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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.

Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

LONDON MARKET INSURERS' POST-TRIAL BRIEF

TABLE OF CONTENTS

I. PRESERVATION OF ARGUMENTS RAISED BY LMI 1

II. JOINDER 2

III. LEGAL ARGUMENT 2

A. The Plan Improperly Addresses Bad Faith Claims 2

1. Neither the Debtor nor the Survivors' Trust can ever have a bad faith claim 3

2. Individual judgment creditors can have bad faith claims only in limited circumstances as determined in state court litigation after the Bankruptcy Case is over, which litigation would have no effect on this case 4

3. The Debtor failed to carry its burden 4

B. The Plan's Deferred Discharge Provision is Improper 5

C. The Plan Contains Unclear Language About the Non-Settling Insurers 7

D. The Plan Improperly Limits the Rights of Parties in Interest to Object to Claims 8

E. The Plan Cannot Delegate Claims Allowance and Disallowance to the Survivors' Trustee 9

F. The Plan Improperly Proposes to Pay Invalid Claims 11

G. LMI Have the Right to Be Heard Without Conceding Financial Responsibility 12

H. Article III Does Not Limit LMI's Right to Be Heard in this Case 15

1. Article III Does Not Limit a Party-in-Interest's Right to Be Heard Here 15

2. LMI Need Only Satisfy Section 1109(b) to Be Heard 19

3. Even If Article III Were to Apply, LMI Satisfy Its Requirements 19

4. Even if Article III Applies, the Burden Rests on the Party Invoking Federal Jurisdiction, Not on LMI 20

I. The Debtor's Prudential Standing Argument is Foreclosed by Supreme Court Precedent 21

J. The Debtor's Failure to Contest LMI's Arguments Resulted in Waiver 23

IV. CONCLUSION 23

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 2 of 30

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Cases

Anderson Excavating, LLC v. Weiss World,
638 F.Supp.3d 525 (W.D.Pa. 2022) 3

Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC,
2025 WL 2177391 (4th Cir. Aug. 1, 2025) 15

Canal Corp. v. Finnman (In re Johnson),
960 F.2d 396, 404 (4th Cir. 1992) 10

Cardillo v. Moore-Handley, Inc. (In re Cardillo),
172 B.R. 146 (Bankr. N.D. Ga. 1994) 7

Cassirer v. Thyssen-Bornemissza Collection Foundation,
862 F.3d 951 (9th Cir. 2017) 3

Century Indem. Co. v. Congoleum Corp. (In re Congoleum Corp.),
426 F.3d 675 (3d Cir. 2005) 14

Childs. Health Def. v. CDC,
2024 WL 3521593 (D.D.C. July 24, 2024) 21

Clemons v. Mississippi,
494 U.S. 738 (1990) 17

Env't Integrity Project v. Wheeler,
2021 WL 6844257 (D.D.C. Jan. 27, 2021) 21

F.D.A. v. Alliance for Hippocratic Medicine,
602 U.S. 367 (2024) 15

Farmer v. EPA,
759 F.Supp.3d 101 (D.D.C. 2024) 21

Frontier Ins. Co. v. Westport Ins. Corp. (In re Black),
460 B.R. 407 (Bankr. M.D. Pa. 2011) 11

Hand v. Farmers Ins. Exch.,
23 Cal. App. 4th 1847 (1994) 2, 4, 6

Harrington v. Purdue Pharma L. P.,
603 U.S. 204 (2024) 5

Heathcoat v. Potts,
905 F.2d 367 (11th Cir. 1990) 17

Hollingsworth v. Perry,
570 U.S. 693 (2013) 15

In re AIO US, Inc.,
2025 WL 1617477 (Bankr. D. Del. June 6, 2025) 17, 21, 22

In re Arbco Cap. Mgmt., LLP,
479 B.R. 254 (S.D.N.Y. 2012) 15

In re Coho Energy, Inc.,
395 F.3d 198 (5th Cir. 2004) 15

In re D.M. Barber, Inc.,
13 B.R. 962 (Bankr. N.D. Tex. 1981) 10

In re Dambowsky,
526 B.R. 590 (Bankr. M.D.N.C. 2015) 15

In re Dumain,
492 B.R. 140 (Bankr. S.D.N.Y. 2013) 11

In re Hopeman Bros., Inc.,
2025 WL 3688940 (Bankr. E.D. Va. Oct. 31, 2025) 14

In re Mastercraft Record Plating, Inc.,
32 B.R. 106 (Bankr. S.D.N.Y. 1983) 10

In re Niebur,
637 B.R. 153 (Bankr. D. Colo. 2022) 11

In re Pardee,
218 B.R. 916 (B.A.P. 9th Cir. 1998) 11

In re Roman Cath. Diocese of Albany, New York,
2025 WL 2536165 (Bankr. N.D.N.Y. Sept. 3, 2025) 14

In re Roman Catholic Diocese of Syracuse,
665 B.R. 866 (Bankr. N.D.N.Y. 2024) 14

In re Team Systems Int'l, LLC,
2024 WL 4647489 (Bankr. D. Del. Oct. 21, 2024) 19

In re Technicool Sys., Inc.,
896 F.3d 382 (5th Cir. 2018) 15

In re Thorpe Insulation Co.,
677 F.3d 869 (9th Cir. 2012) 22

In re Wilton Armetale, Inc.,
968 F.3d 273 (3d Cir. 2020) 22

Kiviti v. Bhatt,
80 F.4th 520 (4th Cir. 2023) 15, 16

Knotts v. United States,
893 F.2d 758 (5th Cir. 1990) 18

Lexmark Int'l, Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014) 15, 21, 22

Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania,
591 U.S. 657 (2020) 15, 21

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 4 of 30

Logan v. Credit Gen. Ins. Co. (In re PRS Ins. Grp., Inc.),
335 B.R. 77 (Bankr. D. Del. 2009) 10

Loyd v. Paine Webber, Inc.,
208 F.3d 755 (9th Cir. 2000) 19

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992) 15

Meland v. WEBER,
2 F.4th 838 (9th Cir. 2021) 20

N. Pipeline Constr. Co. v. Marathon Pipe Line Co.,
458 U.S. 50 (1982) 16

Scotts Valley Band of Pomo Indians v. Burgum,
2025 WL 1178598 (D.D.C. Apr. 23, 2025) 21

Smith Int'l, Inc. v. Hughes Tool Co.,
759 F.2d 1572 (Fed. Cir. 1985) 18

Stern v. Marshall,
564 U.S. 462 (2011) 16

Thomas v. Bible,
983 F.2d 152 (9th Cir. 1993) 17

Truck Ins. Exch. v. Kaiser Cement,
2022 WL 71771 (Cal. Ct. App. Jan. 7, 2022) 13

Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.,
60 F.4th 73 (4th Cir. 2023) 13, 17, 18

Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.,
602 U.S. 268 (2024) ..... passim

United States v. Real Prop. Located at Incline Vill.,
958 F.Supp. 482 (D. Nev. 1997) 18

