**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re: | ) | **Chapter 11** |
| | ) | |
| GRITSTONE BIO, INC. et al., | ) | **Case No. 24-12305 (KBO)** |
| | ) | |
| Debtor. | ) | |
| | ) | **Hearing Date: Friday, August 21, 2026 at 11:00 a.m. – 6th Floor – Room No. 3** |
| | ) | **Objection Deadline: Friday, August 14, 2026 at 4:00 p.m.** |
| | ) | |

**MOTION OF CERTAIN UNDERWRITERS AT LLOYDS, LONDON AND ARCH INSURANCE COMPANY FOR CLARIFICATION OF THE PLAN AND TO AUTHORIZE AND APPROVE PAYMENT OF COSTS, CHARGES AND EXPENSES AND OTHER LOSS INCLUDING SETTLEMENTS**

1. Certain Underwriters of Lloyds, London ("Underwriters") and Arch Insurance Company ("Arch" together with "Underwriters" hereinafter the "Insurers"), by and through the Insurers' undersigned counsel, hereby move this Court (the "Motion") pursuant to section 1142(b) of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") for entry of an order, in substantially the form attached to the Motion as Exhibit A (hereinafter "Ex."; the "Proposed Order") clarifying the terms of the Plan and approving the payment and continued payment of: i) Costs, Charges and Expenses incurred in defending the Actions as defined herein; ii) the settlement of the securities class action styled, In re Gritstone bio, Inc. Securities Litigation, Case No. 3:24-cv-03640-CRB for $6 million; and iii) any other Loss attributed to the Trustee Action styled, Thomas Pitta, Liquidating Trustee for Gritstone, Plaintiff, v. Allen, et al., Case No. 3:24-cv-06018-CRB. Such payments would be in accordance with and subject to the terms and conditions of the Advanced Boardroom and Company Protection Primary Claims Made Directors and Officers Liability Insurance Policy Number B0146ERUSA2301072 (the "Primary Policy") and the Arch Essential Follow Form Excess Liability Insurance Policy (the "Excess Policy" and together the "Policies") Underwriters and Arch, respectively, issued to Gritstone Bio, Inc. ("Gritstone"). Such payments would also be subject to the Insurers' reservation of all rights and defenses available to them under the Policies, at law and in equity, certain defense costs, settlement amounts or other amounts to the extent that same constitute **Costs,**

**Charges and Expenses**,[1] or other **Loss** as amended by Endorsement Number 8 entitled the "Woodruff Sawyer Amendatory Endorsement Including Activist Investor Costs" ("Endorsement #8"). (Ex. B, at pp. 21, 51 of 71).

In support of this Motion, the Insurers respectfully state as follows.

## JURISDICTION

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue for this Chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested by this Motion are Sections 105(a), 541 and 1142(b) of the Bankruptcy Code.

## FACTUAL BACKGROUND

4. On October 10, 2024, Gritstone filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Gritstone is a clinical-stage biotechnology company founded in August 2015 and headquartered in Emeryville, California. Gritstone focused on developing "next-generation" vaccines to treat cancer oncology and infectious diseases. Andrew R. Allen was Gritstone's President, Chief Executive Officer and Director. Vassiliki Economides was the Chief Financial Officer and an Executive Vice President of Gritstone. Additional information regarding the Debtor, including its current and historical business operations and the events precipitating the Chapter 11 filing, is set forth in detail in the Declaration of Vassiliki Economides in Support of the Debtor's Chapter 11 Petition and First-Day Relief. [Document ("Doc.") 17].

### A. The Pending Lawsuits Involving Gritstone and Its Directors and Officers.

5. Beginning in June 2024, Gritstone and numerous directors and officers, including Andrew R. Allen, Vassiliki Economides, Shefali Agarwal, Lawrence Corey, Clare Fisher, Elaine Jones, Naiyer Rizvi and Steven Krognes, were sued in the following court cases:

[1] Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to them in the Policies, true and correct copies of which are attached hereto as Exhibits B and C.

