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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

OBJECTION TO THE DEBTOR'S MODIFIED FOURTH AMENDED PLAN OF REORGANIZATION DATED MARCH 27, 2026

Date: June 15, 2026
Time: 9:00 a.m.
Place: United States Bankruptcy Court
1300 Clay Street, Courtroom 220
Oakland, CA 94612

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LMI[1] object to the Debtor's Modified Fourth Amended Plan of Reorganization Dated March 27, 2026 [Dkt No. 2758] ("Plan")[2] filed by The Roman Catholic Bishop of Oakland ("Debtor"). In support thereof, LMI respectfully state as follows.

I. PRELIMINARY STATEMENT

The Plan does not merit confirmation. The Debtor did not propose the plan in good faith as Section 1129(a)(3) requires.[3] Critically, the Plan purports to incorporate state law bad faith findings and claims against insurers like LMI. The Bankruptcy Court has no Constitutional authority over such claims and any reference to such claims is unnecessary and inappropriate. The Plan's provisions, which purport to expand non-existent bad faith claims and which would delay the Debtor's discharge, are irrelevant to plan confirmation. These provisions undermine key policies of the Bankruptcy Code, including granting the Debtor a fresh start. The lack of clarity in the Debtor's plan concerning the Non-Settling Insurers' reimbursement obligation also renders the Plan unconfirmable. Further, the Plan improperly delegates claims "allowance" to the Survivors Trustee. The Court may not authorize the Survivor Trustee's role to allow claims. Claims allowance is a judicial function. The Survivors Trustee is not a judicial officer and cannot allow claims.

The Plan violates Section 1129(a)(1) by improperly restricting LMI from objecting to claims. Curtailing LMI's rights as parties in interest violates *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268 (2024). As parties in interest, LMI are potentially affected by the Plan and may raise and be heard on *any* issue. The Plan also includes irrelevant findings regarding settlement. These findings should

[1] LMI are Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 60034 issued to the Roman Catholic Bishop of San Francisco, and Nos. K 78318 and CU 3061 issued to the Roman Catholic Bishop of Oakland; Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Co. Ltd.); the Ocean Marine Insurance Company Limited (as Part VII transferee of the World Auxiliary Insurance Corporation Limited); River Thames Insurance Company Limited; Dominion Insurance Company Limited; Companhia de Seguros Fidelidade-Mundial f/k/a Fidelidade Insurance Company of Lisbon; and R&Q Gamma Company Limited (as Part VII transferee of Anglo French Ltd.).

[2] Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

[3] Unless defined otherwise, "Section" refers to the Bankruptcy Code (11 U.S.C. § 101 et seq.).

not be included because they overlap with insurance issues over which the Bankruptcy Court lacks jurisdiction.

Accordingly, the Court should not confirm the Debtor's plan.

II. RELEVANT FACTS

A. The Bankruptcy Case

On May 8, 2023, the Debtor filed a chapter 11 petition to address claims stemming from sexual abuse allegations. Shortly thereafter, the U.S. Trustee appointed nine unsecured creditors to be members of the Official Committee of Unsecured Creditors ("Committee").[4] For several years, the Debtor, Committee, and insurers (including LMI) unsuccessfully attempted to resolve the case through mediation. Indeed, LMI (and certain other insures) reached settlements with the Debtor that it now disavows.

On September 9, 2025, the Debtor filed a motion to dismiss its chapter 11 case.[5] On November 25, 2025, the Court indicated it would dismiss the Debtor's case without prejudice unless it filed a settlement term sheet outlining the key provisions of a plan. [6]

On December 11, 2025, the Debtor filed its Non-Binding Term Sheet – Fourth Amended Plan of Organization ("Term Sheet") and a corrected Term Sheet.[7] On December 17, 2025, the Debtor filed an updated Term Sheet, which, according to the Debtor, added signatories.[8] LMI executed the Term Sheet, which provided that LMI were to be treated as "Settling Insurers" under the Debtor's plan.[9] One of the key provisions of the Term Sheet was settlement with numerous insurers, which the Debtor later reneged on, after having used those putative settlements to buy time to file a new plan.

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[4] Dkt No. 58. Unless otherwise noted, references to the docket refer to the docket in the bankruptcy case of *The Roman Catholic Bishop of Oakland*, Case No. 23-40523 WJL.

[5] Dkt No. 2293.

[6] Dkt No. 2467. at ¶ 3.

[7] Dkt Nos. 2504 and 2505.

[8] Dkt No. 2521.

[9] Continental Casualty Company, Insurers California Insurance Guarantee Association, United States Fire Insurance Company, American Home Assurance Co., and Westport Insurance Corporation are also signatories to the Term Sheet.

On February 20, 2026, the Debtor filed its Fourth Amended Plan of Reorganization, the immediate predecessor of the current Plan. On March 6, 2026, the Committee filed a competing plan of reorganization ("Committee Plan").[10] The Bankruptcy Court held multiple continued hearings on whether to approve the disclosure statements for the Committee Plan.

On March 29, 2026, the Debtor filed the current Plan. Under the Plan, and contrary to the Term Sheet, the Debtor will no longer settle with LMI or any other insurers.

