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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re:

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

Debtor.

Case No. 23-40523 WJL

Chapter 11

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

Judge: Hon. William J. Lafferty

Date: Closing Arguments TBD
Time: TBD
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

TABLE OF CONTENTS

I. PRELIMINARY STATEMENT 1

II. BACKGROUND 3

III. ARGUMENT 4

A. The Insurance Assignment Does Not Violate the Bankruptcy Code. 4

1. The Insurers' Self-Serving Objection to Assignment of Bad Faith Claims Should be Overruled. 4

a. RCBO's Current Bad Faith Claims Against the Insurers are Assignable. 5

b. RCBO's Insurers May Face Potential Future Bad Faith Liability for Failure to Accept Reasonable Offers to Settle Survivors' Claims against RCBO. 6

c. This Court Need Not and Should Not Prejudge Unresolved Issues of California Law Regarding Insurance Coverage. 7

2. The Discharge Provisions of the Plan Are Consistent With the Bankruptcy Code. 8

3. The Plan Does Not Include Non-Consensual Non-Debtor Releases in Violation of Purdue Pharma. 12

a. The Plan Makes Adequate Provision for Contribution Claims. 12

b. The Trust Distribution Protocol Does Not Bar Recovery of Channeled Contribution Claims. 13

4. The Plan Provisions Regarding Treatment of Claims are Proper. 14

a. LMI and Pacific Willfully Ignore This Court's Precedent in Arguing it Must be Permitted to Object to Abuse Claims Post-Confirmation. 14

b. The Process by which the Survivors' Trustee and Claims Reviewer will Determine the Distribution Recovery for Abuse Claims Is Proper. 16

5. The Plan Does Not Assign Non-Debtor Rights in Violation of the Law or Policy Terms 18

6. The Plan Does Not Modify the Insurers' Contractual Right to Defend Litigation Claims 19

B. The Insurance Assignment Is Not Ambiguous. 21

Case: 23-40523 Doc# 3453 Filed: 08/19/26 Entered: 08/19/26 20:41:05 Page 2 of 41

1. The Plan is Clear Regarding Assignment of Ongoing Obligations of the Insured Under the Policies.....22

2. Any Remaining Responsibility of the Reorganized Debtor for Certain Obligations is for the Insurers' Benefit and Does Not Create Ambiguity.....24

3. There is No Ambiguity Regarding *Blue Ridge* Claims.....24

4. The Trust Documents Do Not Create Ambiguity.....25

5. It is Abundantly Clear That Non-Settling Insurers Do Not Have Coverage Liability for Trust Distributions.....26

C. The Insurers' Remaining Objections Should Be Overruled Or Are Not a Bar To Plan Confirmation.....27

1. The Plan Does Not Permit Litigation Option Claimants to Recover More Than They Are Entitled.....27

2. There is Nothing Improper in the Right of Abuse Claimants to Rescind Their Litigation Option Election.....28

3. The Findings in the Confirmation Order are Proper, or Can Easily Be Modified.....30

a. The Plan Supplement is Part of the Plan, and the Findings Regarding the Plan Supplement are Appropriate.....31

b. The Waiver of the 14-Day Stay of Effectiveness of the Confirmation Order Can Be Removed.....31

c. The Findings and Conclusions Regarding Settlement Are Appropriate.....32

d. The Findings Regarding Substantial Consummation Can Be Removed.....32

4. LMI's Standing Arguments are Misplaced and Incorrect.....33

IV. CONCLUSION.....35

Table of Authorities

Page(s)

Cases

Blue Ridge Insurance Co. v. Jacobson,
25 Cal. 4th 489 (2001) 12, 25

Buss v. Superior Court,
16 Cal. 4th 35 (1997) 12, 24

Coleman v. Republic Indem. Ins. Co.,
132 Cal. App. 4th 403 (2005) 6

Comunale v. Traders & Gen. Ins. Co., 50 Cal. 2d 654 (1958) 4, 5, 6

Critz v. Farmers Ins. Grp.,
230 Cal. App. 2d 788 (Ct. App. 1964) 5

Eichenholtz v. Brennan,
52 F.3d 478 (3d Cir. 1995) 12

Ellis v. Westinghouse Elec. Co., LLC,
11 F.4th 221 (3d Cir. 2021) 8

Essex Ins. Co. v. Five Star Dye House, Inc.,
38 Cal. 4th 1252 (2006) 5

Flour Corp. v. Superior Court,
61 Cal. 4th 1175 (2015) 19

Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.,
109 Cal. App. 4th 944 (2003) 22

Hamilton v. Maryland Cas. Co.,
27 Cal. 4th 718 (2002) 5, 6

Hand v. Farmers Ins. Exchange,
23 Cal. App.4th 1847 (1994) 27, 28

Harrington v. Purdue Pharma,
603 U.S. 204 (2024) 12

In re AIO US, Inc.,
672 B.R. 261 (Bankr. D. Del. 2025) 17, 33, 34

In re AIO US, Inc.,
677 B.R. 509 (Bankr. D. Del. 2025) 2, 16, 17

In re Cardillo,
172 B.R. 146 (Bankr. N.D. Ga. 1994) 9, 10

In re Chandler,
459 B.R. 215 (Bankr. E.D. Pa. 2011) 10

In re Hopeman Bros., Inc.,
No. 24-32428-KLP, 2025 WL 3688940 (Bankr. E.D. Va. Oct. 31, 2025) 33

Case: 23-40523 Doc# 3453 Filed: 08/19/26 Entered: 08/19/26 20:41:05 Page 4 of 41

In re Reisher,
149 B.R. 372 (Bankr. M.D. Pa. 1992) 9

In re Roman Cath. Church of Archdiocese of New Orleans,
No. 20-10846, 2025 WL 3545484 (Bankr. E.D. La. Dec. 9, 2025) 17, 33

In re Roman Cath. Diocese of Albany, New York,
2025 WL 2536165 (Bankr. N.D.N.Y. Sept. 3, 2025) 33

In re Roman Catholic Diocese of Syracuse,
655 B.R. (Bankr. N.D.N.Y. 2024) 33

In re Sullivan,
153 B.R. 746 (Bankr. N.D. Tex. 1993) 9

In re W. Asbestos Co.,
313 B.R. 832 (Bankr. N.D. Cal. 2003) 15, 16

In re Waterscape Resort LLC,
520 B.R. 424 (Bankr. S.D.N.Y. 2014) 9

M & G Polymers USA, LLC v. Tackett,
574 U.S. 427 (2015) 22

McDermott, Inc. v. AmClyde,
511 U.S. 202 (1994) 12

San Diego Federal Credit Union v. Cumis, Inc.,
162 Cal. App.3d 358 (Cal. Ct. App. 1984) 20, 21

Truck Ins. Exch. v. Kaiser Cement & Gypsum Corp.,
16 Cal. 5th 67 (2024) 34

United States v. White,
466 F.3d 1241 (11th Cir. 2006) 9

Statutes

11 U.S.C. § 1102 32

11 U.S.C. § 1129 30

11 U.S.C. § 1129(a) 10

11 U.S.C. § 1141 9

11 U.S.C. § 1141(a) 15

11 U.S.C. § 1141(d)(1) 8, 9

11 U.S.C. § 362(c)(2) 9

11 U.S.C. § 502 17

11 U.S.C. § 502(a) 15, 16

11 U.S.C. §1123(b)(6) 19

11 U.S.C. §1141(d) 8, 9, 10

CAL CIV. CODE § 2860 ..... 20, 21

CAL. CIV. CODE § 1638 22
CAL. INS. CODE § 520 ..... 19, 20

Other Authorities

1 B. Witkin, *Summary of Cal. Law*, Contracts, § 730, p. 815 (10th ed. 2005) 24

The Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the "Debtor" or "RCBO") in the above-captioned chapter 11 bankruptcy case (the "Chapter 11 Case"), hereby files this omnibus response (the "Omnibus Response") to (1) the *London Market Insurers' Post-Trial Brief* [Docket No. 3414] (the "LMI Objection"), (2) the *Objecting Insurers' Post-Trial Brief in Opposition to Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 3415] (the "Westport Objection"); and (3) the *Pacific Insurers' Joinder to London Market Insurers' Post-Trial Brief* [Docket No. 3417] (the "Pacific Joinder" and together with the LMI Objection and Westport Objection, the "Insurer Objections"),[1] filed by certain of the Debtor's pre-petition insurers under insurance policies covering Abuse Claims (collectively, the "Insurers"). The post-trial brief filed by the Official Committee of Unsecured Creditors (the "Committee") [Docket No. 3416] is addressed in a separate reply.

I. PRELIMINARY STATEMENT

Over the course of decades, the Debtor purchased general liability insurance policies (the "Policies") covering a variety of risks including liability for claims of negligent supervision regarding abuse of minors by priests within the Diocese of Oakland. That these acts were perpetrated by priests within the Diocese is undeniably horrific. The coverage under the Policies was intended to provide a means to compensate Survivors of abuse for such negligence claims. For the past four, five, or six decades, the Insurers have enjoyed the benefit of the premiums paid by the Debtor to secure coverage. After AB 218 was enacted, lifting the statute of limitations, the Debtor was faced with hundreds of new complaints.

The Debtor should have been able to turn to the Insurers for coverage under the Policies it had paid for to protect its finances and compensate Survivors. Instead, the Insurers have frustrated the Debtor's ability to obtain the benefit of its coverage assets at nearly every turn. Now they seek to hold confirmation of the Debtor's Plan of Reorganization hostage unless the Debtor agrees to tilt the coverage playing field in their direction, at the expense of Survivors and in frustration of the Debtor's ability to reorganize. The Insurers have an obligation under California law to place the interests of their insured ahead of their own. Seeking to block the Debtor's reorganization unless the Debtor consents to stack the deck in their favor

[1] All page number references to the Insurer Objections, and to any other documents filed on the docket, are to the Pacer-stamped numbers.

cannot be squared with that obligation. All the more so when the Insurers' changes would inevitably draw an objection from the Committee, further jeopardizing the Debtor's reorganization.

The Insurers point to the doctrine of insurance neutrality, articulated by Judge Goldblatt in his decision in *In re AIO US, Inc*. as the principle that "bankruptcy law intends for the bankruptcy filing of the insured to be as 'neutral' as possible to the rights and obligations of the insurer." 677 B.R. 509, 534 (Bankr. D. Del. 2025). In other words, the Plan should seek to place the contracts for insurance "in the same position, to the extent possible, as if the bankruptcy case never happened."[2] This principle is not in dispute. What is in dispute is its application to this case and the Debtor's Plan. As set forth below, each of the major changes to the Plan the Insurers demanded serves not to maintain a level playing field, but rather to tilt it further in their direction, leveraging the Debtor's bankruptcy to attempt to gain benefits they would not be entitled to if the bankruptcy had never happened.