- *John Poslajko, individually and on behalf of all others similarly situated, v. Gritstone Bio, Inc., et al.* (the "Poslajko Action") filed on June 7, 2024 in the United States District Court, Northern District of California (the "Court")[2];
- *Tammy Beal, Individually and on Behalf of All Others Similarly Situated v. Gritstone Bio, Inc., et al.* filed in the Court on June 17, 2024, and amended complaint and corrected amended complaint styled styled *Richard Rodriguez, Individually and on Behalf of All Others Similarly Situated v. Andrew R. Allen and Vassiliki Economides* filed in the Court on November 8, 2024 and December 9, 2024, respectively, subsequently captioned, *In re Gritstone bio, Inc. Securities Litigation*[3] (collectively with the Poslajko Action, the "Complaint" or "Action"); and
- *Kenneth Granville, derivatively and on behalf of Gritstone Bio, Inc. v. Andrew R. Allen, et al.* filed in the Court on August 26, 2024, proceeding as *Thomas Pitta, Liquidating Trustee for Gritstone, Plaintiff, v. Allen, et al.*, Case No. 3:24-cv-06018-CRB pursuant to an Order to Substitute Plaintiff Under Fed.R.Civ.P. 25(C) dated April 2, 2026 (the "Trustee Complaint" or "Trustee Action", together with the Action the "Actions").

6. Plaintiffs in the Actions generally allege that, while acting in their capacity as directors and/or officers of the Debtor Gritstone, defendants made certain misrepresentations and fraudulently concealed certain information regarding Gritstone's business, operations and prospects.

7. Pursuant to a mediator's proposal at a mediation conducted on April 22, 2026, the Action was settled in principle for $6 million.

8. The United States District Court, Northern District of California, preliminarily approved a settlement of the Action for $6 million on July 24, 2025 (the "Settlement Amount").

9. The Trustee voluntarily dismissed the Trustee Action on July 14, 2026 and the Court terminated the civil case on July 15, 2026.

[2] Plaintiff voluntarily dismissed the *Poslajko* Action without prejudice on June 17, 2024.
[3] Plaintiffs Richard Rodriguez and Tammy Beal did not name Gritstone as a defendant in the corrected amended complaint.

**B. The Directors and Officers Liability Policy Issued to Gritstone by Underwriters.**

10. Prior to the Petition Date, Underwriters and Arch issued the Policies to Gritstone for the **Policy Period** of September 28, 2023 to September 28, 2024.

11. Coverage provided under the Primary Policy is subject to a Limit of Liability of $5,000,000 in the aggregate for the **Policy Period**,[4] which is the maximum limit of Underwriters' liability for all **Loss**, including **Costs, Charges and Expenses**, from all **Claims** first made during the **Policy Period** and reported to Underwriters in accordance with the terms of the Policy. (Ex. B, at pp. 18, 49 of 71; Clause IV.B of the Primary Policy and Item C of the Primary Policy's Declarations, both as amended by Endorsement #8). A $3,500,000 Retention applies to each Claim, Investigation, Inquiry, Securities Claim or other Claim under Insuring Clause I.B and I.C. (Ex. B, at pp. 18, 49 of 71; Item D of the Primary Policy's Declarations, as amended by Endorsement #8). No Retention applies to a **Claim**, **Investigation** or **Inquiry** under Insuring Clause I.A, **Security Holder Demand**, **Books and Records Demand** or **Activist Investor Filing**. (Ex. B, at pp. 18, 49 of 71; Item D of the Primary Policy's Declarations, as amended by Endorsement #8).

12. Coverage provided under the Arch Excess Policy is subject to a Limit of Liability of $5,000,000 excess of $5,000,000, subject to any applicable retention. (Ex. C). The Limit of Liability is the maximum aggregate amount that Arch shall pay under the Arch Excess Policy for all covered **Loss**, including **Costs, Charges and Expenses**. The Arch Excess Policy provides excess coverage only after exhaustion of the **Underlying Limit** by payment, in legal currency, of covered **Loss** by the **Underlying Insurance** issued by Underwriters. Section III.F of the Arch Excess Policy defines **Underlying Limit** as "the aggregate sum of all limits of liability of all **Underlying Insurance**." Section III.E of the Arch Excess Policy defines **Underlying Insurance** as "the Primary Policy and any Underlying Excess Policies." Here, the **Underlying Limit** is $5,000,000 and the **Underlying Insurance** is the Primary Policy.