Virginia House of Delegates v. Bethune-Hill,
587 U.S. 658 (2019) 15, 20

Wellness Int'l Network, Ltd. v. Sharif,
575 U.S. 665 (2015) 16

Statutes

11 U.S.C. § 1109(b) ..... passim

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11 U.S.C. § 1129(a)(1) 2, 9

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 5 of 30

11 U.S.C. § 1129(a)(3) 2, 11
11 U.S.C. § 1129(a)(5) 1
11 U.S.C. § 1141(d)(1) 5
11 U.S.C. § 501 11
11 U.S.C. § 502(a) ..... passim
11 U.S.C. § 524 ..... 6, 7
28 U.S.C. § 151 16
Fed. R. Bankr. P. 3021 12

Other Authorities

U.S. Const., art. I 15, 18
U.S. Const., art. III ..... passim

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Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 6 of 30

Certain Underwriters at Lloyd's, London and Certain London Market Companies ("London Market Insurers" or "LMI")[1] submit this post-trial confirmation brief ("Post-Trial Brief") as ordered by the Court on July 7, 2026. In support thereof, LMI respectfully state as follows:

I. PRESERVATION OF ARGUMENTS RAISED BY LMI

On May 13, 2026, LMI filed their objections ("Objections")[2] to the *Debtor's Modified Fourth Amended Plan of Reorganization Dated March 27, 2026* ("Plan").[3] For avoidance of doubt, LMI continue to assert all their Objections[4] whether addressed herein, raised during the confirmation trial, or otherwise.

In addition, LMI, on behalf of LMI, Westport Insurance Corporation f/k/a Employers Reinsurance Corporation; Pacific Indemnity Company ("Westport"), Pacific Employers Insurance Company, Insurance Company of North America, and Westchester Fire Insurance Company ("Pacific"); and Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company ("Travelers"), sent to the Debtor on July 22, 2026, a red-lined draft of Plan revisions, which would make the Plan acceptable to those insurers. This matter was discussed several times at the confirmation hearing. As of the date of filing of this Post-Trial Brief, LMI have not received any response from the Debtor. In the event that the Debtor submits a revised Plan to the Court, LMI reserve all of their objections and rights with respect to such revised Plan.

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[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] Dkt. No. 2951.

[3] Dkt No. 2758.

[4] Including without limitation the arguments that Sections 1123(a)(7) and 1129(a)(5) of the Bankruptcy Code require disinterest fiduciaries and that the Plan does not contain adequate anti-fraud measures.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 7 of 30

II. JOINDER

To avoid duplication, LMI join in the below arguments raised by the Objecting Insurers in their post-trial brief and incorporate those arguments as though fully set forth herein. In some cases, LMI add additional points to those arguments. LMI also make certain arguments that do not appear in the Objecting Insurers post-trial brief.

- A. The Insurance Assignment is Ambiguous and Does Not Comply with the Bankruptcy Code or Applicable Law[5]
- B. The Delayed Discharge in the Debtor's Plan is Impermissible
- C. 1. The Plan is Ambiguous Regarding Scope of the Trust's Liability
- C. 2. The TDP Improperly Precludes the Payment of Contribution Claims
- D. The Litigation Option is Inconsistent with the Bankruptcy Code, Applicable State Law, and the Plan's Own Terms, and Therefore Violates §§ 1129(a)(1) and 1129(a)(3)
- E. The Plan Does Not Preserve the Objecting Insurers' Contractual Right to Defend Litigation Claims That, Under the Plan, They Have the Exclusive Obligation to Pay
- F. The Plan is Not a Settlement of All Claims and therefore Section 12.12 is Not Authorized Under the Bankruptcy Code
- G. The Court Should Eliminate Improper (or Unsupported) Factual Findings and Legal Conclusions from the Confirmation Order
- I. The Plan and Confirmation Order Should State Unambiguously that Insurance Coverage is Not Being Sought for Distribution Claims

III. LEGAL ARGUMENT

A. The Plan Improperly Addresses Bad Faith Claims

The Plan's references to state law bad faith claims are inappropriate and require denial of confirmation. The Plan purports to assign the Debtor's rights to the policy proceeds.[6] It also purports

[5] Subject to the arguments about *Hand*.

[6] Plan, §§ 1.1.15, 1.1.93, 1.1.94, and 8.1.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 8 of 30

to assign potential bad faith claims to the Survivors' Trust.[7] To the extent bad faith claims may exist, which is disputed, they would be governed by state law, not bankruptcy law.

A prerequisite to the existence of a bad faith claim is that the Debtor has been required, by final judgment, to incur some liability in excess of the liability that it would have incurred without the alleged misconduct of the insurer ("Additional Liability").

1. Neither the Debtor nor the Survivors' Trust can ever have a bad faith claim

The Debtor cannot have any bad faith claims here. Pursuant to the Court's order allowing stay relief, none of the judgments in the cases to be resolved in the tort system can be enforced against the Debtor.[8] The Plan caps the Debtor's liability. Thus, the Debtor cannot be affected whatsoever, regardless of the conduct of its insurers.

As the Debtor does not now have - and in the future will never have – a bad faith claim, the Debtor cannot assign such non-existent claims. "It is a fundamental legal principle that *nemo dat quod non habet*—nobody can give what he does not have."[9] The Ninth Circuit recognizes this principle.[10] Hence, the Debtor's non-existent bad faith claims cannot be assigned to the Survivors' Trust.

Nor may the Survivors' Trust ever have an independent bad faith claim. Under the Trust Distribution Procedures, when Abuse Claimants choose the Litigation Option, the Survivors' Trust's liability is limited to the Distribution Amount, even if the Abuse Claimant obtains a judgment that is higher.[11] Because the Survivors' Trust is not required to pay any judgment more than the Distribution

[7] Plan, §§ 1.1.15, 1.1.93, 1.1.94, and 8.1.

[8] Dkt No. 2168.

[9] *Anderson Excavating, LLC v. Weiss World*, 638 F.Supp.3d 525, 534 (W.D.Pa. 2022).

[10] *Cassirer v. Thyssen-Bornemissza Collection Foundation*, 862 F.3d 951, 961 (9th Cir. 2017).

[11] *See* Trust Distribution Procedures, Dkt No. 2867-6 at § 5.2.

Amount, the Survivors' Trust could never suffer any damages that give rise to a bad faith claim. Like the Debtor, the Plan and Trust Distribution Procedures limit the Survivors' Trust's liability.

2. Individual judgment creditors can have bad faith claims only in limited circumstances as determined in state court litigation after the Bankruptcy Case is over, which litigation would have no effect on this case

The *Hand* case allows, in very limited circumstances, a judgment creditor (as opposed to an insured), to pursue a bad faith claim directly against an insurer in state court.[12] This litigation arises only in a unique situation where (1) coverage exists under the applicable policy and (2) nonetheless, the insurer refuses to pay a valid, final judgment.[13] That situation could occur only after this bankruptcy case is over. (To date, (1) there is no final judgment against the Debtor and (2) there has been no determination of coverage.[14]) That case would be tried in state court and state law would determine whether any bad faith claims exist. The resolution of that case would have nothing whatsoever to do with this bankruptcy case.

