O'MELVENY & MYERS LLP
Tancred V. Schiavoni (admitted *pro hac vice*)
1301 Avenue of the Americas, Suite 1700
New York, NY 10019
Telephone: (212) 326-2000
Facsimile: (212) 408-2419
Email: tschiavoni@omm.com

Alexandra J. Wolter (S.B. #317951)
400 South Hope Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Email: awolter@omm.com

Hannah V. L. George (admitted *pro hac vice*)
1625 Eye Street, NW
Washington, DC 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
Email: hgeorge@omm.com

Pacific Indemnity Company,
Century Indemnity Company as successor to
CCC Insurance Company as successor to
Insurance Company of North America,
Pacific Employers Insurance Company, and
Westchester Fire Insurance Company

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor

PACIFIC INSURERS' REPLY TO THE DEBTOR'S POST-HEARING BRIEF IN SUPPORT OF CONFIRMATION OF THE DEBTOR'S MODIFIED FOURTH AMENDED PLAN OF REORGANIZATION [DKT. NO. 3418]

Case No. 23-40523 WJL

Chapter 11

Judge: Hon. William J. Lafferty

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/ 234052326081900000000007
25

TABLE OF CONTENTS

Page

PRELIMINARY STATEMENT 1

I. The Debtor Refused to Engage with Insurers and Accommodated Only the Committee on Issues That Prejudice the Insurers 2

II. The Debtor's Brief Leaves Most Insurer Objections Unanswered and Unrefuted 4

A. Section 12.12 Exceeds the Scope of Section 1129(a)(3). 5

B. The Channeling Injunction extinguishes non-Debtor contribution claims without consent in violation of *Purdue Pharma*. 6

C. The judgment reduction mechanism fails as a substitute for the contribution rights the Plan extinguishes. 6

D. The Plan impairs Insurers' contractual rights through multiple mechanisms. 7

E. The Trust's dual role as defense partner and adversary creates an irreconcilable conflict 7

F. The Exculpation Provision is overbroad and extinguishes Insurers' remedies. 8

III. The Plan Fails to Allocate the Insured's Continuing Obligations 9

A. The Plan's terms contradict the Debtor's description of the assignment. 9

B. *New Orleans* and *Norwich* are distinguishable because all Insurers settled. 12

IV. The Code Does Not Permit a Piecemeal Discharge, and *Madison Square* and *Diocese of Buffalo* are Distinguishable 13

V. The Plan Extinguishes Contribution Rights It Claims to Preserve 17

VI. No Insurance Valuation Evidence Was Admitted or Admissible, and Judicial Estoppel Does Not Apply 18

JOINDER 20

CONCLUSION 20

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 2 of 25

TABLE OF AUTHORITIES

Page(s)

Cases

Blixseth v. Credit Suisse,
961 F.3d 1074 (9th Cir. 2020) 9

Eichenholtz v. Brennan,
52 F.3d 478 (3d Cir. 1995) 7, 19

Hamilton v. State Farm Fire & Cas. Co.,
270 F.3d 778 (9th Cir. 2001) 22

Harrington v. Purdue Pharma L.P.,
603 U.S. 204 (2024) 6, 18

In re AIO US, Inc.,
617 B.R. 509, 554 (Bankr. D. Del. 2025) 6

In re Am. Hardwoods, Inc.,
885 F.2d 621 (9th Cir. 1989) 19

In re Am. Home Mortg. Holdings, Inc.,
402 B.R. 87 (Bankr. D. Del. 2009) 10

In re Boy Scouts of Am. & Del. BSA, LLC,
642 B.R. 504 (Bankr. D. Del. 2022) 5, 6

In re Boy Scouts of America,
137 F.4th 126 (3d Cir. 2025) 7, 8, 9

In re Diocese of Buffalo, N.Y.,
No. 21-20687 (Bankr. W.D.N.Y. Oct. 1, 2025) 15

In re Diocese of Camden, N.J.,
653 B.R. 309 (Bankr. D.N.J. 2023) 6

In re Franciscan Friars of Cal., Inc.,
No. 23-41723-WJL (Bankr. N.D. Cal. July 29, 2026) 4

In re Lewis,
515 B.R. 591, 595 (B.A.P. 9th Cir. 2014) 6

In re Madison Square Boys & Girls Club, Inc.,
No. 22-10910 (SHL) (Bankr. S.D.N.Y. July 21, 2023) 14