During the competing plan confirmation process, the Court granted Abuse Claimants stay relief to proceed in state court.[11] On April 22, 2026, a jury awarded $16 million in damages to Steven Woodall in *John Doe OK 1022 v. Roman Catholic Bishop of Oakland* ("Woodall Action").[12] Two days later, the Committee announced that it had withdrawn the Committee Plan and would instead seek to dismiss the Debtor's bankruptcy case.[13] To date, LMI have actively participated in the plan and disclosure statement process, including filing objections and supplemental objections to the Committee's and Debtor's disclosure statements.[14]

B. <u>The LMI Policies</u>

LMI subscribed Excess Umbrella Policies issued to the Archdiocese of San Francisco and the Roman Catholic Bishop of Oakland may be an Additional Assured under those policies for the period from March 12, 1962, to October 25, 1963. LMI also subscribed to Excess Umbrella Policies issued to the Roman Catholic Bishop of Oakland for the periods from October 15, 1963, to October 25, 1966 (collectively, the "LMI Policies").[15] These Excess Umbrella Policies are excess indemnity policies.

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[10] Dkt No. 2705.

[11] Dkt No. 2168.

[12] The Committee disclosed Mr. Woodall's identity in a publicly filed document with Mr. Woodall's permission. *See* Dkt No. 2854 at n. 1.

[13] Dkt No. 2854.

[14] Dkt Nos. 2797, 2799.

[15] *See* RCBO-CC-0000001_0034 to RCBO-CC-0000001_0076. The Debtor designated these policies as confidential.

The Debtor's primary insurer(s) is responsible for the defense of any potentially covered claim until final resolution of the litigation.[16]

III. ARGUMENT

A. The Plan is Not Proposed in Good Faith in Violation of 11 U.S.C. § 1129(a)(3)

Section 1129(a)(3) requires that a Chapter 11 plan be "proposed in good faith and not by any means forbidden by law." The inquiry focuses on whether the plan's purpose aligns with the purposes and objectives of Chapter 11.[17]

The Supreme Court has explained that the purpose of the Bankruptcy Code is "to revive the debtor's business and thereby preserve jobs and protect investors."[18] Chapter 11 is intended to facilitate the successful rehabilitation and maximize the value of the estate.[19]

Chapter 11 may not be used to pursue objectives unrelated to reorganization or to gain litigation advantages.[20] It cannot be used as a vehicle for gamesmanship or for advancing the interests of particular parties at the expense of the reorganization process.[21]

The good faith analysis focuses on the totality of the circumstances and the process by which the plan is proposed. It "depends on an amalgam of factors and not upon a specific act," including whether the plan reflects an intent to abuse the judicial process or the purposes of the reorganization provisions.[22]

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[16] *Diamond Heights Homeowners Assn. v. Nat'l Am. Ins. Co.*, 227 Cal. App. 3d 563, 577 (1991) (holding that policy language similar to the Assistance and Co-operation Condition of the Umbrella Policies requires "the primary insurer ordinarily remains responsible for the defense until final resolution of the litigation").

[17] 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy, ¶1129.02 (16th ed. 2026).

[18] *Toibb v. Radloff*, 501 U.S. 157, 163 (1991).

[19] *N.L.R.B. v. Bildisco and Bildisco*, 465 U.S. 513, 527 (1984).

[20] *See In re Churchill Dev. Ltd.*, 74 B.R. 187, 190 (Bankr. D. Ariz. 1987).

[21] *Id.*

[22] *Idaho Dep't of Lands v. Arnold (In re Arnold)*, 806 F.2d 937, 939 (9th Cir. 1986); *In re Marshall*, 721 F.3d 1032, 1048 (9th Cir. 2013); *see also In re Mense*, 509 B.R. 269, 277 (Bankr. C.D. Cal. 2014) ("In finding a lack of good faith, courts have emphasized an intent to abuse the judicial process and the purposes of the reorganization provisions … [p]articularly when there is no realistic possibility of an effective reorganization and it is evident that the debtor seeks merely to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.") (internal citation omitted).

1. The Plan's Improper References to Bad Faith Claims and Attempted Expansion of Bad Faith Claims Violate Section 1129(a)(3)

The Plan violates Section 1129(a)(3) by authorizing the transfer of non-existent bad faith claims to the Survivors' Trust and to Abuse Claimants for the purpose of suing insurers.

a. Bad Faith Claims Are Irrelevant to Plan Confirmation

"Bad faith" claims are governed by state law, not bankruptcy law. Bad faith claims may arise when an insurer with a duty to defend fails to defend its insured,[23] or when an insurer with a duty to settle unreasonably fails to accept a settlement within policy limits and subjects its insured to damages in excess of limits;[24] under specific circumstances, a judgment creditor may pursue a bad faith claim against an insurer "when the insurer unreasonably and in bad faith withholds payment of the claim [or judgment] of its insured..."[25] (collectively, "Bad Faith Claims").

