Blaise S. Curet (Bar No. 124983)
SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC
2001 Addison Street
Suite 110
Berkeley, California 94704
Tel: (415) 352-6200
Fax: (415) 352-6208
BCuret@spcclaw.com

Matthew J. Antonelli (State Bar No. 343144)
Joshua D. Weinberg (admitted *pro hac vice*)
Joshua P. Mayer (admitted *pro hac vice*)
Anna Belle Reilly (admitted *pro hac vice*)
RUGGERI PARKS WEINBERG LLP
1875 K Street NW, Suite 800
Washington, DC 20006
Tel: (202) 984-1400
Fax: (202) 984-1401
mantonelli@ruggerilaw.com
jweinberg@ruggerilaw.com
jmayer@ruggerilaw.com
areilly@ruggerilaw.com

Attorneys for Westport Insurance Corporation f/k/a Employers Reinsurance Corporation

[Additional counsel listed in the signature blocks at the end of the brief]

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:

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

Debtor.

OBJECTING INSURERS' POST-TRIAL REPLY BRIEF IN OPPOSITION TO CONFIRMATION OF DEBTOR'S MODIFIED FOURTH AMENDED PLAN OF REORGANIZATION

Case No. 23-40523 WJL
Chapter 11
Judge: Hon. William J. Lafferty

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The Objecting Insurers identified in the signature blocks below (collectively, the "Objecting Insurers") respectfully submit this post-trial reply brief in opposition to confirmation of *Debtor's Modified Fourth Amended Plan of Reorganization Dated March 27, 2026*, ECF No. 2758 (the "Plan") and entry of the proposed *Order Confirming Debtor's Modified Fourth Amended Plan of Reorganization*, ECF No. 2866-1 (the "Proposed Confirmation Order").

Debtor's argument relating to insurance issues in both its pre-trial and post-trial briefs has been limited, even to the extent of ignoring certain of the Insurers' objections entirely.[1] Debtor's post-trial submission did, however, address three important issues: (1) the insurance assignment; (2) the right to control the defense of Litigation Option claims; and (3) the delayed discharge. Debtor asserts that the Plan provisions are appropriate because the Plan contains explicit language preserving insurer rights, the insurers retain the ability to argue they control the defense of Litigation Claims, and nothing in the Plan changes the "rule" that insurers can only be liable for bad faith as a result of their own conduct.

None of those arguments, however, addresses whether these provisions improperly "put a thumb on the scale one way or the other" in preserving the parties' respective rights and obligations under the insurance policies.[2] The answer here is clear: Debtor has proposed these provisions, which Debtor proudly touts as an offering to the Committee, for the intended purpose of substantially and impermissibly undermining Objecting Insurers' contractual rights. California law recognizes an intricate balance of rights and obligations between insured and insurer. That balance includes the insurer's right to defend potentially covered claims to eliminate or minimize liability as well as the insurer's right to seek reimbursement where its duty to settle extends to claims that are not covered.

The Plan intentionally upends that balance. The insurance assignment (and lack of clear direction permitting the insurers to defend, even though the Plan explicitly provides that only the insurers have potential liability to pay tort claims) threatens to leave control of the defense of Litigation Claims with a Debtor that has no obligation to pay holders of Abuse Claims and whose

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[1] *See* Argument, point 3, *infra*.

[2] *In re AIO US, Inc.*, 677 B.R. 509, 537 (Bankr. D. Del. 2025) ("*Avon*").

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motivations may not be centered on limiting or mitigating liability. Or, even more prejudicial to Objecting Insurers, defense could be turned over to the Trustee who is a fiduciary for the claimants suing the Debtor. The delayed discharge provision is similarly prejudicial. It intentionally creates a scheme whereby the insurer is forced to settle claims that may fall outside overage – and potentially faces bad faith claims if it fails to do so – but the insurer may be deprived of the appurtenant ability to seek reimbursement that California law provides.

Debtor has identified neither a legitimate bankruptcy purpose nor any other necessity for these provisions. Their only purpose is to increase leverage against the insurers, who (by Debtor's own admission) would be forced to settle potentially uncovered claims to avoid allegations of bad faith without the corresponding right to seek reimbursement. That is precisely the "tipping of the scales" that insurance neutrality does not permit. The Court accordingly should decline to confirm the Plan with any of these provisions.