As the Insurers acknowledge, previous versions of the Debtor's Plan, up to the Third Amended Plan, included Insurance Assignment provisions negotiated between the Debtor and the Insurers, and which the Insurers supported. The Committee vehemently opposed that version of the assignment. In its ongoing efforts to seek consensus and reach agreement with the Committee on plan terms where possible, the Debtor continued to negotiate with the Committee regarding the terms of the Insurance Assignment. When it filed the current Plan, the Debtor incorporated a few specific and limited changes to the Insurer Assignment to address the Committee's most prominent concerns while keeping the Plan insurance-neutral. The result of these efforts was a major success: non-opposition by the Committee to the Insurance Assignment, after years of dispute.

The Debtor made only six specific, material changes to the Insurance Assignment from the Third Amended Plan to the current Plan, as detailed in the Debtor's August 7 Post-Trial Brief.[3] As set forth below and in the Post-Trial Brief, each change is consistent with bankruptcy and non-bankruptcy law, and served to make the Insurance Assignment more neutral, not less, and leveling the playing field. Remarkably, the Insurers now not only object to these changes, but also to numerous provisions of the

[2] Westport Obj. at 10.
[3] *See* Post-Trial Brief (defined below), at 74-75.

Plan that they previously supported and that remain substantively unchanged from the language of the Third Amended Plan. Where provisions that were heavily negotiated with and supported by the Insurers are now intolerably ambiguous, the Insurers' professions of good faith do not hold up.[4]

The Plan's structure is firmly rooted in the principle of insurance neutrality, as articulated in *AIO US, Inc.* All modifications to the Insurance assignment provisions from prior versions of the Plan were made to address Committee Concerns, while still maintaining a level playing field. Unfortunately, the Insurers simply do not want a level playing field. They want it tilted to their favor, and appear willing to hold up the Debtor's Plan unless they get exactly that. The Court should overrule the Insurer Objections and confirm the Plan.

II. BACKGROUND

On March 29, 2026, the Debtor filed its *Modified Fourth Amended Plan of Reorganization Dated March 27, 2026* (the "Plan") [Docket No. 2758][5] and *Disclosure Statement in Support of Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 2759] (as later amended and modified, the "Disclosure Statement").[6]

On June 5, 2026, the Debtor filed its *Memorandum of Law in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 3100] (the "Pre-trial Brief"). On August 7, 2026, the Debtor filed *Post-Trial Brief in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 3418] (the "Post-trial Brief").

Also on August 7, the following Post-Trial Briefs were filed by parties objecting to confirmation of the Debtor's Plan: (1) *London Market Insurers' Post-Trial Brief* [Docket No. 3414], (2) *Objecting Insurers' Post-Trial Brief in Opposition to Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* [Docket No. 3415], (3) the *Official Committee of Unsecured Creditors' Post-Trial Brief in Opposition to Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* Dated

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[4] *See, e.g.*, Plan § 5.14, the now-objected to language of which was drafted by one Insurer, and expressly endorsed by every other now-objecting Insurer.

[5] Capitalized terms not defined below have the meaning ascribed to them in the *Debtor's Modified Fourth Amended Plan of Reorganization* (the "Plan") [Docket No. 2758].

[6] The Debtor filed the solicitation version of the Disclosure Statement at Docket No. 2902.

March 27, 2026 [Docket No. 3416], and (4) *Pacific Insurers' Joinder to London Market Insurers' Post-Trial Brief* [Docket No. 3417]. Because the issues raised in the Post-Trial Briefs filed by the Committee and certain of the Debtor's Insurers address almost completely separate issues, the Debtor has split its replies into two different filings. This Reply addresses the Insurer Objections.

III. ARGUMENT

A. The Insurance Assignment Does Not Violate the Bankruptcy Code.

1. The Insurers' Self-Serving Objection to Assignment of Bad Faith Claims Should be Overruled.

The Insurers' objections to assignment of existing and potential bad faith claims would make sense only if it was clear as a matter of law that no bad faith claims could possibly be maintained or asserted post-confirmation. That is not the case. The Objecting Insurers' argument to the contrary[7] relies on an incorrect recitation of California law.

It is well established that an insured can assign a current bad faith claim against its insurers to a third party under California law. That has been the law in California for nearly seventy years. *See Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d 654, 661-62 (1958). By contrast, no California court has ruled on whether the assignee of a bankruptcy debtor's insurance rights and obligations can hold and assert a bad faith claim against its insurers arising post-discharge. The Objecting Insurers object to this portion of the Plan because they want the Debtor's discharge to inure to their benefit, extinguishing the possibility of bad faith claims and capping the insurers' possible exposure at policy limits. But the Objecting Insurers are not entitled to use this Chapter 11 Case to put themselves in a better position than they otherwise would be. Sustaining their objection would violate the very tenets of insurance neutrality they espouse. The Plan's assignment of bad faith claims is consistent with California law and maintains the status quo of the insurer-insured relationship vis-à-vis bad faith. Because the Plan is compatible with California law, it can and should be confirmed. Legal issues pertaining to insurance coverage will be decided by California state courts or the District Court in the post-discharge coverage actions in due course.

[7] *See* LMI Obj. at 3-4; Westport Obj. at 8-9.

a. RCBO's Current Bad Faith Claims Against the Insurers are Assignable.

The Plan assigns all of the Debtor's Insurance Actions to the Survivors Trust to the extent assignable under applicable law.[8] This includes the Debtor's current bad faith claims pending against its Insurers based on their failure to accept the Committee's reasonable settlement demand on behalf of Survivors and against Chubb based on its operation of a purported "victim rights organization called the 'Church Accountability Project' [, using] inflammatory rhetoric and imagery designed to portray [a similarly situated insured, the Catholic Church, and by extension RCBO] in an extremely negative and prejudicial light."[9]

The Objecting Insurers falsely claim the assignment of RCBO's bad faith claims violates California law because "[t]hird-party bad faith claims are prohibited in California, because the insurer's covenant of good faith and fair dealing runs to the insured, not any third parties." (Westport Obj. at p. 9.) This is not correct. Under California law, bad faith claims may be assigned to third parties. *See, e.g., Hamilton v. Maryland Cas. Co.*, 27 Cal. 4th 718, 732 (2002) ("[I]f the claimant is willing, an exchange of an assignment and a covenant not to execute can be made before trial, eliminating the insured's personal exposure to an excess judgment"); *Essex Ins. Co. v. Five Star Dye House, Inc.*, 38 Cal. 4th 1252, 1259 (2006) (approving assignment of a claim for bad faith failure to provide benefits owing under the policy); *Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d at 661-62 (a claim against an insurer for "wrongful failure to settle is assignable whether the action is considered as sounding in tort or in contract"); *see also Critz v. Farmers Ins. Grp.*, 230 Cal. App. 2d 788, 799 (Ct. App. 1964) ("That Arnold's claim against the insurer was incomplete at the time of the attempted transfer to Mrs. Critz is not crucial, in our view. Common law and statutory rules against assignment of expectations may prevent the transferee from immediate assertion of his claim. The attempted transfer of a future right may operate as an equitable assignment or contract to assign, which becomes operative as soon as the right comes into existence."). The cases the Objecting Insurers cite are inapposite.[10] They stand for the proposition that a third-party

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[8] *See*, Plan § 1.1.94.
[9] Sixth Am. Compl., *In Re the Roman Catholic Bishop of Oakland*, Case No. 3:24-cv-00709 (N.D. Cal. Mar. 24, 2026), ECF No. 238, ¶¶ 606-20).
[10] *See* Westport Obj. at 9, n. 31.

claimant against the insured cannot, absent assignment, assert a bad faith claim against a defendant's insurers for failure to accept the claimant's settlement offer. *See Coleman v. Republic Indem. Ins. Co., 132 Cal. App. 4th 403, 415 (2005)*. But a defendant-insured may assign such a claim to a third party claimant, as occurred in *Hamilton* and *Comunale* and as the Plan provides.

b. RCBO's Insurers May Face Potential Future Bad Faith Liability for Failure to Accept Reasonable Offers to Settle Survivors' Claims against RCBO.

The Plan's treatment of potential future bad faith claims is also confirmable. The Objecting Insurers argue the Plan cannot be confirmed because it assigns future bad faith claims that legally can never exist.[11] The Objecting Insurers' position, however, relies on assumptions about California state law that have not been tested. California courts recognize that an insured may have a bad faith claim against its insurer if the insurer refuses a reasonable, within-limits offer to settle a covered claim against the insured, and in doing so exposes the insured to a judgment in excess of the insurance policy's coverage limit. *See Comunale v. Traders & Gen. Ins. Co.*, 50 Cal. 2d 654, 659 (1958). In that scenario, the insured may assert a bad faith claim against its insurer to recoup the difference between the judgment amount and the settlement offer the insurer refused. *Id*. Again, a bad faith claim based on an insurer's failure to settle is assignable. *Hamilton*, 27 Cal. 4th at 725.[12]

The Objecting Insurers claim—without citation to any case law—that neither the Debtor nor the Survivors' Trust can ever have a bad faith claim against the Insurers because "none of the judgments in the cases to be resolved in the tort system can be enforced against the Debtor. Thus, the Debtor cannot be affected whatsoever, regardless of the conduct of its insurers" and "[b]ecause the Survivors' Trust is not required to pay any judgment more than the Distribution Amount, the Survivors' Trust could never suffer any damages that give rise to a bad faith claim."[13] No California court has so held. No California court

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[11] *See* LMI Obj. at 3; Westport Obj. at 9.

[12] This scenario is very real for the Insurers regarding the underlying cases. For example, a number of the insurers were subject to an Order To Show Cause by the *Woodall* state court due to their conduct regarding settlement negotiations. *See* **Exhibit A**, hereto. The Debtor requests the Court take judicial notice of this order.

[13] LMI Obj. at 3-4. In addition to misstating the law, the Objecting Insurers misstate the Plan's terms with respect to the Survivors Trust's exposure. In the event that a claimant receives a judgment against RCBO

has ruled on whether a debtor receiving a discharge in bankruptcy, delayed or otherwise, loses the ability to assert or assign a bad faith claim against its insurers by virtue of the discharge. Likewise, no California court has ruled on whether the assignee of a debtor's insurance coverage rights (here, the Survivors' Trust) can assert a claim for bad faith against that debtor's insurers for failure to accept a reasonable within-limits settlement offer. There is thus no California law precluding the Plan's assignment of potential future bad faith claims against RCBO's insurers.

c. <u>This Court Need Not and Should Not Prejudge Unresolved Issues of California Law Regarding Insurance Coverage.</u>

Ultimately, as described above and recognized by this Court on multiple occasions, whether confirmation of the Plan eliminates the possibility that bad faith claims arising post-confirmation could be asserted against the Insurers and/or assigned to the Survivors' Trust is an unresolved question in the California Courts. Those questions are neither properly before this Court nor necessary to resolve before Plan confirmation. As the Insurers have never failed to make clear, this Court does not have jurisdiction over the coverage claims, including bad faith claims, currently pending in District Court before Judge Corley. As to future claims, the question of whether they could exist and could be asserted by an assignee at some point relies on facts still developing and is simply not yet ripe for decision.