Bad Faith Claims are irrelevant to confirmation of the Plan and the Bankruptcy Code does not address Bad Faith Claims in any manner whatsoever. A plan that strays beyond chapter 11's policy violates Section 1129(a)(3).[26]

However, Bad Faith Claims are referenced throughout the Plan.[27] The Plan's definition of Insurance Actions includes Bad Faith Claims and the Plan purports to assign Insurance Actions to the Survivors' Trust.[28] The Insurance Assignment also purports to assign Insurance Actions (which again, includes Bad Faith Claims) to Abuse Claimants.[29]

There is no need for the Plan to discuss Bad Faith Claims, as they have no impact on the bankruptcy case. Pursuant to the Court's order allowing stay relief, none of the judgments in the cases

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[23] *See, e.g., Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d 654, 661 (1958).

[24] *See, e.g., Hedayati v. Interinsurance Exch. of the Automobile Club*, 67 Cal.App.5th 833, 844 (2021); *Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal.4th 390, 401 (2000).

[25] *Hand v. Farmers Ins. Exch.*, 23 Cal. App. 4th 1847, 1857-58 (1994).

[26] 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy, ¶ 1129.02 (16th ed. 2026).

[27] *See also* Plan referencing the *Hand* decision at, §§ 1.182, 5.14, 8.7, 9.8.4.8, and 13.12.4.

[28] Plan, §§ 1.1.15, 1.1.94, and 8.1.

[29] Plan, § 8.1.

to be resolved in the tort system can be enforced against the Debtor.[30] The Debtor's liability is capped by the Plan. The Debtor cannot be affected, even if an insurer failed to defend or settle, or to pay the amount of any judgment.

Likewise, the right of a successful Abuse Claimant to bring a Bad Faith Claim is irrelevant to plan confirmation. Under the highly unusual factual situation in the *Hand* case the Plan references, a plaintiff was found to have standing to sue an insurer for bad faith because it allegedly failed to pay a valid judgment that was covered by insurance. If that situation were to occur, the Abuse Claimant's rights would be independent of any assignment, and controlled by state law. There is no need for an assignment of currently non-existent claims. There could not possibly be any effect on this bankruptcy case.

Moreover, a plan is proposed in bad faith when it attempts to gain an advantage in litigation.[31] Here, there is an obvious purpose for the authorization of the completely unnecessary transfer of non-existent Bad Faith Claims to the Survivors' Trust and to Abuse Claimants, *i.e.*, to argue that the imprimatur of the Bankruptcy Court confirms that such claims exist and were validly transferred. The Plan's references to Bad Faith Claims are improper and violate Section 1129(a)(3).

2. The Plan Improperly Incorporates or Purports to Address State-Law Bad Faith and Extra-Contractual Insurance Claims

The Plan is unconfirmable because it purports to assign Bad Faith Claims against insurers that arise, if at all, in state court litigation after confirmation, solely under state law, not bankruptcy law. This Court cannot determine the existence of Bad Faith Claims, and hence this Court cannot approve a Plan that addresses such claims. All references in the Plan to Bad Faith Claims must be stricken.

Before the Court can address Bad Faith Claims, it must determine whether such claims actually exist, and whether they are property of the estate. The Court does not have Constitutional and statutory authority to do this, so including Bad Faith Claims in the Plan renders the Plan unconfirmable under Section 1129(a)(3).

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[30] Dkt No. 2168.

[31] *In re Churchill Dev. Ltd.*, 74 B.R. at 190.

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a. The Court Lacks Constitutional Authority to Adjudicate Matters of Private Right

Bankruptcy courts have limited constitutional authority. Article I of the Constitution authorizes Congress to establish bankruptcy laws and courts.[32] Therefore, a bankruptcy court's powers are wholly derived from statute.[33] Article III courts derive their authority directly from the Constitution,[34] and Article I courts cannot exercise the judicial power reserved to Article III courts.[35]

The Supreme Court has long limited the power of bankruptcy courts. In *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, the Supreme Court held that an assignment of jurisdiction to adjudicate state law claims to non-Article III bankruptcy judges was unconstitutional because such claims involve private rights, not public rights subject to resolution by non-Article III tribunals.[36] The Court rejected the argument that bankruptcy courts function merely as "adjuncts" to district courts such that delegation of adjudicative authority would be consistent with Article III.[37] *Northern Pipeline* reflects the Constitutional principle that bankruptcy courts cannot exercise authority beyond that prescribed by statute.

The "restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights[.]"[38] Bankruptcy courts may not adjudicate private rights.[39] In *Granfinanciera, S.A. v. Nordberg*, the Supreme Court held that the Seventh Amendment guarantees a jury trial right notwithstanding Congress's decision to

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[32] *See Caldwell v. Unified Capital Corp. (In re Rainbow Magazine, Inc.)*, 77 F.3d 278, 283-84 (9th Cir. 1996).

[33] *Kiviti v. Bhatt*, 80 F.4th 520, 533 (4th Cir. 2023); *In re Rainbow Magazine, Inc.*, 77 F.3d at 283-84; *see also Minnesota Pollution Control Agency v. Gouveia (In re Globe Bldg. Materials, Inc.)*, 345 B.R. 619, 638 (Bankr. N.D. Ind. 2006).