3. The Debtor failed to carry its burden

The Debtor has not carried its burden to show that the Insurance Action provisions belong in the Plan. The Debtor contends that the Plan "clearly and expressly preserves the rights of Non-Settling Insurers."[15] The Debtor's contention misses the relevant inquiry. As the plan proponent, the Debtor bears the burden of showing that each provision is either required under Section 1123(a) or

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

[13] *Id*.

[14] The only verdict identified in this record was entered in *John Doe OK 1022 v. Roman Catholic Bishop of Oakland.* The appellate period has not elapsed and the judgment is not final. There has been no determination of coverage in this bankruptcy case, and this Court does not have jurisdiction to make such a finding. In any event, the Debtor acknowledged that LMI issued policies prior to the first date of abuse in *John Doe OK 1022* and related cases, and that any conduct described as the basis for bad faith claims as a result of this verdict do not apply to LMI. *See*, Sixth Amended Complaint, *In re The Roman Catholic Bishops of Oakland Insurance Adversary Proceeding Litigation*, U.S. District Court Northern District of California, Case No. 24-cv-709-JSC, Doc. 279, Filed 05/19/26, ¶ 636 and FN 2 on p. 209.

[15] Dkt. No. 3100 at 79; *see* Plan § 8.3.1.

independently permissible under Section 1123(b).[16] The Debtor has made neither showing. Section 1123(b)(6)'s catchall takes its meaning from the specific paragraphs preceding it, which concern only the Debtor's own rights and responsibilities; it does not authorize provisions "radically different" in kind, including provisions addressing the Debtor's rights and responsibilities.[17] The Insurance Actions provisions are exactly that: instead of addressing the Debtor's rights and obligations, they purport to authorize claims by third parties (the Survivors' Trust and Abuse Claimants) against other third parties (the Non-Settling Insurers) over whom the Court's jurisdiction is defined and limited by statute. Section 1123(b)(6) does not permit a plan to expand that jurisdiction or to include provisions governing the rights and responsibilities of the Non-Settling Insurers, and this defect exists independent of whether any bad faith claim could ever arise on the merits.

B. The Plan's Deferred Discharge Provision is Improper

The Plan's Deferred Discharge Provision should be removed. As the Objecting Insurers stated in their brief, that provision "does not serve a legitimate bankruptcy purpose and violates § 1141(d)(1) of the Bankruptcy Code and blackletter law."

As described in Section III. A. above, the Debtor does not have a bad faith claim and can never have such a claim against the insurers. A Litigation Claim can be brought against the Debtor in name only, but the Debtor can never be obligated to pay anything to such Litigation Claimant, by Order of this Court.[18] The Debtor can never suffer any Additional Liability as a result of a Litigation Claim, and, once again, can never have a bad faith claim.

Under the Plan, unlike other claims, for an Abuse Claimant who elects the Litigation Option, the Abuse Claim "shall not be discharged or released to the extent that such Holder may assert claims

[16] *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 215 (2024).

[17] *Id.* at 205 (2024).

[18] Dkt No. 2168.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 11 of 30

in a court of competent jurisdiction against the Debtor in name only," with discharge as to that claim effective only "upon conclusion of any such litigation" ("Deferred Discharge Provision").[19]

The transparent but futile purpose of this provision is to allow a Litigation Claimant to argue that the applicable insurer is required to pay the full amount of any verdict returned by a jury, even though the amount of the insurer's limits is lower than the verdict. Such a non-existent loss would then be used as a basis to argue that the insurer engaged in bad faith. However, that can never be the case as the Debtor could never suffer any Additional Liability.

The Plan attempts to use the Deferred Discharge Provision to create a *Hand*-type of claim, but the two situations are different and *Hand* does not apply. In *Hand*, the plaintiff had already obtained a judgment against the insured, which judgment was covered by insurance. The insurer simply refused to pay the full amount of its limits, so the judgment creditor was permitted to sue, in a second action, in bad faith to recover the full amount.

The Deferred Discharge Provision does not fall into the *Hand* exception. At the time of the filing of a Litigation Claim, there would be no underlying judgment against the Debtor that an insurer has refused to pay. The Litigation Claimant decided to sue in state court instead of accepting the amount of a Distribution Claim. The Debtor's contribution to the Survivor's Trust satisfies the Debtor's total liability to Abuse Claimants. No matter the size of a verdict returned in the state court litigation, the Debtor will never pay any of it. In *Hand*, the insurer failed to pay a claim within its coverage; the only conceivable purpose for the Deferred Discharge Provision is to make insurers pay uncovered claims or amounts in excess of their limits.

An individual Litigation Claimant may allege to have a bad faith claim if a verdict is returned in his favor in state court after Bankruptcy Court confirmation, and the applicable insurer refuses to pay. In that situation, there is no need whatsoever to defer the discharge, because, as the Objecting Insurers eloquently argued, the Debtor's discharge would have no impact on that situation.

Independent of any connection to bad faith claims, the Deferred Discharge Provision cannot be reconciled with the Code's discharge mechanism. Section 524 refers to "a discharge", not multiple

[19] Plan, § 13.3.

discharges.[20] "Bankruptcy courts do not grant or deny 'a discharge" piecemeal and do not grant or deny 'discharges' to a debtor."[21] The Deferred Discharge Provision purportedly discharges the Debtor as to some Abuse Claims on the Effective Date and as to others only upon conclusion of separate litigation whose timing is outside this Court's control. Nothing in the Code authorizes that result. Both defects independently render the Deferred Discharge Provision inconsistent with the purposes and objectives of the Bankruptcy Code.

C. The Plan Contains Unclear Language About the Non-Settling Insurers

As argued in the Objections and incorporated herein as though fully set forth, the wording of Section 9.3.8 of the Plan does not fit precisely with the intent of the Plan or the evidence in support of the Plan. The Debtor clearly intends the Plan to mirror the structure of the *Madison Square Girls & Boys Club, Inc* plan ("*Madison Square*").[22] Under that plan,[23] insurers are not responsible for any Abuse Claims paid by the Survivors' Trust, and their liability extends only to claims pursued in the tort system.[24] At trial, the Debtor's CFO, Attila Bardos, testified that the Debtor is not seeking reimbursement from Non-Settling Insurers for Distribution Claims, confirming the *Madison Square* plan structure applies here.[25] No conflicting evidence was admitted at trial.

The Plan's current wording is somewhat imprecise: under Section 9.3.8 of the Plan, "Non-Settling Insurers shall not be liable for or obligated to reimburse any contribution to the Plan ***made by the Debtor and its Estate***, nor shall the Survivors' Trust be authorized to seek such recovery." By

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[20] 11 U.S.C. § 524(a) (emphasis added).

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

[22] *See Disclosure Statement in Support of Debtor's Modified Fourth Amended Plan of Reorganization*, Dkt No. 2759 ("All Trust Claimants ... elect one of two paths as to their Trust Claim: 1) receive a distribution from the Survivors' Trust and pursue litigation that could yield additional recovery from an insurer, if any (the 'Litigation Option') or 2) accept a distribution solely from the Survivors' Trust (the 'Distribution Option') and forego litigation against the Debtor's insurers.")