ARGUMENT

1. The Insurance Assignment is Improper.

Debtor's argument that the insurance assignment is "generally consistent" with Objecting Insurers' rights (Debtor Br. at 66) misses the mark. Debtor kicks off its argument by asserting that the insurance assignment merely mimics "what numerous prior bankruptcy courts have also determined to be appropriate and consistent with the Bankruptcy Code." (Debtor Br. at 65). Not so. In other diocesan bankruptcy cases (including *Archdiocese of New Orleans* and *Diocese of Norwich*, the two cases Debtor cites), the insurance assignment was *consensual* because there were no non-settling insurers who objected to the assignment. Debtor does not point to any previous *litigated* diocesan case where an insurance assignment like the one at issue here was approved over objection, and Objecting Insurers are aware of none. Prior cases approving a consensual (or unopposed) assignment are of no value in evaluating the insurers' objections here, consistent with California law.

Nor can the Objecting Insurers be deemed to have consented to the Insurance Assignment here because they supported the Third Amended Plan. The Third Amended Plan reflected a compromise that the Objecting Insurers supported as a whole. The Objecting Insurers accepted

certain provisions, including a previous form of the insurance assignment, in exchange for Debtor's agreement to propose other provisions and protections that were important to Objecting Insurers. The term sheet that Debtor and the insurers executed, and which led to the Third Amended Plan, indicates unequivocally that the insurers did not accept the insurance assignment on its own but rather only as part of a package.[3] Not only did the insurers not accept the insurance assignment as a stand-alone provision, but Debtor concedes that in proposing the current Plan, it deleted or revised several key provisions of the Third Amended Plan in an (unsuccessful) attempt to gain favor with the Committee.

This includes Debtor's decision—not consented to by any of the Insurers—to delete the provision of the Third Amended Plan that recognized a defending insurer's right to control the defense of claims that Debtor would no longer have any exposure to pay (the "§ 2860 Provision"). But in suggesting that this revision is simply an instance of Debtor "not waiving" its right to independent counsel, Debtor has framed the issue the wrong way. The *Cumis* decision, its codification in Cal. Civ. Code § 2860, and an insured's limited right to independent counsel all derive from the existence of a conflict of interest that arises where an insurer has reserved rights and could be tempted to shape the defense of a case in a manner that places the risk of loss upon the insured.[4] In that situation, the insured has the right to select separate counsel who is focused exclusively on eliminating or minimizing liability.[5] Under California law, the insured only has a right to select independent counsel where "a conflict of interest arises" between insurer and insured in the pursuit of that goal.[6] And here, Debtor does not dispute that there is no such conflict, nor

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[3] *See* CI-17 at 6-7 (reflecting that the insurers did not consent to the insurance assignment, delayed discharge, and judgment reduction provisions). Debtor concedes as much in its brief. *See* Debtor Br. at 67 (noting that language regarding preservation of alleged rights under *Hand* was "the result of extensive negotiations between the Debtor, Committee, *and* Insurers in connection with the Third Amended Plan, and was agreed to by the Insurers.").

[4] *See Centex Homes v. St. Paul Fire & Marine Ins. Co.*, 237 Cal. App. 4th 23, 31 (2015).

[5] *See Rockwell Int'l Corp. v. Super. Ct.*, 26 Cal. App. 4th 1255, 1263 (1994) (no conflict where "the insured and the carrier share the same goal – minimizing or eliminating liability in the third party action"); *San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc.*, 162 Cal. App. 3d 358, 364 (1984).

[6] *See* Cal. Civ. Code § 2860(a).

can there be one, because the Plan provides that Debtor has no responsibility whatsoever to pay Abuse Claims, including Litigation Option claims.[7] The § 2860 Provision that Debtor agreed to include in the Third Amended Plan, and which Objecting Insurers assert needs to be included here, therefore does not seek to "pre-determine" the issue as Debtor suggests. Nor does it create a "stacked deck at the expense of their insureds" for coverage purposes because the insured – the Debtor – has no exposure at all and, by the Plan's own terms, will have no need to seek coverage for the Abuse Claims.[8] Rather, the § 2860 Provision is appropriate and necessary because under the terms of Debtor's Plan there can be no conflict that could give rise to a claim for independent counsel.

