

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re

LAVIE CARE CENTERS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-55507 (PMB)

(Jointly Administered)

Related to Docket No. 481 and 593

OBJECTION OF THE CHUBB COMPANIES TO THE (I) DEBTORS’ SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF REORGANIZATION AND (II) PLAN SUPPLEMENT

ACE American Insurance Company, ACE Property and Casualty Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, and Indemnity Insurance Company of North America, Federal Insurance Company and each of their U.S.-based affiliates and successors (collectively, the “Chubb Companies”), by and through their undersigned counsel, hereby file this objection (the “Objection”) to the *Debtors’ Second Amended Combined Disclosure Statement and Joint Chapter*

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



11 Plan of Reorganization [Docket No. 481] (the “Plan”)² and the Plan Supplement and in support of the Objection³, the Chubb Companies respectfully state as follows:

BACKGROUND

A. The Bankruptcy Case

1. On June 2, 2024 and June 3, 2024 (collectively, the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Georgia (Atlanta Division) (the “Court”).

2. On July 23, 2023, the Debtors filed the *Debtors’ Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization*, which was amended on September 19, 2023 at Docket No. 438, and the Plan was filed on October 1, 2024 at Docket No. 481.

3. On August 7, 2024, the Debtors filed the *Debtors’ Motion for Entry of Order (I) Approving Disclosure Statement, (II) Scheduling Confirmation Hearing, (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan, (IV) Approving Certain Forms and Notices, and (V) Granting Related Relief* [Docket No. 316] (the “DS Motion”).

4. On October 1, 2024, this Court entered the *Order (I) Conditionally Approving Disclosure Statement, (II) Scheduling Combined Hearing for November 14, 2024 at 9:30 a.m. (Prevailing Eastern Time), (III) Establishing Procedures for Solicitation and Tabulation of Votes on Plan, (IV) Approving Certain Forms and Notices, and (V) Granting Related Relief* [Docket No. 480] (the “DS Order”) granting the DS Motion.

² Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Plan or the Unliquidated Claim Procedures, as applicable.

³ The deadline for the Chubb Companies to file this objection was extended by agreement with the Debtors up to and including November 7, 2024 at 12:00 p.m. (prevailing Eastern Time).

5. On October 21, 2024, the Debtors filed the *Notice of Filing of GUC Trust Agreement with Respect to the Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 571].

6. On October 28, 2024, the Debtors filed the *Notice of Filing of Plan Supplement with Respect to the Debtors' Second Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization* [Docket No. 593] (the "Plan Supplement").

7. Exhibit I to the Plan Supplement are the Unliquidated Claim Procedures.

B. The Insurance Programs

8. Prior to the Petition Date, the Chubb Companies issued certain insurance policies (as renewed, amended, modified, endorsed or supplemented from time to time, collectively, the "Policies") to the Debtors as named insureds.

9. Prior to the Petition Date, the Chubb Companies and one or more of the Debtors also entered into certain written agreements in connection with the Policies (as renewed, amended, modified, endorsed or supplemented from time to time, and including any exhibit or addenda thereto, collectively, the "Insurance Agreements").

10. Pursuant to certain Policies and Insurance Agreements (collectively, the "ACE Insurance Program"), ACE American Insurance Company, ACE Property and Casualty Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, and Indemnity Insurance Company of North America, and/or certain of their U.S.-based affiliates provide, *inter alia*, workers' compensation, general liability, fidelity, automobile liability, inland marine, property, employment practices liability, directors' and officers' liability, errors and omissions, fiduciary liability, and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein, and the insureds, including one or more of the

Debtors, are required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the ACE Insurance Program (collectively, the “ACE Program Obligations”).