[23] *See Madison Square Boys & Girls Club, Inc.*, Case No. 22-10910 (Bankr. S.D.N.Y.), at Dkt No. 614.

[24] Plan, § 9.3.8; Dkt. No. 2951 at 20-21.

[25] Tr. June 25, 2026 at 194:10-16.

only discussing contributions, the Plan fails to clarify the Plan's intent that insurers are not responsible for indemnity for Distribution Claims.

In addition, the Plan does not expressly address Plan contributions from third parties. Non-debtor Roman Catholic Welfare Corporation will be funding the Plan with $30 million. The above language does not specifically cover whether Non-Settling Insurers must reimburse any claims paid from third-party funding, like the Roman Catholic Welfare Corporation. This failure should be cured.

Section 9.3.8 should be amended to add: "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."

D. <u>The Plan Improperly Limits the Rights of Parties in Interest to Object to Claims</u>

As LMI argued in the Objections, insurers with potential financial responsibility for claims are parties in interest entitled to raise and be heard on any issue in the case, including through the claims allowance process.[26] The Debtor asserts that the Plan "preserves the *full* rights of the Insurers to assert any defense, including those arising under the Bankruptcy Code, in defense of Litigation Claimant's state court action."[27] To the contrary, Plan Section 8.3.12 does not preserve a "full" right to "any defense." It reserves Non-Settling Insurers' objections only "as a defense to coverage in Abuse Claim Litigation commenced by a Litigation Claimant"—a right to raise those objections later, in state court, and only as a coverage defense.[28] Nothing in Section 8.3.12 preserves the right to raise those same objections in this Court. Plan Section 5.2.2 further compounds this constraint by limiting objections in this Court after the Effective Date to those grounded in a Bankruptcy Code defense, *entirely excluding non-bankruptcy law objections*, including whether a proof of claim even states a claim cognizable under California law.[29] These restrictions contravene Sections 1109(b) and 502(a), which

[26] Dkt. No. 2951 at 23.

[27] Dkt. No. 3100 at 83.

[28] Plan, § 8.3.12.

[29] Plan, § 5.2.2.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 14 of 30

guarantee parties in interest the right to appear and be heard on any issue and to object to claims. The Plan does not cure the defects LMI highlighted. Accordingly, the Debtor's contrary characterization is inaccurate. Moreover, the Debtor did not address these issues in its *Memorandum of Law in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* ("Confirmation Brief"),[30] so the Debtor has conceded this issue.

The Debtor incorrectly contends that the insurers "rely solely on Section 502(a)" for the proposition that a plan cannot restrict the rights of parties-in-interest to object to claims.[31] Again, the Debtor is wrong: LMI's Objections cite Section 1109(b) and *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268 (2024) ("Kaiser Gypsum"), not Section 502(a) alone.[32] LMI's party-in-interest rights flow independently from Section 1109(b). The Plan may not strip those rights by channeling certain legal objections exclusively to non-bankruptcy forums.

E. The Plan Cannot Delegate Claims Allowance and Disallowance to the Survivors' Trustee

As set forth in the Objections, only this Court may allow or disallow claims; the Court cannot delegate that power to the Survivors' Trustee or any other non-judicial officer.[33] "Regardless of what court determines the underlying merits or amount of a claim, ***the allowance of that claim … is the exclusive province of the bankruptcy court if a proof of claim has been filed in the bankruptcy***

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[30] Dkt. No. 3100.

[31] Dkt. No. 3100 at 83.

[32] Dkt. No. 2951 at 23-24 ("… [t]he 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."; "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).")

[33] Dkt. No. 2951 at 21-22.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 15 of 30

court."[34] The Plan nonetheless authorizes the Survivors' Trustee to "allow any Abuse Claim" filed after the Bar Date.[35]

The Debtor did not substantively respond to this argument and hence LMI prevail on this point.

Rather than address why delegation to a non-judicial officer is permissible, the Debtor characterized the objection as outside the insurers' standing, asserting that claim-allowance procedures are "provisions designed to protect creditor rights—not insurer rights—and fall outside the scope of permissible party-in-interest objections."[36] That is incorrect. Section 1109(b) entitles parties in interests to be heard "on any issue in a case," which includes the core judicial function of allowance and disallowance where, as here, insurers bear the financial consequences.[37] Delegating allowance to a non-judicial officer circumvents statutory safeguards and risks preclusive misuse of Trustee "allowances" against Non-Settling Insurers in later coverage disputes, magnifying the need for judicial adjudication.

Non-Settling Insurers are the only parties with an interest in ensuring that the Debtor complies with the requirements of the Bankruptcy Code and Judicial Code. The Debtor's argument that insurers cannot object to the Plan's delegation of claims allowance is incorrect. As a plan proponent, the Debtor bears the burden of proving that its Plan includes the mandatory Section 1123(a) provisions. If the Plan includes provisions that are not required, the Debtor must still prove that the provisions do

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[34] *Logan v. Credit Gen. Ins. Co. (In re PRS Ins. Grp., Inc.)*, 335 B.R. 77, 81 (Bankr. D. Del. 2009); see, e.*g., Canal Corp. v. Finnman (In re Johnson),* 960 F.2d 396, 404 (4th Cir. 1992); *In re D.M. Barber, Inc.,* 13 B.R. 962, 965 (Bankr. N.D. Tex. 1981) (holding that the bankruptcy court "retains the exclusive jurisdiction to determine the extent to which any such proof of claim should be allowed); 4 *Collier on Bankruptcy* ¶ 502.030[1][a] (15th ed. rev. 2005) ("Regardless of the method chosen for liquidation of a claim, ***the bankruptcy court always retains the jurisdiction and sole right to determine the 'allowability' of the claim*** **under the applicable standards set forth in section 502**".); *In re Mastercraft Record Plating, Inc.*, 32 B.R. 106, 110 (Bankr. S.D.N.Y. 1983) (emphasis added).

[35] Plan, § 1.1.14.

[36] Dkt. 3100 at 79.

[37] 11 U.S.C. § 1109(b); *see* 7 *Collier on Bankruptcy* ¶ 1109.01[1] (16th ed. 2013) ("The general theory behind the section is that anyone holding a direct financial stake in the outcome of the case should have an opportunity (either directly or through an appropriate representative) to participate in the adjudication of *any issue that may ultimately shape the disposition of his or her interest*.") (emphasis added).

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 16 of 30

not violate the Bankruptcy Code.[38] The Debtor has failed to show why a provision delegating claims allowance is required – the Debtor cannot do so because there is no such requirement. That provision violates Section 1129(a)(3), which requires plan proponents to propose plans in good faith.

The issue is not whether insurers can object to such a provision, but that such a provision cannot be included in the Plan.

F. The Plan Improperly Proposes to Pay Invalid Claims

Section 502(a) of the Code provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest…objects."[39] Hence, once an objection is filed, the claim is not allowed. "The trustee can only make those distributions on account of allowed claims."[40]

LMI have objected to ten claims, extinguishing the deemed allowance of such claims.[41] LMI have the right to raise such objections. "There is no reason to define 'party in interest' more narrowly in the context of an objection to a claim than in the context of a plan objection."[42] Because insurers may have "a contractual duty to defend Debtor in the claims litigation," or a right to associate in the defense of, the Debtor in the underlying claims litigation, LMI have "an interest in [claim objections] separate from Debtor's interest that could be affected by the outcome," which provides them with an independent basis to assert claim objections.[43] Accordingly, the claims to which LMI objected cannot be deemed allowed under Section 502(a), and the Plan may not make distributions to those claims

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[38] 11 U.S.C. § 1123(b)(6).

