plan or something -- well, choose either of those or both or more. So tell me how this plays out for you.

MR. MOORE: Your Honor, hold on.

THE COURT: If you guys want to -- if you want to switch up here, feel free.

MR. MOORE: Okay. And this was actually going to be part of the second (indiscernible) --

THE COURT: Okay.

MR. MOORE: So I'm going to defer to Mr. Lee.

THE COURT: Yeah. Sure, sure, sure. Okay.

MR. MOORE: Thank you.

THE COURT: Okay. My question makes sense?

MR. LEE: Matt Lee for the debtor. Can you repeat it, Your Honor? I'm sorry.

THE COURT: Yeah. What I'm being told is, look, this is a gating issue because 1129(a) -- I forget which now. Maybe (10).

MR. LEE: (7).

THE COURT: (7)? Thank you. Says, look, it is an absolute requirement that one demonstrate that the confirmation is in the best interest of the creditors because they are doing

at least as well under confirmation as they would under a under liquidation. So there aren't any off ramps built into that per se.

But you could tell me any number of different things. You could tell me, well, there's a superseding issue here, which is that we can't be liquidated under applicable nonbankruptcy law. And I need to be respectful of that and play that into the bankruptcy analysis. Or because it's a hypothetical test, all you really need to do, you could show that in the abstract. Okay, it's 700 million. Who cares. Doesn't matter. It can't be done. So it becomes a fair-and-equitable test that we have to deal with at confirmation and not before.

Those are my -- those are two ideas for how you might think about that, but you may have others.

MR. LEE: Your questions and your ideas make sense and are clear. May I start with a clinical discussion of what 1129(a)(7) says?

THE COURT: I'm not sure I've heard one before, so I guess I'm looking forward to that.

MR. LEE: I hope "clinical" is the right adjective.

THE COURT: Is this from personal experience or --

MR. LEE: Going to claim privilege on that.

THE COURT: Okay.

MR. LEE: 1129(a)(7)(A) gives the debtor an either-or

proposition for satisfying it.

THE COURT: Uh-huh.

MR. LEE: The first of the either-or, the first option, is that all impaired classes vote in favor of the plan.

THE COURT: Um-hum.

MR. LEE: The second option, if not all impaired classes vote in favor of the plan, then you have to satisfy the best-interest-of-creditors test.

THE COURT: Or for a dissenting class.

MR. LEE: Correct.

THE COURT: Okay.

MR. LEE: Yes. Because we're at the disclosure-statement phase of the case --

THE COURT: Um-hum.

MR. LEE: -- what matters now is not whether we can establish the 1129(a) requirements. What matters now is whether there's anything structural inherent in the fabric of the plan that makes it impossible to satisfy an -- to satisfy the 1129(a) requirements. And the committee has not argued and cannot argue that standing here today, it is impossible to confirm a plan under 1129(a)(7)(A)(i), that a holder of a claim in each class -- I'm sorry, that each class has accepted the plan, each impaired class has accepted the plan. We have four noninsider -- there are four noninsider classes in this plan, 3, 4, 5, and 6.

THE COURT: Um-hum.
MR. LEE: 3 is general unsecureds.
THE COURT: Um-hum.
MR. LEE: 4 is the abuse claimants.
THE COURT: Um-hum.
MR. LEE: Holders of abuse claims. 5 is the holders of unknown abuse claims.
THE COURT: Unknown. Unknown. Yeah. Uh-huh.
MR. LEE: And then 6 is the nonabuse litigation claims, so the slip-and-fall cases.
THE COURT: And those are just, they're riding through, right, basically?
MR. LEE: That we're establishing a reserve and then making insurance available for them.
THE COURT: Okay.
MR. LEE: Under the current draft of the plan.
THE COURT: Okay.
MR. LEE: So on the issue of whether the plan is patently unconfirmable, it is not patently unconfirmable because it is possible -- it is not impossible -- that all four of those impaired classes could vote to support the plan. The committee is going to swear up and down, and they have sworn up and down, there's no way class 4 is going to support the plan. But they don't know that. I don't know that. You don't know that.

THE COURT: Um-hum.

MR. LEE: Okay. So for purposes of the disclosure statement, we don't have to get in at all into whether our liquidation analysis is good, is bad, is complete, or is incomplete. As it is, because I want to be responsive to your question and responsive to the --

THE COURT: Um-hum.

MR. LEE: -- committee's arguments, because it is an important issue, obviously. In the event that we can't satisfy, that the debtor cannot satisfy 1129(a)(7)(A)(i), we have to go to (ii), the best interest of creditors test. And obviously, this is what the committee's objection focuses on. And the debtor did, in fact, do a liquidation analysis. Nobody's disputing that the debtor did a liquidation analysis. The question is whether, at this phase, the disclosure statement -- I mean, even then, the question is whether at this phase, does the disclosure statement accurately describe the liquidation analysis.

Now, to your point, there are assumptions in the liquidation analysis that we're making and legal arguments that we're relying on for including or excluding certain things that are not in the disclosure statement as it's currently drafted. And I think what you've heard from us today is that we are absolutely willing to put that basis into the disclosure statement and also to give the committee an opportunity to

respond.

So that's why I agree with Mr. Moore. On the subject of briefing, it's premature to brief that. Okay. That issue is going to get hashed out at the confirmation phase. It's not the debtor's burden to prove that its liquidation analysis is sound at the disclosure statement phase. And the reason for that is because it's still possible that all the impaired classes are going to vote to approve the plan. So we might not, in theory, ever even have to get to the liquidation analysis. If we have to get to the liquidation analysis, Congress has set up a process that you do that at confirmation.

You want to know what our disclosure statement is going to say about the legal basis for including or excluding certain items. Okay.

THE COURT: Um-hum.

MR. LEE: I'm happy to get to that. If there were a Chapter 7 liquidation in this case, committee is incorrect about what assets have to be included. The committee's position is that all of the debtor's assets have to be included. And that's simply not the law in the Ninth Circuit. There's a case that we cited in our reply brief.

THE COURT: Um-hum.

MR. LEE: Security Farms v. the Teamsters. I'm just going to call it Security Farms because the name of the union's quite long, and it appears twice in the Ninth Circuit decision.

So I'm just going to call it Security Farms. The Court, I mean, in that case, obviously it wasn't a religious institution. Okay. But it was about a labor organization that was heavily -- that is heavily regulated by the National Labor Relations Act.

THE COURT: Um-hum.

MR. LEE: And the court affirmed the exclusion of two key assets that the creditors wanted to be valued, liquidated, and the proceeds of the liquidation used to pay creditors. One was the collective bargaining rights of the union, and the other -- I'm sure you know this. It's a twenty-three year old case. But one was the collective bargaining rights of the union, and then the other was the right to collect future union dues. And what the court said was, look, those assets, even if liquidated, cannot be used to pay creditors because as a matter of federal law, they are dedicated for specific purposes. The benefits of the members. The benefits of the union itself. You can't include those, even in a hypothetical liquidation --

THE COURT: Um-hum.

MR. LEE: -- analysis. So I think maybe a corollary in our case would be -- I'll get to the First Amendment issues in a moment and the idea of selling church buildings, but I'll start with restricted funds.

THE COURT: Um-hum.

MR. LEE: Okay. That's a creature of California state

law. Somebody makes a gift to a church. It's earmarked for a specific purpose. That gift, the church can't take that money outside of bankruptcy. Outside of the insolvency context. The church can't take that gift and pay the light bill. Can't take that gift and buy the bishop a car. Can only use that money for the purpose that the donor has granted to it.

So in a hypothetical Chapter 7 liquidation, the same is true. That money is not available to pay creditors because the donor intent restricts it to that specific gift, okay, and the purpose that the donor made the gift.

So now we'll get into the First Amendment issue. Do you have any questions about that as --

THE COURT: Well, I mean, it's "property of the estate but", right?

MR. LEE: I think it's not property of the estate --

THE COURT: Not property of the estate?

MR. LEE: Because of the restricted nature of the asset, it's not available to pay creditors. Now, again, it doesn't mean that it's available to pay the light bill, but it means that, under California law, it's not available other than for the specific purpose --

THE COURT: Okay.

MR. LEE: -- that the donor made the gift for.

THE COURT: This is very helpful, but in some ways, the principle I have was the debtor should say why. You're

doing that now. The committee may not agree with you. And that's a fight -- I mean, my original conception of this is it's the debtor's obligation to provide a rationale for this, and it's the rationale that can be -- that can be reacted to and that can tee up the issue at confirmation so we know at -- and people want to take discovery about this, that's fine, and file briefs at that. My sense was that this was a definition question, a disclosure statement time, and an argument question at confirmation.

MR. LEE: We agree, Your Honor.

THE COURT: Okay. But I'm not trying to cut you off. It's helpful.

MR. LEE: I won't be cut off. I'll answer your question because I think this is kind of --

THE COURT: Yeah.

MR. LEE: -- where the discussion is leading.

THE COURT: Uh-huh.

MR. LEE: There's a supreme -- there's a body of Supreme Court case law that talks about what is the -- what are the limits and what are the -- what is the scope of the free exercise clause. What is the scope of the establishment clause. That's an understatement. There's tons of cases on that.

But specifically as to how you square religious missions with generally applicable, laws that apply to all of

us, there's one in particular that I want to highlight. It's a 2012 decision. It's called Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, Equal Employment Opportunity Commission.

THE COURT: Um-hum.

MR. LEE: It's a 2012 case. It was a unanimous decision of the court. And in that case, the court was dealing with the ministerial exception. I don't know if you're familiar with the case. I don't want to --

THE COURT: Not as much as you are. Go ahead.

MR. LEE: It just means you hadn't read it in the last two days. But so the case is dealing with the ministerial exception --

THE COURT: Um-hum.

MR. LEE: -- to the employment discrimination laws.

THE COURT: Um-hum.

MR. LEE: Discrimination and retaliation laws. In that case, it was a disability claim against a chapter of the Lutheran Church. And they had fired a minister for not following church protocols in dealing with her issue surrounding her disability. And so she sued for disability discrimination and retaliation. And the unanimous court said, no -- she was a minister. I'm sorry. She was an ordained minister who had taken vows and agreed to be bound by specific code and specific set of conduct.

THE COURT: Um-hum.

MR. LEE: And what the what the Court ultimately held -- I'll read a brief quote from it.

"Requiring a church to accept or retain an unwanted minister or punishing a church for failure to do so intrudes upon more than a mere employment decision. Such action interferes with the internal governance of the church, depriving the church of control over the selection of those who will personify its beliefs. And by imposing an unwanted minister, the state infringes the free exercise clause, which protects a religious groups right to shape its own faith and mission through its appointments. According to state, the power to determine which individuals will minister to the faithful also violates the establishment clause, which prohibits government involvement in such ecclesiastical decisions."

Now, the decision of when and where to establish a church, a Catholic Church, or to sell property with a church building on it is fundamental to the mission of the church, and it's fundamentally a decision left to the bishop of the diocese in which the church sits.

In the Catholic faith, the church building itself is of significance that is difficult to describe. I'm going to try and do it for you now. The church is where the faithful

experiences the Holy Trinity. You walk into the church. You are in the presence of God. You go get communion. You receive the body and blood of Christ. And the whole time you're there, you're surrounded by the Holy Spirit descended upon those gathered there. It is the mission. It is the church.

And yes, it's a piece of real estate. And yes, it's a piece of real estate on planet Earth in the State of California, United States of America. But to tell the bishop that he has to close X number of churches or that he has to close this church or he has to sell this church and combine that congregation with another congregation fundamentally infringes on the debtor's First Amendment rights and on the bishop's First Amendment rights. It substitutes church doctrine for the will of the Court. And our position is going to be that the Court can't do that. That the government can't do that.

Now, I want to say what we're not saying. We are not saying that this applies to every asset. We are not saying that it means we are exempt from any particular requirement of 1129. It does not mean that we can get around the fair-and-equitable point. We have to propose a plan that's fair and equitable.

The plan we've proposed -- and we could perhaps be more specific about this in the disclosure statement as well. But the plan that we have proposed depends upon the sale of

church real estate, vacant land, and land that is not vacant. It depends on it. It depends on it to make our plan payments, which are significant, 103 million to the survivors trust from the debtor, reorganized debtor, over the course of a four-year period after the effective date, including a 63-million-dollar payment on the effective date of the plan. How are we paying for that? We're taking out a fifty-five-million-dollar loan --

THE COURT: Um-hum.

MR. LEE: -- from the Roman Catholic Cemeteries of Oakland. And it's a real loan. We're going to give them mortgages on other properties, which then we're going to have to sell -- we're going to have to sell assets to pay that off. So not only are we paying 103 million to the survivors, we've got to pay back our lender and we've got to make all of our other payments.

THE COURT: Um-hum.

MR. LEE: We can consensually and the bishop can consensually and has acknowledged that he's willing to do that. He's willing to alienate church real estate in order to do right by the survivors. But as far as the 1129(a)(7) argument goes, and specifically 1129(a)(7)(A)(ii), our position is going to be that the we cannot be, in a hypothetical Chapter 7 liquidation, forced to sell buildings with churches on it because of the reason I described. Briefing on this will be much more eloquently stated --

THE COURT: Um-hum.

MR. LEE: -- than what you've heard today --

THE COURT: But your position is that for today's purpose, what I need to direct you to do is articulate exactly what these principles are so that at confirmation, with further briefing, we can have an intelligent argument.

MR. LEE: That's exactly what I'm saying, Your Honor.

THE COURT: Okay.

MR. LEE: I agree with you.

THE COURT: All right.

MR. LEE: And if I can add --

THE COURT: Yeah.

MR. LEE: -- none of this makes the plan patently unconfirmable sitting here today because of the clinical argument I made before.

THE COURT: No, but I do think -- I mean, I don't think it would be -- I may not make a ruling on this now. I don't know that it would necessarily be out of bounds to include in that presentation that it may be that if the Court is not convinced that the diocese has the winning legal position here, the plan isn't confirmable because I think at that point, we're just going to be -- we may be at the end of our rope, and it may be that Chapter 11 is not a viable concept anymore if I agree more with the committee than I agree with you.

MR. LEE: Or it may be that you order us to redo the liquidation analysis, including --

THE COURT: Okay. I mean, you tell me where the hard stop is on that. Okay.

MR. LEE: Well, if we're talking at confirmation, I think you have a number of options. I think for today's --

THE COURT: And look, I mean, the elephant in the room. You guys are going to talk. Right. And this is a highly iterative process. I have no illusions that this is the last-and-best offer at all, nor do you, nor does the committee, which is another reason why, if this is a moving target in that sense, it's one that ought to keep moving and not stop now, right, is what you're going to tell me?

MR. LEE: Yes, Your Honor.

THE COURT: Right? Okay. Got it. All set?

MR. LEE: On 1129(a)(7), yes.

THE COURT: Okay. Is there something else you want to talk about?

MR. LEE: They raised the number of patent --

THE COURT: Okay.

MR. LEE: -- unconfirmability issues. I'm happy to let you --

THE COURT: Well, I wanted to pause on this one and get everybody's input. Okay. But Mr. Weisenberg, it's your objection, so you get the last word. Okay.

MR. WEISENBERG: Thank you, Your Honor. Mr. Prol is going to take the last whack at it.

THE COURT: Okay. Thanks. Appreciate it.

MR. PROL: Thank you, Judge. Jeff Prol, Lowenstein Sandler, on behalf of the committee.

THE COURT: Um-hum.

MR. PROL: Just addressing this 1129(a)(7)(A) issue --

THE COURT: Um-hum.

MR. PROL: -- the debtor argues that the committee cannot argue that the plan is patently unconfirmable because they can potentially meet the Romanette (i). And we would argue in response to that, Your Honor, that what we're trying to do here is to eliminate a costly detour and frolic.

THE COURT: Yeah.

MR. PROL: And that if, ultimately, this Section 1129(a)(7)(A)(i) and (ii) cannot be met, we shouldn't spend the time or the money that the debtor says it doesn't have to go on a --

THE COURT: Um-hum.

MR. PROL: -- three, four, five, however-long-month junket it is to go through discovery --

THE COURT: Yeah.

MR. PROL: -- and a confirmation hearing and that this issue can be determined as a matter of law, either today or after subsequent briefing, before we go through that process.

Although they say the committee can't argue that they cannot meet Romanette (i), I will tell you that there are only two cases, two diocese cases, that have ever gone to solicitation of a plan without the consent of a committee. And both cases, the tort claim has voted more than ninety percent to reject the plan. So I think that that -- and we reference those cases in our brief. I think Your Honor can take judicial notice that it's very unlikely that this case will be any different than the only two cases in history that have proceeded down that course.

Secondly, with regard to Romanette (ii), the debtor conflates a hypothetical liquidation test with somehow Your Honor forcing them to sell churches. That's not the case. In a hypothetical liquidation test, the debtor has to show what the assets would bring in a liquidation. They don't have to sell them. The point is, and Your Honor made this in your opening comments, you don't have to confirm the plan. If they don't meet this test --

THE COURT: Um-hum.

MR. PROL: -- Your Honor cannot confirm the plan. And it has nothing to do with whether or not you can force them to sell churches. It has nothing to do with religious freedom. Okay. They ultimately don't have to sell churches. They can raise the money somehow else.

I haven't read the Security Farms case, but Mr. Lee's

recitation is that there were two key assets that were excluded, and I wrote this down, collective bargaining rights and the right to collect future dues. In a liquidation, I'm assuming the collective bargaining rights aren't worth anything because they go away, and future dues don't exist because they're not collected. And that could be the reason why the court didn't require them to value those particular assets. Completely different than valuing real estate in this case.

The terms of the argument with regard to religious freedom and the establishment clause, again, I don't think that that really weighs in in this case. So this is a hypothetical liquidation. It's not an actual liquidation. It doesn't prevent parishioners from continuing to worship in their churches or in other churches.

And I don't have the citation at hand, but I think we cited a case in our papers that stands for the proposition that even if churches are liquidated in a bankruptcy case, it's not the only church. There are other churches in the area. And we did cite in our papers the fact that the bishop here, pre-bankruptcy, did engage in a mission realignment process, where he himself acknowledged that the diocese, because of the economic condition, because of the survivor liabilities here, would have to close churches. And if that's necessary, it's necessary, but again, it's not impacted by the 1129(a)(7) test, which is only hypothetical. Okay. Thank you, Your Honor.

THE COURT: Thank you. Anything more on this?

No? Anybody else want to be heard?

No? Okay. Let me make a quasi-ruling. I'm very aware -- I appreciate everybody's concern about the status of the case now and the burn rate and the need to move forward. I also appreciate that, where you have an objection that really is, as a matter of law, not resolvable, one should not go through the exercise of soliciting a plan. This doesn't fall there for me for a couple reasons.

I think a disclosure statement time, the exercise is for the debtor to articulate a basis on which they believe they could confirm a plan and that plan is, in their belief, fair and equitable and meets the other 1129(a) requirements. I'm hearing loud and clear what the committee is saying about their views of the plan and what's happened in other situations where a plan's gone out without committee approval. I'm going to, notwithstanding that, focus more on teeing up the issues and framing the issues because I do think there is at least an argument that a hypothetical test is appropriate here.

And look, you can create two versions of a balance sheet. You can create one that says, okay, if we sold everything, here's the result. We don't think that's pertinent to anything. We think, based on the principles we're articulating in another portion of the disclosure statement, that it is a principled position that the result of a

liquidation would be X.

And then we will argue about that. And the committee will take a very different view of it. And having articulated that, I think the debtor should say something along the lines of there is a material risk that if the Court does not agree with the debtor about this limitation and the debtor is not able otherwise to make assets available and satisfy what the debtor -- what the committee will say is the hard-and-fast liquidation analysis. We may not be able to confirm a plan in this case. Period. End of story. The case may have to be dismissed. I think it's just about that stark.

And I'm not trying to be funny here. I also think because this is a highly iterative process and because maybe I'm kidding myself that this case has been especially constructive and cordial, and I think it has been, that the opportunity for further discussion here and to reach some accord is alive, even though I thoroughly expect the committee to say, we think this plan is unconfirmable. We think the values are not in line with reality. I get all that. It doesn't mean that there can't be further discussion and this is not a solvable problem. This is potentially a solvable problem.