[34] *In re Rainbow Magazine, Inc.*, 77 F.3d at 283-84.

[35] *Kiviti*, 80 F.4th at 532; *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 76-77 (1982).

[36] *N. Pipeline*, 458 U.S. at 50-76, 87-89.

[37] *Id.* at 76-77.

[38] *Id.* at 71.

[39] *Brott v. U.S.*, 858 F.3d 425, 434 (6th Cir. 2017) (citing *Stern v. Marshall*, 564 U.S. 462, 494 (2011); *N. Pipeline*, 458 U.S. at 50, 70; *In re Apex Exp. Corp.*, 190 F.3d 624, 632 (4th Cir. 1999); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 53, 56, 61 (1989).

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assign adjudication to a non-Article III tribunal.[40] Consistent with *Northern Pipeline*, this decision underscores the principle that courts, including specialized tribunals, ***cannot exercise adjudicative power in contravention of statutory or Constitutional limits.***

The Supreme Court addressed a similar situation in *Stern v. Marshall*.[41] In *Stern*, the debtor Vickie Lynn Marshall ("Marshall") filed a state court action against her stepson, E. Pierce Marshall ("Pierce") over claims that Peirce interfered with Marshall's inheritance.[42] Marshall filed a bankruptcy petition, and Pierce filed a defamation claim in Marshall's bankruptcy case.[43] The bankruptcy court granted Marshall's motion for summary judgment and awarded damages on her counterclaim.[44] Pierce objected, arguing that Marshall's counterclaim was not a core proceeding.[45] The Supreme Court ruled that although the bankruptcy court had statutory authority to rule on Marshall's counterclaim, the bankruptcy court lacked Constitutional authority to do so.[46] Marshall's counterclaim is a "private right," which only Article III courts may issue final rulings on.[47] Bankruptcy courts are not constitutionally vested with authority to enter final orders over private rights.[48] Hence, although the bankruptcy court had statutory authority, it lacked Constitutional authority.[49]

Bad Faith Claims sound in tort and arise under state law independent of the bankruptcy case. These claims are private rights that fall *outside* the Constitutional authority of the Bankruptcy Court,

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[40] *Granfinanciera*, 492 U.S. at 33.

[41] *Stern v. Marshall*, 564 U.S. 462 (2011).

[42] *Id.* at 469-70.

[43] *Id.* at 470.

[44] *Id.*

[45] *Id.* at 471.

[46] *Id.* at 469, 482.

[47] *Id.* at 493, 495.

[48] *Id.* at 503 ("Article III of the Constitution provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article.").

[49] *Id.*

and therefore the Court may not determine whether such claims exist and whether they are property of the estate. The Plan's attempt to incorporate and transfer such claims within the plan process impermissibly expands the Court's Constitutional authority.

b. Statutes Define a Bankruptcy Court's Jurisdiction

"The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute."[50] "Two statutes govern jurisdiction over bankruptcy proceedings, 28 U.S.C. §§ 157 and 1334 ."[51] Federal bankruptcy jurisdiction over claims "is defined by 28 U.S.C. § 1334 [.]"[52] That statute "provides that 'the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11…."[53]

Section 157(a) of Title 28 divides jurisdiction into "core" and "non-core" matters.[54] The "core/non-core distinction is a critical one with respect to a bankruptcy court's adjudicative authority" and is "relevant to the scope of the bankruptcy court's powers upon referral: in core proceedings, the bankruptcy judge may issue final orders and judgments."[55] In contrast, in "non-core proceedings, the bankruptcy court's powers are more circumscribed: it must submit 'proposed findings of fact and conclusions of law' to the district court, which enters an order only after conducting de novo review."[56]

"The first of these categories, cases under Title 11, 'refers merely to the bankruptcy petition itself.'"[57] Clearly, Bad Faith Claims are not bankruptcy cases, so the first category of bankruptcy court jurisdiction does not apply. For the reasons explained below, the Court does not have jurisdiction and Constitutional authority not have jurisdiction over any Bad Faith Claims.

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[50] *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995).

[51] *Ed. Credit Mgmt. Corp. v. Kirkland* (*In re Kirkland)*, 600 F.3d 310, 315 (4th Cir. 2010).

[52] *Zinchiak v. CIT Small Bus. Lending Corp. (In re Zinchiak)*, 406 F.3d 214, 225 (3d Cir. 2005).

[53] *Celotex*, 514 U.S. at 307.

[54] 28 U.S.C. § 157(b) -(c).

[55] *Mullarkey v. Tamboer (In re Mullarkey)*, 536 F.3d 215, 221 (3d Cir. 2008).

[56] *Id*.