[39] 11 U.S.C. § 502(a).

[40] *In re Dumain*, 492 B.R. 140, 143 (Bankr. S.D.N.Y. 2013) (quoting Fed. R. Bankr. P. 3021 ("after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed....")); cf. *In re Niebur*, 637 B.R. 153, 158 (Bankr. D. Colo. 2022); see also *In re Pardee*, 218 B.R. 916, 930 (B.A.P. 9th Cir. 1998) ("Whether payment on a claim will be made in a bankruptcy case often depends upon whether the claim is 'allowed.'")

[41] Dkt. Nos. 3108, 3112, 3116, 3120, 3124, 3128, 3132, 3136, 3140, and 3144.

[42] *Frontier Ins. Co. v. Westport Ins. Corp. (In re Black)*, 460 B.R. 407, 414 (Bankr. M.D. Pa. 2011).

[43] *See id.* (recognizing Westport's right to assert claim objections because its interests would diverge from the debtor's if the underlying claims were allowed).

unless this Court allows the claims. Plan Section 1.1.14 would improperly permit the Survivors' Trustee to deem them Allowed, notwithstanding LMI's pending objections, violating Section 502(a) and Federal Rule of Bankruptcy Procedure 3021, and requiring that such a plan not be confirmed.

The hearing on these claim objections has been adjourned.[44] The Notice of Adjournment expressly states that the adjournment "shall not prejudice or otherwise affect" LMI's rights and arguments with respect to the claim objections.[45] Because the objections remain live, any distribution on these claims before allowance would violate the Code and Rules.

G. LMI Have the Right to Be Heard Without Conceding Financial Responsibility

The Debtor misconstrues *Kaiser Gypsum* in its Confirmation Brief.[46] Notably, the Debtor's argument lacks citations to any page of *Kaiser Gypsum*. The reason for that is *Kaiser Gypsum* does *not* require an insurer to accept financial responsibility for bankruptcy claims to have the right to raise and be heard on any issue in an insured's bankruptcy case.

Neither binding case law nor Section 1109 require parties in interest to accept financial responsibility for claims. Rather, LMI are parties in interest because of their contractual obligations under their policies, not from any acknowledgement that a particular claim is valid or owed.[47]

In *Kaiser Gypsum*, the Supreme Court described Truck Insurance Exchange ("Truck") as an "insurer for companies that manufactured and sold products containing asbestos[.]" Hence, Truck was "obligated to pay *up to* $500,000 per asbestos claim covered under its insurance contracts with the companies."[48] The use of the phrase "up to" shows that Truck may have paid nothing for each asbestos claim.[49] The Supreme Court reasoned that Truck's *contractual obligations* under its policies made

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[44] Dkt. No. 3282.

[45] *Id.*

[46] Dkt. No. 3100 at 78.

[47] *Kaiser Gypsum*, 602 U.S. at 282 (recognizing insurer with contractual financial responsibility is a party in interest, without requiring concession of liability).

[48] *Id.* at 271 (emphasis added).

[49] *Id.*

Truck a party in interest: "Those executory contracts are the ones that give insurers an interest in the proceeding and, in this case, make Truck financially responsible for the bankruptcy claims."[50] Nothing in *Kaiser Gypsum* requires an insurer to concede that it must pay any particular claims; the contractual obligation confers party in interest status.

Kaiser Gypsum's own procedural history confirms this reading. For nearly twenty years, Truck contested its financial responsibility for Kaiser Gypsum's asbestos claims, litigating whether it owed coverage under its policies in California state court. Indeed, Truck was still litigating whether it could apportion liability to other primary policies that had aggregate limits, which would effectively preclude coverage under Truck's policies, when the Supreme Court heard argument.[51] The creditors committee in *Kaiser Gypsum* confirmed as much, describing Truck as having "attempted to avoid its policy obligations through nearly two decades of coverage litigation[.]"[52] Moreover, during the bankruptcy case, Truck argued that the debtors' refusal to incorporate Truck's desired provisions into the plan violated the debtors' policy obligations to "cooperate with [Truck]" and to "secur[e] and giv[e] evidence."[53] Truck never conceded liability for a single claim.

The Supreme Court held that Truck was a party in interest because its policies—not any concession—made it financially responsible for the claims.[54] Neither Kaiser Gypsum nor the committee of asbestos claimants in *Kaiser Gypsum* ever argued that Truck's failure to acknowledge liability erased Truck's right to be heard on any issue as a party in interest.[55] Because that issue was

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[50] *Id.* at 282.

[51] *Kaiser Gypsum*, Brief in Opposition ("Debtor's Brief"), No. 22-1079, at 4 (U.S. Sept. 5, 2023); *Truck Ins. Exch. v. Kaiser Cement*, No. B278091, 2022 WL 71771 at *4 (Cal. Ct. App. Jan. 7, 2022).

[52] *Kaiser Gypsum*, Brief in Opposition of Respondents Official Committee of Asbestos Personal Injury Claimants and Future Claimants' Representative ("Committee's Brief"), No. 22-1079, at 4 (U.S. Sept. 5, 2023).

[53] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 80, 84-85 (4th Cir. 2023).

[54] *See Kaiser Gypsum*, 602 U.S. at 268.

[55] *See* Debtor's Brief, *supra* note 51, at 16-27; *see also* Committee's Brief, *supra* note 52, at 9-12.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 19 of 30

never argued or decided in *Kaiser Gypsum*, there is no colorable argument that the Non-Settling Insurers must accept financial responsibility to be parties in interest.

Kaiser Gypsum identifies a second, independent basis for insurer standing: where a debtor's plan eliminates its liability and claimants have no incentive to limit their recovery, the insurer bearing ultimate financial exposure may be the only party with any incentive to identify problems with the plan.[56] Such circumstances are present here. Once confirmation of the Plan discharges the Debtor's liability, the Debtor has no remaining incentive to contest the validity or amount of Abuse Claims, and Abuse Claimants have every incentive to maximize their own recovery rather than constrain it. In that respect, as a Non-Settling Insurer, LMI are positioned as Truck was in *Kaiser Gypsum* and would similarly be exposed to the Abuse Claims.

The Debtor's reliance on *Albany* for the proposition that an insurer must accept financial responsibility to have standing is misplaced.[57] *Albany* is currently on appeal and therefore is not a final decision.[58] Notably, it also includes no citations from *Kaiser Gypsum* bearing on LMI's right to be heard. The Debtor's other authority, *Hopeman Brothers, Inc.*,[59] is likewise unpersuasive because it relies on *Albany*.[60] Neither case compels a different result. Moreover, Chief Judge Kinsella rejected such reasoning in *In re Roman Catholic Diocese of Syracuse*, holding that "liability does not need to be acknowledged or adjudicated before the teachings of *Truck* apply."[61] Accordingly, the Debtor's argument fails under *Kaiser Gypsum*.