The Plan does not foreclose these issues or preclude the Insurers from making any arguments regarding availability of bad faith claims, at the appropriate time in the appropriate forum. The Plan has multiple safeguards to ensure this is the case and protect the Insurers rights. The Assigned Insurance Interests are limited to those "assignable under applicable law…."[14] The Insurance Assignment is caveated as being "effective to the maximum extent permissible under applicable law and the terms of the Abuse Insurance Policies."[15] "Except as expressly stated herein, any coverage issues involving the Non-Settling Insurers or the Abuse Insurance Policies issued by the Non-Settling Insurers shall be determined in accordance with applicable non-bankruptcy law."[16] "All positions and arguments with respect to available

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that exceeds the limits of RCBO's applicable insurance coverage, the claimant may recover and/or retain from the Survivor's Trust up to the distribution amount. *See* Plan § 9.8.4.8.

[14] Plan § 1.1.15.

[15] Plan § 8.1.6.

[16] Plan § 8.3.13.

coverage under such Abuse Insurance Polices shall be fully preserved for assertion by the Non-Settling Insurers and the Abuse Claimants in any litigation of coverage issues."[17]

The Insurers' objection is not that the Plan somehow prejudges assignability or future existence of bad faith claims. It is that the Plan does not stack the deck in their favor by conclusively eliminating such claims regardless of whether they might exist under applicable state law and the terms of the Policies. The Insurers have gone to great pains to establish that coverage questions under the Policies must be decided by a court of competent jurisdiction based on applicable non-bankruptcy law and the terms of the Policies. This cuts both ways. A bad faith claim likewise must be decided by such a court based on applicable non-bankruptcy law and the terms of the Policies. The only thing the Plan assigns the Survivors' Trust is the right to assert any claim the Debtor could assert under the Policies, without ruling one way or the other what viable claims exist.

2. <u>The Discharge Provisions of the Plan Are Consistent With the Bankruptcy Code.</u>

Rather than citing any persuasive authority that the delayed discharge of Abuse Claims in section 13.3 of the Plan "violates § 1141(d)(1) of the Bankruptcy Code and blackletter law,"[18] the Objecting Insurers spend the lion's share of their objection discussing how the delayed discharge could adversely affect them. Their dissertation is a smokescreen for a result they cannot escape: Section 13.3 of the Plan is absolutely permitted by Section 1141(d) of the Bankruptcy Code.

Section 1141(d) provides that "***[e]xcept as otherwise provided in this subsection, in the plan, or in the order confirming the plan***, the confirmation of a plan discharges the debtor from any debt that arose before the date of such confirmation" (emphasis added). The plain statutory text expressly permits a plan and confirmation order to delay or modify a debtor's discharge. *See, e.g., Ellis v. Westinghouse Elec. Co., LLC*, 11 F.4th 221, 235 (3d Cir. 2021) ("§ 1141(d)(1) creates a default rule for discharging pre-confirmation debts, meaning it applies only when the plan and confirmation order are silent on the issue");

[17] *Id.* The foregoing are a number of the key provisions preserving the Insurers' rights as to coverage, but are by no means a comprehensive catalog of all such protections the Insurers negotiated in Article VIII of the Plan.

[18] *See* Westport Obj. at 11.

In re Sullivan, 153 B.R. 746, 751 (Bankr. N.D. Tex. 1993) ("nothing in § 1141(d)(1) forbids the conclusion that a plan can 'otherwise provide' anything at all regarding the debtor's discharge"); *In re Reisher*, 149 B.R. 372, 374 (Bankr. M.D. Pa. 1992) ("Clearly 1141(d) **does** contemplate that Debtors can postpone the discharge to sometime after the confirmation date.") (emphasis added).

The Objecting Insurers do not contest this general principle. They instead claim the Plan cannot delay the discharge under § 1141(d) for the Abuse Claimants but not for everyone else.[19] But nothing in § 1141(d) qualifies or limits the "as otherwise provided" provision to disallow delaying discharge for a single class. In fact, a delayed discharge to a single class is commonly provided for in confirmed chapter 11 plans.[20]

Language excised from two Eleventh Circuit decisions do not help the Objecting Insurers. The first is *United States v. White*, 466 F.3d 1241 (11th Cir. 2006). *See Objecting Insurers' Post-Trial Brief* at 12:1 n.44. There, the court said debtor "cannot receive different discharges for different types of debt but can be granted only a single discharge applicable to all debts." *Id.* at 1245-46 (citing *In re Cardillo*, 172 B.R. 146 (Bankr. N.D. Ga. 1994)). This comment was made in the context of the court's analysis of whether the automatic stay remained in effect with respect to nondischargeable debts. Section 362(c)(2) of the Bankruptcy Code provides that the automatic stay is lifted upon discharge. The court was pushing back on the debtor's contention that the discharge under § 1141 lifted the stay as to dischargeable claims but not nondischargeable claims. Thus, in the quote deployed by the Objecting Insurers, the Eleventh Circuit merely stated the effect of the discharge under § 1141 **on the automatic stay** are uniform. The court did **not** hold a plan or confirmation order could not alter the *timing* of the discharge as to different classes of claims. In fact, later in the opinion, the court stated § 1141 provides "that confirmation of a plan need not grant the debtor a discharge if the plan provides otherwise" and analyzed whether the debtor's plan provided for a delayed discharge and satisfied the "otherwise provided" condition. *White*, 466 F.3d at 1246-47.

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[19] *See* Westport Obj. at 12-13; LMI Obj. at 6-7.

[20] *See* Post-Trial Brief at 68-69 (citing cases); *see also In re Waterscape Resort LLC*, 520 B.R. 424, 433 (Bankr. S.D.N.Y. 2014) (stating it was "clear that the Plan and Confirmation Order excepted the claims of the Class 3 claimants...from the discharge, release and injunction provisions of the Plan.").

The second case, *In re Cardillo*, 172 B.R. 146 (Bankr. N.D. Ga. 1994) is even more inapposite.[21] The *Cardillo* court held that a judgment of nondischargeability did not constitute a "denial" of the debtor's discharge under § 363(c)(2)(C), such that the automatic stay would be lifted for nondischargeable claims upon that judgment rather than upon the automatic discharge of § 727. *Cardillo*, 172 B.R. at 150-51. Again, the court's point was that the discharge of nondischargeable claims in a Chapter 7 case is governed by the same discharge rules as all other claims, not that different classes of claims cannot be discharged at different times.

The Objecting Insurers' attempt to shoehorn these cases into their objection should be wholly rejected. Nothing in the Plan alters the substantive effects of the discharge for Abuse Claimants. The discharge that will eventually apply to Abuse Claimants – Class 4 Claims – is the same discharge that will apply to all other classes upon confirmation. The discharge itself is uniform across all claims and classes. Only the timing of the discharge differs, something section 1141(d) expressly allows.

The Objecting Insurers' alleged prejudice does not bear on whether the delayed discharge is permitted under 1141(d). Confirmation is exclusively focused on whether the requirements of § 1129 have been met notwithstanding adverse consequences the plan might have for interested parties. *See In re Chandler*, 459 B.R. 215, 220 (Bankr. E.D. Pa. 2011) (bankruptcy court "has no discretion to disapprove the Plan where the Plan Proponent has established that each of the requirements of 11 U.S.C. § 1129(a) have been met"). In any case, the Plan expressly preserves all the Insurers' defenses to Abuse Claims, included coverage defenses. The Insurers can raise these coverage defenses in the state court litigation or in any resulting litigation for bad faith claims. Thus, their fears they will be "deprived of any essential remedy" in light of an excess judgment[22] is a veil for their true fears: facing liability for their own actions.

Finally, as the Debtor described in its Post-Trial Brief, multiple bankruptcy courts have approved similar provisions in other diocesan and tort-case plans.[23] The plans in the *Madison Square Boys & Girls Club*, *Diocese of Rochester*, and *Diocese of Buffalo* cases are cited in the Post-Trial Brief. Similar

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[21] *See* LMI Obj. at 7 n.21.
[22] *See* Westport Obj. at p. 13.
[23] *See* Post-Trial Brief, at 76-77.

provisions are found in the confirmed plans in the *Diocese of Syracuse* and *Diocese of Camden* cases. The *Camden* confirmed plan provides the following regarding discharge of abuse claims:

> Notwithstanding the foregoing and anything herein to the contrary, to preserve and maintain coverage under Non-Settling Insurer Policies: (i) the Debtor will not be discharged from any Abuse Claim and (ii) an Abuse Claim will not be released or enjoined against the Diocese, the Reorganized Debtor, any relevant Covered Party and any relevant Non-Settling Insurer for any Abuse that may be covered under Non-Settling Insurer Policies, in both cases (i) and (ii) until an Abuse Claim is settled with the Diocese, the Reorganized Debtor, any relevant Covered Party and any relevant NonSettling Insurer or is fully adjudicated, resolved and subject to Final Order, but recourse is limited as described below.

In re The Diocese of Camden, New Jersey, Case No. 20-21257 (Bankr. D.N.J., Feb. 23, 2024) Doc. 3659, p. 57 of 111 (confirmed plan).[24] Likewise, the *Diocese of Syracuse* confirmed plan provides:

> With respect to any Filed Abuse Claim held by a Consenting Abuse Claimant who elects treatment as a Litigation Claimant and who is authorized by the Trustee to liquidate his or her Litigation Claim on or before the first anniversary of the Effective Date, the Abuse Claim Discharge Date shall be the earlier of the date on which (a) all Litigation Claims asserted by such Litigation Claimant against the Diocese and/or any Participating Party have been fully adjudicated, settled or dismissed on a final and non-appealable basis and any Non-Settling Insurers' resulting liability with respect to such Litigation Claim, as determined by settlement or Final Order, has been fully satisfied by payment in accordance with the terms of such settlement or Final Order; (b) the Abuse Claimant withdraws his or her election to be a Litigation Claimant in accordance with Section 4.3.2.a of the Plan; or (c) the Trust enters into a settlement with respect to all Non-Settling Insurer Policies that are Target Policies of such Litigation Claim.

In re The Roman Catholic Diocese of Syracuse, New York, Case No. 20-30663-5-wak (Bankr. N.D.N.Y., Sep. 24, 2025) Doc. 3068, p. 87 of 106 (confirmed plan).[25]

For the reasons set forth above, the Court should approve the discharge provisions of the Plan as drafted, and overrule the Insurers' objections thereto.

[24] Confirmed by order of the District of New Jersey Bankruptcy Court on September 26, 2025, Case No. 20-21257, Doc. 3684. While confirmation was appealed by the insurers, the confirmation order was not reversed.