13. Insuring Agreement I of the Primary Policy provides that:

> **A.** Underwriters shall pay on behalf of the **Insured Persons**

[4] There is: i) a sublimit of liability of $250,000 in the aggregate for the Policy Period for all Security Holder Demand Investigatory Costs and Books and Records Costs; and ii) a sublimit of liability of $50,000 in the aggregate for the Policy Period for all Activist Investor Costs (as defined by the Primary Policy). This matter does not involve such costs.

> 1. the **Loss** arising from a **Claim** first made during the **Policy Period** for a **Wrongful Act**, …

(Ex. B, at p. 20 of 71).

14. The Primary Policy also provides certain coverage to the **Company** under Insuring Agreements B (**Loss** by the **Company** to the extent it indemnifies **Insured Persons**), C (**Loss** from a **Securities Claim** made against the **Company**, and D (**Security Holder Demand Investigatory Costs**, **Books** and **Records Costs**, and **Activist Investor Costs**), none of which are implicated by the Actions (as defined below). (Ex. B, at pp. 20, 50 of 71; Insuring Agreements B, C and D, as amended by Endorsement #8).

15. Section II.L of the Primary Policy defines **Insureds** as the **Company** and **Insured Persons**. (Ex. B, at p. 24 of 71). In relevant part, Section II.C of the Primary Policy defines the term **Company** as: 1. the **Parent Company**. (Ex. B, at p. 21 of 71). Gritstone is the **Parent Company** under the Primary Policy. (Ex. B, at p. 17 of 71; Item A of the Policy's Declarations).

16. Section II.K of the Primary Policy, as amended by Endorsement #8, defines **Insured Persons** as "all persons who were, now are, or shall be directors, officers or risk managers of the **Company** and all persons serving in a functionally equivalent role for the **Parent Company** …" (Ex. B, at pp. 23, 53 of 71). Mr. Allen and Ms. Economides are **Insured Persons** by virtue of their service as CEO and CFO, respectively, of Gritstone. Ms. Agarwal, Mr. Corey, Ms. Fisher, Ms. Jones, Mr. Rizvi and Mr. Krognes were directors of Gritstone and therefore are **Insured Persons**.

17. In relevant part, Section II.B of the Primary Policy, as amended by Endorsement #8, defines "**Claim**" as "1. any written demand for monetary damages, non-monetary relief, injunctive relief or other relief against any of the **Insureds**, or any civil, criminal, administrative, regulatory, arbitration or mediation proceeding or other alternative dispute resolution process initiated against any of the **Insureds**…" (Ex. B, at pp. 20-21, 50-51 of 71). The Actions constitute a **Claim** under the Policies.

18. The term "**Loss**" is defined in the Primary Policy, as amended by Endorsement #8 to include "damages, judgments, including pre and post- judgment interest, and settlements" and "**Inquiry Costs** and **Costs, Charges and Expenses**." (Ex. B, at pp. 24-25, 54-56 of 71; *See* Clause II(O) of the Primary Policy). The Primary Policy, as amended by Endorsement #8 defines the term "**Costs, Charges and Expenses**" as follows:

> 1. reasonable and necessary legal fees and expenses incurred by the **Insureds** in defense, settlement and appeal of any **Claim** or **Investigation** and cost of attachment or similar bonds, including:

(a) reasonable and necessary expert fees and **Class Certification Fees** incurred by the **Insureds** in defense, settlement and appeal of any **Claim** or in responding to any **Investigation**, and

(b) reasonable and necessary legal fees and expenses incurred by the **Insureds** in defense, settlement and appeal of:

(i) any **Claim** made against the chief executive officer or chief financial officer of the **Parent Company** seeking repayment of compensation as a result of a financial restatement of the **Company** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, or

(ii) any **Claim** made against the **Insured Persons** seeking repayment of compensation as a result of a financial restatement of the **Company** pursuant to Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or any internal policy of the **Company** promulgated in accordance therewith; and

2. reasonable fees and expenses incurred by the **Insureds** at the Underwriter's request to assist Underwriters in investigating a **Claim** or **Investigation;**
3. reasonable and necessary legal fees and expenses incurred by any **Insured Person** where deposed as a witness in connection with any **Claim** against any other of the **Insureds** or **Investigation** or **Inquiry** of any other **Insured Person**; and
4. in respect of coverages afforded under Clause II.B.2., reasonable costs (other than collateral) for a bond or other financial instrument to guarantee the contingent obligation of the **Insured Persons** for bail or its equivalent required by a court in any foreign jurisdiction,

but shall not include salaries, wages, overhead or benefit expenses associated with directors, officers or employees of the **Company**.