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[56] *Kaiser Gypsum*, 602 U.S. at 282; citing American Property Brief 15–16; *Century Indem. Co. v. Congoleum Corp. (In re Congoleum Corp.)*, 426 F.3d 675, 687 (3d Cir. 2005) (holding that insurers had standing to pursue appeal, noting that it is unlikely that parties other than the insurers would challenge the debtor's application to employ law firm).

[57] *In re Roman Cath. Diocese of Albany, New York*, No. 23-10244, 2025 WL 2536165, at *3 (Bankr. N.D.N.Y. Sept. 3, 2025); Dkt. 3100 at 78.

[58] *Lloyd's Underwriters & Certain London Market Cos. v. Roman Catholic Bishop of Albany, N.Y.*, No. 1:25-cv-1569 (N.D.N.Y. 2025).

[59] *In re Hopeman Bros., Inc.*, No. 24-32428-KLP, 2025 WL 3688940, at *5 (Bankr. E.D. Va. Oct. 31, 2025).

[60] Dkt. 3100 at 78.

[61] *In re Roman Catholic Diocese of Syracuse*, 665 B.R. 866, 875 (Bankr. N.D.N.Y. 2024).

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 20 of 30

H. Article III Does Not Limit LMI's Right to Be Heard in this Case

1. Article III Does Not Limit a Party-in-Interest's Right to Be Heard Here

Article III's requirements, including its "case or controversy" requirement, do not apply to bankruptcy proceedings. Article I authorizes Congress to establish bankruptcy laws and governs bankruptcy courts' powers.[62] Article III of the U.S. Constitution authorizes Congress to establish the District Courts and Courts of Appeal to exercise the "judicial Power of the United States" ("Judicial Power").[63] Article III confines the Courts established pursuant to its authority to exercise the Judicial Power in "cases" and "controversies."[64]

While bankruptcy cases must be filed in District Court, the District Courts routinely refer bankruptcy cases, including all of the matters within a bankruptcy court's Article I jurisdiction, to a bankruptcy court.[65] "Once a case is validly referred to the bankruptcy court, the Constitution does not require it be an Article III case or controversy for the bankruptcy court to act."[66]

Article III courts exercise Judicial Power under the Constitution. Because bankruptcy courts do not wield the Judicial Power in bankruptcy cases, they are not subject to Article III's case-or-controversy limitations, including the standing doctrine.[67] The Supreme Court established that

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[62] U.S. Const., art. I, § 8 ("Congress shall have Power to…establish…uniform Laws on the subject of Bankruptcies throughout the United States[.]"); *see also In re Arbco Cap. Mgmt., LLP*, 479 B.R. 254, 259 (S.D.N.Y. 2012) (citing U.S. Const., art. I, § 8, cl. 4); *In re Dambowsky*, 526 B.R. 590, 595 (Bankr. M.D.N.C. 2015) (noting that bankruptcy courts' powers are governed by Article I).

[63] U.S. Const., art. III, § 1; *see also F.D.A. v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992).

[64] *See generally Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014); *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 662 (2019); *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. 657 (2020); *Hollingsworth v. Perry,* 570 U.S. 693, 704 (2013); *Kaiser Gypsum*, 602 U.S. 268.

[65] *Kiviti v. Bhatt*, 80 F.4th 520, 533, n.9 (4th Cir. 2023) ("In practice, referrals occur automatically because virtually all district courts have entered standing orders of reference.") (citing 1 *Collier on Bankruptcy* ¶ 3.02[1] (2023)).

[66] *Id.* (citing *In re Technicool Sys., Inc.*, 896 F.3d 382, 385 (5th Cir. 2018)).

[67] *Id.*; *see also In re Coho Energy, Inc.*, 395 F.3d 198, 202 (5th Cir. 2004) ("Bankruptcy courts are not authorized by Article III of the Constitution, and as such are not presumptively bound by traditional rules of judicial standing."); *Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 2025 WL 2177391, at *4, n.10 (4th Cir. Aug. 1, 2025).

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 21 of 30

bankruptcy courts do not exercise Judicial Power over forty years ago in *Northern Pipeline Constr. Co. v. Marathon Pipe Line* and again in *Stern v. Marshall*.[68]

In *Stern*, the Supreme Court held that the bankruptcy court lacked constitutional authority to enter a final judgment and that the bankruptcy court's purported status as an "adjunct" of the district court did not expand its constitutional authority.[69] The Supreme Court reasoned that bankruptcy courts exercise broad powers.[70] Although bankruptcy courts exercise broad powers, such power is distinct from Judicial Power under Article III. Stern makes clear that such powers do not bestow bankruptcy courts with constitutional authority to enter final judgments, even if statutes define them as "units" of district courts. As bankruptcy courts cannot exercise Judicial Power under Article III, it follows that Article III's requirements do not apply to bankruptcy courts.[71]

The idea that Article III's requirements apply to the decisions of bankruptcy courts falls apart in practice. Bankruptcy courts routinely determine administrative matters that do not involve an Article III "case" or "controversy" yet are critical to the bankruptcy case. No Article III "case" or "controversy" exists when a bankruptcy case is filed. Debtors may file "first day motions" to streamline case administration. If unopposed, these motions do not satisfy Article III's case or controversy requirements. Despite these matters not involving a case or controversy under Article III,[72] bankruptcy courts routinely decide these matters. Making such decisions would be outside a

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[68] *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 (1982); *Stern v. Marshall*, 564 U.S. 462, 503 (2011); *see also Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 689 (2015) (Roberts, J., dissenting) (stating "With narrow exceptions, Congress may not confer power to decide federal cases and controversies upon judges who do not comply with the structural safeguards of Article III.")

[69] *Stern*, 564 U.S. at 487, 500.

[70] *Id*. at 500.

[71] *Kiviti*, 80 F.4th at 535; *see also* 28 U.S.C. § 151 ("In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district."); *Stern*, 564 U.S. at 501 ("Given that authority, a bankruptcy court can no more be deemed a mere 'adjunct' of the district court than a district court can be deemed such an 'adjunct' of the court of the appeals.").

[72] Likewise, as a case progresses through bankruptcy court, there are many administrative motions that may be unopposed and do not satisfy Article III's case or controversy requirements, yet require a bankruptcy court's approval. For instance, a debtor may file a motion to sell property or to abandon property, a motion to assume a contract, or applications to pay professionals. Even if such motions

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 22 of 30

bankruptcy court's constitutional authority if Article III were to apply. The practical implications of applying Article III's requirements would create insurmountable problems for the day-to-day operations of bankruptcy courts.