[25] Confirmed by order of the Northern District of New York Bankruptcy Court on March 15, 2024, Case No. 20-30663-5-wak, Doc. 3073.

3. The Plan Does Not Include Non-Consensual Non-Debtor Releases in Violation of Purdue Pharma.

The Insurers' raise two arguments, both wrong, that the Channeling Injunction is an improper third-party release in violation of *Harrington v. Purdue Pharma*.[26] These are that the Plan (1) improperly channels contribution claims against Settling Insurers, and (2) bars Non-Settling Insurer reimbursement rights under *Bass* and *Blue Ridge*.[27]

a. The Plan Makes Adequate Provision for Contribution Claims.

The Insurers' objection that the Channeling Injunction improperly channels contribution claims against Settling Insurers is a red herring. The Plan already incorporates a mechanism for treatment of channeled contribution claims in section 8.4, which the Insurers acknowledge is appropriate to resolve the issue.[28] The Insurers appear to want this mechanism clarified.[29] That is unnecessary.

The Westport Objection itself identifies the Plan provisions protecting Non-Settling Insurers' contribution rights:

> Section 8.3 broadly states that nothing in the Plan shall "impair[], alter[], supplement[], chang[e], expand[], decreas[e], or modify[]" the Non-Settling Insurers' rights under their policies. To preserve the Non-Settling Insurers' rights that would otherwise be actionable against Settling Insurers, § 8.4 of the Plan provides that a Non-Settling Insurer can assert a claim for Contribution against the Trust and receive a set-off. That provision also states that if a Non-Settling Insurer's Contribution Claim "exceeds the liability of such Non-Settling Insurer to the Survivors' Trust, the Non-Settling Insurer does not waive any excess claim and may seek affirmative recovery from the Survivors' Trust."[30]

As the Insurers acknowledge, multiple courts have found that this mechanism is appropriate and confirmable, so long as it provides a dollar-for-dollar credit without preconditions.[31] The Plan does just that, providing not only that a Non-Settling Insurer may assert its contribution claim against a Settling

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[26] 603 U.S. 204 (2024).
[27] *See Buss v. Superior Court*, 16 Cal. 4th 35 (1997) (insurer right to seek reimbursement of defense costs paid for defense of claims clearly not subject to coverage); *Blue Ridge Insurance Co. v. Jacobson*, 25 Cal. 4th 489 (2001) (insurer right to seek reimbursement of settlement payments for uncovered claims).
[28] *See* Westport Obj. at 26-27.
[29] *Id.*
[30] Westport Obj. at 26.
[31] *Id.* at 27, citing *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 220-21 (1994); *Eichenholtz v. Brennan*, 52 F.3d 478, 483-84 (3d Cir. 1995).

Insurer as a setoff, reducing dollar-for-dollar the Non-Settling Insurers' liability to the Survivors' Trust and/or Abuse Claimant, but also that the Non-Settling Insurer is entitled to seek affirmative recovery from the Survivors' Trust if the contribution claim exceeds its liability to the Survivors' Trust.[32] Section 8.5 also provides a direct dollar-for-dollar judgment reduction if the Non-Settling Insurer's contribution claim is resolved in the same proceeding as its liability to an Abuse Claimant or the Survivors' Trust.[33]

The Insurers' objections stem from a perceived ambiguity in Section 8.5 of the Plan. This is based on a faulty and unsupported reading of Section 8.5 as somehow negating the setoff and recovery rights in Section 8.4. If the judgment reduction mechanism in Section 8.5 is insufficient to fully address a contribution claim against a Settling Insurer, then the Non-Settling Insurer can either set off against other liabilities or seek an affirmative recovery as provided in Section 8.4.[34]

Sections 8.4. and 8.5 of the Plan thus work together to provide a robust and entirely adequate means to protect the contribution rights of Non-Settling Insurers. This is unsurprising. Those provisions were the result of negotiation with the Insurers and are unchanged[35] from the Third Amended Plan. The Objecting Insurers' pointing to Mr. Bardos's inability to pinpoint exactly how the Plan addresses contribution claims as evidence they are not addressed is a remarkable level of intellectual dishonesty. The Insurers, though they feign confusion, knew and know exactly how the Plan addresses contribution claims of Non-Settling Insurers ***because they negotiated those provisions with the Debtor***.

b. <u>The Trust Distribution Protocol Does Not Bar Recovery of Channeled Contribution Claims.</u>

The Insurers' objections regarding the Trust Distribution Protocol are equally inconsistent with the Plan documents. As the Insurers recognize, and as discussed above, Sections 8.4 and 8.5 provide the Non-Settling Insurers' remedy for Contribution Claims against Settling Insurers.

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[32] Plan § 8.4.
[33] Plan § 8.5.
[34] Plan §§ 8.4, 8.5.
[35] There are extremely minor non-substantive typo corrections, as reflected in Docket No. 2760-1.

As to any rights that might arise for reimbursement of defense costs or settlement payments under the *Buss* and *Blue Ridge* cases, the answer is simple. Any such reimbursement obligations are the obligations of the Survivors' Trust pursuant to, *inter alia*, Sections 8.1.2 and 8.1.3 of the Plan.

The provisions of the Trust Distribution Protocol limiting "Claims" to be paid to Abuse Claims is not inconsistent with the Survivors' Trust's obligations to Non-Settling Insurers under the Plan. The Trust Distribution Protocol is intended to and does govern distributions to pre-petition claims, and those provisions are intended to make clear that the Survivors' Trust is not liable for and shall not pay any other pre-petition claims against the Debtor (such as Non-Abuse Litigation Claims). They do not bar post-confirmation obligations to Insurers under the Plan and Non-Settling Insurance Policies any more than they prohibit payment of the Trust's operating expenses.

Even if there was any inconsistent treatment of contribution claims between the Trust Distribution Protocol and Sections 8.4 or 8.5 of the Plan, or sections 8.1.2 and 8.1.3 of the Plan as to *Buss* and *Blue Ridge* claims, the Non-Settling Insurer protections in the Plan would control.[36]

4. <u>The Plan Provisions Regarding Treatment of Claims are Proper.</u>

a. <u>LMI and Pacific Willfully Ignore This Court's Precedent in Arguing it Must be Permitted to Object to Abuse Claims Post-Confirmation.</u>

LMI, joined by the Pacific Insurers, continues to argue, despite clear contrary authority from the Northern District Bankruptcy Court, that the Plan impermissibly restricts Non-Settling Insurers' post-Effective Date rights to object to Abuse Claims in Bankruptcy Court.[37]

The Plan preserves all rights of the Insurers to assert any defense, including those arising under the Bankruptcy Code, in defense of Litigation Claimant's state court action.[38] The Plan also provides a Non-Settling Insurer can only be liable to indemnify for or defend an individual Abuse Claim if asserted in Abuse Claim Litigation in a court of competent jurisdiction. In other words, if an Insurer is asked to step up and defend an Abuse Claim under the terms of its Policy, it has every right to assert any and all

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[36] *See* Plan § 16.6 (the Plan controls in the event of inconsistency with the Trust Documents).
[37] The Debtor notes that LMI further seeks to mislead the Court by arguing that the Debtor waived this issue by not responding in its Confirmation Brief. This is false. The Debtor directly addressed this argument at pages 83-84 of the Confirmation Brief. *See* Docket No. 310, at p. 83-84.
[38] *See* Plan § 8.3.12.

defenses, including those arising out of the Bankruptcy Code. Nevertheless, the LMI Objection takes issue with the prohibition on Insurers raising claim objections in **this Court** after the Effective Date.[39]

Judge Tchaikovsky in the case of *In re W. Asbestos Co.*, 313 B.R. 832 (Bankr. N.D. Cal. 2003), rejected this exact argument. LMI and the Pacific Insurers ignore, and not for the first time, the existence of this on-point authority. As Judge Tchaikovsky held in *W. Asbestos*, "11 U.S.C. § 502(a) only governs the right of a party in interest to object to a claim until the plan is confirmed." *Id.* at 845. Thus, "[o]nce a plan is confirmed, the terms of the plan govern who may object to the claim." *Id.* On that basis, the Court found a plan provision limiting post-petition objection rights to the claims trust was confirmable. *See id.*[40] For all the reasons set forth by Judge Tchaikovksy, LMI's and Pacific's objections should be rejected.[41]

LMI spins its argument as being based not only on Section 502(a), but also on its rights as a party-in-interest under *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602, U.S. 268 (2024). This argument is misplaced. *Truck Insurance* stands for the principle that an insurer with established financial responsibility for claims is a party-in-interest. *Id.* The Debtor's argument, and the holding in *W. Asbestos*, do not turn on whether LMI is a party-in-interest. Judge Tchaikosky did not decide that the objecting party was not a party-in-interest without standing. *See In re W. Asbestos Co.*, 313 B.R. at 845. Rather, he decided that the right of a party-in-interest to object to claims exists under the Bankruptcy Code only "until the plan is confirmed" and thereafter objections are controlled by the plan:

> In a chapter 11 case, 11 U.S.C. § 502(a) only governs the right of a party in interest to object to a claim until the plan is confirmed. Once a plan is confirmed, the terms of the plan govern who may object to the claim. 11 U.S.C. § 1141(a). Generally, a plan assigns that right and duty either to the reorganized debtor or to the official creditors' committee. In these cases, that duty is assigned to the Trust. **There is nothing inconsistent with the Bankruptcy Code in this provision**.

Id. (emphasis added). The Supreme Court's holding in *Truck Insurance* does not extend to holding that a confirmed plan of reorganization cannot limit or modify how issues can be raised post-confirmation, and

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[39] *See* LMI Obj. at 14.

[40] The Debtor previously assumed the Insurers were unaware of this case, because it would have been concerning if they were aware and failed to cite known contrary authority directly on point. Now that this case was pointed out by the Debtor in its confirmation brief, there is simply no excuse for LMI continuing to not acknowledge and address it.

[41] Notably, other than LMI and the Pacific Insurers, the remaining Objecting Insurers dropped this objection after the Debtor pointed out the *W. Asbestos* decision.

neither LMI nor Pacific can point to a single case suggesting it does. The *W. Asbestos* decision remains good law and should govern here.