In the absence of the § 2860 Provision, Objecting Insurers will be unfairly (and unnecessarily) handicapped in their defense of Litigation Option Claims. To the extent Debtor might assert the right to control defense through independent counsel, that defense would be controlled by a nominal defendant having no financial stake in the outcome. And, to the extent that the Trust is substituted in for the Debtor (as the Plan seems to require), things would be even worse. The Trust is a fiduciary for Abuse Claimants, including any Claimant who exercises the Litigation Option.[9] This fiduciary obligation to holders of Abuse Claims expressly extends to "settling causes of action" and asserting "defenses" to a cause of action, among other things.[10] Moreover, the Trust has a direct financial interest in seeing an Abuse Claimant recover as much as possible on account of his or her Litigation Claim. In the event of a judgment against RCBO (*i.e.*, a Litigation Claim Award), to the extent that amounts received from "one or more Non-Settling Insurers, when taken together with any distributions received by such Trust Claimant from the Survivors' Trust, would cause such Trust Claim to receive more than the total amount of his or her Litigation Claim Award," then the Trust is entitled to receive reimbursement (or a setoff against amounts owed to the Claimant).[11] The Trust, in other words, has economic incentives *not* to defend

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[7] *See* Plan § 8.2.2; *see also* June 25, 2026 Tr. at 185:17-23, 186:2-6 [Bardos].
[8] *See* Plan § 8.9 (providing for substitution of Debtor out of pending coverage action).
[9] *See id.* § 9.2.1.
[10] *See id.*
[11] *See id.* § 9.8.4.8.

a Litigation Option Claim vigorously because if the Claim results in liability that is paid by a Non-Settling Insurer, the Trust may receive a setoff against its obligation to the Claimant. The Plan purports to require the Trust (or the Debtor) to comply with Debtor's policy obligations, explicitly including the duty to cooperate with Objecting Insurers in the defense of Litigation Option Claims.[12] But where the Trust is a fiduciary for the persons suing the Debtor, that duty to cooperate toward minimizing liability directly conflicts with the Trust's obligations to claimants.

The Insurance Assignment remains fundamentally flawed even aside from deletion of the § 2860 Provision. Debtor fails to address a number of these flaws, despite Objecting Insurers having raised them on a timely basis prior to trial. For example, Objecting Insurers explained in their pre-trial objections (and reiterated in their post-trial brief) that the Plan impermissibly attempts to assign insurance rights that belong not to Debtor but to third parties such as RCWC.[13] Numerous courts have held that a bankruptcy court lacks jurisdiction to approve the transfer of non-debtor policy interests to the Trust over insurer objections.[14] Debtor has cited no case to the contrary; indeed, Debtor has now twice failed to address this argument at all.

Nor does Debtor anywhere address the ambiguities that permeate the Insurance Assignment provisions of the Plan. In its post-trial brief, Debtor asserts that it added a "clarification" that the Trust's assumption of obligations arising under the insurance policies "does not relieve the Debtor or Reorganized Debtor of their obligations." (Debtor Br. at 66). That "clarification," however, does not make things clearer because the Plan does not indicate who is obligated to satisfy Insurers' potential reimbursement claims under *Blue Ridge* and *Buss*.[15] Mr. Bardos, Debtor's internal expert

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[12] *See id.* § 8.2.2. ("The Debtor (including the Estate and the Reorganized Debtor) and the Survivors' Trust will cooperate in the defense of any such claim to the extent provided under the applicable Abuse Insurance Policy or Policies and as requested by an affected Non-Settling Insurer.").

[13] *See*, Plan § 1.1.15 (purporting to assign RCWC interests in Non-Settling Insurer Policies); § 8.1.

[14] *See, e.g.*, *In re Diocese of Camden, N.J.*, 653 B.R. 309, 350-52 (Bankr. D.N.J. 2023); *see also In re Sportstuff, Inc.*, 430 B.R. 170, 178 n.15 (B.A.P. 8th Cir. 2010) (collecting cases).

[15] Indeed, if anything, this clarification adds more confusion because other provisions of the Plan indicate that the Trust will not assume some of these key obligations. Section 8.5 of the Plan, for example, appears to provide that the Trust will not pay any reimbursement claims (defined in Section 8.4 as "Contribution Claims") that could be asserted against the Debtor except for payment of deductibles and self-insured retentions. *See* Plan § 8.5.

on the Plan, was unable to say when asked under cross-examination. Because the Plan does not adequately indicate how those continuing obligations will be satisfied, the Court should decline to approve the Insurance Assignment.

2. <u>The Delayed Discharge is Improper and Not Proposed in Good Faith</u>.

Debtor's arguments in support of the delayed discharge provision are equally unavailing, and Debtor cannot square this provision with baseline principles of insurance neutrality. Notably, Debtor never explains why the delayed discharge provision is necessary to the Plan (it is not) nor does it identify any legitimate bankruptcy purpose for the provision (it has none). Instead, Debtor asserts that the delayed discharge provision is permissible because two other cases included allegedly similar provisions and the provision does not "create any bad faith claim against any Insurer." Those points are unpersuasive here.