11. Pursuant to certain other Policies and Insurance Agreements (collectively, the “Federal Insurance Program,” and collectively with the ACE Insurance Program, the “Insurance Programs”),⁴ the Federal Insurance Company and/or certain of its U.S.-based affiliates provide, *inter alia*, property, package, crime, fiduciary liability, directors’ and officers’ liability, equipment breakdown, and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein, and the insureds, including one or more of the Debtors, are required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the Federal Insurance Program (collectively, the “Federal Program Obligations,” and together with the ACE Program Obligations, the “Obligations”).⁵

12. The Obligations are payable over an extended period of time and are subject to future audits and adjustments.

13. Certain of the Obligations are secured by certain collateral, including certain cash collateral, and the Obligations may also be secured by letters of credit, trusts, escrows, surety

⁴ The descriptions of the Insurance Programs set forth herein are not intended to, and shall not be deemed to amend, modify or waive, any of the terms or conditions of the Insurance Programs. Reference is made to the Insurance Programs for a complete description of their terms and conditions.

⁵ The Obligations include both monetary and non-monetary obligations that the insureds, including one or more of the Debtors, may have.

bonds, other cash collateral, other paid loss deposit funds, or other amounts (collectively, the “Collateral”).⁶

14. Certain of the Policies may or may not⁷ provide coverage for Unliquidated Claims that would (or could) be subject to the Unliquidated Claim Procedures, as currently drafted.

15. The Policies generally include provisions that require notice to the Chubb Companies of any potentially covered claims, allow the Chubb Companies to control the investigation and settlement of potentially covered claims, and require cooperation by the Debtors with regard to investigation of such claims.

C. The Plan

16. The Plan purports to provide for the assumption of some but not all of the Debtors’ insurance policies (only those that related to the Facilities), and without clearly providing for treatment of the Debtors’ Obligations.

17. The Plan provides for general treatment of the Debtors’ insurance policies, and contains provisions that contemplate the payment of certain claims by the Debtors’ insurers. *See e.g.*, Plan at Art. VII.G.

18. Specifically, with respect to insurance policies the Plan provides:

Notwithstanding anything contained in the Plan or the Confirmation Order to the contrary, unless specifically rejected by order of the Bankruptcy Court or under the Plan or at the direction of the Plan Sponsor, all Insurance Policies related to the Facilities shall be assumed under the Plan as executory contracts, and nothing in the Plan or the Confirmation Order shall alter the rights and obligations of the Debtors or the insurers under the Insurance Policies (which

⁶ The Chubb Companies specifically reserve the right to object to or otherwise contest any proposed sale, assignment, or other transfer of the Collateral, any portion thereof, and/or any rights, interests, title in or to the Collateral.

⁷ Nothing in this Objection constitutes, or should be construed as taking, a position as to the presence or absence of coverage with respect to any Claim. Any such claim presents a unique set of circumstances that must be evaluated on its own merits.

rights and obligations shall be determined under the applicable Insurance Policies and applicable non-bankruptcy law relating thereto) or modify the coverage thereunder, and all of the Insurance Policies shall continue in full force and effect according to their terms and conditions; provided, however, in the event the underlying claim arose prior to the Petition Date, the Reorganized Debtors shall have no obligation to fund any self-insured retention.

Plan at Art. VII.G.

19. Additionally, the Plan contains a so-called “gatekeeper provision,” in the Injunction, which provides:

No enjoined party may commence, continue, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, or pursuing, a Claim or Cause of Action transferred to the Reorganized Debtors or the GUC Trust pursuant to the terms of the Plan, or a Claim or Cause of Action of any kind against the Debtors, the GUC Trustee, the Exculpated Parties, the Released Parties, or the Debtor Professionals that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action, as applicable, subject to Article X.D and Article X.E hereof, or the Chapter 11 Cases, including, but not limited to, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the administration of the GUC Trust, or any transaction in furtherance of the foregoing, without the Bankruptcy Court (1) first determining after notice and a hearing, that such Claim or Cause of Action (i) represents a colorable claim of any kind, including, but not limited to, negligence, bad faith, criminal misconduct, willful misconduct, actual fraud, or gross negligence against a Protected Party, and (ii) was not otherwise released or transferred to the Reorganized Debtors or the GUC Trust under the terms hereof, and (2) specifically authorizing such enjoined party to bring such Claim or Cause of Action against any such Debtor, Reorganized Debtor, Exculpated Party, or Released Party, as applicable. At the hearing before the Bankruptcy Court to determine whether such Claim or Cause of Action represents a colorable Claim of any kind, the Bankruptcy Court may, or shall if any Debtor, Reorganized Debtor, Exculpated Party, or Released Party, or other party in interest requests by motion (oral motion being sufficient), direct that such Person or Entity seeking to commence or pursue such Claim or Cause of Action file a proposed complaint with the Bankruptcy Court embodying such Claim or Cause of Action, such complaint satisfying the applicable Federal Rules of Civil Procedure, including, but not limited to, Rule 8 and Rule 9 (as applicable),

which the Bankruptcy Court shall assess before making a determination. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XI of the Plan, shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action.