So I think I'm going to ask the -- I'm going to require that the debtor articulate the basis for whatever limits it thinks it has with respect to assets available. And

if that includes assets that the debtor believes it may hold but are not property of the estate, okay, they can articulate that too. And the committee may say, well, it is property of the estate, and therefore, that precludes the State law analysis you want to provide us re the use of the property. We can have those fights.

But I think, for today's purposes, for disclosure statement purposes, this is a matter of definition, sharpening up the question and making sure we all understand what we're going to be talking about before and during confirmation so that everybody knows what the risks are. All right. Thank you very much for the very good arguments on that.

MR. PROL: Just to be clear on that --

THE COURT: Yeah.

MR. PROL: I'd like to understand and make sure that if the debtor is going to put in its liquidation analysis and its explanation, the committee will have an opportunity --

THE COURT: Absolutely.

MR. PROL: -- to criticize that --

THE COURT: Oh, absolutely.

MR. PROL: -- and put it in its own liquidation analysis.

THE COURT: Absolutely. I mean, why not. Right.

MR. PROL: Yeah. Yeah.

THE COURT: Absolutely right. Yeah.

MR. PROL: And Your Honor, we --

THE COURT: And that's beyond the briefing. I mean, that's just something that people can look at that. I get it.

MR. PROL: Okay. And Your Honor, just structurally, we've talked before about the committee attaching an appendix A on some of these issues.

THE COURT: Yeah.

MR. PROL: I think it would be much more helpful to the reader if it appeared in the text of the document, rather than having to have creditors have to read a separate document. So if the debtor puts in its liquidation analysis and explanation, we should be able to have a paragraph right below it that says, "the committee says".

THE COURT: Anybody have a reaction to that?

MS. UETZ: Yes. Your Honor, it's not uncommon for there to be a letter. An appendix. Something. But to have the debtor's disclosure statement confused with statements by the committee in the middle of it, we think, would actually worsen the disclosure. So keeping it in a separate appendix makes the most sense.

THE COURT: Well, if we do that, I think it's incumbent on the debtor to say at each one of those places--

MS. UETZ: Sure.

THE COURT: -- the committee vigorously disagrees, and their explanation is included at. Okay. And please read that

for a full understanding of the competing positions. Okay.

MS. UETZ: Noted.

THE COURT: I think that's what I want to do on that. Okay.

MS. UETZ: Thank you.

THE COURT: Okay. We have more to talk about.

MR. WEISENBERG: Brent Weisenberg on behalf of the committee. I think the next issue is somewhat related and --

THE COURT: By the way, anybody want to take a break? Been going about an hour and a half.

MS. UETZ: Everybody said yes.

THE COURT: Okay. All right. I didn't mean to cut you off. You want to tell us what it is so we can come back with anticipation?

MR. WEISENBERG: I've been voted down. I'm happy to take a break, Your Honor.

THE COURT: Okay. Thank you very much. All right. Thank you. How long, folks? Ten minutes? All right. Five-to-3? Okay. Thank you.

(Recess from 2:44 p.m., until 3:03 p.m.)

THE CLERK: Come to attention. The court is back in session.

THE COURT: Okay. Please be seated.

MR. WEISENBERG: Brent Weisenberg on behalf of the committee. Your Honor, there are a few insurance-specific

issues that we'd like to raise with you. And I'd like to ask Mr. Burns if he can address the Court.

THE COURT: You bet. You're a part of your objection, right?

MR. BURNS: Yes. Your Honor, some of them aren't spelled out in detail in the objection, but we alluded to having insurance issues with the plan. We mentioned specifically the set off.

THE COURT: Okay.

MR. BURNS: And the bad-faith issue. All right. But first, let me apologize, Your Honor. I am Tim Burns.

THE COURT: Yeah. Um-hum.

MR. BURNS: I am special insurance counsel --

THE COURT: Yep.

MR. BURNS: -- for the committee. And thank you.

THE COURT: Um-hum.

MR. BURNS: I'm going to start with something the Court said very early on today, which we --

THE COURT: Don't know when I've been quoted more frequently.

MR. BURNS: So the Court said that the provisions in the plan regarding the litigation option and the continuing rights of the insurers had been thought through with enormous detail. We would agree with that.

THE COURT: Yeah.

MR. BURNS: The plan is intent on making sure that the insurers are in no way prejudiced. But the plan, there's actually, as the Court knows, a five-and-a-half page section of the plan, 8.3, aimed at preserving nonsettling insurers' rights.

THE COURT: Right.

MR. BURNS: But the plan actually results in an array of insurance-law benefits for the insurers that prejudice the survivors' rights. I'm going to talk about five of what I'd call the most glaring of these. I'm cognizant that some of these probably fall within all three buckets that the Court pointed out this morning. Some are designed to aid the iterative process here --

THE COURT: Yeah.

MR. BURNS: -- of saying, we have a real problem with this. Some, in our view, go to confirmability.

So let me start. And I love roadmaps, so you just saw the brief introduction. I'm going to hit five points, and thankfully only five because of the concession this morning, or at least --

THE COURT: Okay.

MR. BURNS: -- the announcement of the design to fix the sixth problem that I would have pointed out here.

THE COURT: Okay.

MR. BURNS: Then I have a short conclusion.

So first, section 5.14 of the plan, and I point folks to -- I call them red pages 35 and 36 because the it's the docket page number, as opposed to the page number of the disclosure statement itself. So section 5.14 of the plan at red page 35 and 36 limits and abuse claim and from recovering from the trust or the nonsettling insurers more than the abuse claim judgment. Totally inconsistent with California law. This provision wipes out the survivors' rights with respect to claims-handling bad faith, and post-judgment bad faith, which is alive and well in California under the Hand v. Farmer Insurance Exchange decision.

It amounts, Your Honor, and to a silent release of the insurers from bad faith liability or certain types of bad faith liability. And we think that's actually confirmability issues. A Purdue issue. What you call the Purdue willingness issue we had an earlier argument this morning. So in order to recover for --

THE COURT: That's, in your view, compulsive and not be consensual?

MR. BURNS: Um-hum. And --

THE COURT: Okay. And that relates to the release?

MR. BURNS: Yes. So we ended up fixing this problem in Rockville Center. But in Rockville Center, we had settling insurers who were paying money. But Judge Glenn expressed a lot of concern about a very similar problem, the silent

releases --

THE COURT: Okay.

MR. BURNS: -- of direct claims against the insurers. And how I characterize it for myself is in order to recover debtor's insurance assets, the survivors are being compelled to release their direct -- their statutory bad faith, their bad faith, their other statutory claims against the insurers because they can't collect more than the abuse judgment. And these amounts would be on top of the abuse judgment. So that's number one.

THE COURT: Um-hum.

MR. BURNS: Second point is the slips (phonetic), and I want to be careful about this because I worry if I'm stuck with a plan like this, if I say too much now, I harm myself later. And so I just want to be very cognizant. But I do want to explain to the Court probably my biggest concern at the moment about the plan. The plan creates a huge risk for survivors with respect to holding the insurers liable for refusing to settle these cases in good faith.

This, Your Honor, is our greatest bargaining leverage in representing claimants in these cases and others, the ability, if an insurer doesn't settle reasonably, to hold the insurer liable in bad faith. Ideally, to preserve bad faith claims, bad faith refusal to settle claims in California, survivors would be required to make demands to the insurers.

The insurers would have to refuse. And then after both of those things happen, the diocese would have to trade its bad faith rights for a nonrecourse agreement. That's under the Hamilton decision under California law.

So in an ideal world, all of this would happen before discharge and release of the debtor because bad faith is based on the debtor being held potentially liable for more than policy limits. So ideally, it would happen before discharge and release, survivors' most powerful tool, and there's no process contemplated in this plan to allow us to do that.

I'm very hesitant. I realized that I live in an imperfect world, and I'm going to have to deal with plans. We represent five or six committees in California in these cases. I may have to end up dealing with plans that give me a less-than-ideal outcome. And so but it creates a risk that we shouldn't have with bad faith refusal to settle claims.

My third point, the third problem, and admittedly, this may fall in the iterative-process category. And trying to get clarification. Trying to get change here. But the plan takes away the trust's ability to pursue the insurance declaratory judgment action for the benefit of all claimants. Plan provision 8.3.13, and I'm quoting, "Any effort to collect from abuse insurance policies issued by the nonsettling insurers to satisfy an abuse claim after confirmation of the plan shall be set individually by the applicable holder."

There are many reasons that the trust would want to pursue the DJ. It's efficient. There are many questions that can be decided by declaration, ones that would conceivably apply to all. And we fear that this plan takes away that right. Admittedly, and Mr. Bair may talk about this when we talk about true disclosure statement issues, the language is a bit confusing at times about whether that's happening or not.

Fourth point. Mr. Weisenberg talked about how the diocese contribution is based on uninsured exposures. That's set out in plan section 9.8.4.1. And I'm not going to the set-off point, being the dioceses and the insurers are helpfully trying to fix that point. But there's another point.

Even though the contribution is based on uninsured exposure, a survivors' share of the contribution is held back, instead of paid like other claimants if they choose the litigation option. Or at least there's a huge concern at that because some of the language says that there's a little ambiguity because frankly, the plan could potentially be said to go both ways on this. So if we stop and think about that, why are we holding back these funds from folks who choose the litigation option?

The natural effect of making their receipt of the diocesan contribution wait until the litigation option is concluded is it discourages litigation. I don't know what their motive was, but I do know that in most of our plans

around the country that we've been working on, the diocesan contribution is also treated as covering uninsured exposures. But survivors would each get their portion of a diocesan contribution, whether they chose the litigation option or not. It increases the dioceses' and insurers' bargaining power.

Fifth point, Cumis counsel, and let me explain what that is, Your Honor. California law requires insurers to provide a policyholder independent counsel when the insurance company's defense under a reservation of rights creates a conflict in the sense that insurer-controlled counsel can steer the defense of the claim to noncovered aspects of the claim. That's a real concern. California weighed in on statute after weighing in on case law.

So this conflict doesn't disappear because the debtor is only nominally in the picture. The insurers' handpicked defense counsel could, for example, attempt to show that the diocese acted with actual intent to injure the abuse claimants in an effort to try to destroy coverage. So they've gotten rid of the check of Cumis counsel. The plan takes away independent counsel in these cases.

So those are the five what I call the most significant problems from an insurance standpoint at the moment. I'm taking folks at their word they're fixing the one that Mr. Weisenberg talked about.

THE COURT: Um-hum.

MR. BURNS: I want to say this. And Your Honor, I actually say it sadly and respectfully for all the parties' efforts at a plan. From an insurance standpoint, this nonconsensual plan, and we believe it will be nonconsensual, may be the predictable result of the dynamics of mediation in these cases. And I don't want to go into this particular mediation. I'm speaking mediation writ large in these cases.

The automatic stay, and I'm well aware of the benefits of the automatic stay, but the automatic stay takes away the survivors' bargaining power --

THE COURT: Um-hum.

MR. BURNS: -- not only with respect to the diocese, but also with respect to the insurance company. It takes away the courthouse steps, where these disputes are often resolved, when the courthouse steps of these underlying sexual abuse cases probably what's most needed. And we mediate for months, and the survivors are unhappy with the result because they're in a process where a large part of their bargaining power has been taken away.

And I would say there are ways to fix this. Lifting the stay with respect to test cases would start to give some of that bargaining leverage back. Get us a normal bargaining leverage. Allowing us to proceed. And we'll talk about this more on the 8th.

THE COURT: Um-hum.

MR. BURNS: I know, with the insurance adversary in an aggressive manner, would begin to give us some of the bargaining power back.

And with that, Your Honor, I thank you --

THE COURT: Thank you.

MR. BURNS: -- for the opportunity to address the Court and the parties --

THE COURT: Okay.

MR. BURNS: -- on these issues.

THE COURT: Appreciate it.

Okay. Who wants to tell me the debtor's version of this?

MS. UETZ: Your Honor, I have a brief comment, and then Mr. Moore is going to be responding.

THE COURT: Okay.

MS. UETZ: I think much of what we just heard was not in the objection. We were struggling to find the arguments. And so we're going to do our best to respond to the Court today based on Mr. Burns' presentation. And Mr. Moore is going to do that.

I would also note Ms. Ridley is in London. She's coming back. And with that, I'm going to yield to Mr. Moore, if that's okay.

THE COURT: Okay.

MS. UETZ: Thank you.

THE COURT: Um-hum. I guess one opening comment would be, and I'm not trying to critique Mr. Burns, but to the extent that maybe some of these comments were a little more precise than they were in the papers, it's probably less likely that I find that they're in a bucket-2 showstopper. I mean, these are things hopefully people can talk about. And so I mean -- so I mean, from Mr. Burns' standpoint, some of them are clarifications and some of them aren't. But I look forward to your comments.

MR. MOORE: Well, Your Honor, I think that's right. I would agree with you. And I would go a step further and say, I didn't actually hear a reference to the disclosure statement in that entire presentation.

THE COURT: Well, okay. But it describes a plan, and we're here to talk about that.

MR. MOORE: So but what you have, Your Honor, is that to the extent that they exist, they are confirmation issues.

And Ms. Uetz is correct. As we were listening to the presentation, we were scanning the committee's objection, and the first issue that he raised was the plan section 5.14. That doesn't appear in -- and it was about releases and then about potentially bad faith claims. Doesn't appear in section 2(a)(1) about releases or in section 2(b) about bad faith. So frankly, we don't really know how to respond to that issue.

But to the extent that it's a plan issue that they

believe impacts inadvertently or improperly the insurers' rights, then I think we can address that at confirmation. The same thing is basically --

THE COURT: Can I stop you for a sec and let me just see if this makes sense? To the extent that Mr. Burns would say this isn't just clarification. This plan is contra California statutes or long-standing public policy. It can't be confirmed. You could address -- you could have a conversation about that between now and January 8th.

MR. MOORE: Certainly, we could, Your Honor.

THE COURT: And certainly, if Mr. Burns believes that under those circumstances, the plan wouldn't be confirmable, he can make -- if you haven't resolved it, I can hear it again on the 8th. Maybe with a little bit more context. And that may be something that goes into the lengthening appendix A.

MR. MOORE: I think that's right, Your Honor. And I think that probably goes to all five of the points that Mr. Burns raised that --

THE COURT: Some of them sounded more clarifying than others. But you go ahead, and you tell me.

MR. MOORE: Well, I think that to the extent that clarification is needed, let's talk about the litigation option. The litigation option is intended to allow survivors that so elect to pursue litigation to monetize the insurance, for lack of a better word. To go after insurance proceeds, to

the extent that it exists. And the way that it works mechanically is that their claim will be scored by the claims abuse reviewer, and a reserve will be created for them of their pro rata distribution of then-available assets or later-available assets based on their scoring. That will not be provided to them at that time because we don't know the outcome of the litigation option.

There is a world in which there is an amount reserved for them for that claimant, but then a judgment comes back that says the survivor trusts -- the survivors' trust liability to that claimant is actually less than the reserve. And we built into the plan that if that happens, whether it's large or small, the remainder part or the gap will be redistributed to all of the other creditors.

But it can't be paid to them until the litigation option is resolved. Mechanically speaking, it's necessary to do it that way. And the intent is obviously not to discourage the litigation option because at that point the debtor, to use the phrase, has no dog in the fight. We're a nominal party only. We have made our contribution to the survivors' trust assets, and we're a nominal party only.

THE COURT: Would it be -- would it be anomalous to say, well, we'll just have a hold back?

MR. MOORE: Well, it's effectively the same thing. It's a reserved amount for that claimant.

THE COURT: Right, but I mean, could you pay sixty percent of that?

MR. MOORE: Well, I suppose you could, Your Honor, but then you run the risk of -- let's just use round numbers, and I'm not suggesting that these are right. But let's say that the trust reserves 500,000 dollars for a given claim.

THE COURT: Um-hum.

MR. MOORE: And then the litigation comes back and says, yes, the claim is worth however much that it's worth, and it could be millions in that circumstance. But it's all covered by insurance. And the insurer, they've made the point under 8.7, there's this offset issue that we're going to resolve. The insurer is directly liable to that claimant under this plan. Will make the payment directly to the claimant. Well, the claimant can't get paid twice for the same amount. So the rest of that number that was reserved for it, assuming that it's entirely allocated to the insurer, is redistributed to everyone else.

And so you could theoretically do a holdback on if you did some kind of a statistical analysis about what the likelihood is that you're going to come out, but you just won't know. But in the meantime, the claimant's protected because they're reserved for. And then the trust gets the option of if someone else is going to pay the claim and it's insured, then I can distribute the rest to all my other claimants.

Mechanically, I think that's the way that it has to work. And the offset issue kind of plays into that because who gets the credit. And so I don't know that you can say at both times you can't give an offset to the insurer, but then the trust pays first, if that makes sense.

THE COURT: Well, I mean, it's one way of looking at it. I'm not sure that's exhausting all the possibilities, so let me just -- I'm not going to rule on this now, obviously.

MR. MOORE: Sure. Sure.

THE COURT: But I think that if you can explore that with some flexibility, I think it's probably worth the conversation.

MR. MOORE: I understand, Your Honor.

THE COURT: Okay.

MR. MOORE: But fundamentally, the litigation option is clearly not intended to discourage litigation. It's actually intended to allow claimants to choose --

THE COURT: Right.

MR. MOORE: -- an individualized option to be able to increase their own recoveries using that insurance.

THE COURT: Yeah.

MR. MOORE: And to the Court's point, we did spend a significant amount of time trying to figure out how to make that work. And I think that's fundamental to both 3, which is that the plan takes away -- Mr. Burns's 3 -- the plan takes

away the trust's ability to pursue insurance declaratory judgment action for the benefit of all claimants, necessarily so, because our plan is an individualized litigation option. You don't have both at the same time. And but to the extent that they don't like that, then they can object to that on confirmation.

THE COURT: Well, and I'm not hearing that that's void as a matter of California statutes. The world would be a better place if it proceeded otherwise. All right.

MR. MOORE: From the committee's perspective, Your --

THE COURT: Yeah.

MR. MOORE: Yeah, absolutely. That's --

THE COURT: I mean, so it's not -- no one's going to tell me that X section of the insurance code says you can't do that.

MR. MOORE: I haven't heard it yet, Your Honor. Certainly not --

THE COURT: Okay.

MR. MOORE: -- seen in the briefing.

THE COURT: I got it.

MR. MOORE: But it is an individualized option to allow individual claimants to --

THE COURT: Yeah.

MR. MOORE: -- elect to proceed that direction. And if they elect not to proceed that direction, that's their

choice as well.

THE COURT: Yeah, but I guess all I'm -- I'm not going to resolve any of this today. I'm not hearing anything here that couldn't be part of a comprehensive discussion --

MR. MOORE: Absolutely. I think --

THE COURT: -- with Mr. Burns.

MR. MOORE: -- we're going to have that discussion --

THE COURT: And I think you should.

MR. MOORE: -- as we continue to refine and to clarify and to amplify some of these issues.

THE COURT: All right.

MR. MOORE: And Your Honor, I'm not going to address the automatic stay. We'll be back in a couple of weeks on that issue. I think that the last was that the policyholder must have independent counsel. Again, I think that's part of the discussion that we can have. To the extent that the plan says otherwise and they disagree, we can deal with that on confirmation. So to use the Court's phrase, I don't think any of these issues are showstoppers, to the extent that they're even issues at all.

THE COURT: Okay. I appreciate it.

Okay. Mr. Burns, do you want to clarify anything or --

MR. BURNS: (Indiscernible) Your Honor --

MR. PLEVIN: Your Honor, could I speak?

THE COURT: Yeah. Let Mr. Burns finish if he needs to.

Are you all set?

Okay. Come on up, Mr. Plevin.