The bankruptcy courts that approved similar language in *Madison Square Boys and Girls Club* and *Diocese of Rochester* did so under very different circumstances. In *Diocese of Rochester*, the plan that Judge Warren ultimately confirmed was *fully consensual* among all of the insurers. In *Madison Square*, there was no insurer objection to the discharge provision. In neither case was the inclusion of this type of language litigated, and the inclusion of provisions in a plan that were agreed to, or at least were not objected to, have no probative value here, where Objecting Insurers have raised this issue repeatedly.[16]

More important, neither case is relevant here because both cases were before New York bankruptcy courts that were focused on New York law. Neither court had to consider the balance of rights and obligations that California law creates as between insurer and insured. As Objecting Insurers set forth in their post-trial brief, California law imposes on insurers an obligation to settle claims in certain situations. To prevent that obligation from expanding an insurer's obligation beyond the scope of its policy, California law provides a corresponding remedy – the right to seek,

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[16] Moreover, Debtor's attempted reliance on *Diocese of Buffalo* is particularly telling. In that case, debtor reached settlements with all of its insurers, leaving no insurer to be prejudiced by the discharge provision. But more critically, Debtor's brief fails to note that no plan has been confirmed in the *Diocese of Buffalo* case and, indeed, the plan to which Debtor cites was withdrawn.

under *Blue Ridge,* reimbursement from the policyholder for claims that are ultimately determined not to be covered. In the absence of that remedy, an insurer's obligation to provide coverage would be expanded to cover claims beyond the parties' contractual bargain. Indeed, fundamental to the *Blue Ridge* court's decision was the concern that if an insurer could not seek reimbursement, the insured would be unjustly enriched, having received insurance coverage it was not contractually entitled to receive.

The delayed discharge serves only to disrupt this careful balance of rights and obligations under California law. Debtor concedes in its post-trial brief that a deferred discharge for Abuse Claims is not necessary to preserve the Litigation Option. California law provides that the insured's bankruptcy does not preclude a judgment creditor from seeking damages.[17] The only reason to propose the deferred discharge of this liability, therefore, is to preserve the threat of bad faith liability, even though Debtor no longer has any obligation to the Claimant. At the same time, the discharge of all other claims against Debtor is intended to truncate Objecting Insurers' corresponding right of reimbursement for uncovered claims. Debtor attempts to dismiss Objecting Insurers' concerns that the delayed discharge provision is calculated to generate bad faith claims as "nonsense." But despite Debtor's protestations to the contrary, this scheme is very much calculated to generate bad faith claims because it places Objecting Insurers in the untenable situation of being forced to choose between paying uncovered claims that are outside the scope of its insurance contract or face bad faith claims merely for attempting to assert limitations and defenses to coverage. In some cases, this may force an insurer that is faced with the threat of a substantial verdict to settle cases even though it has strong coverage defenses and even though it will not be able to exercise its right to seek reimbursement.

Bankruptcy law does not permit the Plan to expand Objecting Insurers' coverage obligations beyond the terms of their contracts. But that is precisely what the delayed discharge is intended to accomplish because it places Objecting Insurers in the position of being forced to settle

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[17] *See* Cal. Ins. Code § 11580(b); *see also In re Beeney*, 142 B.R. 360 (B.A.P. 9th Cir. 1992) (claimant did not violate discharge injunction by asserting claim against debtor as nominal party to pursue insurance proceeds).

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claims that may not be covered without remedies that are otherwise provided for under California law. In *Avon*, Judge Goldblatt held that insurers' (and insureds') property rights should be analyzed in the same manner here as they would be outside of bankruptcy.[18] Debtor accordingly cannot use bankruptcy to generate extracontractual recoveries in favor of one party (or class of parties) that would not be available outside of bankruptcy.[19] That is precisely why the delayed discharge is improper here. It serves no necessary (or legitimate) purpose; rather, its aim is to put insurers at risk for settlements that go well beyond the contractual scope of coverage, with the threat of bad faith if Objecting Insurers refuse to do so. The Bankruptcy Code does not permit Debtor's attempt to manufacture liability for Objecting Insurers that otherwise would not exist.