Plan at Art. X.F.

D. The Plan Supplement

20. Exhibit A to the Plan Supplement contains the list of Potentially Assumed Executory Contracts and Unexpired Leases, the Insurance Programs are not listed therein.

21. Exhibit I to the Plan Supplement includes the Unliquidated Claim Procedures.

22. The Unliquidated Claim Procedures provide a mechanism for the GUC Trustee to liquidate all unliquidated claims in Classes 6A and 6B through both an informal offer and exchange process (pursuant to Article IV of the Unliquidated Claim Procedures) and more formal mediation and arbitration processes (pursuant to Articles V and VI).

23. The Unliquidated Claim Procedures cover and do not except any Claims that would be classified in Classes 6A and 6B.

OBJECTION

24. The Chubb Companies object to the Plan⁸ on the bases that: (i) while it appears that the Debtors seek to retain the benefits of the Insurance Programs (*see, e.g.*, Plan at Arts. VII.G

⁸ This Objection focuses on the objections to the Plan. As for the Disclosure Statement, the Chubb Companies assert that Section 1125 of the Bankruptcy Code provides that a plan proponent may not solicit acceptance or rejection of a plan unless, before such solicitation, the plan proponent transmits to the parties to be solicited the plan and a disclosure statement containing “adequate information,” as defined in section 1125(a) of the Bankruptcy Code, which has been approved by the Bankruptcy Court after notice and a hearing. *See* 11 U.S.C. § 1125(b). A disclosure statement contains “adequate information” if it provides information concerning the proposed plan of a kind and in sufficient detail that would enable a hypothetical reasonable investor typical of the holders of claims or interests of the relevant class to make an informed judgment about the plan. *See* 11 U.S.C. § 1125(a). Courts consistently refuse to approve disclosure statements that lack the information that a “hypothetical reasonable investor” would require to make an informed decision about the proposed plan. *See, e.g., Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996); *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417-18 (3d Cir. 1988), *cert. denied*, 488 U.S. 967 (1988); *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401 (Bankr. S.D. Tex. 2016) (citing *In re Cajun Elec. Power Co-op., Inc.*, 150 F.3d 503, 518 (5th Cir.1998)); *see also In re Applegate Prop., Ltd.*, 133 B.R. 827, 831

(related to Insurance Policies) and the Unliquidated Claim Procedures at Art. III.8 (relating to payment of Unliquidated Claims by the Debtors' insurers), the Plan fails to adequately address the fact that, in order to do so, the Debtors' successors must remain liable for the Obligations under the Insurance Programs; and (ii) the Plan fails to provide that workers' compensation claims and direct action claims must continue to be administered, handled, defended, settled, and/or paid in the ordinary course of business, as required by applicable state law and cannot be subject to the Unliquidated Claim Procedures.

25. Further, the Chubb Companies object to the Unliquidated Claim Procedures. However, to the extent that this Court is inclined to permit such a process, the Chubb Companies request that certain revisions be made to the Unliquidated Claim Procedures to make the Unliquidated Claim Procedures consistent with the Chubb Insurance Programs and applicable law.

A. The Debtors' Successors Cannot Continue To Receive The Benefits Of The Insurance Programs Without Remaining Liable For The Obligations Thereunder.

26. As set forth above, the Debtors appear to seek to retain the benefits of their insurance policies; however, the Plan fails to adequately address the treatment of the Debtors' obligations under their insurance policies.

27. To the contrary, the Plan contains provisions which provide for the release of liens, the vesting of assets in the Debtors' successors free and clear of liens, releases of certain third-parties, and exculpation and injunctions against certain actions. *See, e.g.*, Plan at Art. X.C-F.