MR. PLEVIN: Your Honor, Mark Plevin on behalf of continental. When I gave my appearance at the beginning of the hearing, I said I probably wouldn't be speaking. And that was based on the fact that the committee's disclosure statement objection said nothing about insurance.

THE COURT: Um-hum.

MR. PLEVIN: They were, I think, two sentences, and the word "bad faith" was in there. But Mr. Burns talked about statutes.

THE COURT: Um-hum.

MR. PLEVIN: He didn't identify any. He talked about the Hamilton case. I think he gave one other citation.

THE COURT: Um-hum.

MR. PLEVIN: There's none of this in their brief.

THE COURT: And I'm not deciding it now.

MR. PLEVIN: Well, that's good. I want to join the debtor's remarks by saying I think these are confirmation objections. What's clear is that Mr. Burns and the committee don't like the agreement that was reached in mediation --

THE COURT: Um-hum.

MR. PLEVIN: -- with the assistance of Judge Newsome

and Mr. Gallagher, between the insurers on the one hand and the debtor on the other hand.

THE COURT: Um-hum.

MR. PLEVIN: We don't think there's anything that's even a confirmation problem. Certainly, there's no disclosure problem here. And therefore, we would urge the Court to not rely on anything that was said today as a reason for not approving the disclosure statement. If we have to have a confirmation hearing about it, I look forward to seeing Mr. Burns' arguments in writing so we could respond --

THE COURT: Um-hum.

MR. PLEVIN: -- because I think some of what he said, if not a lot of what he said, is just wrong. And it's not reflective of California law. And I would welcome the opportunity to explain to the Court at the right time in a brief that responds to an objection by the committee why that's so.

THE COURT: Okay.

MR. PLEVIN: Thank you.

THE COURT: Um-hum. I think we're headed toward further consideration of an amended version of this document I'm guessing on January 8th. But if people want to reserve a different day, that's up to you. I don't want to -- if Mr. Burns wants to translate anything he said into something that he thinks is fundamentally contra California law and the plan

would be void were it confirmed in that fashion, I want to give him a chance to do that. And you can respond. Okay. If that's all doable before the 8th, great. I'm not hearing that now, but I'm not going to silence him on that.

Did you want to say something?

MS. UETZ: Just on that point, Your Honor, if I'm hearing implicit in what you're saying a suggestion that if Mr. Burns wants to brief that issue, just in terms of the calendar --

THE COURT: Yeah.

MS. UETZ: -- going from recall, but I think our response to some motions are due maybe December 30th. And then there's a reply date.

THE COURT: Yeah.

MS. UETZ: Maybe we use those same dates for that follow up.

THE COURT: Okay for me. And by the way, we put this on the 8th, look, it's a Wednesday. It's a 10:30 calendar. If, between now and the time we break, people have a better idea about when we ought to be taking chapter 2 of this, I'm all ears. Okay. We don't have to do it on the 8th. If a day here or there is helpful, that's a possibility. Okay.

MR. MOORE: I think before we get to the hearing, Judge, just looking at the holiday calendar and what they're going to need to do to modify documents --

THE COURT: Uh-huh.

MR. MOORE: -- and us review it and prepare our own piece, seems the 8th might be a little aggressive.

THE COURT: It might be, and that's okay.

MR. MOORE: But let's just put up (indiscernible) --

THE COURT: Well, you guys --

MR. MOORE: -- then we'll talk about it before the end of the day.

THE COURT: Whatever you guys agree with, within reason, I'll try to work with. Okay. The only thing. I'm fairly certain I'm leaving early on the 22nd. So the 22nd will be a tough day for me to do.

Is that right, Ms. Fan?

THE CLERK: Yes, Your Honor.

THE COURT: Okay. Unless you all want to come to Las Vegas and hear some BAP arguments. Okay.

MS. UETZ: Your Honor, just a clarification.

UNIDENTIFIED SPEAKER: Oh, sounds good.

UNIDENTIFIED SPEAKER: Yeah. No, I'm good with that.

MS. UETZ: Are you talking about the continuation on the disclosure statement hearing date, or are you talking about everything that's scheduled for the 8th. I just want to understand.

THE COURT: You guys tell me what works.

MS. UETZ: We should talk and then return.

THE COURT: Yes. You guys tell me what works. Okay. I mean, if you agree that we should have the hearing is currently set on the 8th on the 8th and have the disclosure statement hearings on some other day, I'll do my best to accommodate you. Okay. But you tell me.

MS. UETZ: Okay. Well, we should take the break and then talk and --

THE COURT: Yeah. So yeah, at an appropriate time. Let's do that. Okay.

MS. UETZ: Thanks.

THE COURT: Okay. Thanks.

MR. WEISENBERG: Your Honor, Brent Weisenberg on behalf of the committee. If it's okay with Your Honor, given the time, what I'd like to do is run through a list of issues that we haven't yet covered.

THE COURT: Um-hum.

MR. WEISENBERG: It sounds like we are going to have the opportunity after this hearing to work with the debtor to either refine the language --

THE COURT: Yep.

MR. WEISENBERG: -- or insert our differences.

THE COURT: Right.

MR. WEISENBERG: I think some of these issues may need to be called by you. And so that's why I want to get them out on the table. And then we can --

THE COURT: Okay. Is the hope I can call them today or that I call them at a further hearing?

MR. WEISENBERG: At some point. I just want to -- I just want to flag the issue for Your Honor.

THE COURT: That's fine. That's a good idea.

MR. WEISENBERG: Thank you.

THE COURT: Okay. Ms. Uetz, do you want to tell me it's a bad idea?

MS. UETZ: No, it's a good --

THE COURT: No?

MS. UETZ: -- idea. I just want to use the most time we can get with Your Honor today to try to call some of the issues and have (audio interference) but --

THE COURT: Okay. Well, look, if Mr. Weisenberg is saying, I'd rather talk than tell you this is a showstopper, I assume you're going to enjoy --

MS. UETZ: Very much, Your Honor.

THE COURT: -- that remark. Right. Okay. Thank you. Appreciate it.

MS. UETZ: But it also helps to get your direction.

THE COURT: And we got to get Ms. Albert home to watch Cal. Okay. That's important.

MS. ALBERT: Thank you, Your Honor.

THE COURT: You're welcome.

MR. WEISENBERG: Your Honor, in no particular order --

THE COURT: Um-hum.

MR. WEISENBERG: -- we believe that the disclosure statement is deficient or misleading in the following ways.

Number one, we identified for Your Honor the ninety-eight-million-dollar valuation that the debtor puts on sexual abuse claims.

THE COURT: Yeah.

MR. WEISENBERG: Yet there is no methodology or report or anything of the like to support that analysis.

Number two is --

THE COURT: Um-hum.

MR. WEISENBERG: -- with respect to each class of claims, we would submit, there needs to be an approximation of the number of claimants in that class. An approximation of the value of their claims. The reason for that, Your Honor, is I think the best example is the general unsecured creditor pool. The debtor may very well have more than sufficient funds to pay them in full.

THE COURT: Um-hum.

MR. WEISENBERG: But if it's choosing not to in order to create an impaired accepting class, then that's something we're entitled to argue at plan confirmation and so -- and by the way, that's not just for us. That's also for that class itself to understand its treatment as compared to the debtor's assets and the comparative treatment of other classes. So as a

matter of disclosure, we think that's required.

THE COURT: Well, can I stop you and see? I don't mean to get in the weeds on this, but it'd be one thing for the debtor to say, our position is that we're unable to pay these claims on X date because, and you can test that in discovery. But you think this should all be articulated more fully in the disclosure statement?

MR. WEISENBERG: Yes, Your Honor.

THE COURT: Okay. Okay.

MR. WEISENBERG: Again, just flagging the issue.

THE COURT: Um-hum.

MR. WEISENBERG: We would like to discuss with Your Honor the classification of the unknown abuse claimants.

THE COURT: Meaning?

MR. WEISENBERG: There's two issues with that classification, Your Honor. Number one. There's no estimation of how many claims may fall within that bucket. The estimated value of their claims. The amount. I'm sorry, Your Honor.

With respect to the unknown abuse claimant, the objection is more specific, which is as a matter of due process, we don't believe that the --

THE COURT: Yeah.

MR. WEISENBERG: -- future claims representative has sufficient time.

THE COURT: I know. I read that loud and clear.

MR. WEISENBERG: Right. Okay. Sorry.

THE COURT: No, no problem.

MR. WEISENBERG: What I was alluding to, Your Honor, was actually class 6, which is the nonabuse litigation claims. And for the same reason I just identified for you, understanding the treatment of that class is important. I heard today that the debtor would revise the disclosure statement to inform readers of the amount being put into the nonabuse litigation reserve. It still begs the question of whether there are any claimants in that class and if so what the value of their claims are so that a creditor could understand the treatment being proposed to them.

Your Honor, with respect to the executive summary, we think, again, it's misleading and also inaccurate in a few ways.

First, I think the most material issue we'd like to discuss with you is the use of the charts. We think that is entirely misleading and frankly, a dangerous road to go down. We spoke about the omitted claims valuation. The valuation of the Livermore property, that appears in several places. It's in the charts. It's also in the executive summary, standing alone, and also in the liquidation analysis or the comparison to the liquidation analysis.

I may ask Mr. Bair to better identify for the Court some of the issues that are raised by the litigation option and

the distribution option. There were instances where it was unclear the ramifications of a creditor doing so. There was also some confusion on our end about, even with respect to the litigation option, what a claimant having elected that option, what their rights would be. In certain instances, it seemed like he or she may be the claimant. In other places, it appeared the survivors' trust would be the claimant.

In addition, the plan -- or excuse me, the disclosure statement also alludes to the fact that the survivors' trustee can settle the claims with the insurers. It's entirely unclear how that settlement would impact a distribution option claimant or a litigation option claimant.

So if it's okay with Your Honor, let's talk about the charts.

THE COURT: Um-hum.

MR. WEISENBERG: And Your Honor is not the first person to be asked to address this. Judge Glenn spent considerable time speaking with the debtor about the charts. In fact, we attached to our objection the transcript of the hearing, where Judge Glenn found that the charts were highly misleading.

Number one, he was concerned by the fact that the information was only half there. The debtor admits that it is selectively chosen what cases to include. It is glaring that they have not chosen the San Diego diocese case or the Stockton

Diocese case or frankly, other cases, which would -- even if this was a comparison, I'm going to tell you why it's not to contextualize the return in this case to others. But Your Honor, let's start with this.

There is no comparison about what a return in one case should mean in another. The joke we made in our pleadings was the creditors in Sears don't look to Lord & Taylor and say, oh, my return is reasonable based upon how creditors were treated in that case. Why? Because we have different facts. We have different law. We have a different insurance program. Here, specifically, whether the statute of limitations applies is one of the most meaningful drivers to the value of a claim.

The cases or at least certain of the cases that are set forth in that chart were greatly impacted by the statute of limitations. Okay. And so when each of these creditor bodies in these cases was trying to determine what they believe would be fair and equitable in the construct of that case, they looked at the drivers I just spoke about. What is the -- what is the debtor's insurance policy? What are the severity of the claims? What is the state law? Then what are the debtor's assets in this particular case? What circuit are we in such that there may be informing decisions about any number of varying opinions about how to interpret the Bankruptcy Code?

There's also, again, the number of claims, and I think I referred to the different severity. And again, it can't be

understated that the statute of limitations has one of the most meaningful drivers. And so in Rockville Center, the judge ultimately instructed the debtor to not include the charts or if it was or if they were going to be included, there was going to need to be meaningful changes to what was being presented to creditors.

And again, Judge Glenn referenced the fact that there needs to be a reference to recoveries outside of bankruptcy. For example, this very diocese historically settled their claims for 1.1-million dollars. Adjusted for inflation, it's 1.7 million. Shouldn't creditors be informed about that recovery? It is very possible, if, unfortunately, we're unable to settle, and the debtor has said it's running out of cash, this case might be dismissed. And if so, creditors should understand what a recovery outside of bankruptcy should be.

But again, I don't want to go there, Your Honor, because I think it's highly misleading to make a creditor believe that the reasonableness of this recovery is based upon looking at other cases. There's no market for sexual abuse claims. There's nothing of the sort. And so we can't look to those other cases.

So we would submit, Your Honor, that the charge should be omitted. And if Your Honor thought there was some validity, then we would have extensive comments, not only to the selection of the cases, but we also have disagreements about

some of the facts embedded in the charts. For example, the debtor submits that a recovery in Syracuse may be X. We don't believe that's the recovery. Or the number of claims they used. And so we would like the opportunity to speak with the debtor because we don't agree with the valuations that even they've used.

THE COURT: I'm thinking I'm going to be noodling this a little bit and rereading Glenn's transcript between now and the 8th or so. Okay. But you're open to different possibilities here? I mean, omission of the charts is one. Heavy clarification is another, right?

MR. WEISENBERG: I don't think I have the luxury of deciding what I am and I'm not okay with. Yes, we would prefer the charge to be omitted.

THE COURT: Okay.

MR. WEISENBERG: If Your Honor ultimately says you want them in, then we will work with the debtor and work with Your Honor to make what we think is at least --

THE COURT: I appreciate it.

MR. WEISENBERG: -- a more realistic --

THE COURT: I appreciate it. Thank you.

MR. WEISENBERG: Do you want to allow the debtor to speak to this, Your Honor?

THE COURT: If it's okay, yeah.

MR. WEISENBERG: Of course.

THE COURT: I mean, I don't know if it's -- there may not be much conversation now but --

MR. WEISENBERG: I'm sorry. Before that, could I let Mr. Bair just make --

THE COURT: Yeah. Come on up.

MR. WEISENBERG: -- one or two points and then --

THE COURT: Sure, sure, sure.

MR. BAIR: Your Honor, we appreciate the opportunity to be able to respond without moving to another set of issues.

THE COURT: Well, I don't know that we are. Are we talking about the same issue?

MR. BAIR: Same issue.

THE COURT: Okay.

MR. BAIR: Your Honor, Jesse Bair, special insurance counsel --

THE COURT: Okay.

MR. BAIR: -- for the committee.

THE COURT: Okay.

MR. BAIR: I just wanted --

THE COURT: I mean, look, we've all been kind of open minded about who grabs the lectern here. Okay. So I --

MR. BAIR: Yes.

THE COURT: -- appreciate it. Thank you.

MR. BAIR: I just wanted to provide two illustrative examples. Mr. Weisenberg mentioned that we have some

disagreements with the facts that are embedded --

THE COURT: Yeah.

MR. BAIR: -- even within the chart as presented. So just for Your Court's -- for the Court's edification, I wanted to provide examples of that, just --

THE COURT: Okay.

MR. BAIR: -- to explain why we feel strongly about the charts --

THE COURT: Okay.

MR. BAIR: -- so that, for example, on page 12 of 86, the first chart --

THE COURT: Yep. Um-hum.

MR. BAIR: -- which talks about debtor contributions, for example, the debtor here is listed at about a hundred-million dollars, and that's money coming from the debtor and the parishes.

THE COURT: Yep.

MR. BAIR: And here, they say that, well, the parishes are part of the debtor, so it's all the debtor money. That's listed as a hundred million. But if you go down to the middle of the chart, Syracuse, New York, it's listed as around fifty-million dollars. Now, the debtor in parish contribution in Syracuse is a hundred-million dollars. And what I assume they're doing here is they're saying, well, in New York, the parishes are separately incorporated. So the debtor

contribution is fifty. And they just cut fifty off.

So this chart would look very different if you included the debtor contribution in other states and the parish money. And so I think we need to just be very careful here if we're going --

THE COURT: Okay.

MR. BAIR: -- to have these comparisons to really show the whole pool of assets because if you're going to say the hundred million here is debtor and parishes but we're just not going to include parish money in other jurisdictions, that can skew this chart quite substantially.

THE COURT: Okay. All right. Thank you.

MR. BAIR: So and then the other point is just in the second chart, when they're talking about average payments in other cases, we just need to be very careful about how they're counting claims because here in the debtor numbers, they're using 345 as the number. And they say here that they're deducting duplicate claims, for example. But when you do the math in these other cases, they're clearly leaving duplicate claims in. And so that's skewing those average claimant numbers.

And I'm not saying they're doing that on purpose necessarily. But if they're outsiders looking into a case, for example, in Rockville Center, they might say, oh, there's over 700 claims. But if you go through the claim objections and

count up all the claims that are left at the end, it's closer to 600 so -- and that can make --

THE COURT: Okay.

MR. BAIR: -- a big difference here. So I think we just need to be --

THE COURT: Okay.

MR. BAIR: -- careful with these charts.

THE COURT: Okay.

MR. BAIR: And I appreciate the time, Your Honor.

THE COURT: Sure.

MR. MOORE: Thank you, Your Honor. Mark Moore, on behalf of the RCBO.

THE COURT: Um-hum.

MR. MOORE: Your Honor, let's start with the charts, and let's start with contextualizing why they exist. One of the reasons that the debtor has proposed this plan is that we think it's a good plan. One of the reasons that we think it's a good plan is that we compare it to other similar diocesan religious order cases, and we come out to a place where we believe we are providing more, we being the debtor and related entities.

This is a point of comparison that is important to our creditors to be able to understand what we're giving them and how it compares to other cases. I understand that the committee doesn't like that because they want to go get

information about jury verdicts and use that instead, jury verdicts that we filed bankruptcy because we can't pay the multiplicity. I understand that they have concerns about the representation of different cases, whether you choose San Diego or Stockton or Rockville Center, which was confirmed last week, or not.

And again, I think the Court's already provided them with the method to put that into the world, which is their letter, their appendix, whatever it is that they want their position to be. They can say, no, the debtors are wrong, and they have the right to do that, as the Court has recognized. But this information is important about other cases. We have taken great care to try and delve through publicly available filings, other disclosure statements, other claim objections, and other cases to try and figure out how these things do compare to each other because it is a data point. It frames a point of reference. And it's a point of reference that's important for the debtor because it gets to what is a fair, ultimate outcome, whether the committee agrees with that or not.

Regarding the ninety-eight-million value of the abuse claims, that's not a value. That is a pledge of assets from the Diocese of Oakland, plus five-million dollars for the unknown abuse claims, which, if it's not paid, will be spilled back over into the survivors' trust. It's not a valuation.

And we've been very explicit in our plan that we've not attempted a valuation because these unliquidated tort claims are by nature unliquidated.

And so to say that we need to back into how we get to ninety-eight-million dollars, I think, number one, the Court's already said we need to make more disclosure about how we got there and why about what we're doing. So we will. But it's not a valuation, and it can't be construed as a valuation. To say that it is goes against the language of our plan.

About other asset valuation, Livermore, for example, again, we're not required to disclose in a disclosure statement precisely how we get to a valuation for that. It's a confirmation issue where we'll put on our evidence. I understand the committee may have a different view about what Livermore is worth. They can present that view if it's informed and show us how it's informed.

Other issues, Your Honor. Omitted information regarding claim value and number, again, we're happy to put in the number of claims that we think are in each class. That's relatively easy. I think that there may be three in class 6. Unknown claims, the tricky part about unknown claims is that they're unknown. And obviously we have described in some detail our claims review analysis and claims review process in the plan.

Regarding settlement information from previous to --

from the diocese, we actually did have that in our plan. It's on page 35 of 86. We clearly disclosed the prior settlements from what I think is called the initial legislation in the plan. You can find it there. It was fifty-six-million dollars for fifty-two claims, or maybe fifty-two-million dollars for fifty-six claims. Actually, I think I was right the first time.

Your Honor, but again, a lot of this is going to be stuff that we're going to talk about over the next couple of weeks, which I think is where the Court's going to direct us to go.

THE COURT: Okay.

MR. MOORE: A lot of it is going to be things that they want us to say differently that we're just not willing to say, because we do believe that it's true. We do believe that it's fair. We do believe that it's right. And it is our disclosure statement for our plan. If they want to say something different, we've already given them the opportunity to do that, and we welcome their submission. Obviously, we're going to need to take a look at that too, and we'll have the opportunity to do that.