The provision LMI and the Pacific Insurers object to was included in the Plan based on the Committee's position in an effort by the Debtor to compromise issues where possible. Because these efforts resulted in the Committee no longer objecting to the Insurance Assignment, and especially since this was an issue of substantial importance to the Committee, the Debtor cannot agree to modify the Plan as LMI and Pacific suggest. As the Debtor noted in its confirmation brief, however, if the Court were to somehow come to a different conclusion than Judge Tchaikovsky, the appropriate result would be a minor modification to the Plan to preserve whatever post-petition objection rights the Court determines the Insurers should have. This is therefore effectively a dispute between the Insurers and the Committee, and the Debtor is content to live with any result the Court determines is appropriate.

b. <u>The Process by which the Survivors' Trustee and Claims Reviewer will Determine the Distribution Recovery for Abuse Claims Is Proper.</u>

LMI and the Pacific Insurers misconstrue the Plan in arguing that determination of the distribution amount to be allocated to Abuse Claims cannot be delegated to the Survivors' Trust.[42] *First*, nothing about the Plan deprives the Court of jurisdiction to determine if an Abuse Claim is allowed pursuant to section 502(a). As described above, the ability to object to Abuse Claims in this Court is preserved post-petition, with the right and duty to do so assigned to the Trust. "There is nothing inconsistent with the Bankruptcy Code in this provision." *In re W. Asbestos Co.*, 313 B.R. at 845.

Second, to the extent the issue is simply that the Trust Documents refer to "allowance" by the Survivors' Trustee, the use of this term as a shorthand for the Survivors' Trust determination of whether and to what extent and Abuse Claim is payable by the Trust is not objectionable. Some version of these provisions have been included in every single confirmed diocesan Chapter 11 plan the Debtor is aware of. This specific issue was considered, and the position now raised by LMI and Pacific rejected, by Judge Goldblatt in *In re AIO US., Inc.*, 677 B.R. 509 (Bankr. D. Del. 2025). There, certain insurers objected to language describing the claims being resolved by the post-confirmation creditor trust as "allowed" claims.

[42] LMI Obj. at 15-16.

Id. Judge Goldblatt overruled this objection, holding that "giving a post-confirmation trust the authority to resolve claims against the estate and distribute the proceeds of estate causes of action is nothing like the third-party release invalidated in *Purdue Pharma*." *Id.* at 558. Therefore, "[t]his type of provision fits squarely within the catch-all of § 1123(b)(6)." *Id*. As Judge Goldblatt noted, while "the Bankruptcy Code envisions that it is the role of the bankruptcy court to 'allow' or 'disallow' creditors' claims," the plan can instead provide for resolutions of claims through a trust process. *Id*. at 547, 558.

Judge Goldblatt specifically addressed the semantic issue raised by LMI and Pacific regarding the use of the term "allowed" in connection with the trust's resolution of claims:

> As far as the vocabulary goes, **the Court does not think that there is anything wrong with describing the result of this settlement process as the "allowance" of a claim**. So the Court will overrule the insurers' objection that would require the term "allowed" to be replaced with "resolved." But it is true that this "allowance" process differs from the kind of allowance contemplated by § 502 of the Bankruptcy Code in that no court is making any adjudication of liability. Rather, the claims are being "allowed" in the settled amounts because the claimants and the trust all agreed to this settlement mechanism. In approving it, this Court is saying no more than that these "allowed" amounts shall be binding on the trust and the claimants with respect to each claimant's relative share of the trust's assets. a court that may later be tasked with resolving such a dispute might do so.

Id. at 558. Likewise, the Survivors' Trust's "allowance" of an Abuse Claim is merely a determination of the amount to be distributed by the Trust to a Trust Claimant on account of their interest in the Survivors' Trust pursuant to the Plan and the Survivors' Trust Agreement. As with the trust's "allowance" in *AIO US*, it is not an adjudication of liability or damages by the Court. *See id.*

This objection should also be overruled because the Survivors' Trust's determination of Abuse Claim distributions has zero bearing on the rights or obligations of the Insurers. While *Truck Insurance* may arguably confirm party-in-interest standing for insurers as a general matter, subsequent cases have clarified the established rule that party-in-interest standing does not extend to issues that have no bearing on the rights of the objecting party. *See In re Roman Cath. Church of Archdiocese of New Orleans*, No. 20-10846, 2025 WL 3545484 (Bankr. E.D. La. Dec. 9, 2025) (quoting *In re AIO US, Inc*., 672 B.R. 261, 273 (Bankr. D. Del. 2025): "[T]he case law on party-in-interest standing under § 1109(b) limits an objector to asserting its own rights—it may not assert the rights of others.").

The Insurers attempt to justify their objection by arguing there is a risk of "misuse of Trustee 'allowance' against Non-Settling Insurers in later coverage disputes."[43] This argument is wrong, and in making it, LMI and Pacific ignore the explicit safeguards in the Plan against that very possibility. Section 8.3.5 of the Plan provides in full:

> With respect to the Non-Settling Insurers, for purposes of establishing the value of any Abuse Claim for purposes of recovery from, or coverage under, any Abuse Insurance Policy issued by a Non-Settling Insurer, no determination made in the Chapter 11 Case, nor any determinations made by the Abuse Claims Reviewer or Survivors' Trustee concerning any Abuse Claim at any time, shall be binding on or against a Non-Settling Insurer, nor shall any party (including any Abuse Claimant) offer into evidence, or seek to admit into evidence, any such alleged determination in any tort actions pursued by Abuse Claimants against the Debtor (as a nominal party only) or the Survivors' Trust in the non-bankruptcy court system for the purpose of recovering from Non-Settling Insurers, except for the limited purpose of establishing the amount of any credit to which the Debtor (as a nominal party) may be entitled to offset any verdict in favor of an Abuse Claimant.[44]

By not even aknowledging this provision of the Plan, LMI's and Pacific's objection is simply not credible, and cannot be taken as a good faith objection to the Plan terms.

5. <u>The Plan Does Not Assign Non-Debtor Rights in Violation of the Law or Policy Terms.</u>

The Insurers argue the Plan is "unconfirmable as a matter of law" because the Assigned Insurance Interests include RCWC's rights under the Policies only as to Abuse Claims for which RCWC receives an RCWC Release.[45] The Insurers argue this renders the Plan unconfirmable because the Bankruptcy Court lacks jurisdiction over RCWC's rights under the Policies and therefore cannot order their assignment through the Plan and Confirmation Order. The Insurers are wrong for at least four reasons.

First, while the Bankruptcy Code may not give the Bankruptcy Court jurisdiction to administer non-debtor assets in most circumstances, this does not mean the assignment of RCWC's rights in relation to Released RCWC Claims is *de facto* invalid. Indeed, assignment of coverage rights to a plaintiff in exchange for a covenant not to sue is routine under California law. That is exactly the effect of the RCWC Release and assignment structure. To the extent RCWC can validly assign its rights under applicable non-

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[43] LMI Obj. at 16.
[44] Plan § 8.3.5.
[45] *See* Westport Obj. at 10-11; Plan § 1.1.15.

bankruptcy law, there is no reason such an assignment cannot be included in the Plan, regardless of whether the rights are within the Court's jurisdiction as property of the estate. *See* 11 U.S.C. §1123(b)(6).

Second, the California Supreme Court held in *Flour Corp. v. Superior Court*, 61 Cal. 4th 1175 (2015) that Cal. Ins. Code § 520 overrides anti-assignment provisions in insurance policies and allows for assignments of coverage for occurrences that have already taken place. Westport's argument that the anti-assignment provisions in two of its Policies bar the Insurance Assignment is wrong under California law.

Third, it is not clear that the assigned rights are outside the Court's jurisdiction. Although RCWC is indisputably a non-debtor, and its property is not property of the estate, the assigned coverage rights are under Policies that are themselves property of the Debtor and therefore property of the estate.

Fourth, and most importantly, the Plan is drafted such that the inability to assign any particular rights and interests under applicable law cannot render the Plan unconfirmable. That may have been the result in the cases cited by the Insurers under the various terms of their plans, but it should not be here. Because the Insurance Assignment is clear that rights are assigned under the Policies only to the extent permitted by law (*see* Plan §§ 1.1.15, 8.1, 8.1.6.), if any such rights of RCWC are not assignable under applicable law, they are not assigned, and the Plan is otherwise unaffected. As with all coverage issues, the question of whether any particular rights are assignable is not before this Court in confirmation of this Plan, and is largely a hypothetical question. At this point, how many RCWC Releases will be received is unknown, as is whether any of the releasing Survivors will seek coverage pursuant to RCWC's assignment of rights. If and whether that circumstance arises, the Insurers' right to assert any and all defenses, including any prohibition on assignment of the asserted coverage rights, is expressly preserved multiple times in the Plan.[46]

6. The Plan Does Not Modify the Insurers' Contractual Right to Defend Litigation Claims

The Insurers argue that the Plan "impermissibly compromises" their right to defend Litigation Claims.[47] This misstates the Plan and mischaracterizes their actual objection. The Plan unequivocally

[46] *See* Plan §8.3, *et seq.*
[47] *See* Westport Obj. at 33-34.

preserves insurers rights under the terms of the Policies and applicable non-bankruptcy law. What the Insurers actually object to is the Plan not affirmatively *waiving* state law rights of the insured for their benefit.[48]

The Plan preserves the Insurers rights to defend litigation Claims. Indeed, the Insurers acknowledge the Plan states the Insurers "shall have the right (and the obligation, to the extent so provided under their respective Abuse Insurance Policy(ies)), to defend such Claim, consistent with the terms of their Abuse Insurance Policies and applicable non-bankruptcy law."[49] And that it provides "the rights of affected Non-Settling Insurers to defend or associate in the defense of such Abuse Claim shall be fully preserved so that a Non-Settling Insurer who has offered to, or has an obligation to, defend may do so."[50] In defending any such Litigation Claims, the Insurers' rights to assert any and all defenses, both to the Debtor's liability and coverage, are expressly preserved:

> [A]all of the Debtor's defenses to liability, both legal and equitable, in connection with any asserted Abuse Claim, and the Non-Settling Insurers' rights to assert all such underlying defenses and insurance coverage defenses in connection with Abuse Claims will not be impaired in any way by the Plan, the Plan Documents, the Confirmation Order, or the Survivors' Trust Documents, but shall be subject to applicable non-bankruptcy law.[51]

These provisions and the remaining terms of the Plan fully protect the Insurers' rights to Defendant Litigation Claims.

In fact, the Insurers' objection is that the Plan does not include a provision affirmatively waiving the right to independent counsel under section 2860 of the California Civil Code, and the *Cumis* decision.[52] *See* Cal. Civ. Code § 2860; *San Diego Federal Credit Union v. Cumis, Inc.*, 162 Cal. App.3d 358 (Cal. Ct. App. 1984). Demanding that the Plan provide an affirmative waiver of state law rights provided to insureds is fundamentally inconsistent with the principle of insurance neutrality the Insurers advocate. The Plan adopts those principles, providing, among other things, that "[f]or all issues relating to insurance coverage concerning Non-Settling Insurers, the provisions, terms, conditions, and limitations of the

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[48] *See id.* at 35-37.
[49] Plan § 8.2.2.
[50] *Id.*
[51] Plan § 8.3.13.
[52] *See* Westport Obj. at 33-34.

applicable Abuse Insurance Policies shall control, subject to applicable non-bankruptcy law." In other words, the right to *Cumis* counsel under section 2860 is governed by the terms of the Policies and applicable California law.