(Bankr. W.D. Tex. 1991) ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for *themselves* what impact the information might have on their claims and on the outcome of the case, and to decide for themselves what course of action to take."). In this case, the Debtors have failed to meet their burden by failing to clearly provide treatment for the Insurance Programs and the Chubb Companies' rights and claims thereunder and, therefore, object to the Disclosure Statement and final approval thereof on this basis.

28. It is well-established that debtors (and their successors) cannot seek to receive benefits of a contract without being liable for obligations thereunder. *See Tompkins ex. rel. A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir. 2006) (holding that it is a basic principle of contract law that a party to an agreement is constrained to accept the burdens as well as the benefits of the agreement); *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 457 F.3d 766, 773 (8th Cir. 2006) (finding that a party who accepts the benefit of a contract must also assume its burdens); *Bhushan v. Loma Alta Towers Owners Assoc., Inc.*, 148 Fed. Appx. 882, 888 (11th Cir. 2005) (stating “one who has accepted a contract’s benefit may not challenge its validity in order to escape its burdens”); *S & O Liquidating P’ship v. C.I.R.*, 291 F.3d 454, 459 (7th Cir. 2002) (“A party who has accepted the benefits of a contract cannot ‘have it both ways’ by subsequently attempting to avoid its burdens.”); *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (“In short, [plaintiff] cannot have it both ways. [It] cannot rely on the contract when it works to its advantage, and repudiate it when it works to [its] disadvantage.” (citations and quotations omitted)); *Ricketts v. First Trust Co. of Lincoln, Neb.*, 73 F.2d 599, 602 (8th Cir. 1934) (finding that “he who seeks equity must do equity, and that one may not accept the benefits and repudiate the burdens of his contract”); *Meierhenry Sargent Ltd. Liab. P’ship v. Williams*, No. 16-4180, 2017 U.S. Dist. LEXIS 65739, at *20 (D.S.D. May 1, 2017) (“Various courts have held that a party may not avail itself of a favorable aspect of the contract and then disavow a non-favorable aspect.” (citations omitted)); *Power Sys. & Controls, Inc. v. Schneider Elec. USA, Inc.*, No. 10-137, 2010 U.S. Dist. LEXIS 56671 at *3 (E.D. Va. June 9, 2010) (“[A] party may not avail itself of one aspect of a contract and disavow another aspect of the contract in order to avoid its consequences. . .[.]”); *see also In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) (“The [debtor] . . . may not blow hot and cold. If he accepts the contract he

accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.”) (internal citations omitted); *In re Texas Rangers Baseball Partners*, 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”).

29. Moreover, each of the Insurance Programs is an integrated insurance program and therefore must be read, interpreted and enforced in its entirety.⁹ See *Huron Consulting Servs., LLC v. Physiotherapy Holdings, Inc. (In re Physiotherapy Holdings, Inc.)*, 538 B.R. 225, 233 (D. Del. 2015) (finding that separately drafted agreements dated at different times but relating to the same subject constitute one cohesive agreement); *Dunkin’ Donuts Franchising LLC v. CDDC Acquisition Co. LLC (In re FPSDA I, LLC)*, 470 B.R. 257, 269 (E.D.N.Y. 2012) (holding that “two agreements [were] so interrelated, [that] they form[ed] a single overarching executory contract”); *In re Aneco Elec. Constr.*, 326 B.R. 197, 202 (Bankr. M.D. Fla. 2005) (finding “single, non-severable agreement” where contracts were between same parties and obligations of each party are mutually dependent upon the other); *In re Karfakis*, 162 B.R. 719 (Bankr. E.D. Pa. 1993) (stating that “two contracts which are essentially inseparable can be, and should be, viewed as a single, indivisible agreement between the parties”).

30. Accordingly, the Plan must be clarified to provide that, to the extent that the Debtors or their successors seek to retain the benefits of any portion of the Insurance Programs, the entirety of each of the Insurance Programs shall be assumed by the Debtors’ successors, and the Debtors’ successors shall remain liable in full for all of the Obligations arising under the Insurance Programs.