Kaiser Gypsum implicitly recognized this principle. In *Kaiser Gypsum*, the parties argued whether Article III limited Truck's right to be heard. The Fourth Circuit, applying an Article III standard to whether Truck could object to Kaiser Gypsum's plan, held that Truck lacked standing to object.[73] The committee of asbestos claimants, acting as appellees, made this exact argument to the Supreme Court.[74] However, the Supreme Court did not find Article III relevant to determining whether Truck could object to Kaiser Gypsum's chapter 11 plan.[75] Instead, the Supreme Court decided *Kaiser Gypsum* solely on whether Truck satisfied the "party in interest" requirement under Section 1109(b).[76] The Supreme Court's decision in *Kaiser Gypsum* to reverse the Fourth Circuit yet engage only in statutory analysis is telling,[77] because the Fourth Circuit held that Truck lacked Article III

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are unopposed, a bankruptcy court still must rule on such matters. When a case concludes, a trustee may seek approval of their final report, or a debtor may file a motion for final decree. Again, these types of motions do not satisfy the justiciability doctrines of standing, ripeness and mootness. Absent opposition, none of these matters involve a case or controversy under Article III. Despite these matters not involving a case or controversy under Article III, a bankruptcy court has the authority to decide these matters even though they would not satisfy Article III's requirements. There is no clause in the Constitution permitting an Article III court to choose whether these requirements apply. Similarly, the justiciability doctrines applicable to political questions and advisory opinions do not normally apply in bankruptcy cases.

[73] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 60 F.4th 73 (4th Cir. 2023).

[74] *Kaiser Gypsum*, Brief for Respondents Official Committee of Asbestos Personal Injury Claimants and Future Claimants' Representative, 2024 WL 328747 (U.S.) at 35-43.

[75] *Kaiser Gypsum*, 602 U.S. 268; *In re AIO US, Inc.*, 2025 WL 1617477, at *4 (Bankr. D. Del. June 6, 2025) ("As a starting point, it bears note that *Truck Insurance* itself never even discusses the question of Article III standing.").

[76] *Kaiser Gypsum*, 602 U.S. at 285.

[77] When parties brief an argument, but the Supreme Court (or an appellate court) does not address that argument, its silence is an implicit rejection of such argument. *See Thomas v. Bible*, 983 F.2d 152, 154–55 (9th Cir. 1993) (concluding that appellate court's denial of attorney's fees to prevailing civil rights defendant on ground that claim was not frivolous necessarily implied finding that claim was non-frivolous for purposes of summary judgment), *cert. denied*, 508 U.S. 951 (1993); *Clemons v. Mississippi*, 494 U.S. 738, 747 n. 3 (1990) (noting that the "[U.S. Supreme] Court implicitly rejected those arguments in both cases by refusing to address them"); *Castille v. Peoples*, 489 U.S. 346, 351 (1989) ("the claim has been presented as of right but ignored (and therefore impliedly rejected)"); *Heathcoat v. Potts*, 905 F.2d 367, 370, 371 (11th Cir. 1990) (concluding that remand order requiring

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 23 of 30

standing.[78] If a lack of Article III standing could have precluded Truck from being heard – as the Fourth Circuit incorrectly held - then the Supreme Court would have been obligated to address whether Truck had Article III standing. It did not do so. It would have made no sense for the Supreme Court to remand the case so that Truck could be heard, only for Article III again to serve as an impediment on remand to hearing Truck's arguments.

The Supreme Court's recognition of this principle was evident during oral argument in *Kaiser Gypsum*. Justice Gorsuch remarked, "on the Article III point, I wonder whether we need to tangle or should tangle with it because I think of Article III as the – the plaintiff coming to court has to establish an injury…[N]ormally we say someone objecting to relief…doesn't have to establish Article III standing. And that would seem to be a closer fit to a party or a group like yours seeking to object to a plan."[79] Justice Barrett similarly observed, "it seems to me that maybe we would have to at least say Article III doesn't apply…"[80]

Hence, the Supreme Court was unreceptive to the Article III arguments and recognized that parties objecting to relief need not establish separate Article III standing. There is no requirement for "standing" under Article I.

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trial court to consider party's defenses necessarily implied ruling that party was properly substituted for another party, and that therefore implicit ruling that party was properly substituted was law of the case on remand); *Knotts v. United States*, 893 F.2d 758, 761 (5th Cir. 1990) (ruling mandate instructing consideration of party's proportional fault necessarily implied rejection of that party's immunity argument, which was briefed and argued on appeal, though not addressed specifically in remand order); *Smith Int'l, Inc. v. Hughes Tool Co.*, 759 F.2d 1572, 1577 (Fed. Cir. 1985) (finding in prior appellate panel's ruling that challenged patent was valid an implied rejection of every argument against validity advanced by challenger, and therefore ruling that validity was law of case), *cert. denied*, 474 U.S. 827 (1985); *United States v. Real Prop. Located at Incline Vill.*, 958 F.Supp. 482, 488 (D. Nev. 1997) ("The Supreme Court implicitly rejected the government's *res judicata* argument; that rejection is now the law of this case and this court may not revisit the argument on remand.").

[78] *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 88 (4th Cir. 2023).

[79] *See Kaiser Gypsum* Transcript at 20:19-25 to 21:1-6, available at https://www.supremecourt.gov/oral_arguments/argument_transcripts/2023/22-1079_4357.pdf.

[80] *Id.* at 22:16-19.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 24 of 30

2. LMI Need Only Satisfy Section 1109(b) to Be Heard

Kaiser Gypsum established that insurers are parties in interest under Section 1109(b) because they have potential financial responsibility under their insurance contracts for covered bankruptcy claims.[81] Under Section 1109(b), a "party in interest" is entitled to "appear and be heard" on any issue in a bankruptcy case. This "text is capacious."[82] The use of this broad language was part of an "effort to encourage and promote greater participation in reorganization cases."[83]

Kaiser Gypsum clarified that courts must evaluate whether bankruptcy proceedings "might affect" a prospective party, not whether they actually affect them.[84] When a plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard."[85] As the Supreme Court held, insurers are parties in interest, because bankruptcy proceedings "can affect an insurer's interests in myriad ways," including impairing rights to control settlements, abrogating contribution rights, or inviting fraudulent claims through collusive arrangements.[86]

3. Even If Article III Were to Apply, LMI Satisfy Its Requirements

LMI satisfy Article III's standing requirements. Three elements must be satisfied to meet Article III standing requirements: (1) injury in fact, (2) causation, and (3) redressability.[87] As set forth below, LMI satisfy each element.

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[81] *Kaiser Gypsum*, 602 U.S. at 277.

[82] *Id.* at 277.

[83] *Id.* at 280.

[84] *Kaiser Gypsum*, 602 U.S. at 283; *see also In re Team Systems Int'l, LLC*, 2024 WL 4647489, at *2 (Bankr. D. Del. Oct. 21, 2024) ("The phrase 'party in interest' is meant to be interpreted broadly and should include any party who is 'potentially concerned with, or affected by, a proceeding.'").

[85] *Kaiser Gypsum*, 602 U.S. at 282.

[86] *Id.* at 281.

[87] *See Loyd v. Paine Webber, Inc.*, 208 F.3d 755, 758 (9th Cir. 2000).