[57] *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991) citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 92 (5th Cir. 1987).

c. No "Arising Under" Jurisdiction

The Court does not have "arising under" jurisdiction over Bad Faith Claims. Bankruptcy courts have "original but not exclusive" jurisdiction over claims "arising under title 11[.]"[58] "A claim 'aris[es] under Title 11' if it is a cause of action created by the Bankruptcy Code, and which lacks existence outside the context of bankruptcy."[59]

Bad Faith Claims are not causes of action created by the Bankruptcy Code, nor do they lack existence outside the context of bankruptcy. To the contrary, Bad Faith Claims are purely state law claims, which are regularly litigated in state courts. The first basis of core jurisdiction is thus absent.

d. No "Arising In" Jurisdiction

The Court does not have "arising in" jurisdiction over Bad Faith Claims. Bankruptcy courts have core jurisdiction over matters that can ***only*** arise in cases under Title 11.[60] "Proceedings 'arising in' Title 11 are those proceedings that are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy."[61] A matter does not satisfy "arising in" jurisdiction if it "would have existed whether or not the Debtor filed bankruptcy."[62] "In other words, a controversy arises in Title 11 when it would have no practical existence but for the bankruptcy."[63]

Again, Bad Faith Claims exist outside of bankruptcy under applicable state law. Thus, because Bad Faith Claims are not claims that could only arise in a bankruptcy case, the second and final basis for core jurisdiction is also absent.

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[58] 28 U.S.C. § 1334(b).

[59] *Kirkland* , 600 F.3d at 316.

[60] 28 U.S.C. § 1334(b).

[61] *A.H. Robins Co. v. Dalkon Shield Claimants Trust (In re A.H. Robins Co.)*, 86 F.3d 364, 372 (4th Cir. 1996).

[62] *Valley Historic Ltd. P'ship v. Bank of NY*, 486 F.3d 831, 836 (4th Cir. 2007).

[63] *Grausz v. Englander*, 321 F.3d 467, 471 (4th Cir. 2003) (citation and internal quotation marks omitted).

e. No "Related to" Jurisdiction over Bad Faith Claims

Bankruptcy courts may exercise jurisdiction over claims "related to cases under title 11."[64] However, the scope of "related to" jurisdiction "cannot be limitless."[65] Bankruptcy courts may not hear civil proceedings "that have no effect on the estate of the debtor."[66]

The Third Circuit, in *Pacor, Inc. v. Higgins,* articulated the test for determining 'related to' jurisdiction.[67] While *Pacor* has been overruled on other grounds, the test under *Pacor* "clearly remains good law."[68] The Ninth Circuit has adopted the *Pacor* test.[69]

"Under *Pacor*, bankruptcy courts have jurisdiction to hear a proceeding if 'the outcome could conceivably have any effect on the estate being administered in bankruptcy.'"[70] Conceivability is a "key word."[71] "An action is 'related to' a bankruptcy proceeding 'if [1] the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) ***and*** [2] which in any way impacts upon the handling and administration of the bankrupt estate.'"[72] The two components of the *Pacor* "related to" test are not satisfied here, as discussed below.

(1) The Outcome of Bad Faith Claims Will Not Affect the Debtor's Rights, Liabilities, Options, or Freedom of Action

The Debtor's Bad Faith Claims do not exist as a matter of law, as set forth above. Accordingly, the Court cannot have "related to" jurisdiction over the Debtor's non-existent Bad Faith Claims.

The purported *Hand* Bad Faith Claims are unrelated to the Debtor's bankruptcy case, as these claims are between a non-debtor judgment creditor and the involved insurer(s). The outcome of *Hand*

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[64] 28 U.S.C. § 1334(b).

[65] *Celotex Corp.*, 514 U.S. at 308.

[66] *Id.* at 308, n. 6.

[67] *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

[68] *Stoe v. Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006) citing *In re Federal-Mogul Global, Inc.*, 300 F.3d 368, 381 (3d Cir. 2002).

[69] *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455 (9th Cir. 1988).

[70] *Resorts Int'l Fin., Inc. v. Price Waterhouse & Co. (In re Resorts Int'l Inc.)*, 372 F.3d 154, 164 (3d Cir. 2004).

[71] *Id.*

[72] *Id.*

claims would have no impact on the Debtor's rights, liabilities, options, or freedom of action, and thus have no relation to the Debtor's bankruptcy case. Hence the Court has no "related to" jurisdiction over the *Hand* Bad Faith claims.

(2) <u>The Outcome of Bad Faith Claims Will Not Impact the Administration and Handling of the Debtor's Estate</u>

Even if a claim, *arguendo*, would affect a debtor's rights, liabilities, options, or freedom of action, such claim can "relate to" a bankruptcy case only if its outcome impacts the estate's administration and handling.[73] Specifically, only claims that affect the arrangement, standing, or priorities of the Debtor's *creditors* can affect the administration and handling of the estate.[74] Bad Faith Claims could have no such effect.