Finally, I think the last thing that was mentioned was the classification of the unknown claims. Your Honor, this is something we've seen in multiple diocese bankruptcy cases, particularly where you now have an approved unknown claims

representative. That class is separate from the known class, but again, to the point that the Court disagrees with that somehow, again, that's a confirmation issue. If you don't like our classification, then you can tell us that whenever we come back, whenever it is that we come back.

But for right now, Your Honor, I think that all of these issues are either confirmation issues. They're either the committee's perspective, which it's able to communicate. But these are not issues that should prohibit the ultimate solicitation of the debtor's disclosure statement.

THE COURT: Well, I think that I'm somebody I don't have to order you guys to meet and confer. You're going to do that, and I think that --

MR. MOORE: We will do that, Your Honor.

THE COURT: And I think we begin there. And if you do not -- if the committee makes a comment or requests clarification or an amendment and you don't make it, that may prompt you to say, with more clarity, why you're taking the position you are. And that will either end up with me in the charts, maybe deciding that they're more trouble than they're worth, we'll see, or a lengthening exhibit A.

MR. MOORE: I understand, Your Honor. And coming out of this hearing, we've heard loud and clear that there's things that we need to clarify. There's things

THE COURT: Yeah.

MR. MOORE: -- we need to amplify.
THE COURT: Yep.
MR. MOORE: And there's a discussion that needs to be had.
THE COURT: Okay.
MR. MOORE: And we've already committed ourselves to eliminate some things or to clarify some things, and we're going to do that.
THE COURT: Okay.
MR. MOORE: We'll be doing that over the next days and weeks.
THE COURT: Yeah.
MR. MOORE: Hopefully we can resolve some of these issues.
THE COURT: Um-hum.
MR. MOORE: But as to use your term "showstoppers", we don't think that any of this stuff rises to that level because --
THE COURT: Okay.
MR. MOORE: -- ultimately, it's about information. It's about casting an informed vote. And that's what we want our creditors to do.
THE COURT: Okay. Thank you very much.
MR. WEISENBERG: Brent Weisenberg for the committee.
THE COURT: Um-hum.

MR. WEISENBERG: Your Honor, we hear you loud and clear with respect to how we should move forward. And so we would submit that there's no need to go through the litany of other issues. We understand how Your Honor wants us to try to solve it. We will.

THE COURT: Um-hum.

MR. WEISENBERG: We'll try. I don't know if we will. And so again, I don't think we need to argue any further about those issues. We're going to work through that with the debtor.

THE COURT: I appreciate it. Thank you.

MR. WEISENBERG: If you don't mind, we do need to speak with one another about hearing dates.

THE COURT: Shall we adjourn for a minute and let you guys talk about that?

MS. UETZ: Yes. It would be helpful, Your Honor, if I may, if we might get a preview from the Court on available dates, perhaps the week of the 13th and the 20th. That might help inform our discussion, if that's possible to hear that.

THE COURT: Well, sure. I mean, 22 through 24 are out.

MS. UETZ: Are no?

THE COURT: Yeah, are no.

MS. UETZ: Okay.

THE COURT: Yeah, I've got to be somewhere else.

MS. UETZ: Good. So does Mr. Lee.

THE COURT: Okay. Well, maybe you're arguing something in Las Vegas for all I know.

MS. UETZ: Sorry, I just outed Mr. Lee.

THE COURT: Yeah. Okay. That, I'm highly confident about.

Remind me, Ms. Fan, if anything else is blocked out at the moment.

THE CLERK: The week of the 13th is pretty open, Your Honor. We just have the calendars on the 15th. So Monday, Tuesday, Wednesday --

THE COURT: Okay.

THE CLERK: -- Thursday's open. And the week --

THE COURT: Okay.

THE CLERK: -- of the 20th, the 20th is a holiday, so we would only have the 21st.

THE COURT: Oh, right. Okay. So the 21st is open, but the rest of the week is not so great?

THE CLERK: Yes, Your Honor.

THE COURT: But we have a lot of -- I take it we're having the 13 calendar on the 9th?

THE CLERK: Yes, Your Honor.

THE COURT: Okay. So we have a lot of availability the week of the 13th. Everything but the Wednesday morning is pretty open.

MS. UETZ: That's helpful, Your Honor, because --
MR. MOORE: We're actually here in front of Judge Corley on the 16th.
THE COURT: Okay.
MR. MOORE: So if we could have it --
THE COURT: Yeah, you tell me.
MR. MOORE: -- on the 15th or the 17th --
THE COURT: Yeah.
MR. MOORE: -- that would eliminate some airfare.
MS. UETZ: Early afternoon on the 16th. So that's what --
THE COURT: I'm sorry.
MS. UETZ: -- I was going to talk with counsel about that.
THE COURT: Okay.
MS. UETZ: Maybe the break, and then we'll return with suggestions?
THE COURT: That's fine. Yeah. No, the afternoon of the 15th is fine for me. And I'll work with the rest of the week. Okay.
MS. UETZ: For the afternoon of 16th, is that good too?
THE COURT: Sure. Are you seeing Corley in the morning? Okay.
MS. UETZ: Back and hopefully squeeze it in. Well,

schedule it for --

THE COURT: A couple of years ago, we were on a panel presentation about bankruptcy appeals at all levels. And she was a brand new DJ, and she hadn't had a bankruptcy appeal yet. So she asked me to sort of take the laboring oar, which I tried to do. She's a delightful human being and wonderfully smart judge.

MS. UETZ: I've had one ever. That's it.

THE COURT: Oh, really? Okay. All right. Okay.

MS. UETZ: I was just telling somebody that yesterday.

THE COURT: Very good. All right. How long do you guys want?

MS. UETZ: Five, ten minutes, I think.

UNIDENTIFIED SPEAKER: Yeah.

MS. UETZ: Yeah.

THE COURT: All right. Come back about ten after.

MS. UETZ: Thanks so much.

(Recess from 3:56 p.m., until 4:15 p.m.)

THE CLERK: The court is back in session.

THE COURT: Okay. Are some dates others may try to pencil in or --

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Sure.

MS. UETZ: I can go? Okay.

THE COURT: Yeah.

MS. UETZ: Thanks. I'm sorry, are we on the record? Do I make an appearance? I'm just -- we are, right?

THE COURT: We should be.

MS. UETZ: Okay. I'm sorry. Ann Marie Uetz for the debtor, Foley & Lardner, Your Honor.

THE COURT: Okay. Thank you.

MS. UETZ: We are looking at the following schedule.

THE COURT: Uh-huh.

MS. UETZ: Backing off of Thursday, January 16th, for the hearing and the continuation of the disclosure statement.

THE COURT: Okay.

MS. UETZ: So backing off from that, January 14th, which is Tuesday, the debtor's reply to any objection. Friday, January 10, the committee objection. Friday, January 3rd, the debtor will file its amended disclosure statement. So I went backwards there.

THE COURT: Okay. Okay.

MS. UETZ: Two related items. One of them I just thought of. The appendix for the committee and what they might -- what they might attach, we didn't actually talk about that. I guess I would suggest it be with the objection.

MR. WEISENBERG: That's what I was going to suggest. Fine.

MS. UETZ: Cool.

THE COURT: That's fine.

MS. UETZ: Okay. See, we're all agreeing. So the appendix with the objection on --

THE COURT: Okay.

MS. UETZ: -- the 10th, and we talked about extending the solicitation period with a recognition and a commitment statement that neither the committee nor the insurers will file any plan through and including January 16th. And we'll address it again on that day when we're back in court.

THE COURT: Okay. Do you have in mind already how many days it takes you to get from approval to out-the-door?

MS. UETZ: This is where Mr. Moore is going to stand up.

THE COURT: All right.

MR. MOORE: Remind him of January 8th.

MS. UETZ: Oh, and --

THE COURT: We're not moving the 8th?

MS. UETZ: -- we're staying with January 8th.

THE COURT: Got it. To the extent we're filing things on the 14th, can we make that noon?

MS. UETZ: Yes, Your Honor.

THE COURT: Okay. Thanks.

MS. UETZ: Hundred percent.

THE COURT: Okay.

MS. UETZ: Thank you for --

THE COURT: Sure.

MS. UETZ: -- indulging us on that.

THE COURT: That's okay.

MR. MOORE: Your Honor, in the run up to filing the plan and disclosure statement, we talked a little bit to our claims noticing agent. They think that they can get it done in three business days.

THE COURT: Wow.

MR. MOORE: If it's over a weekend, it may be the following Monday or Tuesday. Because I think we just said was the 16th is a Thursday.

THE COURT: Okay.

MR. MOORE: So it may be as long as five business days. I'll have to discuss that with them --

THE COURT: Okay.

MR. MOORE: -- taking into account the weekend.

THE COURT: Okay.

MR. MOORE: But I think that that should work.

THE COURT: All right. Well, look, in the meantime, I'll at least give you some strong inclinations on the 8th about a whole bunch of things. And as I teased before, soliciting is one thing. Actually having the confirmation hearing is another. We can build in -- I'll hear everybody about how that ought to work. Okay.

MR. MOORE: That's why I stood, Your Honor, which is, I suspect we will not be able to agree on a timetable. And so

we'll likely need Your Honor to call.

THE COURT: We'll take it up, I promise. Okay. Anything else?

MR. MOORE: We'll take that up on the 16th. Is that right, Your Honor? You gave inclinations on things on the 8th and then be back.

THE COURT: Oral rulings.

MR. MOORE: Right. Of course.

THE COURT: Yeah.

MR. MOORE: Okay.

THE COURT: Okay.

MR. MOORE: Yeah.

MR. PLEVIN: Your Honor, Mark Plevin. Just a point of clarification because we weren't involved in the discussion.

THE COURT: Um-hum. Do you want to participate in some briefing?

MR. PLEVIN: No, no. Just what time the hearings are.

THE COURT: Are you sure?

MR. PLEVIN: I've got enough briefs to write, Your Honor.

THE COURT: Okay.

MR. PLEVIN: Just when the hearings will be on January the 16th.

THE COURT: Well, the 8th is already 2 o'clock et seq. Right.

UNIDENTIFIED SPEAKER: Yes, Your Honor.
THE COURT: And you guys, you're going to -- you need to go see Judge Corley in the morning on the 16th.
MS. UETZ: Correct.
THE COURT: So should we say 2, or is there a better time?
MR. MOORE: I think maybe more time.
MS. UETZ: I think the soonest we could start in the afternoon would be optimal. We'll be done with Judge Corley by noon, I would imagine. So maybe 1 o'clock start or whatever the --
THE COURT: All right. You want to -- I mean, 1:30, just to be --
MS. UETZ: 1:30 would be great.
THE COURT: -- build in a half hour? Okay.
MS. UETZ: Sure.
MR. PLEVIN: That's on the 16th?
THE COURT: Yes.
MR. PLEVIN: And then I had heard, I think, that the start of the hearing on January 8 had been moved back.
THE COURT: Well, I think we're doing it in the afternoon. We're not trying to compete with all the --
MR. PLEVIN: Okay. So --
THE COURT: -- business on the way. I understood it was 2. If somebody wants to tell me that's wrong, I'm all

ears.

THE CLERK: It's currently scheduled for 2 p.m., Your Honor.

THE COURT: Okay. Anybody need to change that or are we good?

MR. PLEVIN: I just wanted to know when to be where. Thank you, Your Honor.

THE COURT: Okay. All right. Anything else for the good of the order?

No? There's always one more thing.

No? All set? See you, guys.

MS. UETZ: Not today, Your Honor.

THE COURT: All right. Well, have a lovely holiday.

IN UNISON: Thank you, Your Honor.

THE COURT: Yeah, it was a pleasure, as always. Thank you so much. Okay. See you later.

(Whereupon these proceedings were concluded at 4:19 PM)

I N D E X

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ MICHAEL DRAKE, CER-513, CET-513

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Phoenix, AZ 85020

Date: December 23, 2024

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EXHIBIT B

First Disclosure Statement Objection

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,

Debtor.

Case No. 23-40523 WJL

Chapter 11

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO THE DEBTOR'S DISCLOSURE STATEMENT

Judge: Hon. William J. Lafferty

Date: December 18, 2024
Time: 10:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

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RULES

The Official Committee of Unsecured Creditors (the "**Committee**") of The Roman Catholic Bishop of Oakland (the "**Debtor**" or the "**Diocese**") files this objection (this "**Objection**") to the adequacy of the proposed Disclosure Statement (Dkt. No. 1445) (the "**Disclosure Statement**") describing *The Debtor's Plan of Reorganization* (Dkt. No. 1444) (the "**Plan**").[1] In support of this Objection, the Committee states:

I.

PRELIMINARY STATEMENT

When a proposed plan so clearly violates section 1129 of the Bankruptcy Code such that it cannot be confirmed, courts will address confirmation issues at a disclosure statement hearing. That should be the case here. The Committee opposes the Plan and will recommend that Abuse Claimants vote to reject the Plan. If past is prologue, Abuse Claimants will follow in tow and thus, it is a virtual certainty that they will overwhelmingly reject the Plan.[2] The Debtor will therefore need to cramdown the Plan on Abuse Claimants, requiring (i) that an impaired class of claims votes for the Plan, (ii) a showing that Abuse Claimants are being treated fairly and equitably and that the Plan was proposed in good faith, and (iii) that Abuse Claimants will receive more than if the Debtor were hypothetically liquidated under chapter 7 of the Bankruptcy Code. The Debtor will not be able to establish any of the foregoing.[3]

Through this Objection, the Committee establishes that the Plan is patently unconfirmable because of the Debtor's facial violation of the fair and equitable test. The Bishop fails to acknowledge that hundreds of millions of dollars of real estate and hundreds of millions of dollars

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[1] Capitalized terms not defined below have the meaning ascribed to them in the Plan.

[2] The Disclosure Statement mistakenly states that state court counsel to Committee members represent approximately 45% of Abuse Claimants. *See* Disclosure Statement, at 6, Dkt. No. 1445.

[3] Abuse claimants in *In re The Archdiocese of Saint Paul and Minneapolis* and *In re The Roman Catholic Diocese of Rockville Centre*, the only two Diocese bankruptcy cases where votes on a plan of reorganization were solicited without committee support, voted by an overwhelming majority to reject those plans. In *In re The Archdiocese of Saint Paul and Minneapolis,* more than 93% of abuse claimants rejected the Archdiocese's plan. *See* Report of Ballot Tabulation, No. 15-30125 (Bankr. D. Minn. Sept. 21, 2018), Dkt. No. 1041. In *In re The Roman Catholic Diocese of Rockville Centre*, about 86% of abuse claimants rejected the Diocese's plan. *See* Decl. of Stephanie Kjontvedt of Epiq Corporate Restructuring, LLC Regarding the Solicitation and Tabulation of Ballots Cast on Fourth Modified First Amended Chapter 11 Plan, No. 20-12345-mg (Bankr. S.D.N.Y. Apr. 17, 2024), Dkt. No. 3057.

of cash and cash equivalents are either property of the bankruptcy estate or can be recovered for the estate under the Bankruptcy Code's avoidance powers.

Failing to heed the prescient words of then U.S. Bankruptcy Judge Louis DeCarl Adler in the San Diego diocese bankruptcy case, the Bishop filed this Chapter 11 Case in a transparent attempt to limit the Debtor's liability for survivors' pain and suffering that the Diocese negligently failed to stop. In other words, this case was filed to radically reduce the amount of damages that Abuse Claimants would otherwise be able to recover in state court. Judge Adler correctly recognized that "***Chapter 11 is not supposed to be a vehicle or a method to hammer down the claims of the abused***. It is a method of dealing with those claims fairly while preserving the core business, if you will, of the chapter 11 debtor." Mot. to Dismiss Hr'g Tr. at 76:9-13, *In re The Roman Cath. Bishop of San Diego*, No. 07-00939-LA11 (Bankr. S.D. Cal. Nov. 5, 2007), Dkt. No. 1368 (emphasis added). Judge Adler also stated:

> I decided this morning to reacquaint myself with the exact definition of "disingenuous." According to *Merriam Webster's* it means lacking in candor, also giving a false impression of simple frankness, calculating. From what I understand of the Diocese's finances . . . I think the term "disingenuous" as applied to the Diocese description of assets available to fund this settlement is completely accurate. There is, in my view, ample other property available for liquidation to fund the settlement without threatening the mission of the church. It is simply a question of how the Diocese sets its priorities.
>
> I say this because this case has ramifications beyond San Diego. There may be other diocese in this country which may be considering Chapter 11 as an easy vehicle to deal with the claims of abuse victims. I think that would be a mistake now or in the future. ***The church needs to look within itself. It needs to ask itself whether its core mission to educate children, to tend to the spiritual needs of its community, and to bring some healing to those abuse victims requires it to retain nonessential assets such as parking lots, apartment buildings, houses bequeathed to it, parish churches no longer viable, vacant land***. . . . Before a diocese -- any diocese -- resorts to a Chapter 11 filing, it should be making a good faith honest effort to assess whether that is necessary.

Id. at 75:4–76:8 (emphasis added). The Debtor clearly did not head Judge Adler's advice.

The Debtor's Plan contains other features which independently render it unconfirmable as a matter of law. The Plan:

(i) does not have one impaired class to accept the Plan to avail the Debtor of the cramdown provisions under section 1129(b)(2) of the Bankruptcy Code;

(ii) seeks to bind the holders of Unknown Abuse Claims, some of whom will not be known until well after the Effective Date, to the release, exculpation, and injunction provisions without making adequate provision for those claimants to be represented in Plan negotiations and the confirmation process;

(iii) facially fails the hypothetical liquidation test required for cramdown under section 1129(b)(2)(B) of the Bankruptcy Code because the Debtor, admittedly, does not include a substantial portion of its multi-million dollar real estate portfolio in its analysis;

(iv) improperly provides for non-consensual third-party releases and exculpation which grants broad immunity to a plethora of entities and individuals not entitled to protection;

(v) violates the absolute priority rule; and

(vi) is proposed in bad faith.

It follows that solicitation of the Debtor's Plan should be foreclosed to avoid burdening the Debtor, its estate and creditors with the expense of solicitation, discovery and a confirmation trial over a Plan that cannot be confirmed.

If this Court is inclined to review the adequacy of the Disclosure Statement, it is replete with omissions, misstatements and confusing language, all of which is explained below but highlighted here. For example, the Disclosure Statement:

(i) fails to provide an easily understandable summary for Abuse Claimants to know the amount of their distribution, when they will receive it, and what contingencies exist that may prevent or delay distributions;

(ii) does not accurately present the outcome of a hypothetical liquidation of the Debtor's assets and what Abuse Claimants would receive in a liquidation, ignoring (a) hundreds of millions of dollars of Diocese real estate assets, (b) hundreds of millions of dollars of assets that could be recovered from affiliated entities, and (c) potential recoveries from The Roman Catholic Welfare Fund ("**RCWC**"), which is a co-defendant in about 70 state court actions pending against the Debtor;

(iii) is both confusing and internally inconsistent in its explanation of the differing treatment provided to Trust Claimants choosing the Distribution Option and Litigation Option and their rights to receive and retain insurance proceeds paid by a Non-Settling Insurer;

(iv) provides no analysis or reasonable basis for determining whether the amount being set aside for Unknown Abuse Claims is fair and equitable;

(v) provides no information on the Diocese's settlement and release of a $40 million claim against its affiliate, The Catholic Cathedral Corporation of the East Bay (the "**Cathedral Corporation**");

(vi) seeks to lure Abuse Claimants into accepting the Plan based on charts purportedly analyzing the compensation that survivors received in other diocesan bankruptcy cases. But the Disclosure Statement is misleading, at best, and deceptive, at worst, because the Debtor's charts (a) select certain favorable precedents and omit unfavorable precedents, and (b) fail to disclose critical information necessary for any meaningful comparison; and

(vii) misleadingly asserts that the real property that the Debtor seeks to assign the Survivors' Trust, the Livermore Property, is worth between $43 million and $81 million (or more). The Debtor's valuation is neither supported by analysis nor evidence. Even the Debtor concedes that its valuation depends on the property being rezoned and obtaining entitlements for residential development, and that neither is guaranteed. *See* Disclosure Statement, at 74, Dkt. No. 1445. Ironically, in the Disclosure Statement, the Debtor states that its real estate is difficult to value because any sale would necessitate a zoning change for the subject property. *See* Disclosure Statement, Liquidation Analysis, Ex. B, at 7, ¶ F, Dkt. No. 1445-2. In addition, the Debtor's valuation of the Livermore Property fails to consider that it will likely take years and significant expense to obtain the necessary approvals to maximize the value of the Livermore Property, which timeframe would see survivors pass-away. Thus, almost half of Abuse Claimants' projected recovery may be gravel and rock.