(Ex. B, at pp. 21, 51 of 71).

19. Section II.BB of the Primary Policy, as amended by Endorsement #8, defines "**Wrongful Act**" as:

1. any actual or alleged act, error, omission, misstatement, misleading statement, neglect or breach of duty:

2. by any of the **Insured Persons**, while acting in their capacity as such, or any matter claimed against any of the **Insured Persons** solely by reason of their serving, or having served, in such capacity;

3. by any of the **Insured Persons**, while acting in their capacity as, or any matter claimed against any of the **Insured Persons** by reason of their serving, or having served, as a controlling person within the meaning of Section 15 of the Securities Act of 1933, as amended or Section 20(a) of the Securities Exchange Act 1934, as amended; or

(Ex. B, at pp. 21, 51 of 71).

20. On account of the bankruptcy, Debtor Gritstone has refused to indemnify the **Insured Persons** for **Loss** arising from the Actions. Accordingly, the **Insured Persons** seek coverage for such **Loss** under Insuring Agreement A of the Primary Policy.

21. The Primary Policy has an "Order of Payments" provision, which requires the **Insurer** to pay all covered **Loss** of **Insured Persons** under Insuring Agreement A before paying any **Loss** of the **Company** under Insuring Agreements B, C or D. (Ex. B, at pp. 31-32, 61 of 71; *See* Clause IV.H of the Primary Policy, as amended by Endorsement #8 of the Primary Policy). Upon information and belief, there are no currently pending **Claims** for which the **Company** presently is or will be incurring **Loss** covered under Insuring Agreements B, C, or D of the Primary Policy, as amended by Endorsement #8.

22. Clause VIII.F of the Primary Policy provides, in pertinent part:

> a. Bankruptcy or insolvency of the **Company** or any of the **Insured Persons** shall not relieve Underwriters of any of their obligations under this Policy. The coverage provided under this policy is intended to protect and benefit the **Insured Persons**. If a liquidation or reorganization proceeding is commenced by the **Company** (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state, local or foreign law, then, in regard to a covered **Claim**, **Investigation** or **Inquiry** under this Policy, Underwriters and the **Insureds** hereby agree not to oppose or object to any efforts by Underwriters or any of the **Insureds** to obtain relief from any stay or injunction applicable to the proceeds of this Policy as a result of the commencement of such liquidation or reorganization proceeding.

(Ex. B, at p. 35-36 of 71).

23. The Insuring Agreement of the Arch Excess Policy provides that:

> This Policy provides excess coverage after exhaustion of the **Underlying Limit**. Except as otherwise provided in this Policy, coverage under this Policy shall follow form to, and apply in conformance with, the provisions of the **Primary Policy** as of the inception of this Policy. Notwithstanding the foregoing, this Policy shall provide no broader coverage than the most restrictive policy of **Underlying Insurance**.

(See Ex. C). As such, the Arch Excess Policy follows form to, and provides no broader coverage than, the Primary Policy.

**C. <u>The Insurers Request Clarification Regarding the Terms of the Plan.</u>**

24. On April 3, 2025, the Court entered an order [Docket No. 601] (the "**Confirmation Order**") confirming the *Chapter 11 Plan for Reorganization* (the "**Plan**"). A copy of the Plan is annexed to the Confirmation Order as Exhibit "A". On April 4, 2025, the Plan became effective and Gritstone emerged from bankruptcy as the Reorganized Debtor [Docket No. 604].

25. Despite being interested parties, the Insurers were not provided with notice of the hearing on the Disclosure Statement or the confirmation hearing.