The Insurers' only material justification for an exception to neutrality in this instance is that the Third Amended Plan included a waiver of the right to *Cumis* counsel. That is true. It was also one of the provisions of the insurance assignment in the Third Amended Plan that the Committee most strongly objected to. In reviewing the Committee's concerns regarding the insurance assignment, the Debtor determined that it was appropriate to remove this provision. This was both in an effort to reach consensus with the Committee on as many issues as possible, and because the Committee was correct that the provision was not truly insurance neutral because it did not leave the issue to determination by a non-bankruptcy court of competent jurisdiction under the terms of the Policies and applicable state law.

Under the Plan, the Insurers will have every right and ability to argue to a court with jurisdiction over a coverage action or Litigation Claim that section 2860 does not apply. All of their rights under the Policies and applicable non-bankruptcy law are preserved. The Insurers are not satisfied with this, and instead demand this Court pre-judge the issue, once again tilting the playing field in their favor. The reason they want this should be self-evident and is the same reason that led to the *Cumis* decision and the enactment of section 2860 in the first instance: the Insurers have every incentive to direct the defense of cases in a direction that leads to a loss of coverage. The Court should not accede to the Insurers demands that it pre-judge this issue in their favor and should overrule this objection.

B. <u>The Insurance Assignment Is Not Ambiguous.</u>

Both Westport and LMI claim certain terms of the Plan are ambiguous. None of these objections identify any real ambiguity in the Insurance Assignment or the Plan generally.

The Insurers' ambiguity arguments are primarily rooted in a transparent effort to use the testimony of the Debtor's CFO, Attila Bardos, to create the illusion of ambiguity where there is none. Any alleged ambiguity must be found in the Plan and Plan Documents themselves, and only then may the Court consider extraneous evidence. While Mr. Bardos's testimony at trial regarding the Insurance Assignment was thorough and well-prepared, he is not and does not purport to be an insurance expert or a lawyer, and he did not memorize the Plan (nor was he required to). To the extent he may not have understood,

remembered, and thoroughly described every nuance of the Insurance Assignment, his testimony does not and cannot create ambiguity in the actual Plan and Plan Document terms. *See, e.g., M & G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 435 (2015) ("Where the words of a contract in writing are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent." (quoting Williston on Contracts § 30:6 (4th ed.)); *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, 109 Cal. App. 4th 944, 956 (2003) ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity") (quoting Cal. Civ. Code § 1638).

The Plan terms are clear on their face. Each asserted ambiguity is addressed as follows:

1. <u>The Plan is Clear Regarding Assignment of Ongoing Obligations of the Insured Under the Policies.</u>

The Insurers first object that it is unclear whether the Survivors' Trust is being assigned obligations under the Policies, in addition to the Debtor's "rights and interests."[53] There is zero ambiguity in the Plan on this point. The operative assignment language in Section 8.1 of the Plan provides: "Subject to the rights of the Non-Settling Insurers set forth herein, including Sections 8.2 and 8.3 of this Plam … the Assigned Insurance Interests shall be automatically and without further act or deed assigned and transferred to the Survivors' Trust on the Effective Date…."[54] As the Insurers acknowledge, the "Assigned Insurance Interests are clearly defined by the Plan to mean:

> [A]ll rights, claims, interests, benefits, **responsibilities and obligations** of the Debtor and RCWC (solely as to Released RCWC Claims) in the Non-Settling Insurer Policies that are assignable under applicable law and to the fullest extent assignable under applicable law, including, without limitation, Insurance Actions, subject to the terms hereof including without limitation Articles VIII and IX of the Plan and the provisions of the Plan concerning the Litigation Option.[55]

[53] *See* Westport Obj. at 13.
[54] Plan § 8.1.
[55] Plan § 1.1.15 (emphasis added).

There is no ambiguity here. The full sentence the Insurers cherry pick from provides that the assignment is "only" of rights and interests as opposed to an assignment of the Policies themselves.[56] This in no way negates the inclusion of "responsibilities and obligations" in the definition of Assigned Insurance Interests.

Further, trying to read ambiguity into Section 8.1 requires deliberately ignoring Sections 8.1.2 and 8.1.3. Those sections expressly provide that the Survivors' Trust must satisfy monetary (section 8.1.2) and non-monetary (section 8.1.3) obligations under the Policies.[57] As to monetary obligations:

> The Survivors' Trust shall be solely responsible for satisfying, to the extent required under applicable law or the Abuse Insurance Policies, any premiums, deductibles, self-insured retentions, and fronting obligations arising in any way out of any and all Abuse Claims.[58]

As to other obligations:

> Upon the effectiveness of the Insurance Assignment, the Survivors' Trust shall have whatever obligations, if any, that exist under the Abuse Insurance Policies under applicable law, including without limitation all notice obligations required under the Abuse Insurance Policies and applicable law pertaining to Abuse Claims; *provided, however*, that the Survivors' Trust's assumption of such responsibility shall not relieve the Debtor, the Reorganized Debtor or the Released Parties from their respective obligations under the Abuse Insurance Policies as provided herein.[59]

This could hardly be clearer.

The Insurers again turn to the testimony of Mr. Bardos in search of ambiguity, this time asserting he could not identify whether particular obligations were transferred to the Survivors' Trust. The fact that Mr. Bardos did not have a sufficiently encyclopedic knowledge of the Insurance Assignment to answer the question with certainty does not mean the Plan is ambiguous. To find the specific and clear answer to the question the Insurers asked on cross-examination – "whether the obligation to pay an insurer's claim for reimbursement was being assigned" (Westport Obj., at p. 13) – the Insurers needed simply to read sections 8.1.2 and 8.1.3 of the Plan.

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[56] Plan § 8.1.
[57] Plan §§ 8.1.2, 8.1.3.
[58] Plan § 8.1.2.
[59] Plan § 8.1.3.

2. Any Remaining Responsibility of the Reorganized Debtor for Certain Obligations is for the Insurers' Benefit and Does Not Create Ambiguity.

Although Sections 8.1.2 and 8.1.3 should allay the Insurers' concerns, the Insurers continue mining for ambiguity by ignoring the primary clause of Section 8.1.3 – assigning responsibilities to the Survivors' Trust – and focusing only on the clarifying clause that such assignment does not relieve the Debtor and released parties "from their respective obligations under the Abuse Insurance Policies as provided herein." In doing so, **the Insurers misquote the Plan, changing language that purports to be a direct quotation of the Plan** from "as provided herein" to "as provided under applicable law."[60]

Section 8.1.3 has a straightforward meaning: (1) the insureds' obligations under the policies are transferred to the Survivors' Trust, and (2) this assignment does not relieve the Debtor of any ongoing obligations under the Policies to the extent provided in the Plan. The Insurers' purported confusion cannot be credited in the face of what is a recitation of basic tenant of contract law: an assignor remains secondarily liable after an assignment of obligations to an assignee. 1 B. Witkin, *Summary of Cal. Law*, Contracts, § 730, p. 815 (10th ed. 2005). Here, the Plan says the Debtor's ongoing obligations are "to the extent provided herein."[61]

The Insurers have suggested revisions to Sections 8.1.2 and 8.1.3 in their proposed redline.[62] The Debtor believes these revisions are wholly unnecessary for the reasons set forth above but would be willing to consider their inclusion nonetheless. The Debtor is not willing, however, to do so to the extent doing so gives rise to a Committee objection to the Insurance Assignment. The Debtor has provided the Insurers' proposed redline to Committee counsel, and requested a response regarding what, if any, revisions would be acceptable to the Committee. The Debtor has not, as yet, received any response.

3. There is No Ambiguity Regarding *Blue Ridge* Claims.

The same clear, unambiguous answer applies to the Insurers' purported confusion regarding reimbursement claims under the *Buss* and *Blue Ridge* cases. *See Buss v. Superior Court*, 16 Cal. 4th 35

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[60] Westport Obj. at 14 (purporting to quote Plan § 8.1.3).
[61] Plan § 8.1.3.
[62] *See* Westport Obj. Ex A [Docket No. 3415-1], at 51.

(1997) (insurer right to seek reimbursement of defense costs paid for defense of claims clearly not subject to coverage); *Blue Ridge Insurance Co. v. Jacobson*, 25 Cal. 4th 489 (2001) (insurer right to seek reimbursement of settlement payments for uncovered claims).

To be clear, any such rights are entirely hypothetical at this point. To date the Insurers have paid no settlements, so there are no reimbursement claims under either *Buss* or *Blue Ridge*.

The only defense costs advanced to date have been by Travelers in the amount of approximately $800,000 in connection with the *Woodall* case, which resulted in a clearly covered verdict against the Debtor for negligent supervision. There will be no pending potential reimbursement claims under *Buss* or *Blue Ridge* as to that verdict.

As to any such rights that might arise post-confirmation, the answer is simple: they are the obligation of the Survivors' Trust pursuant to, *inter alia*, Sections 8.1.2, and 8.1.3 of the Plan.

4. The Trust Documents Do Not Create Ambiguity.

Next, the Insurers turn to the Trust Documents in their search for ambiguity. The thrust of this argument is that the Survivors' Trust Agreement and Trust Distribution Protocol ("TDP") fail to resolve the supposed ambiguities the Insurers have identified in the Plan regarding responsibilities and obligations under the Policies. For all the reasons set forth above, there is no ambiguity in the Plan, rendering this objection meaningless. To the extent the Survivors' Trust Agreement does not expressly enumerate compliance with obligations relating to assigned insurance rights as a duty of the Trustee, this is irrelevant. The Survivors' Trust Agreement makes clear the Survivors' Trust is governed not only by the Survivors Trust Agreement, but also by the Plan and Confirmation Order.[63] Further, the Survivors' Trust Agreement provides "[t]he Survivors' Trustee shall have all of the rights, powers, and duties set forth in the Plan."[64]

The Insurers focus on the absence of obligations under Non-Settling Insurer Policies from the various powers of the Survivors' Trustee enumerated in Section 3.1 of the Survivors' Trust Agreement.[65] This is incorrect, and once again ignores the actual language of the documents. The list of enumerated

[63] *See* Survivors' Trust Agmt. [Docket No. 2867-6], at 5 (the "Confirmation Order, the Plan, and this Survivors' Trust Agreement, including the Exhibits hereto, which includes the Survivors' Trust Distribution Plan … constitute the governing instrument of the Survivors' Trust.").
[64] *Id.* at 6.
[65] Westport Obj. at 16.

powers and duties is expressly not exclusive and is "in addition to any other powers and duties conferred on the Survivors' Trustee by … the Survivors' Trust Documents."[66] As noted above, the Survivors' Trust Documents include the Plan, and Sections 8.1.2 and 8.1.3 assign compliance with these obligations to the Survivors' Trust.