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 25 of 30

First, there is an injury in fact. An injury in fact is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical."[88] Here, LMI have a legally protected interest: the Bankruptcy Code grants parties in interest like LMI the right to object claims under Section 1109(b) and 502(a). Moreover, there is an "invasion" of LMI's right to object to claims. As set forth in Section III.D. above, Plan Section 5.2.2 impairs LMI's right to object to claims in this Court by barring LMI from raising post-Effective Date objections based on non-bankruptcy law. This injury is concrete: the Plan restricts LMI's right to object to claims as parties in interest. The restriction is clear and directly targets the right of parties in interest to object to claims. This injury is also imminent. If the Plan is confirmed, the Plan will curtail LMI's right to object to claims—the injury is not a potential harm. As such, the first standing element is met.

Second, there is causation. The Plan's language in Section 5.2.2 causes the injury by limiting LMI's right to object to claims. The injury LMI will suffer is directly tied to this language, not to some outside, contingent event.

Third, the injury is redressable. As explained above, the Plan's language injures LMI. The Court can avoid the injury to LMI by entering a confirmation order that makes clear that LMI have the right to object to claims on any grounds, including objections based on non-bankruptcy law, in this Court after the Effective Date.

Accordingly, LMI satisfy each element of Article III standing.

4. Even if Article III Applies, the Burden Rests on the Party Invoking Federal Jurisdiction, Not on LMI

Even if Article III requirements were to be applied in bankruptcy cases, LMI would not be required to establish constitutional standing because they are *objecting* to relief, *not seeking* it. Only the party that is "invoking a court's jurisdiction" is required to establish standing.[89] "Article III does

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[88] *Meland v. WEBER*, 2 F.4th 838, 844 (9th Cir. 2021).

[89] *Virginia House of Delegates*, 587 U.S. at 663 (The Virginia House of Delegates was free to *defend* against a lawsuit alleging that the State of Virginia had improperly gerrymandered the drawing of state legislative districts. But once the State of Virginia (the party with standing) chose not to appeal an adverse ruling, the House of Delegates lacked standing to seek Supreme Court review.); *see also Scotts Valley Band of Pomo Indians v. Burgum*, 2025 WL 1178598, at *2 n.3 (D.D.C. Apr.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 26 of 30

not restrict the opposing party's ability to object to relief being sought at its expense."[90] Here, the Debtor has invoked the Court's jurisdiction by filing a bankruptcy petition and by asking the Court to confirm its Plan. LMI are objecting to the Court granting the requested relief. Nothing in Article III's jurisprudence requires parties opposing relief requested by another party to establish standing. When the party invoking the Court's jurisdiction has standing, no further Article III analysis is required for parties opposing such relief.[91]

I. The Debtor's Prudential Standing Argument is Foreclosed by Supreme Court Precedent

The Debtor misstates the law when it argues the Non-Settling Insurers "lack prudential standing to object to matters implicating only third-party survivors' rights."[92] As an initial point, the Debtor is facially incorrect. If the Plan could only affect the survivors, and not insurers, LMI would have no reason to object. Moreover, the Supreme Court eliminated the doctrine of "prudential standing" in *Lexmark*, rejecting an argument that required the plaintiff to be within the "zone of

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23, 2025) (suggesting that only a "plaintiff or appellant, not an appellee or defendant" is a party that is "invoking the court's jurisdiction" and must demonstrate Article III standing.); *Farmer v. EPA*, 759 F.Supp.3d 101, 107 n.2 (D.D.C. 2024) ("defendant-intervenors not invoking the court's jurisdiction are not required to demonstrate standing.") (citing *Env't Integrity Project v. Wheeler*, 2021 WL 6844257, at *2 (D.D.C. Jan. 27, 2021) (Jackson, J.) and *Childs. Health Def. v. CDC*, 2024 WL 3521593, at *5 n.3 (D.D.C. July 24, 2024)).

[90] *See also In re AIO*, 2025 WL 1617477 at *4 ("The question of who may be heard to oppose the relief sought poses no constitutional issue.").

[91] *Little Sisters*, 591 U.S. at 674 n.6.

[92] Dkt. 3100 at 79.

Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 27 of 30

interests" pursuant to statute, as a "prudential standing" requirement.[93] There is nothing prudential about such analysis.[94]

"Whether [a] plaintiff is within the zone of interests' still matters. But it is part of the merits analysis, not a 'prudential standing' requirement."[95] *Lexmark* "excised 'prudential' or 'statutory' additions to the 'irreducible constitutional minimum of standing.'"[96] Hence, whether a plaintiff falls within the "zone of interests" protected by a statute is a question of statutory construction. "We do not ask whether in our judgment Congress should have authorized [the plaintiff's] suit, but whether Congress in fact did so."[97] A court "cannot limit a cause of action that Congress has created merely because 'prudence' dictates."[98]

Even if prudential standing survived Lexmark, LMI still satisfy its requirements and can properly object to confirmation of the Plan. Sections 502(a) and 1109(b) leave little doubt that parties in interest have been afforded the right by Congress to raise and be heard on any issue in bankruptcy, including by objecting to claims.[99] Therefore, LMI are within the zone of interests protected by Sections 502(a) and 1109(b).[100] In addition, please see the argument above in Section III.H.4.

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[93] *Lexmark*, 572 U.S. at 126.

[94] *In re AIO,* 2025 WL 1617477 at *7.

[95] *Id.*

[96] *In re Wilton Armetale, Inc.*, 968 F.3d 273, 281 (3d Cir. 2020) (quoting *Lexmark*, 572 U.S. at 125-128 and omitting other internal citations and quotations).

[97] *Lexmark*, 572 U.S. at 128.

[98] *Id.*

[99] *See Kaiser Gypsum*, 602 U.S. at 278.

[100] *In re Thorpe Insulation Co.*, 677 F.3d 869, 888 (9th Cir. 2012) ("A fundamental purpose of section 1109(b) is to grant any party with a financial stake in the case the right, at the party's election, to participate with respect to the judicial determination of any issue bearing on the ultimate disposition of his or her interest.").

J. The Debtor's Failure to Contest LMI's Arguments Resulted in Waiver

The Debtor did not substantively respond to certain of LMI's Objections, despite having every opportunity to do so. LMI raised these arguments in its Objections, well before the Debtor's Confirmation Brief. The Debtor had ample time and occasion to address each argument and chose not to.

LMI have objected, in part, to the Plan's attempt to constrain claim objections, the delegation of claims allowance to the Survivors' Trustee, and the Plan's proposed payment of claims. The Debtor failed to respond. There is no reason to allow untimely arguments after the confirmation trial has concluded. Accordingly, the Debtor's failure to offer any legal argument in response supports treating these objections as waived.

IV. CONCLUSION

For the foregoing reasons, LMI respectfully request that the Court deny confirmation of the Debtor's Modified Fourth Amended Plan unless and until the Plan is modified to address the legal defects and ambiguities identified in LMI's Objections and this Post-Trial Brief.

Dated: August 7, 2026

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Case: 23-40523 Doc# 3414 Filed: 08/07/26 Entered: 08/07/26 19:14:44 Page 29 of 30

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, a copy of the **LONDON MARKET INSURERS' POST-TRIAL BRIEF** was filed through the Electronic Case Filing System of the United States Bankruptcy Court, Northern District of California, and served electronically to all parties registered to received notice via ECF.

Dated: August 7, 2026

/s/ Jeff D. Kahane
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