26. Paragraph 67 of Article I.A of the Plan provides that the "Liquidating Trust Assets" means "(i) the Vested Causes of Action, and all proceeds thereof (including, for the avoidance of doubt, the proceeds of D&O [Liability] Insurance Policies)…", which, in turn, are defined as "all insurance policies for directors' and officers' liability issued to the Debtor or its prior or present directors, officers or executives, including tail coverage after termination of any such policies." *See* Article I.A, ¶¶ 35 and 67.

27. As such, it appears that the Liquidating Trustee could maintain that all proceeds of the Policies are therefore a Liquidating Trust Asset pursuant to paragraph 67 of Article I.A of the Plan.

28. However, Article VI.A of the Plan also provides that:

> [n]otwithstanding anything to the contrary in the Plan, as of the Effective Date, all rights of the Debtor, its directors, officers and executives, and the Estate in any D&O Liability Insurance Policies are fully and expressly preserved under the Plan. Confirmation and effectiveness of the Plan will not discharge or impair, or otherwise modify any rights of the Debtor, Reorganized Debtor, its directors, officers and executives, the Estate, the Liquidation Trustee, or any other beneficiary under the D&O Liability Insurance Policies. For the avoidance of doubt, the Debtor, Reorganized Debtor, its directors, officers and executives, and the Estate reserve all rights, claims, offsets, setoffs, defenses, counterclaims and all other interests relating to any and all D&O Liability Insurance Policies. With the exception of the current D&O Liability Insurance Policies in effect, all other insurance policies of the Debtor are treated as non-executory contracts that are neither assumed nor rejected under the Plan and are revested in the Reorganized Debtor as of the Effective Date.

29. The Liquidating Trustee has not outlined how the Plan alters the terms of the Policies.

30. The Insurers believe that the Plan does not alter the terms of the Policies or otherwise impact the rights of the **Insured Persons** to seek payments under the Policies as provided for thereunder.

31. The Insurers have discussed the relief sought herein with the Debtor's counsel. The Debtor concurs with the Insurers' position that the Plan does not alter the terms of the Policies or otherwise impact the rights of the **Insured Persons** to seek payments under the Policies pursuant to its terms and subject to the reservation of the Insurers' rights.

32. Nonetheless, to provide further clarity, Underwriters, the Debtor and counsel for the Liquidating Trustee previously entered into a Stipulation regarding only the payment by Underwriters of **Costs, Charges and Expenses**, which the Court So Ordered on November 18, 2025. (A copy of the So Ordered Stipulation is annexed as Exhibit D).

## RELIEF REQUESTED

33. By this Motion, the Insurers seek an order from this Court clarifying the provisions of the Plan regarding proceeds of D&O [Liability] Insurance Policies and approving and authorizing the payment, in accordance with and subject to the terms and conditions of the Policies and the Insurers' reservation of all rights and defenses under the Policies, at law and in equity, of **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount, or any other settlement amount of **Insured Persons** arising from the Actions.

## ARGUMENT

### A. Insured Persons Are Entitled to Payment of All Costs, Charges and Expenses and Other Loss including settlements Prior to Using Policy Proceeds For Other Claims Pursuant to the Priority of Payments Provision

34. Using the proceeds of the Policies to pay **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount will not adversely affect the Debtor's bankruptcy estate because, until any covered **Costs, Charges and Expenses** and other **Loss** are satisfied, the proceeds of the Policies cannot be used for any other purpose. In fact, the priority-of-payments provision clarifies that all Side A coverage claims must be paid in full *before* the proceeds of the Policies can be used to satisfy claims under any other coverage. *See* Clause IV.H of the Primary Policy, as amended by Endorsement #8 of the Primary Policy. *In re TierOne Corp.*, 2012 WL 4513554, at *3 (Bankr. D. Neb. Oct. 2, 2012) ("The directors and officers have a right to make

claims under the policies and to receive payment of the policy proceeds to the exclusion of the bankruptcy estate since they are the insureds that are first in line" ).