In *Pacor*, "[a]ny judgment obtained would thus have no effect on the arrangement, standing, or priorities of [the debtor's] creditors."[75] The Third Circuit held "[t]here would therefore be no effect on administration of the estate."[76]

In *Zale*, the Fifth Circuit held that a bankruptcy court could not enjoin bad faith claims by third parties (like the Litigation Claimants here) against the insurers, because the bankruptcy court did not have jurisdiction over the Bad Faith Claims.[77] Here, Bad Faith Claims could not impact the arrangement, standing, or priorities because these are claims against the Debtor's insurers, not claims against the Debtor. Bad Faith Claims, if any such were to exist, would be litigated after the Debtor has been discharged and the Plan confirmed. Thus, because the claims will not affect any creditor's arrangement, standing, or priority, there is no conceivable effect on the Debtor's bankruptcy case. Accordingly, because the outcome of Bad Faith Claims (1) will not affect the Debtor's rights, liabilities, options or freedoms of action and (2) will not impact the handling and administration of the

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[73] *See Pacor*, 743 F.2d at 995-96; *Valley Historic*, 486 F.3d at 836; *Celotex Corp.*, 514 U.S. at 307 n. 5.

[74] *Pacor*, 743 F.2d at 995-96.

[75] *Id.* at 995-96.

[76] *Id.* at 996.

[77] *In re Zale Corp.*, 62 F.3d 746, 755-56 (5th Cir. 1995).

Debtor's bankruptcy estate, the Bankruptcy Court has no related to jurisdiction over the Bad Faith Claims.

In sum, because Bad Faith Claims fall outside both the Constitutional and statutory limits on the Bankruptcy Court's authority, the Plan's attempt to incorporate and facilitate such claims exceeds those limits. By attempting to impermissibly expand the Court's Constitutional and statutory authority, the Plan is not aligned with the Bankruptcy Code's objectives and cannot be confirmed under Section 1129(a)(3).

3. The Plan's Deferred Discharge Provision is Improper

The Plan's delay of the Debtor's discharge is improper. Under the Plan, if an Abuse Claimant chooses the Litigation Option, "such Abuse Claim shall not be discharged or released to the extent that such Holder may assert claims in a court of competent jurisdiction against the Debtor in name only…" ("Deferred Discharge Provision").[78] The Deferred Discharge Provision undermines the Bankruptcy Code's "principal purpose" to grant a "fresh start" to a debtor.[79] Postponing the discharge does not serve any bankruptcy purpose.

The Deferred Discharge Provision is included only as an attempt to fabricate state law Bad Faith Claims against the insurers. As noted earlier, there can be no state law Bad Faith Claim against an insurer without a judgment against the insured. The postponement of the Debtor's discharge until a judgment is entered seeks to lay the groundwork for the assertion of Bad Faith Claims against insurers. It serves no bankruptcy purpose. Because the Deferred Discharge Provision undercuts a "principal purpose" of the Bankruptcy Code, the Plan violates Section 1129(a)(3).

Moreover, there must be a single discharge of all claims, not multiple discharges. Indeed, the plain language of Section 524 mentions "***a*** discharge", not multiple discharges.[80] "Bankruptcy courts do not grant or deny 'a discharge" piecemeal and do not grant or deny 'discharges' to a debtor."[81]

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[78] Plan, § 13.3.

[79] *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007).

[80] 11 U.S.C. § 524(a) (emphasis added).

[81] *Cardillo v. Moore-Handley, Inc. (In re Cardillo)*, 172 B.R. 146, 151 (Bankr. N.D. Ga. 1994).

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There is no language in the Bankruptcy Code that authorizes a debtor to receive different discharges for different debts.[82]

4. The Plan's Judgment Reduction Mechanism Fails to Adequately Replace Displaced Contribution Rights

The Plan's judgment reduction mechanism fails to adequately preserve the Non-Settling Insurers' contribution rights. Section 8.7 applies only where a Non-Settling Insurer asserts a contribution claim in an action involving an Abuse Claimant and such claim is adjudicated valid. In that circumstance, any resulting judgment is reduced by the amount of the Settling Insurers' or Survivors' Trust's liability on the contribution claim.

This limited mechanism fails to address two core categories of contribution rights. First, it does not account for a Non-Settling Insurer that settles a claim pre-judgment and pays more than its allocable share, thereby foreclosing the insurer's ability to seek contribution for overpayment. Second, it does not address circumstances in which a Non-Settling Insurer successfully defends a claim but incurs substantial defense costs for which it would ordinarily be entitled to contribution from other responsible insurers. Because the mechanism does not fully replicate the scope of displaced contribution rights, it does not cure the Plan's improper interference with those rights.

Accordingly, the Plan fails to comply with Section 1129(a)(3) because it exceeds the Bankruptcy Court's constitutional and statutory authority by impairing non-debtor contribution rights without providing a legally adequate substitute.

5. The Plan Contains Unclear Language About Non-Settling Insurers

The Plan has unclear language about the Non-Settling Insurers' obligations. Specifically, the Plan states that the "Non-Settling Insurers shall not be liable for or obligated to reimburse any

[82] *U.S. v. White*, 466 F.3d 1241, 1245-46 (11th Cir. 2006).

contribution to the Plan ***made by the Debtor and its Estate***, nor shall the Survivors' Trust be authorized to seek such recovery."[83] This language is unclear and could be misinterpreted by a state court.

There are two problems with the wording. The first is that the Plan is intended as a "Madison Square Plan," whereunder the insurers are not responsible for any Abuse Claims paid by the Survivors' Trust; rather, their liability extends only to Litigation Claims.