For all these reasons, the Court should deny approval of the Disclosure Statement.

II.

THE DISCLOSURE STATEMENT CANNOT BE APPROVED BECAUSE THE PLAN CANNOT BE CONFIRMED

While the Bankruptcy Code requires that a disclosure statement contain "adequate information," approval of a disclosure statement describing a plan that cannot be confirmed must be denied, regardless of the extent of disclosure it contains. *See, e.g.*, *In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) (citations omitted) ("Because the underlying plan is patently unconfirmable, the disclosure statement may not be approved."). This rule emanates out of common sense: courts will not permit a bankruptcy estate to incur the costs of soliciting votes for a plan that even if unanimously accepted by creditors could never be confirmed. *See, e.g.*, *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (citations omitted).

To preserve estate assets and precious time, this Court should deny approval of the Disclosure Statement because the Plan it describes does not meet the requirements of section 1129 of the Bankruptcy Code. Specifically, since it will be rejected by Class 4 (Abuse Claims), thus failing to satisfy section 1129(a)(8), the Plan can be confirmed only if it meets all the other provisions of 1129(a) and the cramdown requirements of 1129(b). It fails on both accounts.

A. The Plan Cannot Satisfy Section 1129(a)(1) of the Bankruptcy Code.

To be confirmable, a plan must comply with the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). The Debtor's Plan fails to do so for several reasons.

(i) The Plan Unlawfully Releases Non-Debtor Third Parties.

The Plan's definition of "Released Parties" is so broad that it provides for the non-consensual release of countless individuals and entities, none of whom are debtors, including the Debtor's:[4]

> current and former directors, managers, officers, employees, equity holders (regardless of whether such interests are held directly or indirectly), interest holders, predecessors, successors, and assigns, subsidiaries, affiliates, managed accounts or funds, and each of their respective current and former equity holders, officers, directors, managers, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

Debtor's Plan of Reorganization, at 13, Dkt. No. 1444. On its face, "Released Parties" includes the following non-debtors, all of whom are described as affiliates in the Decl. of Charles Moore, Managing Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to The Roman Catholic Bishop of Oakland, in Support of Chapter 11 Pet. and First Day Pleadings, Section II ("Affiliated Non-Debtor Catholic Entities"), at 10-15, Dkt. No. 19: (a) The Roman Catholic Welfare Corporation of Oakland; (b) Lumen Christi Academies; (c) The Roman Catholic Cemeteries of the Diocese of Oakland; (d) The Oakland Parochial Fund, Inc.; (e) The Catholic Cathedral Corporation of the East Bay; (f) Christ the Light Cathedral Corporation; (g) The Oakland Society for the Propagation of the Faith; (h) Catholic Charities of the Diocese of Oakland, Inc., dba Catholic Charities of the East Bay; (i) Catholic Church Support Services; (j) Furrer Properties Inc.; (k) Adventus; (l) Catholic Foundation for the Diocese of Oakland; and (m) each of their

[4] Even before the *Purdue* decision (*Harrington v. Purdue Pharma L.P.*, 603 U.S. ___ (2024)), the Ninth Circuit did not permit non-consensual third-party releases. *See, e.g., Resorts Int'l, Inc. v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401 (9th Cir. 1995) ("This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors."); *New Falls Corp. v. Tullo*, 2009 Ariz. App. Unpub. LEXIS 452, at *18 (Ariz. Ct. App. Apr. 28, 2009) ("Despite a split of authority between federal courts on this issue, the Ninth Circuit has consistently held that bankruptcy courts have no authority to discharge the liabilities of non-debtors, including guarantors.").

officers, directors, managers, principals, members, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals.

Under the plain meaning of the undefined term "predecessors" used in the definition of "Released Parties," non-consensual third-party releases would be granted to, among others, the Archdiocese of San Francisco, from which the Debtor was formed. *See Predecessor*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/predecessor (last visited Dec. 4, 2024) (defining "predecessor" as "one that precedes"). Under the plain meaning of the undefined term "affiliate" used in the definition of "Released Parties," third-parties could be granting non-consensual releases to every diocese across the country and even the Holy See, all of which are "closely associated" with the Debtor.[5] *See Affiliated*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/affiliated (last visited Dec. 4, 2024) (defining "affiliated" as "closely associated with another typically in a dependent or subordinate position"). At minimum, each proposed released entity must be specifically identified and must provide financial information sufficient to help determine the adequacy of consideration it is paying in exchange for the third-party release.[6]

The Plan's release provision also improperly provides that the Churches are receiving releases. If the Churches are unincorporated divisions—as the Committee contends—and thus a part of the Debtor, they are not separate legal entities and do not require separate releases. Alternatively, if the Churches are unincorporated associations, and thus, separate legal entities from the Debtor, as the Debtor appears to contend, the Churches may not receive non-consensual third-party releases.

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[5] While the Plan provides for an opt-out mechanism so that a creditor may exclude itself from the Third-Party Release, it appears that option is only available as to claims against Contributing Non-Debtor Catholic Entities.

[6] The financial information should include, but not be limited to, all assets, including cash and investments and real property holdings, deposit and loan fund obligations, total liabilities, total revenue, total operating expenses, net operating surplus / (deficit), and change in net assets. This information should be provided for at least a five-year period of time. For all real property holdings, the information should include, but not be limited to, the current use of the property and a designation of whether or not the property is considered to be central to the mission of the Diocese and/ or the entity seeking a release.

(ii) The Plan Is Poised to Unlawfully Bind Holders of Unknown Abuse Claims.

Unknown Abuse Claimants, some of whom may not be known until after the Effective Date, are bound to the release, exculpation and injunctions provisions of the Plan without making adequate provision for future claimants' interests to be represented in this Chapter 11 Case. On December 9, 2024, the Debtor moved for the appointment of an Unknown Abuse Claims Representative, rendering the appointment all but futile because the Unknown Abuse Claims Representative will not be afforded adequate opportunity to evaluate the scope of the Debtor's estate, the expected number and value of unknown claims and negotiate the treatment thereof under the Plan before the proposed Voting Deadline of February 25, 2025. In the *Camden Diocese* case, the Unknown Abuse Claims Representative, the Honorable Michael R. Hogan (Ret.), the proposed Unknown Abuse Claims Representative here, filed his "Report and Recommendations" ***4 months and 28 days*** after the effective date of his retention. *See* Order Granting Application To Employ Judge Michael R. Hogan As Unknown Claims Representative, *In re The Diocese of Camden*, No. 20-21257-JNP (Bankr. D.N.J. Feb. 28, 2022), Dkt. No. 1237 and Unknown Claims Representative's Report and Recommendations, *In re The Diocese of Camden*, No. 20-21257-JNP (Bankr. D.N.J. July 26, 2022), Dkt. No. 2083.[7] Here, if Judge Hogan was retained on December 18, 2024, the Debtor would have Judge Hogan retain professionals, complete his diligence, negotiate the treatment of Unknown Abuse Claimants, and cast his ballot in ***70 days***.

(iii) The Plan Improperly Exculpates Non-Debtor Parties.

The Plan may not be confirmed given the definition of "Exculpated Parties." Courts have found that the limited grant of immunity to certain entities and individuals for actions within the scope of their duties to a bankruptcy estate does not extend to parties that are not fiduciaries of the

[7] In other cases where Judge Hogan was appointed as the unknown claims representative, it took him ***between 126 to 858 days to issue his report*** (measured from the effective date of his retention). *See, e.g.*, *In re Roman Cath. Church of the Diocese of Gallup*, No. 13-13676-t11 (Bankr. D.N.M. Feb. 12, 2016 and June 17, 2016), Dkt. Nos. 526, 581 (126 days); *In re Roman Cath. Church of the Archdiocese of Santa Fe*, No. 18-13027-t11 (Bankr. D.N.M. June 13, 2022 and Dec. 26, 2022) Dkt. Nos. 996, 1206 (196 days); *In re Roman Cath. Bishop of Helena*, No. 14-60074-TLM (Bankr. D. Mont. Apr. 9, 2014 and Jan. 12, 2015), Dkt. Nos. 186, 408 (278 days); *In re Roman Cath. Diocese of Harrisburg*, No. 1:20-bk-00599-HWV (Bankr. M.D. Pa. Nov. 16, 2021 and Jan. 25, 2023), Dkt. Nos. 744, 1500 (435 days); *In re The Norwich Roman Cath. Diocesan Corp.*, No. 21-20687 (Bankr. D. Conn. Aug. 4, 2022 and Mar. 6, 2024) Dkt. Nos. 753, 1712 (580 days); *In re The Archdiocese of Saint Paul and Minneapolis*, No. 15-30125 (Bankr. D. Minn. Feb. 14, 2017 and Sept. 21, 2018) Dkt. Nos. 969, 1271 (584 days); *In re Archbishop of Agaña*, No. 19-00010 (Bankr. D. Guam Mar. 3, 2020 and July 9, 2022) Dkt. Nos. 355, 894 (858 days).

estate. *See, e.g.*, *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081-82 (9th Cir. 2020) (holding that exculpation clauses must be limited to parties participating in the bankruptcy proceeding and plan approval process). But the Plan's definition of "Exculpated Parties" includes: (a) The College of Consultors of the Diocese of Oakland and each of its members; (b) The Diocese of Oakland Finance Council and each of its members; (c) The Presbyteral Council of the Diocese of Oakland and each of its members; and (d) for each of the foregoing, their respective officers, directors, agents, employees, equity holders, attorneys, financial advisors, accountants and representatives. Debtor's Plan of Reorganization, at 8, Dkt. No. 1444. The Debtor has not established, and cannot establish, that all of these entities are fiduciaries to the Debtor's estate. Accordingly, the exculpation provision may not be approved and the Plan cannot be confirmed. *See, e.g.*, Order Denying Approval of the Disclosure Statement in Support of Fourth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse Dated Sept. 13, 2024, at 12, *In re The Roman Cath. Diocese of Syracuse*, No. 20-30663 (Bankr. N.D.N.Y. Nov. 14, 2024), Dkt. No. 2308 (holding that the "Exculpation and Release Provisions" were too broad, could not extend to "related persons of the Persons and Entities" and that the exculpation provision should be limited to estate fiduciaries and their professionals, the Committee and its members, the mediators, and Debtor's officers and directors who participated in the Chapter 11 process from the Petition Date to the Effective Date).

B. <u>The Plan Cannot Satisfy Section 1129(a)(3) of the Bankruptcy Code.</u>

The Plan was not proposed in good faith. It therefore does not comply with section 1129(a)(3) of the Bankruptcy Code. Evidence of the Debtor's bad faith includes:

(i) The Debtor's transfer of about $106 million to the Oakland Parochial Fund (the "**<u>OPF</u>**") just 30 or so days before the Petition Date. The OPF, which had laid dormant for over a decade, was used by the Diocese to shield its enterprise's assets, all the while keeping the assets under the control of the Bishop given the commonality of officers of the Debtor and OPF and the power granted to the Diocese in OPF's incorporation documents. *See* OPF Articles of Incorporation, at 1 (The OPF "is formed, and shall be operated, supervised or controlled by The Roman Catholic Bishop of Oakland, a California corporation sole ('RCBO')….") attached as

Exhibit A to the Declaration of Brent Weisenberg in support of this Motion (the "**Weisenberg Dec.**"). The Committee has filed an adversary complaint to recover this transfer.

(ii) The Diocese has not pursued collection of a $40 million loan it made to the Cathedral Corporation in or about 2009 that the Cathedral Corporation has yet to repay. Rather, under the Plan, the Diocese will deem its claim satisfied by taking ownership of the Cathedral and the land on which it sits without providing any valuation of those assets. While section 1123(b)(3) of the Bankruptcy Code provides that a plan may provide for the settlement or adjustment of any claim belonging to the debtor or the estate, the Bankruptcy Court is to approve such settlements under the Bankruptcy Rule 9019 standard. *See, e.g.*, *In re PG&E Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) (holding, with respect to settlements in a debtor's plan of reorganization, "the standards under Rule 9019 will be applied."). In fact, heightened scrutiny is warranted "when an insider benefits from a compromise or release that a debtor in possession proposes on behalf of its bankruptcy estate." *In re Astria Health*, 623 B.R. 793, 801 n.24 (Bankr. E.D. Wash. 2021) (citing *In re Drexel Burnham Lambert Grp.*, 134 B.R. 493, 498 (Bankr. S.D.N.Y. 1991)) ("We subjected the agreement to closer scrutiny because it was negotiated with an insider, and hold that closer scrutiny of insider agreements should be added to the cook book list of factors that Courts use to determine whether a settlement is fair and reasonable."). The Disclosure Statement contains no discussion regarding whether this settlement passes muster under Bankruptcy Rule 9019.

(iii) The Debtor has transferred over $4.5 million during the Chapter 11 Case to Cathedral Corp. to, among other things, fund its operations.[8]

(iv) The Diocese commenced a "Mission Alignment Process" before the Chapter 11 Case through which it was to close certain Churches to reduce operational costs and monetize its real estate for the benefit of survivors. In explaining the "Mission Alignment Process" to parishioners Bishop Barber stated: "[redacted]

[8] The Committee was informed by the Debtor that certain of these payments were made under a "Facilities Use Agreement" under which the Debtor paid rent to Cathedral Corp. But the Debtor has not produced that agreement to the Committee and even if such agreement exists, there has been no explanation as to why the Debtor paid over $4.5 million to Cathedral Corp. when it owes the Debtor in excess of $40 million.

[redacted]" Tr. of Bishop Michael C. Barber Presentation ("RCBO-CC-0009268_0001"), at 1, ¶ 01:47, attached to the Weisenberg Dec. as Exhibit B. In a May 8, 2023 letter to parishioners and friends of the Diocese, Bishop Barber stressed the need to "re-align our resources to meet the needs of our diocese, while addressing claims coming through the bankruptcy process." Letter from Bishop Michael C. Barber (May 8, 2023), attached to the Weisenberg Dec. as Exhibit C. Bishop Barber added that it was essential that the Debtor focus on "our mission to serve people, not on maintenance of structures which no longer serve our mission." *Id.* The Diocese has since walked back its plan and neither the Plan nor the Disclosure Statement discuss the closure of any Parishes or Churches or committing any real estate, other than the Livermore Property, to fund distributions to survivors or the operational efficiencies which could be achieved by doing so.

(v) The Debtor's failure to include hundreds of millions of dollars of real estate as property of its estate. The Debtor contends that it owns certain improved real property in trust for the Churches. But the Churches are not separately incorporated under California law and have no civil legal existence of their own. Indeed, before the Petition Date, the Debtor induced Abuse Claimants to dismiss their state court complaints against Church defendants by entering into several stipulations acknowledging and agreeing that the defendant Church was "not a separate corporation or civil legal entity of any kind and The Roman Catholic Bishop of Oakland, a corporation sole, holds title to its assets under civil law." *See* Exhibit D attached to the Weisenberg Dec.

Moreover, the Debtor ignores the Bishop's wide-ranging power to control the operations and purse strings of Diocese affiliates. [redacted]" App'x A to Series 2007 Bond Offering Memorandum dated Nov. 13, 2007, at A-16, attached as Exhibit E

to the Weisenberg Dec. [9] Meaning, the Bishop was quick to represent his control over non-Debtor affiliates and their assets when he wanted money. But now that he is being asked to pay money, he disavows his power and asserts that every non-Debtor is separate and distinct. In that same vein, in soliciting purchasers of Diocese bonds, [redacted]" App'x A to Series 2007 Bond Offering Memorandum dated Nov. 13, 2007, at A-15. In the Disclosure Statement, the Bishop now recants his previous statement, asserting that all funds raised through the Bishop's Ministries Appeal ("**BMA**") are "restricted to fund the particular ministries and programs that the BMA was designed to support and facilitate …" Disclosure Statement, at 19, Dkt. No. 1445.[10]

(vi) Finally, the Debtor seeks to assign its rights under its insurance policies to the Survivors' Trust under provisions that expand the state-law rights of Non-Settling Insurers while substantially prejudicing the state-law insurance rights of Abuse Claimants. The Debtor did not invite the Committee to participate in several stealth mediation sessions with the Non-Settling Insurers. And now that the Committee has seen the proposed "agreement" reached between the Debtor and the Non-Settling Insurers, it opposes its terms. In addition to containing numerous provisions at odds with Abuse Claimants' prepetition rights, the terms of the Plan would inhibit Abuse Claimants' ability to reach a fair resolution with Non-Settling Insurers without years of litigation. As but one example, the insurance assignment language risks depriving Abuse Claimants of the ability to hold the Non-Settling Insurers liable for bad faith failure to promptly

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[9] While the Committee does not concede that canon law has relevance when determining whether purported affiliates of the Debtor are in fact separate corporations under civil law, [redacted]. *See* Order Granting Mot. in Limine, at 3, *Off. Comm. of Unsecured Creditors v. Archbishop of Agaña (In re Archbishop of Agaña)*, Ch. 11 Case No. 19-00010, Adv. No. AP 19-00001 (D. Guam Feb. 8, 2022), Dkt. No. 213 ("[T]he court finds that the Archdiocese's internal religious structure is irrelevant to the determination of whether a resulting trust exists under civil law. [And], to consider the non-secular interpretation of canon law would result in a religious entanglement that the First Amendment forbids.") (footnote omitted) (citing *Jones v. Wolf*, 99 S. Ct. 3020, 3025 (1979)).

[10] Upon information and belief, in or about 2022, the Diocese renamed "The Bishop's Appeal." It is now called "The Bishop's Ministries Appeal."

and fairly settle Abuse Claimants' claims against the Debtor, a key feature of California law meant to deter wrongful insurer conduct.

The Plan also fails to comply with applicable law. Accordingly, it does not comply with section 1129(a)(3) of the Bankruptcy Code. Under Section 9.3 of the Plan, the Debtor Cash Contribution and any Non-Debtor Catholic Entity Contribution are being made to satisfy any liability the Debtor and any Contributing Non-Debtor Catholic Entities may have for uninsured claims and uninsured exposure (such as self-insured retentions). Under Section 8.7 of the Plan, an Abuse Claimant holding a judgment against a Non-Settling Insurer will have his or her distribution offset by the amount of the distribution received under the Plan. But the Non-Settling Insurers have no contractual or state law right to an offset for such amounts because they are explicitly being made for any uninsured portion of the judgment, whether that be a self-insured retention, a payment above a Non-Settling Insurers' policy limits or otherwise. Nonetheless, the Non-Settling Insurers would enjoy the benefit of an offset that they are not entitled to. In doing so, the Plan makes the Non-Settling Insurers—rather than Abuse Claimants—a beneficiary of the Debtor's contribution to the Survivors' Trust.