In re Mallinckrodt PLC,
639 B.R. 837 (Bankr. D. Del. 2022) 9

In re Norwich Roman Cath. Diocesan Corp.,
No. 21-20687 (Bankr. D. Conn. June 13, 2025) 13, 14

In re PG&E Corp.,
617 B.R. 671 (Bankr. N.D. Cal. 2020) 5

In re Pittsburgh Corning Corp.,
453 B.R. 570 (Bankr. W.D. Pa. 2011) 10

In re Roman Catholic Church of the Archdiocese of New Orleans,
No. 20-10846 (Bankr. E.D. La. Dec. 8, 2025) 13, 14

In re Wash. Mut., Inc.,
442 B.R. 314 (Bankr. D. Del. 2011) 9

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 3 of 25

TABLE OF AUTHORITIES
(continued)

Page(s)

McDermott, Inc. v. AmClyde,
511 U.S. 202 (1994) 7, 19

Mission Prod. Holdings, Inc. v. Tempnology, LLC,
587 U.S. 370 (2019) 8

New Hampshire v. Maine,
532 U.S. 742 (2001) 21

San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y,
162 Cal. App. 3d 358 (Ct. App. 1984) 9

U.S. ex rel. Farmers Home Admin. v. Arnold & Baker Farms (In re Arnold & Baker Farms),
177 B.R. 648 (B.A.P. 9th Cir. 1994) 5

Statutes

11 U.S.C. § 1129(a) 4

11 U.S.C. § 1129(a)(1) 7

11 U.S.C. § 1129(a)(3) 5, 7

11 U.S.C. § 502(a) 6

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 4 of 25

The Pacific Insurers, as defined in the signature block, hereby file this post-hearing reply (this "**Reply**") to the Debtor's *Post-Trial Brief in Support of Confirmation of Debtor's Modified Fourth Amended Plan of Reorganization* [Dkt. No. 3418] (the "**Debtor's Brief**"). In support of this Reply, the Pacific Insurers respectfully state as follows:

PRELIMINARY STATEMENT

The Debtor's Brief exposes precisely why its Plan cannot be confirmed given the existing provisions that prejudice the Insurers. The Debtor never answers the threshold question about the Insurance Assignment: who, after the Effective Date, must perform the insured's continuing duties, and who must pay when those duties generate reimbursement or contribution obligations? The Plan calls the Assigned Insurance Interests both the Debtor's "responsibilities and obligations" and its "rights and interests," while Article VIII states that the Trust will take on obligations, but the assignment will not relieve the Debtor's or the Reorganized Debtor's duties. Those provisions create ambiguity without resolution. The Debtor's own witnesses could not identify whether reimbursement obligations are passed to the Trust or remain with the Debtor, nor any mechanism for payment in the Plan. Confirmation cannot rest on counsel's after-the-fact characterization of an instrument that the Plan leaves internally inconsistent.

The Debtor's answer that these questions are "determined for another forum" cannot be squared with a Plan that extinguishes the Insurers' contribution and reimbursement rights and channels them to a Trust that cannot pay them. Nor can discharge be manipulated by the Plan to artificially change the nature of the insurance contracts.

The Debtor's conduct since then confirms that these defects are not oversights. On July 22, 2026, the Objecting Insurers gave the Debtor a redline of the Plan addressing the outstanding objections and identifying changes that should be made to the Plan. The Debtor solicited those revisions but, as of the filing of this Reply, has neither responded to them nor met-and-conferred with any Insurer. The Debtor further maintains that no change is worthwhile unless the Committee consents. Rather than neutrally preserving rights or working toward a good-faith resolution, that position grants an adverse constituency veto power over the restoration of

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 5 of 25

protections removed for its benefit. The Court should evaluate the Plan as written, not as the balanced agreement the Debtor once negotiated or the revisions it now declines to consider.