The second problem comes from third party funding of the Plan. The Plan will be funded in part by a $30 million contribution from the Roman Catholic Welfare Corporation ("RCWC").[84] RCWC is "separate and distinct from" the Debtor.[85] Although a Plan heading states that there is "No Insurer Reimbursement Obligation," it does not specifically cover third party funding by potential additional assureds. The lack of clarity could lead to potential future litigation.

When a plan is ambiguous, it lacks good faith.[86] Here, the Plan violates Section 1129(a)(3) because it lacks clarity regarding the reimbursement obligation of Non-Settling Insurers. To remedy the ambiguity, section 9.3.8 of the Plan should add the following language: "No Entity, including without limitation, the Debtor, the Reorganized Debtor, the Estate, RCWC, the Survivors' Trust, the Survivors' Trustee, and any Holder of an Abuse Claim, shall make a Claim to any Insurer to recover any amounts paid under the Distribution Option."

6. The Plan Improperly Delegates Claims Allowance and Disallowance to the Survivors' Trustee

The Plan impermissibly delegates the Court's exclusive authority to allow and disallow claims to the Survivors' Trustee. A trustee cannot "allow" or "disallow" claims. Before a claim can be allowed, it must either be filed,[87] or scheduled as undisputed, liquidated and non-contingent.[88] Federal

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[83] Plan, § 9.3.8 (emphasis added).

[84] Plan, § 9.3.2.

[85] Plan, § 1.1.134.

[86] *See In re Pittsburgh Corning Corp.*, 453 B.R. 570, 587 (Bankr. W.D. Pa. 2011).

[87] 11 U.S.C. §§ 501; 521(1); Fed. R. Bankr. P. 3003(b)(1) and (2); *In re Dennis*, 230 B.R. 244, 247 (Bankr. D. N.J. 1999) ("The Code clearly requires a proof of claim to be filed for a claim to be allowed.").

[88] Fed. R. Bankr. P. 3003(c)(2); *see In re Dynamic Brokers, Inc.*, 293 B.R. 489, 495 (B.A.P. 9th Cir. 2003) (noting that under § 1111(a), which is unique to chapter 11 cases, a claim listed on the debtor's schedules is "deemed filed" if it is not designated as disputed, contingent, or unliquidated, a rule

Rule of Bankruptcy Procedure ("Rule") 3002 requires unsecured creditors, like holders of Abuse Claims, to file a proof of claim for the claim to be allowed.[89] Further, a claim "is deemed allowed, unless a party in interest…objects."[90]

Section 157 of Title 28 of the United States Code ("Judicial Code") specifies that only this Court, and no other entity, can allow or disallow claims. "The process of allowing and disallowing claims is an essential part of the bankruptcy process and, as such, is within the bankruptcy court's constitutional authority to decide."[91] Moreover, "[t]he duty to examine and pass on proofs of claim is that of the bankruptcy court alone, and cannot be delegated."[92]

Contrary to this black-letter law, the Plan purports to delegate allowance—a judicial function—to the Survivors' Trustee and authorizes the Survivors' Trustee to "allow *any* Abuse Claim" filed after the Bar Date.[93] Because such delegation expands the authority of a non-judicial officer, the Plan violates Section 1129(a)(3) and its inclusion in the Plan bars confirmation.

7. <u>The Plan Improperly Restricts Party-in-Interest Participation</u>

For the reasons set forth below, the Plan improperly restricts participation of parties in interest from objecting to claims. This restriction alters the adversarial framework contemplated by the Bankruptcy Code to ensure fair adjudication of claims and undermines the integrity of the claims resolution system. Limiting meaningful participation in the claims process undermines the integrity of

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implemented by Fed. R. Bankr. P. 3003(b)(1), which provides that a creditor need not file a proof of claim in such cases.)

[89] *In re Kinney*, 123 B.R. 889, 890 (Bankr. D. Nev. 1991) ("Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; *any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.*")

[90] 11 U.S.C. § 502(a).

[91] 4 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 502.01 (16th ed. 2026).

[92] *In re Mastercraft Record Plating, Inc.*, 32 B.R. 106, 110 (Bankr. S.D.N.Y. 1983); *see also In re Sun OK Kim*, 89 B.R. 116, 118 (D. Haw. 1987) ("If the trustee is formally notified and refuses to make an objection, either the debtor or the creditor may then ask the bankruptcy court to disallow the claim.")

[93] Plan, § 1.1.14 (emphasis added).

claims administration. The Plan's departure from Chapter 11's core purpose of ensuring orderly and equitable resolution of creditor claims bars confirmation under Section 1129(a)(3).