⁹ The Chubb Companies reserve the right to object to the treatment of the Policies and any related insurance agreements as executory if the Debtors seek to reject any such contracts.

B. The Plan Should Clearly Provide That Nothing Modifies, Alters Or Impairs The Insurance Programs.

31. The Chubb Companies are unable to determine with any certainty the Debtors' proposed treatment of the Insurance Programs under the Plan. The Plan provides that, "unless specifically rejected by order of the Bankruptcy Court or under the Plan or at the direction of the Plan Sponsor, all Insurance Policies related to the Facilities shall be assumed under the Plan as executory contracts." *See* Plan at Art. VII.G. However, it is unclear what Insurance Policies the Debtors believe "relate to the Facilities" and the Plan provides for no treatment for Insurance Policies that the Debtors do not believe "relate to the Facilities." Therefore, the Plan is unclear regarding how the Insurance Programs are proposed to be treated under the Plan.

32. Nevertheless, regardless of this lack of clarity in the Plan, it is clear under well-established law that neither the Debtors nor this Court can rewrite the Insurance Programs but rather the Insurance Programs must be enforced as written. *See, e.g., In re WorldCorp, Inc.*, 252 B.R. 890, 897 (Bankr. D. Del. 2000) (a court may not "rewrite [a] contract to include terms that a party wishes [it] had bargained for, but did not, prior to execution of the agreement"); *see also Coca-Cola Bottling Co. of Shreveport v. Coca-Cola Co.*, 769 F. Supp. 671, 707 (D. Del. 1991) *aff'd*, 988 F.2d 414 (3d Cir. 1993) ("Courts do not rewrite contracts to include terms not assented to by the parties."); *Ally Financial Inc., v. Wells Fargo Bank, N.A. (In re Residential Capital, LLC)*, 531 B.R. 25, 45 (Bankr. S.D.N.Y. 2015) (a party cannot convince a court to "rewrite [a] contract to fulfill [its] unspoken expectation") (quoting, in part, *Buena Vista Home Entm't, Inc. v. Wachovia Bank, N.A. (In re Musicland Holding Corp.)*, 374 B.R. 113, 121 (Bankr. S.D.N.Y. 2007)); *In re Best Mfg. Grp. LLC*, 2012 WL 589643, at *6 (Bankr. D. N.J. 2012) ("Where the terms of a contract

are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written.”); *In re Enterprise Lighting Inc.*, 1994 Bankr. LEXIS 1307 at *7 (Bankr. E.D. Va. Jan. 21, 1994) (the generally broad equitable powers of a bankruptcy court “have not been interpreted to go so far as to allow the Court to rewrite contracts or create new contractual rights between the Debtor and a third party”).

33. However, as noted above, the Plan contains provisions that provide for the release of liens, the vesting of assets in the Debtors’ successors free and clear of liens, releases of certain third parties, and exculpation and injunctions against certain actions. *See, e.g.*, Plan at Art. X.C-F.

34. The Plan must therefore clarify that nothing in the Plan, the Plan Supplement, the Confirmation Order or any other document related to the foregoing, including, but not limited to, those provisions identified above, shall modify, alter or impair the Insurance Programs, including the rights and obligations of the Chubb Companies and the Debtors thereunder, as well as the coverage provided thereunder.

35. Accordingly, the Chubb Companies further object to the Plan on this basis.

1. Improper treatment of self-insured retentions.

36. The Plan does not properly address the Debtors’ obligations with respect to self-insured retention amounts.

37. Specifically, the Plan improperly purports to limit the Debtors’ and/or Reorganized Debtors’ (as applicable) obligations with regard to self-insured retention amounts, including with respect to assumed Insurance Policies. The Plan fails to properly provide that the amount of a claim against a Debtor that is comprised of a self-insured retention should (in most cases) constitute a General Unsecured Claim against the applicable Debtor’s Estate up to the

amount of the applicable self-insured retention or portion thereof, to be paid in accordance with the terms of the Plan.