C. The Plan Cannot Satisfy Section 1129(a)(7) of the Bankruptcy Code.

The Debtor asserts that it is not obligated to satisfy section 1129(a)(7)(a)(ii)'s hypothetical liquidation test because (i) its bankruptcy case cannot involuntarily be converted to a chapter 7 liquidation, and (ii) it cannot be forced to sell its real estate. This argument has been routinely rejected in other non-profit bankruptcy cases. The *In re Boy Scouts of America* court specifically rejected the Debtor's argument that the hypothetical test does not apply because a non-profit cannot be liquidated, holding that section 1129(a)(7) applies to non-profits because "there is nothing illogical about requiring a nonprofit to show that it can meet this requirement in order to obtain the benefits of a confirmed plan." *In re Boy Scouts of Am.*, 642 B.R. 504, 661 (Bankr. D. Del. 2022), *aff'd*, 650 B.R. 87 (D. Del. 2023). Historically in Catholic diocese bankruptcy cases, courts list section 1129(a)(7) as among the required factors to confirm a chapter 11 plan of reorganization

under section 1129(a) notwithstanding the church's status as a non-profit.[11]

The Debtor will be unable to satisfy the hypothetical liquidation test required for cramdown of the Plan under section 1129(a)(7)(a)(ii) of the Bankruptcy Code. ***The Debtor concedes it has not complied with the test*** by stating that it only includes "proceeds from certain vacant land and the properties serving as collateral for the secured RCC loan" in its liquidation analysis. Disclosure Statement, Ex. B, at 7, ¶ F, Dkt. No. 1445-2. According to the Debtor, it need not include substantially all of its improved real estate—which represents the vast majority of the Debtor's wealth—in its liquidation analysis "[b]ecause the Debtors (sic) cannot have their chapter 11 cases (sic) converted into chapter 7 cases involuntarily, the Debtors (sic) also cannot be forced to close and sell Churches." *Id.*[12] As a result, the Debtor is excluding somewhere between $400 million and $700 million of real property assets from its liquidation analysis.

The Debtor's transparent effort to reduce the distribution Abuse Claimants would receive under a hypothetical chapter 7 filing is also evidenced by the Debtor's tamping down or disregarding the value of other assets available to satisfy Abuse Claims while artificially increasing expenses to be incurred in a chapter 7, including:

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[11] *See, e.g.*, *In re Diocese of Camden*, 653 B.R. 309, 341 (Bankr. D.N.J. 2023) (despite the debtor arguing that section 1129(a)(7) does not apply to non-profits, "the Court disagrees" and required the diocese debtor to satisfy the Liquidation Analysis requirements); Order Confirming Debtor's First Amended Plan of Reorganization Dated Nov. 3, 2022, at 9, *In re Roman Cath. Church of the Archdiocese of Santa Fe*, No. 18-13027-t11 (Bankr. D.N.M. 2022), Dkt. No. 1214 (order confirming chapter 11 plan finding the debtor satisfied section 1129(a)(7) Liquidation Analysis, despite acknowledging that section 1112(c) "protects charitable institutions by precluding conversion of a chapter 11 case to chapter 7."); *In re Roman Cath. Archbishop of Portland*, 339 B.R. 215, 227 (Bankr. D. Or. 2006) ("[I]n order to meet the best interests test for confirmation set out in § 1129(a)(7), the plan must provide that an impaired class receive at least as much as the class would receive in a chapter 7 liquidation.").

[12] The Committee anticipates that the Debtor will assert some form of First Amendment right or rely on canon law to justify its refusal to include hundreds of millions of dollars of assets in its liquidation analysis. Both arguments will fail. *First*, section 1129(a)(7) of the Bankruptcy Code is a ***hypothetical*** test designed to ensure non-consenting creditors receive at least as much as they would if the debtor was liquidated. The test is a hypothetical measuring device, it does not rest upon whether the Debtor's assets could legally be involuntarily liquidated under chapter 7. *Second*, canon law has no relevance when deciding issues under civil law. *See, e.g.*, *Tort Claimants Comm. v. Roman Cath. Archbishop of Portland (In re Roman Cath. Archbishop of Portland)*, 335 B.R. 842, 857-58 (Bankr. D. Or. 2005) (Bankruptcy court determined that it did not need to consider canon law in the context of resolving a property dispute as a religious organization's internal law is not relevant to the dispute unless neutral principles of civil law make it so. "In other words, although a corporation sole is authorized by state law to organize its affairs pursuant to canon law, it is the corporation's organization and structure as implemented under civil law that governs the corporation's relationship with the secular world.").

(i) The liquidation analysis ascribes no value to the Debtor's ownership interest in a telecommunications network—which produces $2 to $3 million a year in cash flow. *See* Disclosure Statement, Ex. C "Projected Cash Flows," at 7, Dkt. No. 1445-3.

(ii) The liquidation analysis fails to recognize that under a hypothetical liquidation, Abuse Claimants would retain their claims against RCWC and RCWC's insurers.

(iii) The Debtor asserts that litigation costs in the tens of millions of dollars would be incurred liquidating Abuse Claims in a chapter 7 case. But it is not clear why a chapter 7 trustee could not create a trust much like the Survivors' Trust and adopt similar procedures for distributions from that trust. By doing so, there would be no increased cost to the estate if the claims were liquidated and paid in a chapter 7.

D. The Plan Cannot Satisfy Section 1129(a)(10) of the Bankruptcy Code.

Before the Plan can be crammed down on Abuse Claimants, the Debtor will need to secure the vote of one impaired accepting class, but that class does not exist. All of the classes of claims listed as "impaired" under the Plan, other than the Abuse Claimants' Class, are either "unimpaired" or not entitled to vote.

(i) Class 3 (General Unsecured Claims) are being paid in full.

While the Debtor asserts that Class 3 (General Unsecured Claims) is impaired, the Disclosure Statement states, "[t]he Plan further provides that the Holders of Allowed . . . ***General Unsecured Claims will be paid in full*** as set forth herein . . . ." Disclosure Statement, at 8, Dkt. No. 1445 (emphasis added). The Plan provides:

> [E]ach such Holder [of an Allowed General Unsecured Claim] shall receive payment in Cash from . . . the Reorganized Debtor in an amount equal to such Allowed General Unsecured Claim, payable no later than the later of (a) the date that is one year after the Effective Date, (b) the date that is twenty-one (21) days after the date when such General Unsecured Claim becomes an Allowed General Unsecured Claim, or (c) the date on which the Holder of such General Unsecured Claim and the Reorganized Debtor shall otherwise agree in writing.

Debtor's Plan of Reorganization, at 22, Dkt. No. 1444.

Even if this Class is impaired, there is no evidence of the number and value of Claims in this Class, and the Debtor has failed to establish that it is unable to pay these Claims in full without impairing them.

(ii) The Debtor's Attempt to Classify Unknown Abuse Claims in a Separate Class Is an Improper Attempt to Gerrymander the Classification of Claims.

The Plan's concept of appointing an Unknown Abuse Claimants Representative to represent the interests of Unknown Abuse Claimants is patterned after the appointment of a future claimants representative to represent the interests of demand holders in an asbestos-related bankruptcy under section 524(g)(4)(B)(i) of the Bankruptcy Code.[13] Section 524(g)(4)(B)(i) requires the appointment of "a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands . . . " but it does not grant the legal representative the right to vote on a plan. The fact that Congress chose to use the word "demand" instead of "claim" in section 524(g) has led some to conclude that holders of demands may not be classified under a plan of reorganization. *See, e.g.*, NAT'L BANKR. REV. COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS 339–41 (1997), https://govinfo.library.unt.edu/nbrc/reportcont.html, Chapter 2 ("Treatment of Mass Future Claims in Bankruptcy"). While consensual diocesan plans have classified unknown holders of demands, they often do so by placing them in the same class as known claimants.[14] The Debtor's decision to classify Unknown Abuse Claims in a separate Class, and permit the Unknown Abuse Claimants Representative to cast a ballot on behalf of that Class, would empower an individual to determine whether the Debtor can obtain the vote of an impaired

[13] Holders of "demands" in an asbestos related bankruptcy are individuals that have been exposed to asbestos but have not manifested evidence of asbestos related disease prior to the claims bar date. They are also colloquially referred to as "future claimants."

[14] *See, e.g.*, **(i)** Second Amended Joint Plan of Reorganization Proposed by the Debtor and Official Committee of Unsecured Creditors, *In re Diocese of Davenport*, No. 06-02229-lmj11 (Bankr. S.D. Iowa Apr. 3, 2008), Dkt. No. 262, at 22 ("For purposes of accepting or rejecting the plan," Unknown Tort Claims class combined with the abuse Tort Claims class and "treated as a single class."); **(ii)** Debtor's and the Official Committee of Unsecured Creditors' Third Amended and Restated Joint Plan of Reorganization for the Catholic Bishop of Northern Alaska, *In re Cath. Bishop of Northern Alaska*, No. 08-00110 (Bankr. D. Alaska Dec. 17, 2009), Dkt. No. 602-1, at 42 (Class 10 impaired voting class of creditors included tort claims and future tort claims); **(iii)** First Amended Disclosure Statement for Debtor's Second Amended Plan of Reorganization Jointly Proposed by Executive Committee of the Association of Parishes, Debtor, Future Claims Representative and Tort Claimants' Committee, *In re The Cath. Bishop of Spokane*, No. 04-08822-FPC11 (Bankr. E.D. Wash. Mar. 7, 2007), Dkt. No. 1773-3, at 33 (current and future claimants treated as one voting class for purposes of accepting or rejecting the debtor's plan) and **(iv)** Third Amended and Restated Disclosure Statement Regarding Plan of Reorganization Dated May 25, 2005, *In re The Roman Cath. Church of the Diocese of Tucson*, No. 4:04-bk-04721-BMW (Bankr. D. Ariz. May 26, 2005), Dkt. No. 401, at 16 (same).

While unknown holders of demands have been separately classified in other diocesan bankruptcy cases, doing so was in the context of a consensual plan of reorganization.

accepting class. Under basic principles of fairness and equity, no single individual should have this power.

Even if Unknown Abuse Claimants may be separately classified, the Debtor filed a motion to retain the Unknown Abuse Claimants Representative on December 9, 2024. As explained above, even if the Unknown Abuse Claimants Representative is retained as of December 18, 2024, the amount of time he will be afforded to determine whether Unknown Abuse Claimants are being treated fairly and equitably is grossly insufficient. The Plan is thus poised to violate the due process rights of unknown and unknowable Abuse Claimants who will manifest injury after the Claims Bar Date—classified in Class 5 of the Plan—by seeking to bind them to the Plan without providing the Unknown Claims Representative adequate opportunity to perform diligence with respect to the Debtor's assets and the number and value of potential Unknown Abuse Claims, or to negotiate the Plan's treatment of Unknown Abuse Claims.

(iii) The Diocese Fails to Establish the Existence of Voting Creditors in Class 6 (Non-Abuse Litigation Claims).

The Diocese classifies Non-Abuse Litigation Claims in a separate Class and proposes to create the Non-Abuse Litigation Reserve to fund distributions to Holders of Allowed Non-Abuse Litigation Claims. But the Debtor does not disclose whether there are any claimants in this Class, the estimated value of their claims, and the amount to be funded into the Non-Abuse Litigation Reserve, making it impossible to know whether there are any creditors in this Class, the value of their claims, or whether claims in this Class are actually impaired.

(iv) The Class 8 (OPF Claim) May Not Serve as the Debtor's Impaired Class.

OPF's vote cannot count when determining whether the Debtor has obtained the consent of one impaired accepting Class of creditors so that it can avail itself of the Bankruptcy Code's cramdown provisions for two reasons. *See* 11 U.S.C. § 1129(a)(10). *First*, contemporaneous with the filing of this Objection, the Committee is filing an objection to OPF's claim (the "**OPF Claim Objection**").[15] *Second*, the OPF is both a statutory and non-statutory insider as explained in the

[15] The OPF Claim Objection is included herein by reference as if it were fully set forth herein.

OPF Claim Objection and section 1129(a)(10) of the Bankruptcy Code provides that insider votes are disregarded for purposes of determining whether an impaired class has accepted the plan.

E. The Plan Cannot Satisfy Section 1129(b)(2)(B) of the Bankruptcy Code.

Even if the Debtor's Plan met all the requirements of section 1129(a), except (a)(8), the Debtor would still not be able to cramdown the Plan on Abuse Claimants because the Plan fails to satisfy section 1129(b)(2)(B) of the Bankruptcy Code, specifically the absolute priority rule. It would be inequitable and contrary to the absolute priority rule to allow the Debtor to impair Abuse Claims by unilaterally deciding how much to pay its victims while reaping the benefits of reorganization, freeing itself of liability, and retaining hundreds of millions of assets for its post-bankruptcy life. The Debtor cannot retain or receive anything from the reorganization until all creditors are paid in full. *See* 11 U.S.C. §§ 507, 726 (unsecured creditors are third in line to receive a distribution from the estate and the debtor is sixth in line).

III.

THE DISCLOSURE STATEMENT CONTAINS INADEQUATE INFORMATION TO ENABLE ABUSE CLAIMANTS TO CAST INFORMED VOTES

Even if the Debtor manages to remedy the Plan deficiencies described above, additional information on Abuse Claimants' treatment must still be provided before the requirements of section 1125 of the Bankruptcy Code are satisfied.

A. The Disclosure Statement Should Include an Easy-To-Digest Summary of What Rights Abuse Claimants Possesses Under the Plan and What They Can Expect in Terms of Recovery and Distribution

Two bankruptcy courts recently denied approval of a diocesan disclosure statement because each lacked an easy-to-digest summary of the projected distribution to, and rights of, survivors. In the *Rockville Centre* bankruptcy case, the Honorable Martin Glenn held:

> As a guiding principle, the Disclosure Statement should provide in easy-to-digest terms what rights an Abuse Claimant possesses under the Plan as well as what an Abuse Claimant can expect in terms of recovery and distribution. The Court believes that such information would allow Abuse Claimants to make an informed assessment how they may fare if they pursued their claims outside of the bankruptcy system and, therefore, whether they would vote in favor of or against the Plan.

Order Regarding the Second Modified Disclosure Statement for First Amended Plan of Reorganization Proposed by the Roman Catholic Diocese of Rockville Centre, at 3, *In re The Roman Cath. Diocese of Rockville Centre*, No. 20-12345-mg (Bankr. S.D.N.Y. Jan. 18, 2024), Dkt. No. 2828; *see also* Order Denying Approval of the Disclosure Statement in Support of Fourth Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse Dated Sept. 13, 2024, at 12, *In re The Roman Catholic Diocese of Syracuse*, No. 20-30663-5-wak (Bankr. N.D.N.Y. Nov. 14, 2024), Dkt. No. 2308 (in denying approval of debtor's disclosure statement, court quoted Judge Glenn to set forth its concerns with complexity of information provided). Judge Glenn further held that "Abuse Claimants should be not expected to navigate multiple documents and cobble together bits and pieces of information in an effort to ascertain what rights they may or may not possess." *Id.* at 4–5.

The Disclosure Statement is long and convoluted. It fails to provide a concise statement of the treatment of Abuse Claims and contains confusing information that is irrelevant to an Abuse Claimant's decision to accept or reject the Plan. *See, e.g.*, Debtor's Plan of Reorganization, at 22, Dkt. No. 1444. The Debtor should create a short, "plain English" explanation of the Plan, located near the beginning of the Disclosure Statement to provide Abuse Claimants the information necessary to help them determine whether to vote for or against the Plan. Included should be a simple explanation of the effect of an Abuse Claimant choosing the Distribution or Litigation Option and a summary of the relevant portions of the Survivors' Trust Documents so that Abuse Claimants are not forced to review multiple documents to figure out how their Claims will be treated.

B. <u>The Disclosure Statement Omits Significant Information.</u>

(i) <u>Omitted Claims Valuation Method</u>: The Disclosure Statement fails to explain how the Diocese calculated the total value of Abuse Claims at $98 million and thus, Abuse Claimants have no way to understand whether the amount being paid to the Survivors' Trust is fair and equitable. The valuation is especially suspect given that the average payment this Diocese made to survivors to settle claims asserted during a prior opening of the statute of limitations in the early 2000s was $1.1 million per claim (and $1.7 million after adjusting for inflation). Even if only 345

Abuse Claims were allowed (the number is closer to 375), the Debtor's liability, calculated using the inflation adjusted values that it paid in the early 2000's, would be $586.5 million.[16]

(ii) Omitted Survivors' Trust Documents: The Disclosure Statement refers, many times, to the treatment afforded Abuse Claimants or the powers the Survivors' Trustee holds as being set forth in the Survivors' Trust Documents. But the Survivors' Trust Documents were not filed with the Disclosure Statement and may not be filed until shortly before the Voting Deadline. The Survivors' Trust Documents must be promptly filed and later served with the Solicitation Package so that Abuse Claimants will have adequate opportunity to review them prior to voting. These deficiencies are fatal; until remedied, the Disclosure Statement cannot be approved. *See, e.g., In re Ferretti*, 128 B.R. 16, 19 (Bankr. D. N.H. 1991) (noting a disclosure statement must be succinct and clear).[17]

(iii) Omitted Information re: Analysis of Adversary Proceedings: The Disclosure Statement fails to describe contested matters and adversary proceedings pending before this Court and the potential impact of this Court's adjudication of those matters. Creditors must be informed that the size of the Debtor's estate will meaningfully increase if the Committee prevails in those actions. The Disclosure Statement must also discuss the November 19, 2024 motion the Debtor filed in the District Court requesting that the District Court Insurance Case be stayed pending a decision on confirmation of the Plan and its impact on Abuse Claimants' ability to recover against the Non-Settling Insurers. RCBO's Mot. to Hold Cases in Abeyance, *Roman Cath. Bishop of Oakland v. Pac. Indem.*, No. 3:24-cv-00709-JSC (N.D. Cal. Nov. 19, 2024), Dkt. No. 146.

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[16] To expedite a consensual resolution of this case, the Committee recently filed the Lift Stay Motion through which it seeks a modification of the automatic stay so that six Abuse Claimants' lawsuits against the Diocese may continue. In the context of approval of the Disclosure Statement and confirmation of the Plan, liquidating claims as contemplated by the Bankruptcy Code, using state law, serves a vital (and gating) function: it will allow survivors to determine the approximate percentage return they will receive under the Plan. Indeed, the Disclosure Statement does not—and cannot—provide adequate information until this occurs.

[17] There is no exemption from the requirement of adequate disclosure for creditors who intend to object to a plan. To the contrary, adequate disclosure is required even if all parties are subject to cram down, because "[t]he opportunity for parties in interest to appear and effectively express a dissenting voice would be drastically diminished" otherwise. *In re Jeppson*, 66 B.R. 269, 297 (Bankr. D. Utah 1986).

(iv) Omitted Information re: Unknown Abuse Claims: The Disclosure Statement provides no analysis or reasonable basis for determining the amount to be set aside for Unknown Abuse Claims. There is neither a projection of the number of Unknown Abuse Claims which may be filed nor any valuation of those claims, making it impossible for the Unknown Abuse Claims Representative to make an educated decision on whether the proposed $5 million Unknown Abuse Claims Reserve is fair and equitable.

(v) Omitted Information re: Asset Valuation

The Disclosure Statement provides that each Holder of an Abuse Claim shall receive their allocable share of the Survivors' Trust Assets. But the Disclosure Statement fails to provide an adequate valuation of the Livermore Property or ascribe any value to the Insurance Assignment, both of which are asserted to be substantial components of the Survivors' Trust Assets. The Debtor must provide a detailed, and credible, valuation of those assets so that Abuse Claimants can determine the value of the assets to be placed into the Survivors' Trust.

(vi) Omitted Information re: Number and Claim Valuation

The Disclosure Statement fails to provide the approximate number of Claims in each Class and the estimated value of Claims in each Class. Without such information, it is impossible for a Class to determine whether the treatment it is being afforded under the Plan is fair and equitable. *See, e.g.*, *In re Arnold*, 471 B.R. 578, 585-86 (Bankr. C.D. Cal. 2012) (holding that debtor's disclosure statement failed to provide adequate disclosures because it "does not contain adequate information with respect to the total amount owed to General Unsecured Creditors.").

C. The Disclosure Statement Is Misleading.

(i) Fairness of Distribution to Abuse Claimants: The Debtor seeks to justify the fairness of its distribution to Abuse Claimants by comparing its proposed payment to other Catholic diocese bankruptcy case distributions. That is a specious comparison. The Debtor's charts (i) include certain precedents that support the Debtor's purported valuation and omit other precedents that do not support the Debtor's view, and (ii) fail to disclose critical information necessary for any meaningful comparison, such as the applicable law and statute of limitations governing claims in the bankruptcy case, the debtor's assets, the availability of insurance, the

severity of the claims being settled and the average amount paid to survivors in or about 2002, when the statute of limitations was previously opened. What a group of survivors received in another case is irrelevant to what is fair and equitable in this case. Taken to its extreme, the Debtor would have this Court believe that the reasonableness of creditors' recovery in the Sears bankruptcy should be based on the recovery creditors received in Lord & Taylor's chapter 11 case.