35. The potential for coverage of the Debtor under the other insuring agreements does not alter this conclusion. Indemnification coverage does not constitute property of the estate where indemnification is "hypothetical or speculative" and, thus, "is no longer protecting the estate's other assets from diminution." *Downey*, 428 B.R. at 607; *World Health*, 369 B.R. 810 (noting that courts "have found that insurance policy proceeds are not property of the estate where a debtor is covered for indemnification, but indemnification 'either has not occurred, is hypothetical, or speculative'") (quoting *Allied Digital*, 306 B.R. at 512); *Youngstown Osteopathic Hosp. Ass'n v. Ventresco (In re Youngstown Osteopathic Hosp. Ass'n)*, 271 B.R. 544, 550 (Bankr. D. Ohio 2002) (finding that insurance proceeds were not property of estate because "[D&O] policies are obtained for the protection of individual directors and officers. Indemnification coverage does not change this fundamental purpose.") (quoting *Ochs v. Lipson (In re First Central Fin. Corp.)*, 238 B.R. 9, 13 (Bankr. E.D.N.Y. 1999)).

36. Further, it is an established principle that bankruptcy should not expand a Debtor's rights against others beyond rights that existed at the commencement of the case. *See, e.g.*, *Downey*, 428 B.R. at 607 ("Section 541(a) is not intended to expand the debtor's rights against others beyond what rights existed at the commencement of the case.") (internal quotations and citations omitted); *In re Cont'l Airlines, Inc.*, 134 B.R. 536, 541 (Bankr. D. Del. 1991) ("To the extent that such an interest is limited in the hands of the debtor, it is equally limited in the hands of the estate.") (internal quotations and citations omitted). Outside of bankruptcy, the Policies provide the **Insured Persons** with direct coverage, and the Debtor's interest in the proceeds of the Policies is contractually subordinate to those of the **Insured Persons** under the priority-of-payment provision. *See In re Laminate Kingdom LLC*, 2008 WL 1766637, at *3 (Bankr. S.D. Fla. Mar. 13, 2008) ("[T]he estate has only a contingent, residual interest in the Policy's proceeds; and, payment of the proceeds in accordance with the [priority of payments provision] does not diminish the protection the Policy affords the estate, as such protection is only available after the [directors' and officers' defense costs] are paid."); *see also Downey*, 428 B.R. at 608 (in holding that the policy proceeds were not property of the estate, the court explained "were the Court to hold that the Policy proceeds are property of the estate and, thus, subject to the automatic stay, the trustee

would have greater rights in the [proceeds of the Policies] than the debtor had before filing for bankruptcy.") (internal quotations and citations omitted).

37. The Policies provide coverage to the **Insured Persons** who have a present need for payment of **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount, that outweighs the Debtor's need for coverage. Any claims against the Debtor covered under other insuring agreements under the Policies would be clearly subordinate to those of the **Insured Persons** by operation of the priority-of-payment provision. And, because there is no retention under the Side A coverage, the Debtor will not be required to fund any amounts out of pocket in order for the **Insured Persons** to access coverage. Courts acknowledge that the central purpose of Policies is to protect individual directors and officers. *See, e.g., In re First Cent. Fin. Corp.*, 23008 B.R. 9, 16 (Bankr. E.D.N.Y. 1990).

38. The **Insured Persons** would suffer substantial and potentially irreparable harm if they are denied the ability to obtain payment of covered **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount. Consistent with the purpose of director and officer liability policies, the Debtor purchased the Policies first and foremost to provide insurance coverage to and for the benefit of its officers and directors, including the **Insured Persons**. *See In re MF Glob. Holdings Ltd.*, 469 B.R. 177, 192 (Bankr. S.D.N.Y. 2012) ("D&O [P]olicies are obtained for the protection of individual directors and officers . . . [i]n essence and at its core, a D&O [P]olicy remains a safeguard of officer and director interests and not a vehicle for corporate protection.") (internal quotations omitted).