2. The Plan contains an improper “gatekeeping” provision.

38. The Plan provides that certain claims against the Debtors and certain third parties, which may include claims covered by insurance, can only go forward if, among other things, the claimant first obtains from the Bankruptcy Court a determination that its claim is “colorable,” which determination the Court will purportedly “have sole and exclusive jurisdiction” to make. *See* Plan at Art. X.F.

39. As an initial matter, it is well-established that the Plan cannot confer the Court with jurisdiction over any dispute or proceeding. *See In re U.S. Brass Corp.*, 301 F.3d 296, 303 (5th Cir. 2002) (“[T]he source of the bankruptcy court’s subject matter jurisdiction is neither the Bankruptcy Code nor the express terms of the Plan.”); *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 228 (3d Cir. 2004) (“[J]urisdiction cannot be conferred ... in a plan of reorganization”); *In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 515 (N.D. Tex. 2019), *aff’d sub nom. Matter of Acis Cap. Mgmt., L.P.*, 850 F. App’x 302 (5th Cir. 2021) (“Parties may not, in the course of ordering their private affairs, enlarge *or shrink* Article III or the federal statutes governing subject matter jurisdiction.”) (emphasis in original).

40. It is also well-established that bankruptcy courts lack core jurisdiction over the liquidation or estimation of contingent or unliquidated personal injury tort claims. *See* 28 U.S.C. § 157(b)(2)(B); *see also In re Schepps Food Stores, Inc.*, 169 B.R. 374, 377 (Bankr. S.D. Tex. 1994) (“Congress did *not* want proceedings affecting the liquidation of personal injury or wrongful

death claims to be core matters. Thus, bankruptcy courts lack the power to finally adjudicate these causes of action.”).

41. Thus, to the extent the Plan purports to confer on the Court any jurisdiction, including any exclusive jurisdiction and/or jurisdiction to estimate or finally adjudicate personal injury claims, this is contrary to applicable law.

42. Accordingly, the Chubb Companies further object to the Plan on this basis.

C. **The Plan Must Provide That Workers’ Compensation Claims And Direct Action Claims Must Continue In The Ordinary Course And Such Claims Cannot Be Subject to the Unliquidated Claim Procedures.**¹⁰

43. The Plan does not provide for the handling of workers’ compensation claims or direct action claims against the Debtors’ insurers. Further, as currently drafted the Unliquidated Claim Procedures would improperly govern workers’ compensation and arguably possibly even direct action claims.¹¹

44. Both workers’ compensation claims and direct action claims are subject to state-law regulations that dictate the resolution of such claims, which cannot be modified by the terms of the Debtors’ Plan. *See, e.g., Ohio v. Mansfield Tire & Rubber Co. (In re Mansfield Tire & Rubber Co.)*, 660 F.2d 1108 (6th Cir. 1981) (finding that the administration of workers’

¹⁰ Counsel to the Chubb Companies has been in touch with counsel to the Debtors and the Committee and understands that they agree to amend the Unliquidated Claim Procedures to except at a minimum the workers’ compensation claims and the direct action claims from the Unliquidated Claim Procedures. However, such agreement has not been formalized so the Chubb Companies have included this argument in the Objection.

¹¹ The Unliquidated Claim Procedures need to be revised to specifically exclude not only workers’ compensation claims and direct action claims against any of the Chubb Companies under applicable law from the Unliquidated Claims Procedures but also to except (a) property damage claims, (b) directors’ and officers’ liability claims, (c) errors and omissions claims, (d) claims where a judgment has been entered or settlement already agreed to and signed by all applicable parties, (e) any claims or actions relating to any claims between the Chubb Companies, on the one hand, and the Debtors, on the other, including, but not limited to, any action relating to the claims of the Chubb Companies or actions relating to any and all collateral provided by the Debtors (or their predecessors) to the Chubb Companies and (f) any declaratory judgment actions regarding insurance coverage issues any claims or actions relating to any claims between the Chubb Companies and the Debtors including, but not limited to, any action relating to any claims the Chubb Companies may have under the Insurance Programs.

compensation claims was a valid exercise of a state's police powers and exempt from the automatic stay provisions); *see also* La. R.S. 22:1269 (2012) (Louisiana grants injured persons a right of direct action against a tortfeasor's insurer, which, in several instances, may be brought against the insurer alone, or against both the insured and insurer jointly and *in solido*); Wis. Stat. § 632.24 (2012) (Wisconsin grants injured persons a right of direct action against a tortfeasor's insurer irrespective of whether liability is presently established or is contingent and to become fixed or certain by final judgment against the insured).