Determining whether the proposed distribution to Abuse Claimants is fair and equitable depends on, among other things, the amount of assets in the debtor's estate. Comparing this Chapter 11 Case to a select few Diocese bankruptcy cases scattered around the country does not consider the value of the Debtor's assets, specifically its extensive real estate holdings in one of the most expensive real estate markets in the country, or the value of Abuse Claims in California. Recently, in *In re The Roman Catholic Diocese of Rockville Centre*, Judge Glenn took issue with similar charts proposed to be used in the debtor's disclosure statement, finding them "misleading." Hr'g Tr. of Feb. 8, 2024 Status Conference Re: Hybrid Disclosure Statement, at 86:11-13, *In re The Roman Cath. Diocese of Rockville Centre*, No. 20-12345-mg (Bankr. S.D.N.Y. Feb. 21, 2024), Dkt. No. 2938. The transcript is attached as Exhibit F to the Weisenberg Dec. Judge Glenn ultimately directed that the charts must not be used lest "there's going to be a more fulsome, irrelevant comparison to judgments elsewhere." *Id.* at 87:19-21.

Even if this Court found some value in the comparisons, the Debtor should at least be required to include bankruptcy cases that the Debtor chose not to include in its charts, including the other two California Diocese bankruptcy cases in which plans have been confirmed: (i) *In re The Roman Catholic Bishop of San Diego*, during which the diocese reached a settlement with survivors to pay $198 million to 144 survivors, equaling $1.375 million per claimant, or $2,055,366 on an inflation-adjusted basis and (ii) *In re The Roman Catholic Bishop of Stockton,* during which the diocese reached a settlement with survivors to pay $13.795 million to 27 survivors, equaling an average of $510,926 per claimant, or $661,015 per claimant on an inflation-adjusted basis. The Debtor also fails to mention in its Disclosure Statement the per survivor recovery in the recently announced Los Angeles Archdiocese out-of-court settlement wherein survivors are projected to receive on average $650,000 each. The fairness of the payment to Abuse

Claimants must be determined based on the unique facts of *this* case, not those chosen by the Debtor to drive down survivors' recoveries.

(ii) Value of Survivors' Trust

The Debtor represents in the Disclosure Statement that the Survivors' Trust will be funded with $198.25 million or so. But $81 million of that amount is predicated on the successful rezoning, development and sale of the Livermore Property. If the Survivors' Trust fails to rezone the Livermore Property or obtain entitlements for construction of residential housing, average Survivor recoveries could be reduced to as low as $234,782 (assuming a reduction of funding of $81 million and 345 claims). In addition, the Debtor's estimates fail to consider the costs associated with obtaining necessary approvals and delays to be incurred while the approval process is pursued.

(iii) Comparison to Chapter 7

As shown above, the Liquidation Analysis (Disclosure Statement, Ex. B, Dkt. No. 1445-2) does not fairly present the outcome of a liquidation of the Debtor's assets and what Abuse Claimants would receive in a liquidation.

(iv) Greater Administrative Expenses: The Debtor argues that confirmation of the Plan provides the most favorable outcome for Creditors because the Plan "has the support of, among other entities, the Contributing Non-Debtor Catholic Entities" and the negotiation and drafting required for an alternative plan "would likely add substantially greater administrative expenses." Disclosure Statement, at 68, ¶ A, Dkt. No. 1445. Those statements are not supported by evidence. The mere fact that non-Debtor affiliates that are completely controlled by the Debtor support the Plan and that there may be additional negotiations with those entities over the terms of an alternative Plan does not make the Plan more favorable than other alternatives.

(v) Child Protection Protocols: The Disclosure Statement misleadingly implies that the Plan provides provisions designed to foster the protection of children from Sexual Abuse. *See id.* at 15, ¶ K. Yet Section 12.2 of the Plan refers the reader to Article IV.G. of the Disclosure Statement, which summarizes what the Debtor has done in the past to protect children. *See* Debtor's Plan of Reorganization, at 61, ¶ 12.2, Dkt. No. 1444; Disclosure Statement, at 24, ¶ G,

Dkt. No. 1445. In other words, the Debtor's assertion in the Disclosure Statement that it "will do everything in its power to prevent such abuse," rings hollow. *See* Disclosure Statement, at 6, ¶ D, Dkt. No. 1445. The Debtor somehow has concluded that its lackluster policies and protocols—which have failed to adequately protect children—are enough.

(vi) Ownership of Cathedral: The Disclosure Statement is misleading about who ultimately owns the Cathedral Center. It states that the "[Cathedral Corporation] holds legal title to the land and improvements constituting the Cathedral Center" and will continue to own, operate, and maintain it after the Effective Date of the Plan. But in the next paragraph the Debtor explains a proposed settlement under which it would take ownership of the land and improvements constituting the Cathedral Center. *See id.* at 22, ¶ 5.

(vii) "Initial Determination": The Disclosure Statement explains that each Holder of a Trust Claim will receive a notice containing the Initial Determination, including a projected recovery based on the anticipated assets of the Survivors' Trust at the time of the Initial Determination. *See id.* at 45, ¶ 3. But given that the monetization of the Livermore Property and the Assigned Insurance Assets are unpredictable, and undoubtedly will take years, it is unclear how an educated determination of the projected recovery can be made.

D. The Disclosure Statement Is Confusing or Contradictory.

(i) The Cap Imposed by the Final Determination: The Disclosure Statement's explanation of the differing treatment provided to Trust Claimants choosing the Distribution Option and Litigation Option is both confusing and inconsistent. Article I, Section C of the Disclosure Statement, entitled "Plan Mechanics," describes the differing treatment for Trust Claimants that choose the Distribution Option and those that choose the Litigation Option. The Disclosure Statement provides that, regardless of which option is chosen, a Trust Claimant's Abuse Claim is capped by the Final Determination, which is a valuation of the Abuse Claim by a neutral arbiter. *Id.* at 5. Not only is there no discussion of how the "neutral" will be selected, but there is also no discussion of how the Final Determination's allocation of points can be compared to a monetary recovery awarded to an Abuse Claimant. Further complicating the matter is that the

Livermore Property will take years to monetize, making it impossible to know the equivalency between points awarded to Abuse Claimants and a judgment awarded to that claimant.

(ii) The Impact of Obtaining a Judgment: The Disclosure Statement provides that if a Holder of a Trust Claim obtains a judgment against a Non-Settling Insurer, the Holder will have no further claims against the Survivors' Trust. *See id.* at 46, ¶ d. But the Disclosure Statement also provides that following final resolution of each Abuse Claim Litigation, the Survivors' Trustee will make an initial distribution to each Trust Claimant who selected the Litigation Option. *See id.* ¶ e. Thus, it is unclear whether a Trust Claimant who selected the Litigation Option is entitled to receive any distribution from the Survivors' Trust.

Compounding the confusion is Article VII.C.7., which provides that the Survivors' Trustee may settle with the Non-Settling Insurers on some or all of the Abuse Claims. *See id.* at 41, ¶ 7. But there is no mention on how a settlement would impact an Abuse Claimant who selected the Litigation Option or how those settlement proceeds would be distributed.

(iii) Disposition of Survivors' Trust Assets: Article VII.H. of the Disclosure Statement provides that any remaining Assets in the Survivors' Trust shall be transferred to the Reorganized Debtor. *See id.* at 46, ¶ H. But Article I.C. of the Disclosure Statement states that the Survivors' Trustee will make his Final Distribution "which shall be comprised of *all* Trust Claimants' pro-rata shares of all remaining Survivors' Trust Assets, including reserves." *Id.* at 6.

(iv) Who Will Prosecute Claims Against Non-Settling Insurers After Confirmation?: The Disclosure Statement is also confusing and/or internally inconsistent as to who will prosecute the insurance claims against Non-Settling Insurers after confirmation: individual Abuse Claimants or the Survivors' Trust. Article IX.A of the Disclosure Statement provides that "any effort to collect from Abuse Insurance Policies issued by the Non-Settling Insurers to satisfy an Abuse Claim after Confirmation of the Plan shall be sought ***individually by the applicable Holder of an Abuse Claim*** after such Holder's Claim has been liquidated as provided herein." (emphasis added). By contrast, Article XIII.L.d. of the Disclosure Statement appears to contemplate the Survivors' Trust bringing suit against Non-Settling Insurers: "This [No Duplicative Recovery] provision does not prohibit the Survivors' Trust from pursuing recovery from Non-Settling Insurers for coverage

of an Abuse Claim for which the Holder of such Abuse Claim has received a recovery from the Survivors' Trust."

(v) Miscellaneous Confusion: The Disclosure Statement mentions a "Liquidating Trust" which appears to be a scrivener's error as no such entity is mentioned elsewhere in the Plan. *See id.* at 33. Finally, Article I.C. of the Disclosure Statement provides if a litigation yields a judgment covered by insurance, the amount will be paid by the Survivors' Trust but Article VII.F.3.d. of the Disclosure Statement provides that a Non-Settling Insurer or other third party liable to such Claim Holder will pay the judgment directly to such Holder. *See id.* at 5, 46.

E. The Solicitation Procedures Are Unworkable.

If this Court approves the Disclosure Statement, the Debtor's proposed Plan confirmation schedule does not provide for adequate time for the parties to prepare for a contested confirmation hearing. The Committee submits that any schedule this Court ultimately approves for confirmation must account for sufficient time for:

(i) allowing the State Court Actions (as defined in the Lift Stay Motion) to proceed to allow the parties accurate data points from which to calculate the Debtor's aggregate liability, or, in the alternative, allow the Committee to conduct fact and expert discovery on the Debtor's Abuse Claims' valuation;

(ii) allowing the Committee's adversary proceedings to continue and conclude so that the Plan accurately sets forth the assets of the Debtor's estate;

(iii) the Debtor and all Contributing Non-Debtor Catholic Entities to produce documents and witnesses which fully disclose their financial position and relationships;

(iv) the Debtor to produce documents establishing the validity of any assets it claims are restricted; and

(v) the Committee and other parties in interest to conduct discovery relating to the Plan.

F. The Committee Should Be Authorized to Send a Letter to Abuse Claimants in the Solicitation Package.

If this Court approves the adequacy of the Disclosure Statement, the Committee requests that the Court (a) allow the Committee to prepare a letter advising Abuse Claimants that the Committee opposes confirmation of the Plan and recommending Abuse Claimants vote to reject the Plan, and (b) direct the Debtor to include the Committee's letter with the Disclosure

Statement, before the ballots in a different (yet legible) color paper so the letter is conspicuous and not relegated to the last document in the Debtor's package. Consistent with the decision in *Jacobson v. AEG Cap. Corp.*, the Committee submits that it is appropriate to include the letter as part of the Debtor's solicitation package. 50 F.3d 1493, 1500 (9th Cir. 1995) ("Interested parties, i.e. creditors and shareholders . . . acting in good faith, can circulate opposition to the debtor's plan."); *In re Pierce*, 237 B.R. 748, 758 (Bankr. E.D. Cal. 1999) (holding that a creditors' committee may "advise the general unsecured creditors of their views on any plan of reorganization.").

IV.

RESERVATION OF RIGHTS

If any objection, in whole or in part, contained in this Objection is considered an objection to confirmation of the Plan rather than, or besides, an objection to the adequacy of the Disclosure Statement, the Committee reserves its right to assert such objection, as well as any other objections, to confirmation of the Plan. The Committee also reserves the right to raise further and other objections to the Disclosure Statement before or at the hearing on it.

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WHEREFORE, the Committee requests that this Court deny approval of the Disclosure Statement and grant the Committee such further and other relief as this Court deems just and proper.

Dated: December 11, 2024

LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP
BURNS BAIR LLP

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EXHIBIT C

- *In re Roman Cath. Archbishop of Portland in Or.*, 339 B.R. 215, 227 (Bankr. D. Or. 2006) ("in order to meet the best interests test for confirmation set out in § 1129(a)(7), the plan must provide that an impaired class receive at least as much as the class would receive in a chapter 7 liquidation")
- *In re Diocese of Camden, New Jersey*, 653 B.R. 309, 341 (Bankr. D.N.J. 2023) (despite the debtor arguing that section 1129(a)(7) does not apply to non-profits, "the Court disagrees" and required the diocese debtor to satisfy the Liquidation Analysis requirements)
- *In re Cath. Bishop of Northern Alaska*, Case No. 08-00110 (Bankr. D. Ak. 2010) (confirming chapter 11 plan, holding the debtor satisfied section 1129(a)(7) because each holder of an impaired claim will "receive or retain property under the Plan having a value … that is not less than … if CBNA could be liquidated under Chapter 7")
- *Order Confirming Chapter 11 Plan, In re Cath. Bishop of Spokane*, Case No. 04-08822 (Bankr. E.D. Wash. 2007) (confirming debtor's chapter 11 plan, finding "Debtor has met its burden of proving all of the elements of [section 1129(a)]")
- *Order Confirming Chapter 11 Plan*, In re the Christian Brothers' Institute, et al., Case No. 11-22820 (Bankr. S.D.N.Y. 2014)
- *Order Confirming Chapter 11 Plan*, In re Roman Catholic Diocese of Harrisburg, Case No. 1:20-bk-00599 (Bankr. M.D. Pa. 2023)
- *Order Confirming Chapter 11 Plan*, In re the Diocese of St. Cloud, Case No. 20-60337 (Bankr. D. Minn. 2020)
- *Order Confirming Chapter 11 Plan*, In re Catholic Diocese of Wilmington, Inc., Case No. 09-13560 (Bankr. D. Del. 2011)
- *Findings of Fact and Conclusions of Law Regarding Plan, In re Roman Cath. Bishop of Helena, Montana*, Case No. 14-60074 (Bankr. D. Mont. 2015)
- *Order Confirming Chapter 11 Plan*, In re Roman Cath. Church of the Diocese of Gallup, Case No. 13-13676 (Bankr. D. N.M. 2016)
- *Order Confirming Chapter 11 Plan*, In re Roman Cath. Church of the Archdiocese of Santa Fe, Case No. 18-13027 (Bankr. D. N.M. 2022) (order confirming chapter 11 plan finding the debtor satisfied section 1129(a)(7) Liquidation Analysis, despite acknowledging that section 1112(c) "protects charitable institutions by precluding conversion of a chapter 11 case to chapter 7").

EXHIBIT D

Summary of Fifth Amended Joint Chapter 11 Plan of Reorganization for the Diocese of Rochester, 2-29-20905-PRW, No. 2602-5, p. 7 (Bankr. W.D. N.Y. April 29, 2024)

Exhibit 7

Joint Plan Summary

Summary of Fifth Amended Joint Chapter 11 Plan of Reorganization for The Diocese of Rochester

The Diocese of Rochester (the "Diocese") and the Official Committee of Unsecured Creditors (the "Committee" and together with the Diocese, the "Plan Proponents") jointly propose the *Fifth Amended Joint Plan of Reorganization for the Diocese of Rochester* (the "Plan") to address the Diocese's liability to survivors of sexual abuse and other creditors.[4] The materials in the package that you have received with this summary of the Plan include, among other documents relating to the Plan (i) the Plan itself, (ii) a Disclosure Statement and (iii) a ballot for voting to accept or reject the Plan with instructions on how to complete and return the ballot. The Plan includes exhibits that are part of the Plan and should be reviewed by individuals asked to vote on the Plan. You should review all of these documents because they contain information relevant to your decision to vote to accept or reject the Plan.

This summary of the Plan is intended to assist you in deciding whether to accept or reject the Plan. The summary answers important questions about the Plan and is provided for survivors of sexual abuse who filed claims against the Diocese and related entities because of sexual abuse (such individuals are referred to as "Abuse Claimants"). This document is not intended for anyone other than Abuse Claimants. This summary is only a "plain English" explanation and summary of the Plan and is qualified in its entirety by the full terms of the Plan. The Plan and Disclosure Statement (along with their Exhibits) are not modified by this document, which is provided as a means of explaining the Plan for reference only. You should review the Plan and Disclosure Statement in their entirety because the Plan, if approved by the court, will control how your Abuse Claim is finally resolved against the Diocese, parishes and certain other entities that may be

[4] Capitalized terms used but not defined in this Summary have the meanings given to them in the Plan.

responsible for your abuse. You are encouraged to consult an attorney to advise you regarding the terms of the Plan and how it may affect your legal rights.

1. Why did the Diocese file a Chapter 11 Case?

On September 12, 2019, the Diocese filed its chapter 11 case (the "Chapter 11 Case") in the United States Bankruptcy Court for the Western District of New York. The Diocese filed its Chapter 11 Case to address and resolve all claims asserted against the Diocese under New York's Child Victim Act (the "CVA"). The Honorable Paul R. Warren, United States Bankruptcy Judge, is presiding over the Chapter 11 Case. All documents filed with the Court, including the Plan and Disclosure Statement, are available at https://case.stretto.com/rochesterdiocese free of charge.

Approximately 500 abuse survivors have asserted claims seeking damages for sexual abuse by individuals allegedly associated with the Diocese or related entities. Many abuse survivors also filed lawsuits against the Diocese and parishes and other entities related to the Diocese. Such claims are referred to as "Abuse Claims" in the Plan and this document.

2. What is the Committee?

The Committee was appointed by the United States Trustee to represent Abuse Claimants' collective interests in the Chapter 11 Case. The Committee is comprised of eight individuals who are survivors of sexual abuse by individuals associated with the Diocese. The Committee hired counsel to advise it on bankruptcy and insurance matters. It also hired a financial advisor to aid in its investigation of the Diocese's assets.

3. What is a chapter 11 plan?

Chapter 11 of the Bankruptcy Code allows a debtor (in this case, the Diocese) to resolve claims against it through a plan of reorganization. Abuse Claimants and other creditors who hold claims that will not be paid in full are given an opportunity to vote to approve or reject a plan.

This type of claim is referred to as an "impaired claim" by the Bankruptcy Code and in the Plan. In this case, Abuse Claimants are entitled to vote on the Plan. If enough Abuse Claimants and other creditors vote to accept the Plan, and the Court finds that the Plan meets other requirements of the Bankruptcy Code, the Court may enter an order approving the Plan. Court approval of a plan is referred to as "confirmation" of the plan under bankruptcy law. Once confirmed, the terms of the Plan become binding on all creditors. Because the Plan includes releases for parishes and other Catholic entities who are not debtors in bankruptcy (referred to in the Plan as the "Participating Parties"), under current law the Plan must receive approval from at least 75% of voting Abuse Claimants before it can be confirmed.

4. What is the Disclosure Statement

The Disclosure Statement is intended to provide you with enough information so that you can make an informed decision on whether to accept or reject the Plan. The Disclosure Statement provides detailed information about the Diocese's history, mission and operations, its need to reorganize its finances in bankruptcy, a history of major events in the Bankruptcy Case, and a more detailed explanation of how the Plan will affect your Abuse Claim against the Diocese and the Participating Parties. You should read the entire Disclosure Statement in its entirety.

5. What is the Plan proposed by the Diocese and the Committee?

The Plan includes proposed settlements reached between the Diocese, the Participating Parties, the Committee and four of the Diocese's principal insurers that provided coverage for Abuse Claims. Only one insurer that provides coverage for Abuse Claims has not reached a settlement with the Diocese and the Committee. The Committee negotiated the proposed settlements and recommends that you vote to accept the Plan.

The Plan provides that all Abuse Claims asserted against the Diocese, or against the Parishes and other Participating Parties, will be channeled to, and paid from, a settlement trust (the "Trust"). The Trust is a legal entity that will pursue claims against the one insurer that did not settle with the Diocese and will distribute settlement funds to survivors.