39. Indeed, the Debtor ensured that the claims of directors and officers would be paid first out of proceeds of the Policies, by express language to that effect. Without those proceeds, the **Insured Persons** would be deprived of customary and specifically bargained-for resources to pay **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount, in connection with any **Claims** covered by this Policies, thereby undermining their ability to mount an effective defense. As such, the **Insured Persons** "may suffer substantial and irreparable harm if prevented from exercising [their] rights to defense payments." *Downey*, 428 B.R. at 610 (quotations omitted); *see also Allied Digital*, 306 B.R. at 514 ("Without funding, the Individual Defendants will be prevented from conducting a meaningful defense to the [plaintiff's] claims and may suffer substantial and irreparable harm."). Accordingly, the hardship to the **Insured Persons** far outweighs any hardship to the Debtor's estate, as "clear, immediate, and ongoing

losses to the directors and officers in incurring defense costs trumps only hypothetical or speculative claims by the trustee." *In re Hoku Corp.*, 2014 WL 1246884, at *4 (Bankr. D. Idaho Mar. 25, 2014) (*quoting Groshong v. Sapp (In re MILA, Inc.)*, 423 B.R. 537, 545 (B.A.P. 9th Cir. 2010)) (internal quotations omitted).

40. In recognition of the separate and distinct interests of non-debtor co-insureds, Delaware courts and other courts have permitted the advancement of defense costs to a Debtor's directors and officers even though the insurance policies also provided direct coverage to the co-insured debtor, even when a stay is in effect. *See, e.g.*, *In re NewAge, Inc.*, Case No. 22-10819 (LSS), ECF Dkt. No. 476 (Bankr. D. Del. Feb. 7, 2023); *In re Valeritas Holdings, Inc.*, Case No. 20-10290 (JKS), ECF Dkt. No. 578 (Bankr. D. Del. Nov. 22, 2022); *In re Bayou Steel BD Holdings, L.L.C.*, Case No. 19-12153 (KBO), ECF Dkt. No. 811 (Bankr. D. Del. Nov. 3, 2021); *In re The Hertz Corp.*, Case No. 20-11218 (MFW), ECF Dkt. No.1090 (Bankr. D. Del. Aug. 19, 2020); *In re Penson Worldwide, Inc.*, Case No. 13-10061 (PJW), ECF Dkt. No. 496 (Bankr. D. Del. May 7, 2013); *see also In re MF Glob. Holdings Ltd.*, at 192 (Bankr. S.D.N.Y. 2012) ("Courts in this Circuit and other jurisdictions have permitted the advancement of defense costs to a debtor's directors or officers even though the insurance policies provide direct coverage to the debtor"); *Laminate Kingdom*, 2008 WL 1766637, at *4.

41. Based on the foregoing, Underwriters and Arch submit that clarification of the Plan to approve and authorize (a) reimbursement of **Insured Persons** for covered **Costs, Charges and Expenses** that have already been incurred under the Primary Policy, (b) advancement of all future covered **Costs, Charges and Expenses** under the Policies, and (c) payment of the Settlement Amount under the Policies, unless and until the **Insured Persons** are indemnified, is warranted. Accordingly, Underwriters and Arch request clarification of the Plan to approve and authorize the payment of proceeds of the Policies with respect to the covered **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount, of the **Insured Persons**.

**B. Permitting the Payment, Reimbursement, and/or Advancement of Costs, Charges and Expenses and the Settlement Amount is an Appropriate Exercise of the Court's Powers.**

42. Finally, section 105 of the Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

43. For the reasons stated above, permitting the Insurers to pay, reimburse, and/or advance the covered **Costs, Charges and Expenses** and other **Loss**, including the Settlement Amount, ONGOING COSTS, CHARGES AND EXPENSES AND ANY OTHER SETTLEMENT of the **Insured Persons** in accordance with and subject to the terms and conditions of the Policies is an appropriate exercise of the Court's powers under these factual circumstances.

**NOTICE**

44. Notice of the relief requested in this Motion has been provided to: (i) counsel for the Liquidating Trustee; (ii) counsel to the **Insured Persons**; and (iii) those parties requesting notice pursuant to Bankruptcy Rule 2002 and Del. Bank. L.R. 2002-1.

45. No previous motion for the relief sought herein has been made by the Insurers to this or any other Court.

WHEREFORE, the Insurers respectfully request that this Court: (i) grant this Motion and the relief requested herein; (ii) enter the Proposed Order attached hereto as Exhibit A; and (iii) grant such other and further relief as it deems appropriate.

Respectfully submitted,

**KAUFMAN DOLOWICH LLP**

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Date: July 28, 2026