The Third Amended Plan gave the Debtor its discharge on the Effective Date and made the Litigation Option work through the nominal-party device, and it withheld Cal. Civil Code § 2860 independent counsel expressly because the Non-Settling Insurers alone would bear potential financial responsibility for Abuse Claims. Third Am. Disclosure Statement, Art. IX.B, Dkt. 1874 at 61, 64. When the Committee asked this Court in January 2025 to defer the discharge until the "conclusion of each litigation claim," the Debtor opposed it and represented that no bad faith claim existed to assign. Jan. 21, 2025, Tr. at 68:19–22; Jan. 16, 2025, Tr. at 164:22–165:1, 165:19–21. The Modified Fourth Amended Plan reverses each of those positions: the Plan now defers discharge claim by claim until litigation concludes; the § 2860 provision has been removed; the Trust is substituted as plaintiff on bad faith claims in the Coverage Action; and the Debtor has amended its complaint to assert the very claims it told this Court did not exist. Debtor's Br. at 67. A plan proponent may amend its plan, but it cannot tell this Court that a provision is unwarranted when the Committee demands it and indispensable once the Committee's silence has been purchased. Only the Insurers pay for that reversal.

The Court should deny confirmation unless the Debtor provides a clear, enforceable allocation of the insured's obligations, removes the deferred discharge, and restores the Insurers' remedies.

ARGUMENT

I. The Debtor Refused to Engage with Insurers and Accommodated Only the Committee on Issues That Prejudice the Insurers

During the Confirmation Hearing, Debtor's counsel solicited Plan changes, and the Insurers provided them well before the Debtor's post-trial brief was due.[1] The Debtor then neither conferred with any Insurer nor made any change to the Plan or Proposed Confirmation Order. Instead, the

[1] On July 22, 2026, the Objecting Insurers provided the Debtor with a redline of the Plan addressing the outstanding objections, and as of the date of filing have received no response. *See also* LMI Post-Trial Br. at 1 (noting that LMI sent a "red-lined draft of Plan revisions" on July 22, 2026, which "would make the Plan acceptable" to the objecting insurers, and that "LMI have not received any response from the Debtor").

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 6 of 25

Debtor admits that the changes made between the Third Amended Plan and the Modified Fourth Amended Plan were made to accommodate the Committee, which has an interest in prejudicing the Insurers' contractual rights.[2]

The Debtor argued during the proceedings to approve the disclosure statement for the Third Amended Plan that the deferred discharge and other Plan changes the Committee sought were improper, and that there was no bad faith claim to assign. *See* Jan. 16, 2025, Tr. at 164:22–165:1, 165:8–21, 172:15–173:3; Jan. 21, 2025, Tr. at 53:12–24, 55:8–10. The Debtor now admits that the changes made between the Third Amended Plan and the Modified Fourth Amended Plan were made to accommodate the Committee's demands, which has an interest in prejudicing the Insurers' contractual rights.[3] The Modified Fourth Amended Plan adds in the previously-opposed deferred discharge, modifies the assignment, and removes the § 2860 provision included in the Third Amended Plan that ensured that the Insurers retain the ability to direct the defense of the claims they alone are asked to pay.[4]

The Debtor's admission that it "sees no benefit to further changes unless the Committee consents" confirms the point. Debtor's Br. at 69.[5] The Debtor negotiated insurance contract-protective provisions in the Third Amended Plan, removed them to secure the Committee's non-

[2] Debtor's Brief at 66 ("To the extent there are changes to the Insurance Assignment language from the Third Amended Plan, those changes were made in order to address specific concerns raised by the Committee. In making those changes, the Debtor gained the Committee's non-opposition to the Insurance Assignment provisions.").

[3] *Id*.

[4] The Third Amended Plan, by contrast, expressly recognized that because the Non-Settling Insurers would be responsible for payment of Abuse Claims, and the Debtor would have no financial responsibility, the provisions of California Civil Code § 2860 entitling an insured to independent counsel would not apply. Third Amended Plan § 8.3.1, Dkt. 1830. Bishop Barber signed onto a term sheet embracing this provision. *See* June 22, 2026 Tr. at 66:15-67:10 (Barber); Ex. CI-17 at 14.

[5] The Debtor states it "is open to agreed revisions to the Plan or Confirmation Order" but only if changes "(i) fully resolve a dispute with all Insurers and (ii) do not bring new objections from the Committee." Debtor's Brief at 69. These conditions foreclose resolution. Condition (i) requires unanimous insurer agreement before the Debtor will engage with any single insurer's objection, which is a collective-action barrier no individual insurer can overcome. Condition (ii) grants the Committee veto power over any revision, even though the Committee's interests are directly adverse to the Insurers on these provisions. The practical effect is that no modification is possible.

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 7 of 25

opposition, and now refuses to restore them unless the Committee consents—which is unlikely, given that the Committee benefitted from their removal.