The Plan proposes a combined settlement of $126.35 million, of which $55 million will be funded collectively by the Diocese and the Participating Parties, and $71.35 million will be paid by settling insurers. The Plan also provides that the Diocese and Participating Parties will assign to the Trust their insurance claims against Continental Insurance Company ("Continental" also referred to in the Plan as "CNA"), the sole insurer that has not settled with the Committee and the Diocese.

6. Does the Committee support the Plan?

Yes. The Committee supports the Plan and recommends that Abuse Claimants vote to accept the Plan.

7. Why does the Committee support the Plan?

The Plan is the result of extensive negotiation and mediation between the Committee, the Diocese, the Participating Parties and the four settling insurers. Attorneys representing approximately 70% of Abuse Claimants participated in the negotiations through their representation of individual Committee members. The Committee was represented by Pachulski Stang Ziehl & Jones LLP as bankruptcy counsel and Burns Bair LLP as insurance counsel. Both firms have extensive experience representing Committees of abuse survivors in chapter 11 cases filed by Roman Catholic entities.

The Committee, through its professionals, reviewed and analyzed, among other things, (a) the Diocese's and Participating Parties' financial condition and potential liabilities on account of

Abuse Claims, (b) the Diocese's insurance policies and (c) documents relating to Abuse Claims. Based on the Committee's analysis, the settlements with the Diocese, the Participating Parties and the four settling insurers represent a fair resolution of these entities' liability for Abuse Claims. The settlement with the Diocese and Participating Parties was based on their respective assets, existing liabilities and anticipated exposure to liability for Abuse Claims, as well as concessions made regarding their insurance. These concessions include an assignment to the Trust of insurance claims that can be prosecuted against non-settling insurers to augment the assets available to the Trust through a global settlement of a non-settling insurer's coverage liability, as well as consent, subject to the terms of the Plan, to allow certain Abuse Claimants to proceed with lawsuits against the Diocese and Participating Parties to establish liability and damages and, if successful, to recover funds from those non-settling insurers, which creates additional settlement pressure on non-settling insurers.

Continental insured the Diocese and Participating Parties from approximately 1943 to 1977. Approximately 300 Abuse Claims fall within those years. The Committee believes that Continental is responsible to pay for Abuse Claims valued in the hundreds of millions of dollars. To date, Continental has proposed a settlement of $75 million. In the Committee's opinion, Continental's proposal is not sufficient because it drastically undervalues Continental's obligations under the insurance policies it issued to the Diocese and the Participating Parties for over 30 years.

8. How will the Plan work?

a. *General Overview of Plan*

The Plan establishes a Trust for the benefit of Abuse Claimants. The Trust will distribute funds to Abuse Claimants from the $126.35 million of settlement funds from the Diocese, Participating Parties, and the settling insurers, as well as any additional funds collected through

litigation and/or settlement with Continental. The Trust will initially distribute $105 million of these funds. The Trust will reserve (a) at least $17.5 million to fund its operations and litigation to recover funds from non-settling insurer Continental and $3,576,500 as a reserve for Second Group Abuse Claims (which are Abuse Claims or lawsuits that may be asserted against the Diocese and/or Participating Parties after the Effective Date of the Plan).

b. *Method for Determining Payments to Abuse Claimants.*

Funds will be distributed to survivors pursuant to guidelines described in a document referred to as the "Allocation Protocol" which is attached as an exhibit to the Plan. The Allocation Protocol provides guidelines for an independent claim reviewer to analyze survivors' Abuse Claims and award each Abuse Claim a point score between 0 and 100 taking into account both the nature of the abuse inflicted and the impact of abuse on each Abuse Claimant. The settlement funds will be distributed based on the scores awarded by the claims reviewer. The proposed claims reviewer selected by the Committee is Roger Kramer of Kramer Law LLC. Mr. Kramer has extensive experience mediating sexual abuse claims and serving as an abuse claims reviewer in diocesan chapter 11 cases. Mr. Kramer was carefully vetted by the Committee and the Committee believes that he does not have any conflicts of interest in the Bankruptcy Case.

The Committee believes that the process described in the Allocation Protocol is a fair and reasonable way to distribute the funds available for payment of Abuse Claims. Under the Allocation Protocol, Abuse Claimants may supplement their claims to provide additional information they believe the claims reviewer should consider. The Allocation Protocol also allows Abuse Claimants to have their award reconsidered if they believe the award is too low. Any party seeking such reconsideration would be required to pay $425 to compensate the Trust for the cost of the review. This charge is lower than the filing fee charged by the U.S. District Court for the

Western District of New York for an appeal.[5] The reconsideration charge may be waived by the claims reviewer if paying the charge would cause hardship. The reason for the charge is to reimburse the Trust for part of the cost of administering the reconsideration process.

The Committee recognizes that each Abuse Claimants' trauma is unique and believes that assessment by an independent evaluator provides a fair and efficient way to consider what happened to each Abuse Claimant and the effects of the abuse on each Abuse Claimant. The Committee recognizes that money alone is not sufficient to compensate survivors for the abuse they suffered and the decades of trauma each survivor suffered because of the abuse. The Committee also recognizes that excessive, onerous procedures for reviewing and allocating payment for claims would cause delay and expense that would cause survivors to wait longer to receive less money. For example, if evidentiary reviews (including documents and witnesses) were utilized to assess each claim, the Committee believes that each review may take a minimum of 10 hours for a claims reviewer. In addition, claimants would have to spend time preparing documents, testimony, and expert reports. Rather than force Abuse Claimants to wait longer for less money, the Committee believes the Allocation Protocol strikes the right balance of efficiency and fairness to Abuse Claimants.

Similar allocation processes have been used successfully in approximately twenty chapter 11 cases involving other Roman Catholic dioceses and religious orders.

The Trustee will make the initial distribution to Abuse Claimants as soon as practicable once all Abuse Claims have been scored pursuant to the Allocation Protocol and any requests for reconsideration have been addressed. Based on Mr. Kramer's prior history in other diocesan chapter 11 cases, the Committee expects that the process scoring Abuse Claims, including any

[5] See https://www.nywd.uscourts.gov/sites/nywd/files/district_court_fee_schedule_effective_122023.pdf.

requests for reconsideration, will take approximately 90 to 120 days after the Effective Date of the Plan.

Once the claims review process is complete, the Trustee will make an initial distribution to Abuse Claimants. Settlement funds will be distributed to Abuse Claimants proportionally based on the scores awarded by the claim reviewer, subject to certain downward adjustments for late-filed claims, and upward adjustments for Abuse Claimants who filed timely lawsuits under the CVA and for Litigation Claimants (discussed below) if their litigation efforts result in a settlement with Continental. For example, and by way of illustration only, if the claims reviewer awards a cumulative total of 25,000 points among 500 Abuse Claimants (reflecting a hypothetical average award of 50 out of a possible maximum of 100 points),[6] and if the Trust is making an initial distribution of $100 million, the amount distributable to an Abuse Claimant who is not subject to any adjustments would be calculated as follows:

$$\frac{points\ awarded}{25{,}000} * \$100{,}000{,}000 = distribution\ amount$$

Points Assigned	Hypothetical Distribution Amount
100	$400,000
75	$300,000
50	$200,000
25	$100,000
10	$40,000

[6] The actual cumulative total points awarded could be higher or lower depending upon the claim reviewer's evaluation of Abuse Claims.

If an Abuse Claimant filed a timely CVA lawsuit, they would receive a point enhancement multiple of 1.25 and their distribution would be calculated as follows:

$$\frac{points\ awarded * (1.25)}{25{,}000} * \$100{,}000{,}000 = distribution\ amount$$

Points Assigned	Hypothetical Distribution Amount
100	$500,000
75	$375,000
50	$250,000
25	$125,000
10	$50,000

Conversely, if the Abuse Claimant filed their claim after the Bar Date, they would be subject to point reduction of at least 15%, and as much as 90%, depending upon how late their claim was filed and the reason given for missing the Bar Date.[7] Accordingly, if the claim reviewer determines to apply a 50% reduction on account of the lateness of the claim, the distribution to the Abuse Claimant would be calculated as follows:

$$\frac{points\ awarded * (.50)}{25{,}000} * \$100{,}000{,}000 = distribution\ amount$$

Points Assigned	Hypothetical Distribution Amount
100	$200,000
75	$150,000
50	$100,000
25	$50,000
10	$20,000

c. *Assignment of Insurance Claims to the Trust.*

The Diocese and Participating Parties have claims under the insurance policies issued by Continental, including, but not limited to, claims to (i) compel payment of claims by Continental, (ii) recover attorneys' fees paid by the Diocese in defense of the claims, (iii) for Continental's

[7] The Plan establishes a Trust for the settlement of all Abuse Claims that arose prior to September 12, 2019 which is when the Diocese filed this Chapter 11 Case. Any Claims arising on or after September 12, 2019 but prior to confirmation of the Plan will be treated as either Administrative Claims, or Pass-Through Claims, in accordance with Plan Sections 2.1.1 and 2.3.2 respectively.

denial of almost 300 claims, and (iv) for other breaches of the policies and violations of applicable law. Under the Plan, the Diocese and Participating Parties will assign their insurance claims against Continental to the Trust. Continental asserts that it has defenses to the claims that will be assigned to the Trust. The Trust will litigate the contested claims against Continental for the benefit of Abuse Claimants. Any recovery obtained by the Trust from Continental will be paid to Abuse Claimants and not to the Diocese. The Trust will have sole authority to settle with Continental.

d. *Litigation of Abuse Claims Covered by Continental.*

Abuse Claimants with claims covered by Continental (*i.e.*, where the abuse occurred between approximately 1943 and 1977) may elect to serve as a "Litigation Claimant" and, subject to the terms of the Plan, to litigate their claims against the Diocese and Participating Parties to establish liability and damages. Any judgment a Litigation Claimant may obtain against the Diocese or a Participating Party may only be enforced against Continental and, pursuant to the terms of the Plan, will be assigned to the Trust for the benefit of all Trust beneficiaries.

The Claim Litigation Protocol attached as an exhibit to the Trust Agreement provides that the Trustee will prioritize authorizing those Litigation Claimants with the highest valuations according to the Committee's valuation expert to move forward with litigation first, but may also consider additional factors such as the age of the Litigation Claimant and the legal merits of each Litigation Claimant's case.

Abuse Claimants who were not abused during Continental's coverage period may not pursue litigation of their claims because the insurers that may provide coverage for such claims, as well as the Diocese and the Participating Parties, have already settled their liability for such claims with the Committee.

Litigation Claimants may settle with Continental if the Trust has not first reached a global settlement with Continental. A Litigation Claimant with a settlement against Continental may elect to either (i) contribute the settlement proceeds to the Trust or (ii) keep the settlement proceeds. A Litigation Claimant that contributes their settlement proceeds to the Trust will be eligible to share in any additional distributions by the Trust with respect to recoveries from settlement or judgments against Continental. A Litigation Claimant that elects to keep their settlement proceeds (a) will have to pay 10% of such proceeds to the Trust as reimbursement for the Trust's pursuit of claims against Continental and (b) will not be entitled to any further distributions from the Trust on account of additional recoveries from Continental.

If the Trust settles with Continental before a Litigation Claimant's case is resolved through settlement or judgment against Continental, that case will be terminated and the Abuse Claimant will be compensated according to the Plan's Allocation Protocol. A non-settling Litigation Claimant will also receive additional claim enhancements. The enhancements are on account of these claimants' work and re-traumatization that may be incurred in pursuing litigation.

Enhancements for Litigation Claimants will be funded solely out of additional Trust recoveries from Continental and will therefore not reduce the amounts available for distribution to other Abuse Claimants from the settlement payments made by the Diocese, Participating Parties and settling insurers.

The Committee believes that the efforts of Litigation Claimants will materially enhance the Trust's ability to pursue an appropriate settlement with Continental and, therefore, enhancements for non-settling Litigation Claimants are appropriate under the circumstances. Any recoveries received by the Trust from Continental will be allocated among Abuse Claimants in accordance with the Allocation Protocol and the Plan.

The Trust will make distributions of Trust Assets to all Abuse Claimants without considering whether an Abuse Claim is or is not covered by an insurance policy. The reasons for this include (a) many claims are covered by more than one insurer, (b) the settling insurers are settling their liability with the Diocese and Participating Parties as a whole and settlement payments made by the settling insurers include an unallocated portion to settle unfiled claims and claims the Diocese and Participating Parties may assert for their own damages against each insurer (including reimbursement of attorneys' fees and expenses, as well as other damages) and (c) the Trust, as well as Abuse Claimants as beneficiaries of the Trust, will likely benefit from future recoveries from Continental and, therefore, payment of an initial distribution to Abuse Claimants with claims covered by Continental is fair under the circumstances. Survivors should consider this issue when voting to approve or reject the Plan.

e. *Treatment of Other Claims.*

The Plan also provides treatment for other creditors, as follows:

1) Under the Plan and/or the Bankruptcy Code, certain claims are paid in full. These are:

   a. Administrative Claims that are actual and necessary to administer the Diocese's bankruptcy estate during the chapter 11 case.

   b. Priority Tax Claims.

   c. Non-Priority Tax Claims.

   d. Professional Fee Claims by retained professionals representing the Diocese and the Committee. Professional Fee Claims do not include fees payable to counsel representing individual Abuse Claimants or other parties.

e. U.S. Trustee Fee Claims.

2) The Plan also provides that the following claims will be unimpaired:

a. Secured Claims payable to the Bank of Castle, which issued a letter of credit to the Diocese to secure workers' compensation claims that the Diocese may owe to the State of New York.

b. Pass-Through Claims, which include Non-Abuse Claims that the Diocese determines to leave unaffected by the Chapter 11 Case.

3) Under the Plan, the following claims are impaired:

a. General Unsecured Claims, which will be paid in two installments approximately six months apart;

b. Abuse Claims, which will be paid pursuant to the Allocation Protocol; and

c. Inbound Contribution Claims, which are comprised of claims for contribution and indemnity that have been asserted against the Diocese or Participating Parties by co-defendants and alleged joint tortfeasors, will not receive any payment under the Plan.

All holders of claims against the Diocese are encouraged to review the Plan and Disclosure Statement in their entirety.

The Committee believes that the Plan is in the best interests of Abuse Claimants and all creditors of the Diocese. The Committee recommends that you vote in favor of the Plan.

9. Can I continue litigating claims against Non-Diocesan Entities?

The Plan provides releases and injunctions which will limit your ability to assert claims against the Diocese, the Participating Parties, and the settling insurers. You are encouraged to

fully review the Plan and Disclosure Statement and to consult with legal counsel to ensure that you fully understand these provisions and their impact on your legal rights.

10. Are there risks associated with the Plan?

There are risks associated with the Plan. While you should consult the Disclosure Statement for a more detailed description of potential risks associated with the Plan, some of the more notable risks include the following:

First, Continental has asserted a claim against the Diocese based on a purported breach of a proposed settlement agreement between Continental, the Diocese and the Participating Parties. In May 2022 the Diocese sought Court approval of a proposed $63.5 million settlement with Continental. The Committee objected to this proposed settlement. The Court has not approved or disapproved the settlement and the motion seeking approval of the proposed settlement is still on the Court's docket. Continental asserts that the Diocese entered into a binding contract regarding this settlement and that the Diocese is liable to Continental for an alleged breach of the contract because the Diocese and the Committee are pursuing confirmation of the Plan (which does not include a settlement with Continental). The Diocese and the Committee deny that Continental is entitled to a claim for a number of reasons, including (a) the Diocese and the Participating Parties never signed the proposed settlement agreement and (b) the proposed settlement agreement was conditioned on events that did not occur, such as confirmation of a plan incorporating the settlement between the Diocese and Continental. If Continental prevails in its breach of contract claim, then the Plan may not be feasible because the Diocese may not be able to both satisfy Continental's claim and make the payments to the Trust contemplated in the Plan.

Second, litigation against Continental and/or the Diocese parties may not be successful in establishing liability or getting Continental to pay on its policies. Continental has asserted defenses

to coverage and to the Diocese's and Participating Parties' liability for Abuse Claims. If Continental is successful in these defenses, there is a risk that the Trust and Litigation Claimants may be unable to recover any funds from Continental.

Third, the United States Supreme Court is currently considering an appeal in *Harrington v. Purdue Pharma L.P.* (Case No. 23-124) and the Supreme Court's ruling in that case may impact this Plan. Among the issues under review in *Purdue* is whether courts may approve chapter 11 plans that provide releases for non-debtors without the consent of the persons whose claims are being released. The Plan includes releases for non-debtor entities (*i.e.*, the Participating Parties). If the Supreme Court limits or prohibits courts from approving such releases without consent, and if Abuse Claimants in this case oppose such releases, the Plan may not be confirmed or confirmation could be reversed on appeal. It is impossible to predict the Supreme Court's actions with respect to whether and to what extent a chapter 11 plan can provide non-consensual releases to non-debtors. It is possible the Court could find that such releases are (a) prohibited, (b) permitted or (c) permitted under certain circumstances. Given the unknown nature of the risk, the Committee and the Diocese believe that solicitation of a vote to approve the Plan should begin even while the Supreme Court considers *Purdue*. Waiting for the Supreme Court to rule could result in further delay to Abuse Claimants. If a decision by the Supreme Court requires revision of the Plan or other action by the parties, the Committee and the Diocese will seek appropriate relief from the Bankruptcy Court. In addition, the Committee and the Diocese believe that it is important to gauge Abuse Claimants' views on whether the terms of the Plan are acceptable even if the Supreme Court determines that non-consensual non-debtor releases are not appropriate. As such, despite uncertainty due to the Supreme Court's future decisions, the Diocese and the Committee believe that Plan approval process should not be delayed.

You should review the Disclosure Statement for a full discussion of these and other potential risks. The Committee believes the benefits of the Plan outweigh the risks.

11. What is Continental's plan?

Continental filed a competing plan that proposes to settle its liability for $75 million. Based on its analysis, the Committee believes that Continental's proposal is woefully insufficient because the analysis projects Continental's exposure to be in the hundreds of millions of dollars.

12. Why does the Committee oppose Continental's $75 million settlement proposal?

The Plan Proponents contend that Continental insured the Diocese from approximately 1943 to 1977 although Continental disputes whether it provided coverage in certain years prior to 1952. Abuse Claimants filed over 300 claims asserting abuse that abuse occurred during this time period. These include claims where all acts of abuse occurred during Continental's coverage period and claims where some of the abuse occurred during Continental's coverage period. Continental's policies include caps in amounts that Continental covers for each "occurrence" of abuse. Generally under New York law, each separate act of abuse is an "occurrence." Thus, for example, if an Abuse Claimant was abused 15 separate times in years covered by polices where Continental agreed to pay up to $300,000 per occurrence, and if a jury determined that the damages flowing from each occurrence were at least $300,000, Continental could be liable for up to $4,500,000 for the Abuse Claim, plus payment of attorneys' fees incurred by the insured in defending the claims. Continental contends that its policies contain "batching language deeming all acts of abuse against a single claimant a single occurrence subject to just one per-occurrence limit[,]" however, based on its legal and factual analysis, the Committee believes that Continental is liable for hundreds of millions of dollars in insurance coverage. Continental's current offer of $75 million provides for payment of less than $250,000 on average for each covered Abuse Claim.

In contrast, settlements with the Diocese's other insurers provide for payments of more than $400,000 per covered claim, and, after accounting for self-insured retention features not present in Continental's policies, imply an average per-claim insured valuation of more than $475,000.[8] As such, the Committee believes that Continental's $75 million offer is inadequate.[9]

13. Committee Recommendation

The Committee strongly recommends that Abuse Claimants vote to reject the Continental Plan.

The Committee strongly recommends that Abuse Claimants vote to accept the Plan negotiated by the Diocese and the Committee.

[8] Under the Plan, insurance settlement proceeds will be contributed to the Trust to compensate all survivors, regardless of whether their claim falls within an insured period. The reference to the average settlement amounts by other insurers is for reference only. It is not indicative of the Committee's analysis of Continental's ultimate exposure. Each insurance policy must be analyzed in accordance with its own terms.

[9] As noted above, Continental asserts that it has defenses to coverage of Abuse Claims.