3. Debtor Has Failed to Respond to Objecting Insurers' Other Arguments.

Objecting Insurers gave ample notice of several other objections in their pre-trial brief. In particular, Objecting Insurers' pre-trial objections asserted the following objections:

- The Litigation Option is inconsistent with the Bankruptcy Code and applicable non-bankruptcy law because it (1) improperly allows claimants to recover more than the value of their claim; and (2) the Plan improperly permits claimants to rescind their Litigation Option elections;
- The Plan improperly impairs Objecting Insurers' affirmative claims and causes of action, including claims for contribution against Settling Insurers;
- Section 12.12 is an inaccurate and improper assertion that the Plan is a settlement of all claims when it is not;
- The Plan and/or Confirmation Order include numerous unnecessary, inappropriate and inaccurate factual findings that the Court should delete.

Debtor has had at least two opportunities to brief and respond to these objections. However, Debtor has not done so, nor should it be permitted to respond to these arguments for the first time on reply, when Debtor has known about these points for nearly three months. The Court should adjudicate

[18] *See Avon*, 677 B.R. at 535 (citing *Butner v. United States*, 440 U.S. 48, 55 (1979)).

[19] *See id.* at 535-36 (noting that the "principle of *Butner* seeks to guard against the risk that parties might 'forum shop' into bankruptcy for tactical purposes.").

the Insurers' objections on these points based solely on the arguments and evidence that the Objecting Insurers have presented in a timely fashion. The Court should not permit Debtor to "sandbag" Objecting Insurers (and prevent Objecting Insurers from offering any written response) by presenting arguments for the first time on reply that should have been offered during earlier briefing.

JOINDER

Objecting Insurers join in the arguments set forth in the post-trial reply briefs submitted by Pacific Insurers and London Market Insurers.

CONCLUSION

WHEREFORE, Objecting Insurers respectfully request entry of an order sustaining their Objections to confirmation of the Plan and denying confirmation of the Plan unless Debtor agrees to modify it as requested by the Insurers. If the Court is declined to confirm the Plan, it should modify the Proposed Confirmation Order to include the changes requested by Objecting Insurers. Finally, the Court should grant such other and further relief as is just and right.

Dated: August 19, 2026

Respectfully submitted,

RUGGERI PARKS WEINBERG LLP

/s/ Matthew J. Antonelli

Matthew J. Antonelli (Bar No. 343144)
Joshua D. Weinberg (*pro hac vice pending*)
Joshua P. Mayer (*pro hac vice pending*)
Anna Belle Reilly (*pro hac vice pending*)
1875 K Street NW, Suite 800
Washington, DC 20006
Tel: (202) 984-1400
Fax: (202) 984-1401
mantonelli@ruggerilaw.com
jweinberg@ruggerilaw.com
jmayer@ruggerilaw.com
areilly@ruggerilaw.com

- and -

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SINNOTT, PUEBLA, CAMPAGNE & CURET, APLC

Blaise S. Curet (Bar No. 124983)
2001 Addison Street, Suite 110
Berkeley, California 94704
Tel: (415) 352-6200
Fax: (415) 352-6208
BCuret@spcclaw.com

Attorneys for Westport Insurance Corporation f/k/a Employers Reinsurance Corporation

DENTONS US LLP

Joshua Haevernick (SBN 308380)
1999 Harrison Street, Suite 1300
Oakland, California 94612
Telephone: (415) 882-5000
Email: joshua.haevernick@dentons.com

Andrew D. Telles Wyatt (SBN 316740)
4675 MacArthur Court, Suite 1250
Newport Beach, California 92660
Telephone: (949) 732-3700
Email: andrew.wyatt@dentons.com

Lauren Macksoud (admitted *pro hac vice*)
1221 Avenue of the Americas
New York, NY 10020-1089
Telephone: (212) 768-6700
Email: lauren.macksoud@dentons.com

Keith Moskowitz (admitted *pro hac vice*)
233 South Wacker Drive, Suite 5900
Chicago, IL 60606
Telephone: (312) 876-8000
Email: keith.moskowitz@dentons.com

Attorneys for Travelers Casualty & Surety Company f/k/a Aetna Casualty & Surety Company

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PLEVIN & TURNER LLP

Mark D. Plevin (SBN 146278)
580 California Street, Suite 1200
San Francisco, California 94104
(202) 580-6640
mplevin@plevinturner.com

Miranda H. Turner (admitted *pro hac vice*)
Jordan A. Hess (admitted *pro hac vice*)
1701 Pennsylvania Avenue, N.W., Suite 200
Washington, D.C. 20006
(202) 580-6640
mturner@plevinturner.com
jhess@plevinturner.com

Attorneys for Continental Casualty Company

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