45. Accordingly, the Plan or Plan Supplement (including the Unliquidated Claims Procedures) cannot prevent workers' compensation claims and direct action claims from going forward or force such claims to go through the Unliquidated Claims Procedures. Here, the Insurance Programs include Policies that provide workers' compensation insurance to one or more of the Debtors. Any workers' compensation claims against the Debtors potentially covered by these Policies must therefore be able to proceed, and the Chubb Companies, in turn, must be able to handle and administer such claims.

46. Any provisions of the Plan or Plan Supplement (including the Unliquidated Claims Procedures) that purport to prevent the Chubb Companies from handling workers' compensation claims against the Debtors in the ordinary course and pursuant to the terms of the Insurance Programs and applicable non-bankruptcy law are impermissible, and the Chubb Companies further object to the Plan on this basis.

47. In sum, the Plan must clarify that workers' compensation and direct action claims must continue to be administered, handled, defended, settled, and/or paid in the ordinary course, and, relatedly, that the Chubb Companies may continue to so administer, handle, defend, settle, and/or pay such covered claims in the ordinary course and pursuant to the terms of the Insurance

Programs and applicable non-bankruptcy law and therefore, all workers' compensation claims and direct action claims must be excepted from the Unliquidated Claims Procedures.

D. The Unliquidated Claim Procedures Are Inconsistent With The Insurance Programs And Applicable Law

48. As discussed above, it is well-established that courts cannot alter terms of contracts, and must instead enforce them as written. Several aspects of the Unliquidated Claim Procedures would materially alter the terms and conditions of the Insurance Programs and are inconsistent with applicable state law. For this reason, the Unliquidated Claim Procedures must be revised to conform to and be consistent with the same.

1. The Policy Provisions In The Chubb Insurance Programs Must Be Honored

49. As set forth above, pursuant to the provisions of the Policies, the Chubb Companies generally have the right to receive notice of any claim potentially covered under the Policies and defend and/or settle a covered or potentially covered claim under the Policies; further the insured Debtor is obligated to cooperate with the Chubb Companies in the investigation, defense and/or settlement of any such claims.

50. As drafted, the Unliquidated Claims Procedures permit the GUC Trustee to go through the Offer Exchange Procedures, the Mediation, arbitration, settlement and litigation of Unliquidated Claims that are not resolved through the process outlined in the Unliquidated Claims Procedures without clear guidelines for notice to and participation, if so elected, by the Chubb Companies, or any applicable insurer or third-party administrator. *See* Unliquidated Claim Procedures §§ IV, V, VI, and VII.

51. The Unliquidated Claim Procedures also do not give the Chubb Companies an opportunity to receive and review information regarding any Unliquidated Claim that may potentially be covered by the Chubb Insurance Programs (a "Chubb Potentially Covered Claim")

before a Settlement Offer or Revised Settlement Offer is made to the respective Unliquidated Claimant or the acceptance of any Counteroffer by the GUC Trustee.

52. The Chubb Companies routinely require information regarding, for example, the nature and severity of any alleged injury or damage, medical evaluations and reports, evaluations of causation and liability, actual incurred and estimated future medical or repair costs, actual incurred and estimated future wage losses, and estimated aggregate value of any Chubb Potentially Covered Claim that may arise under the Policies. The Unliquidated Claim Procedures do not account for this requisite meaningful review of a Potentially Covered Claim by the Chubb Companies, including in connection with the Settlement Offer process outlined in the Unliquidated Claim Procedures.

53. Accordingly, the Unliquidated Claim Procedures would limit or impair the Chubb Companies' rights and obligations under applicable provisions of the Policies or prevent their exercise altogether.