B. The Plan Does Not Comply with Applicable Provisions of Title 11 in Violation in 11 U.S.C. § 1129(a)(1)

Section 1129(a) of the Bankruptcy Code sets forth the mandatory requirements for confirmation of a Chapter 11 plan. Among them, Section 1129(a)(1) provides that a plan may be confirmed only if "[t]he plan complies with the applicable provisions of this title." This Section requires the proponent to ensure that the plan conforms to the provisions of the Bankruptcy Code that govern both the structure of a plan and the scope of the bankruptcy court's authority.[94]

1. The Plan Improperly Restricts LMI's Rights to Object to Claims

In *Truck Insurance Exchange v. Kaiser Gypsum Co.*, the Supreme Court held that an insurer with financial responsibility for claims is a "party in interest" because it may be "directly and adversely affected by the reorganization plan," and is therefore entitled to raise and be heard on any issue in the case.[95] The Court further explained that the term "party in interest" encompasses entities "potentially concerned with or affected by a proceeding," and emphasized that Congress intended to promote broad participation in reorganization cases to ensure fairness and transparency.[96]

The Plan improperly restricts these participation rights. First, section 1.1.39 provides that "Non-Settling Insurers shall only assert objections and defenses to an Abuse Claim in the appropriate non-bankruptcy forum following the election of the Holder of such Abuse Claim of the Litigation Option…", thereby precluding insurers from participating in the claims allowance process in this Court.[97] Second, section 5.2.2 limits objections parties in interest may only object to claims in the Bankruptcy Court when such objections are based on a Bankruptcy Code defense. Objections based on non-bankruptcy law may not be raised in Bankruptcy Court after the Effective Date, effectively stripping all other parties in interest of their statutory right to object.

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[94] 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 1129.02.

[95] *Kaiser Gypsum*, 602 U.S. at 269 (2024).

[96] *Id.*

[97] 11 U.S.C. § 502(a).

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These provisions are inconsistent with Sections 1109(b) and 502(a). Section 1109(b) guarantees parties in interest the right to "appear and be heard on any issue in a case," and Section 502(a) provides that a filed claim is deemed allowed unless a party in interest objects. By eliminating the ability of affected parties to participate in the claims allowance process, the Plan contravenes these provisions and therefore cannot be confirmed under Section 1129(a)(1).

2. The Plan Includes Irrelevant and Unauthorized Findings Regarding Settlement

The Plan violates Section 1129(a)(1) because it includes provisions that are not authorized by Section 1123 and are inconsistent with the Bankruptcy Code. Section 1123(b)(6) permits a plan to "include any other appropriate provision not inconsistent with the applicable provisions of this title." The Plan fails this requirement by including proposed findings for which the Bankruptcy Code does not provide, and which are inconsistent with the Bankruptcy Code's provisions.

Specifically, section 12.12 provides that the Plan "shall constitute a good faith compromise and settlement" and that the Bankruptcy Court's findings will establish that such compromises are "fair, equitable and within the range of reasonableness." These provisions are improper because they require determinations that overlap with issues reserved for insurance coverage litigation, including the reasonableness and good faith of settlements. The Bankruptcy Court lacks constitutional authority to adjudicate such coverage disputes, which are matters of private right.

While a plan may incorporate settlements subject to approval, a plan is not itself a settlement and cannot supply or predetermine the findings required under Bankruptcy Rule 9019.[98] By including these findings, the Plan attempts to dictate legal conclusions and circumvent the Court's independent obligation to evaluate the Plan under Section 1129. Because these provisions are not "appropriate" within the meaning of Section 1123(b)(6) and are inconsistent with the Bankruptcy Code, the Plan fails to comply with applicable provisions of title 11 and therefore violates Section 1129(a)(1).

[98] *See In re Boy Scouts of America*, 642 B.R. 504, 626 (Bankr. D. Del. 2022) ("But a Plan is not a settlement. It gets solicited. And if the vote fails, debtors can cram down treatment.").

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C. Joinder to Certain Arguments Raised by Westport Insurance Corporation and Other Insurers

LMI join in the below arguments raised by Westport Insurance Corporation and other insurers in their objection to the Plan as follows and incorporates these arguments as though fully set forth herein:

- III.A.1. The Insurance Assignment is Ambiguous
- III.A.3. The Insurance Assignment Cannot Assign Non-Debtors' Interests in the Non-Setting Insurer Policies
- III.A.4. The Insurance Assignment is Not Voluntary
- III.B. The Delayed Discharge in the Debtor's Plan is Impermissible
- III.C.1. The Debtor's Plan Potentially Allows Abuse Claimants to Recover Amounts in Excess of Their Abuse Claims
- III.C.2 The Plan Improperly Allows Litigation Claimants to Rescind Their Selection of the Litigation Option When It May No Longer Be Advantageous
- III.E.1 The Limitation on Objections to Abuse Claims is Unlawful
- III.F.1. Sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code Require Disinterested Fiduciaries
- III.G. The Plan is Impermissibly Ambiguous About Pursuing Coverage for Trust Claims
- III.H. The Plan Does Not Permit Insurers to Appoint Independent Counsel, Despite Permitting Litigation Against the Debtor "as a nomina party only"
- III.I. The Plan Does Not Contain Adequate Anti-Fraud Measures
- III.J. The Plan is Not a Settlement of all Claims and Therefore Section 12.12 is Not Authorized Under the Bankruptcy Code
- III.L. The Proposed Confirmation Order Contains Improper Findings and Legal Conclusions that Must Be Removed

IV. CONCLUSION

Based on the foregoing, LMI respectfully request the Court not enter an order approving the Plan.

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