5. It is Abundantly Clear That Non-Settling Insurers Do Not Have Coverage Liability for Trust Distributions.

The Insurers argue the Plan is not clear that Non-Settling Insurers have no obligation to indemnify the Debtor or Survivors' Trust for distributions made by the Survivors' Trust.[67] There is no ambiguity here. As LMI acknowledges, Mr. Bardos testified at trial that the Debtor is not seeking reimbursement for Distribution Claims.[68] The Plan also provides: "The 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."[69] To the extent LMI argues this leaves ambiguity as to claims against Non-Settling Insurers for reimbursement as to distributions by the Survivors' Trust (as opposed to contributions into the Survivors' Trust), either from funds contributed by the Debtor or by RCWC, this is addressed by the provisions negotiated by the Insurers in Section 8.3 of the Plan. Section 8.3 provides in extensive detail that no determination of the distribution amount of an Abuse Claim can have any bearing on or be used in any way as evidence of a Non-Settling Insurers' liability for the Abuse Claim.[70]

LMI proposes a revision to Section 9.3.8 to address this. This change is unnecessary, but the Debtor would accept it if it does not give rise to a Committee objection or the Court determines it to be necessary.

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[66] *See* Survivors' Trust Agmt. [Docket No. 2867-6], at 9.
[67] Westport Obj. at 45-46; LMI Obj. at 13-14.
[68] 6/25 Tr. at 194:10-16.
[69] Plan § 9.3.8.
[70] *See* Plan § 8.3.

C. The Insurers' Remaining Objections Should Be Overruled Or Are Not a Bar To Plan Confirmation.

1. The Plan Does Not Permit Litigation Option Claimants to Recover More Than They Are Entitled.

The Plan does not give any Litigation Claimant a right to recover more than they are awarded by a court of competent jurisdiction. Indeed, the Insurers' argument deceptively is not that a Litigation Claimant could potentially recover more than they are awarded by a jury or otherwise in a judgment entered by a court with jurisdiction over their Litigation Claim. This is not possible under the terms of the Plan. The Plan is clear and unambiguous that: "[i]n no event may a Litigation Claimant receive more than the total amount of his or her Litigation Claim Award from all sources."[71] The "Litigation Claim Award" is defined as a judgment or verdict on account of a Litigation Claim.[72] Section 5.14 of the Plan further provides, as to all Class 4 and Class 5 Abuse Claims, "any such Abuse Claimant **shall not recover** in the aggregate from the Survivors' Trust and any Non-Settling Insurer **an amount greater than the amount of the judgment issued by the applicable court of competent jurisdiction on the underlying Abuse Claim**."[73] There cannot, therefore, be any good faith argument that a Litigation Claimant can receive more than awarded by a court of competent jurisdiction after litigation of their Claim and coverage rights.

Instead, the Insurers' objection is really that the Plan does not foreclose the possibility of a Litigation Claimant recovering damages from the Insurer based on the Insurer's bad faith conduct.[74] Specifically, the Insurers' object to the Plan provision reflected in section 5.14 that a Litigation Claimant "is not barred by this Section 5.14 from seeking extracontractual damages under the holding of *Hand*."[75] In raising this objection, the Insurers disingenuously omit mention of the following clause, providing: "all defenses and the rights of any Non-Settling Insurer to oppose any such claim by an Abuse Claimant under

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[71] Plan § 9.8.4.8.
[72] Plan § 1.1.101.
[73] Plan § 5.14.
[74] *See* Westport Obj. at 22-23.
[75] Plan § 5.14 (referencing *Hand v. Farmers Ins. Exchange*, 23 Cal. App.4th 1847 (1994)).

Hand are fully preserved, including that *Hand* is not a correct statement of applicable law and that it would not apply to any such asserted claim."[76]

The Insurers' sophistry is further exposed by the fact that **the Insurers are on record as expressly supporting the specific language to which they now object**. The language of section 5.14 to which the Insurers now object was added to the Debtor's Second Amended Plan [Docket No. 1757] to address concerns raised by the Committee. In its brief in response to the Court's January 29, 2025, memorandum on certain insurance issues, the Committee argued that the First Amended Plan improperly cut off rights under the *Hand* decision.[77] In response the Debtor proposed the language now included in section 5.14 and reflected in other sections of the Plan.[78] The Objecting Insurers specifically endorsed these revisions, stating in their responsive brief: "Nevertheless, Debtor is proposing revisions to the Plan and DS to clarify that the right identified in *Hand* would be unaffected by the Plan. **The Insurers support these revisions**."[79] This brief was jointly submitted by every Insurer now objecting to the Debtor's Plan.[80] It is remarkable that the Insurers now argue to this Court that the Court should "require that the Debtor revise" language that those same Insurers previously endorsed, without even acknowledging their prior position.

Once again, the reality of the Insurers position is seeking to hold the Debtor's Plan confirmation hostage to eliminate their own potential liability under the terms of their policies and applicable non-bankruptcy law.

2. <u>There is Nothing Improper in the Right of Abuse Claimants to Rescind Their Litigation Option Election.</u>

The Insurers object to the right of Litigation Claimants to rescind their Litigation Option election. This objection is legally unsupported and misstates the Plan.

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[76] *Id.*
[77] *See* Docket No. 1705 at 6-7.
[78] *See* Docket No. 145 at 4. The Debtor notes that this language was the result of negotiations with the Insurers. Once again, the Insurers object to a provision of the current Plan that was included verbatim in same language in the Third Amended Plan supported by each of Objecting Insurers. (*See* Third Amended Plan [Docket No. 1830], § 9.8.4.7.)
[79] *See* Docket No. 1751 at 3 (emphasis added).
[80] *Id.* at 10-12.

The Insurers specifically object to the language of the Plan permitting a Litigation Claimant to rescind their Litigation Option election, subject to the discretion of the Survivors' Trustee, after entry of an order of dismissal or a final judgment in the Abuse Claim Litigation.[81] The Insurers object on the basis that "a Litigation Claimant can revoke his or her election and still receive a full distribution from the Trust at the discretion of the Trustee."[82]

Once again, the Insurers object to a provision of the current Plan that was included verbatim in the Third Amended Plan supported by each of Objecting Insurers.[83] The Insurers' arguments that the language is contrary to the Bankruptcy Code and California law are belied by their prior support for the same exact terms. The Insurers cannot be taken to be acting in good faith in the interest of their insured at the same time they seek to block confirmation of the Debtors' Plan based on language they previously supported.

Even if it were not the case that the Insurers previously supported this language, their objection would lack merit. The Insurers do not object to the Litigation Option itself, or to the right of Litigation Claimants to rescind their Litigation Option Election.[84] The objection is merely to the potential timing of the rescission and appears based on a misunderstanding of the implications of rescission. If there was any doubt as to the scope of the Insurers' objection, it is resolved by their redline of proposed revisions to the Plan.[85] As revised, the Litigation Claimant would be permitted to rescind the option at any time "prior to entry of an order of dismissal or a final judgment by a Final Order in the Abuse Claim Litigation in favor of a Released Party or RCWC."[86]

This objection is misplaced because it ignores the remaining terms of the Plan, in particular the limitations on any recovery in excess of any Litigation Claim Award. As described above, the Plan specifically prohibits any Abuse Claimant receiving more than allowed by any judgment or verdict issued by a court of competent jurisdiction.[87] In other words, there is no "second, risk-free bite at the apple."[88] If

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[81] *See* Plan § 9.8.4.1; Westport Obj. at 32.
[82] Westport Obj. at 32.
[83] *See* Third Amended Plan [Docket No. 1830], § 9.8.4.7.
[84] *See id.* at 32-33.
[85] *See* Westport Obj. Ex A [Docket No. 3415-1], at 81-82.
[86] *Id.*
[87] *See* Plan §§ 5.14, 9.8.4.8.
[88] *See* Westport Obj. at 32.

a court of competent jurisdiction enters an adverse judgment or verdict dismissing or limiting the amount of an Abuse Claim, that judgment is binding on the Abuse Claimant as an absolute limit on recovery from both the Survivors' Trust and Non-Settling Insurers.[89] Nothing in the Plan suggests that rescission of the Litigation Option Election eliminates this limitation.

Finally, while the Debtor submits that the Insurers' objection should be overruled for all the reasons set forth above, if the Court nonetheless ultimately determines that the Insurers are correct this should not lead to denial of confirmation. Rather, in that event the Court should simply confirm the Plan subject to modification.

3. The Findings in the Confirmation Order are Proper, or Can Easily Be Modified.

The Westport Objection raises a number of objections to specific findings in the Debtor's proposed form of confirmation order (the "Confirmation Order").[90] As an initial matter, the Debtor notes that most of the findings in the Confirmation Order do not and cannot affect the rights of Non-Settling Insurers. As provided in section 8.3.2 of the Plan:

> Nothing in the Plan, the Plan Documents, **the Confirmation Order**, or the Survivors' Trust Documents shall diminish or impair, or be deemed to diminish or impair, the rights of any Non-Settling Insurer to defend any Abuse Claim or to assert any claim, defense, right, or counterclaim in connection with any Abuse Claim or Abuse Insurance Policy in accordance with applicable law ; *provided, however,* that any claim or counterclaim for Contribution against a Settling Insurer shall be addressed as provided herein.[91]

Further:

> Other than with respect to the effectiveness of the Insurance Assignment contemplated by the Plan and the findings necessary to confirm the Plan under Section 1129 of the Bankruptcy Code for such purpose only, **no Non-Settling Insurer shall be bound in any current or future litigation concerning an Abuse Claim or an Abuse Insurance Policy by any factual findings or conclusions of law issued in connection with Confirmation of the Plan**, and no such findings of fact or conclusions of law shall have any *res judicata* or collateral estoppel effect on any Claim, defense, right, offset, or counterclaim that has been asserted or that may be asserted in any current or subsequent litigation concerning an Abuse Claim

[89] *See* Plan § 5.14.
[90] *See* Westport Obj. at 32.
[91] Plan § 8.3.2 (emphasis added).

or an Abuse Insurance Policy.[92]

The Insurers simply have no grounds for interest in or objection to findings in the Confirmation Order that do not directly implicate their rights and obligations under the Insurance Assignment. Nevertheless, the Debtor addresses each objection to the Confirmation Order raised as follows:

a. The Plan Supplement is Part of the Plan, and the Findings Regarding the Plan Supplement are Appropriate.

The Insurers' objections to Confirmation Order findings regarding the Plan Supplement are not meritorious and should be rejected. The Plan Supplement documents are integral to and a party of the Plan. This is clear in the terms of the Plan: "All Plan Documents and appendices to the Plan are incorporated into this Plan by reference **and are a part of this Plan as if set forth in full herein**."[93] The Plan provides for approval by the Bankruptcy Court of "[t]he documents contained in the exhibits and the Plan Supplement."[94] Irrespective of what might or might not be the case in another plan cited by the Insurers, in this Plan the supplement documents including but not limited to the Child Protection Protocols, the CCCEB Settlement, the Survivors' Trust Agreement, and the Exit Facility are incorporated into the Plan. It is therefore entirely appropriate for the Court to make findings in approving them as part of the Plan.

b. The Waiver of the 14-Day Stay of Effectiveness of the Confirmation Order Can Be Removed.