54. The Unliquidated Claim Procedures should require – as to any Chubb Potentially Covered Claim – that the GUC Trustee provide, within twenty-one (21) calendar days' notice of any offer of settlement or intent to accept an offer of settlement and to require the GUC Trustee to immediately provide all materials received regarding a Chubb Potentially Covered Claim to the Chubb Companies.

55. The Chubb Companies must be provided the opportunity, but not be required, to participate in any and all stages of the Unliquidated Claim Procedures with respect to any Chubb Potentially Covered Claim.

56. The failure of a Chubb Company to respond to a particular notice about, or to participate in, one or more stages of the Unliquidated Claim Procedures as to any Unliquidated

Claim, including a Chubb Potentially Covered Claim, shall not be construed as (a) a waiver of the Chubb Companies' right to participate in other stages of the matter, (b) a waiver of any claims or defenses with respect to any Unliquidated Claim, and/or (c) a determination as to the existence or non-existence of coverage regarding any Unliquidated Claim.

57. Further, the Unliquidated Claims Procedures must be revised to provide that nothing in the Unliquidated Claims Procedures alters the terms and conditions of the Chubb Insurance Programs including, but not limited to, (i) any notice or consent provisions or obligations and (ii) any right of the Chubb Companies to participate in or control any and all discussions, negotiations, dispute resolutions, settlements, mediations, arbitrations, litigation and the like regarding any of the Unliquidated Claims, including a Chubb Potentially Covered Claim.¹²

E. The Chubb Companies Object To The Unliquidated Claim Procedures To The Extent That They Impose Additional Obligations On The Chubb Companies

58. The Chubb Companies object to the Unliquidated Claim Procedures to the extent they impose (whether expressly or as a practical matter) any new and additional obligations upon the Chubb Companies which are not set forth in the Insurance Programs.

59. Therefore, the Unliquidated Claim Procedures should expressly provide that (i) the Chubb Companies shall not be required to undertake any obligations not identified in the

¹² Similarly, any notice or order modifying the automatic stay should expressly provide that nothing therein (i) alters or amends the terms and conditions of any insurance policies issued to the Debtors or of any related agreements; (ii) determines the obligations of the Debtors to any insurers or third party administrators; (iii) creates or permits a direct right of action against any insurers; or (iv) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any alleged applicable policy. Relatedly, the Unliquidated Claims Procedures should clarify that the GUC Trustee and/or the Reorganized Debtors are required to maintain (and not destroy without first providing to the Chubb Companies notice and a reasonable opportunity to acquire) any information relating to Potentially Covered Claims not resolved through the Unliquidated Claim Procedures.

Insurance Programs or not required under applicable non-bankruptcy law; and (ii) the Unliquidated Claim Procedures shall be null and void if the GUC Trustee should fail to comply with the Unliquidated Claim Procedures or otherwise fail to satisfy their obligations thereunder (in whole or in part).

60. Similarly, the Unliquidated Claim Procedures impose an obligation on each Claimant and the GUC Trustee to participate in the Unliquidated Claim Procedures in good faith. The term “good faith” is not defined.

61. The Chubb Companies reserve all rights to object to the extent the obligation of good faith, as that term is used in the Unliquidated Claim Procedures, is intended to apply to the Chubb Companies and such obligation is outside the scope of their contractual obligations and applicable law.

RESERVATION OF RIGHTS

62. The Chubb Companies specifically reserve all of their rights with respect to the Insurance Programs and their right to assert additional objections to the Plan, the Plan Supplement and any documents related thereto.

WHEREFORE, the Chubb Companies respectfully request that this Court: (a) either (i) deny confirmation of the Plan, or (ii) condition confirmation of the Plan on inclusion of the clarifications requested herein; and (b) grant such other relief as the Court deems appropriate.

Dated: November 7, 2024

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CERTIFICATE OF SERVICE

I, Nicolette J. Zulli, hereby certify that I am not less than 18 years of age and that on date set forth below I caused a true and correct copy of the foregoing *Objection* to be served electronically via the Court's CM/ECF electronic noticing system on all parties registered to receive electronic service in the above cases and via email and first class mail on the parties set forth on the attached service list.

Dated: November 7, 2024

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