The insurers spend considerable words arguing that the 14-day stay of effectiveness of a confirmation order under Rule 3020(e) should not be waived in the Confirmation Order. When the Debtor filed its proposed Confirmation Order, it did not know whether ongoing settlement efforts might be successful in resolving objections. The Debtor therefore included a waiver of the 14-day stay, which as the Insurers acknowledge is appropriate where no objections are overruled in confirmation. To the extent

[92] Plan § 8.3.9 (emphasis added).
[93] Plan ¶1.3. (emphasis added) ("Plan Documents" as defined in the Plan includes the Plan Supplement).
[94] *Id.*

the Court confirms the Plan over the objection of the Insurers, the Debtor agrees it is appropriate to remove the waiver of the 14-day stay from the Confirmation Order.

c. The Findings and Conclusions Regarding Settlement Are Appropriate.

As with the objection to section 12.12 of the Plan the Insurers' objection to the findings in the Confirmation Order regarding settlements contained in the Plan should be overruled.

Initially, the Insurers' objection should be overruled simply because the Insurers have no interest in this issue, and have articulated no harm to their rights that could result from this language. Indeed, their ongoing rights cannot be affected, pursuant to sections 8.3.2 and 8.3.9 of the Plan, as set forth above.

Additionally, section 12.12 of the Plan and the findings and conclusions in support are appropriate on two grounds. First, the Plan does include numerous consensual settlements and releases, including but not limited to the CCCEB Settlement, the RCWC Releases to be granted pursuant to the Plan, and the releases granted by the Debtor, and by and between the Debtor and certain other non-debtor parties. Section 12.12 and the settlement findings in the Confirmation Order are appropriate as to those settlements and releases. Second, the language that the terms of the Plan and the treatment of creditors thereunder are in satisfaction and settlement of claims against the Debtor is routine language included in plans and confirmation orders, and in no way could be reasonably taken as a finding that any party that rejected or objected to the Plan voluntarily agreed to its terms.

d. The Findings Regarding Substantial Consummation Can Be Removed.

The Debtor submits that the terms of the Plan establish substantial consummation as of the Effective Date, pursuant to Section 1102 of the Bankruptcy Code. *See*, 11 U.S.C. § 1102. Nevertheless, the Debtor does not object to removal of the finding on substantial consummation from the Confirmation Order, provided the Debtor and all other parties reserve all rights to argue the Plan was substantially consummated on the Effective Date to the extent the issue arises in the future.

4. LMI's Standing Arguments are Misplaced and Incorrect.

A significant portion of the LMI Objection and the Pacific Joinder are devoted to arguments that the Insurers have party-in-interest standing under Section 1109(b) and *Truck Insurance*.[95] Much of this argument is misplaced and irrelevant. The Debtor is not arguing that the Insurers lack standing to be heard regarding issues directly implicating their rights, including the language of the Insurance Assignment. The majority of the Insurers' arguments, while lacking merit, are within the scope of directly implicating the Insurers' rights and interests. LMI's standing arguments therefore are only relevant to its desire for carte blanche to be heard on objections to every aspect of a chapter 11 plan, something section 1109(b) and *Truck Insurance* do not contemplate.

The scope of insurer party-in-interest post *Truck Insurance* remains unsettled and certainly has not been resolved in the Ninth Circuit. There is, however, compelling persuasive authority as cited in the Pre-Trial Brief for the proposition that where an insurers' financial responsibility for bankruptcy claims remains in dispute, it lacks statutory standing under § 1109(b). *See In re Roman Cath. Diocese of Albany, New York*, 2025 WL 2536165, at *3 (Bankr. N.D.N.Y. Sept. 3, 2025); *In re Hopeman Bros., Inc.*, No. 24-32428-KLP, 2025 WL 3688940, at *5 (Bankr. E.D. Va. Oct. 31, 2025). The Insurers suggest that this Court should simply disregard these cases because the *Diocese of Albany* decision has been appealed. This is just wrong – unless and until the decision is vacated or reversed on appeal, it remains good law and is compelling persuasive authority.

Further, the same conclusion was reached by Judge Goldblatt in *In re AIO US*, and by Judge Grabill in the *Archdiocese of New Orleans* case. *See*, *In re AIO US, Inc.*, 672 B.R. 261, 273 (Bankr. D. Del. 2025) ("the case law on party-in-interest standing under § 1109(b) limits an objector to asserting its own rights—it may not assert the rights of others."); *In re Roman Cath. Church of Archdiocese of New Orleans*, 2025 WL 3545484, *2 (Bankr. E.D. La. Dec. 9, 2025) (quoting *In re AIO US*).[96] As Judge Goldblatt noted in reached this conclusion, "[t]he Supreme Court has, in other contexts, expressed due concern for the risk

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[95] *See* LMI Obj. at 18-20.

[96] To the extent the only post-Truck Insurance case cited by the Insurers, *In re Roman Catholic Diocese of Syracuse*, 655 B.R. 866 (Bankr. N.D.N.Y. 2024), suggests a different outcome, it is not more persuasive than the cases cited above.

that a party may seek to weaponize its procedural rights to participate in litigation to serve some ulterior purpose." *In re AIO US, Inc.*, 672 B.R. at 273. That is exactly what LMI and the Pacific Insurers are trying to do: weaponizing their procedural rights to participate here, emboldened by an expansive reading of *Truck Insurance*, to serve its ulterior purpose of minimize the number of claims that might ever make it to superior court and force the Insurers to actually stand behind their policy obligations.

Finally, the Insurers make much of the whether or not the insurer in the *Truck Insurance* case had actually conceded coverage.[97] This is singularly unpersuasive, because the essential fact that Truck was financially responsible for the claims was established, as LMI acknowledges.[98] There has been no such determination here, and the Insurers have been consistently adamant that this Court cannot determine coverage issues. If Judge Corley determines that the Insurers are financially responsible for the claims here, or if the Insurers concede that they are, then certainly the logic of *Truck Insurance* would be applicable. If LMI's implication is in fact that "its policies [make] it financially responsible for the claims" at issue here, this would greatly simplify the current coverage dispute.

Ultimately, regardless of whether it is a question of standing, or simply a question of the weight to be given to a party arguing issues that do not affect its rights and responsibilities, the insurers should not be permitted to hijack the confirmation process for their ulterior motives in asserting objections to matters that do not implicate their rights.

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[97] *See* LMI Obj. at 19.

[98] *Id.* ("The Supreme Court held that Truck was a party in interest because its policies—not any concession—made it financially responsible for the claims."). In fact, Truck denied coverage but was held liable to pay by the California courts after many years of insurance coverage litigation. *See Truck Ins. Exch. v. Kaiser Cement & Gypsum Corp.*, 16 Cal. 5th 67 (2024).

IV. CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court overrule the Insurer Objections, grant confirmation of the Debtor's Plan and grant such other and further relief as may be just and proper.

DATED: August 19, 2026.

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Shane J. Moses
Ann Marie Uetz
Matthew D. Lee
David B. Goroff
Mark C. Moore

/s/ Shane J. Moses
Shane J. Moses

Counsel for the Debtor
and Debtor in Possession

Case: 23-40523 Doc# 3453 Filed: 08/19/26 Entered: 08/19/26 20:41:05 Page 41 of 41

EXHIBIT A

FILED
ALAMEDA COUNTY
APR 10 2026
CLERK OF THE SUPERIOR COURT
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

JOHN DOE OK 1022, an individual,

Plaintiff,

v.

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a Corporation Sole,

Defendant.

Case No. HG 19048685

ORDER TO SHOW CAUSE—WHY THE COURT SHOULD NOT FIND BAD FAITH CONDUCT DUE TO A FAILURE TO NEGOTIATE IN GOOD FAITH AT A MANDATORY SETTLEMENT CONFERENCE

ORDER

By Order dated April 1, 2026, this Court Ordered a further mandatory settlement conference ("MSC") to be held on April 10, 2026 in Department 301. The Court Ordered, among other things, the following: "All pertinent insurance carriers for the parties are ordered to attend with settlement authority"; and "The parties and their carriers are ordered to negotiate in good faith." The MSC was held this morning as scheduled in Department 301, the Hon. Kimberly Colwell presiding.

THE COURT HEREBY ISSUES AN ORDER TO SHOW CAUSE for the parties and their insurance carriers to show cause why this Court should not find that the parties and/or the insurance carriers acted unreasonably and in bad faith and failed to negotiate in good faith during the April 10, 2026, MSC.

This Order to Show Cause shall be heard on **Wednesday, April 15, 2026, at 2:30 pm** in Department 21 of the Alameda County Superior Court. The parties and each insurance carrier that was present at the April 10, 2026, MSC is Ordered to appear at the hearing on this Order to Show Cause.

The defendant is Ordered to serve a copy of this Order on the pertinent insurance carriers.

IT IS HEREBY ORDERED.

Dated: April 10, 2026

By: S. Raj Chatterjee

S. Raj Chatterjee
Judge of the California Superior Court

Case: 23-40523 Doc# 3453-1 Filed: 08/19/26 Entered: 08/19/26 20:41:05 Page 2 of 4

Superior Court of California, County of Alameda
Department 21, Administration Building

Case Number: JCCP005108
Case Name: **NORTHERN CALIFORNIA CLERGY CASES**

ORDER TO SHOW CAUSE—WHY THE COURT SHOULD NOT FIND BAD FAITH CONDUCT DUE TO A FAILURE TO NEGOTIATE IN GOOD FAITH AT A MANDATORY SETTLEMENT CONFERENCE

DECLARATION OF ELECTRONIC SERVICE

I certify that I am not a party to these cases, and that a true and correct copy of the foregoing document was served electronically via the CASE ANYWHERE system. Execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on April 10, 2026

Executive Officer/Clerk of the Superior Court

By: *Belinda Mercado*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp FILED Superior Court of California County of Alameda 04/10/2026 Chad Finke, Executive Officer / Clerk of the Court By: _____ Deputy B. Mercado
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	
PLAINTIFF/PETITIONER: Jon Doe OK 1022	
DEFENDANT/RESPONDENT: THE ROMAN CATHOLIC BISHOP OF OAKLAND, A Corporation Sole et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: HG19048685

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order TO SHOW CAUSE—WHY THE COURT SHOULD NOT FIND BAD FAITH CONDUCT DUE TO A FAILURE TO NEGOTIATE IN GOOD FAITH AT A MANDATORY SETTLEMENT CONFERENCE entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Chad Finke, Executive Officer / Clerk of the Court

Dated: 04/10/2026

By:

B. Mercado, Deputy Clerk