The same counsel for the Committee here acknowledged on the record in *In re Franciscan Friars* for the Committee in that case the Friars plan is insurance-neutral "in a way that no other plan in cases like this is." Hr'g Tr. 22:2–4, *In re Franciscan Friars of Cal., Inc*., No. 23-41723-WJL (Bankr. N.D. Cal. July 29, 2026). They also acknowledged that it "intentionally departs" from the insurance-assignment structure used in other diocesan plans because that structure "has drawn the ire of insurers nationwide and triggered a torrent of litigation," and that the Joint Plan's treatment of insurers is the "even-handed treatment" that insurers seek but do not receive "in virtually every other diocesan bankruptcy." Plan Proponents' Mot. for Entry of Protective Order and/or Requiring Preliminary Plan Objections, Plan Markups, or Competing Summary Judgment Motions at 6–8, *In re Franciscan Friars of Cal., Inc*., No. 23-41723-WJL (Bankr. N.D. Cal. July 15, 2026). By the Committee's own logic, if the Friars plan is uniquely neutral, then plans that follow the standard diocesan assignment-based allocation model—including Oakland's—necessarily impair or prejudice insurers' contract rights. The Committee has effectively admitted as much by defining the Friars' plan against the backdrop of those other plans and touting its departure from them as a feature.

The Plan must be evaluated as written. As written, it leaves the insured's continuing obligations unallocated, channels contribution claims to a Trust with no mechanism for payment and defers discharge in a manner the Code does not authorize. The Debtor's refusal to engage with the Objecting Insurers' proposed language addressing these defects, while simultaneously assuring the Court that insurer rights are protected, underscores why confirmation should be denied absent modification of the Plan. Objecting Insurers' Post-Trial Br., Ex. A, Dkt. 3415.

II. The Debtor's Brief Leaves Most Insurer Objections Unanswered and Unrefuted

The Debtor's Brief collects the insurer objections into a single catalog—"insurance rights, the Insurance Assignment, bad-faith and extra-contractual claims, the Litigation Option, claim allowance and participation rights, the Channeling Injunction, contribution and judgment-

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 8 of 25

reduction provisions, exculpation, Plan settlement findings, and proposed Confirmation Order language"—and then declares that they "should be overruled." Debtor's Br. at 61, 64. Apart from the Insurance Assignment and the delayed discharge, the Debtor's Brief supplies no responsive argument on any of these points, relying instead on the assertion that the disputes belong in "the appropriate forum." Debtor's Br. at 64; *see* Debtor's Mem. of Law in Supp. of Confirmation, Dkt. 3100 ("Pretrial Brief"). Confirmation is a contested evidentiary proceeding, and a plan proponent bears the burden on each element of section 1129. *See* 11 U.S.C. § 1129(a); *In re PG&E Corp.*, 617 B.R. 671, 674 (Bankr. N.D. Cal. 2020); *U.S. ex rel. Farmers Home Admin. v. Arnold & Baker Farms (In re Arnold & Baker Farms)*, 177 B.R. 648, 654 (B.A.P. 9th Cir. 1994). The unanswered objections are addressed below in the order presented in the Pacific Insurers' Objection.

A. Section 12.12 Exceeds the Scope of Section 1129(a)(3).

The Insurers objected that Section 12.12 must be stricken because a chapter 11 plan "is not a settlement," and section 1129(a)(3) permits a good-faith finding as to the plan alone rather than a blanket determination that every claim resolved under the Plan was compromised fairly and within the range of reasonableness. *See* Plan § 12.12; 11 U.S.C. § 1129(a)(3); *In re Boy Scouts of Am. & Del. BSA, LLC*, 642 B.R. 504, 626 (Bankr. D. Del. 2022) ("BSA") ("[A] Plan is not a settlement."); *In re AIO US, Inc.*, 617 B.R. 509, 554 (Bankr. D. Del. 2025). The Debtor's Brief never mentions Section 12.12 and never addresses *BSA*, *Camden*, or *AIO*, each of which refused findings exceeding the scope of section 1129(a)(3). *See BSA*, 642 B.R. at 624–33; *In re Diocese of Camden, N.J.*, 653 B.R. 309, 359–60 (Bankr. D.N.J. 2023); *In re AIO US, Inc.*, at 544–545. Nor does the Debtor's Brief confront this Court's own statements that its Article I powers do not extend to questions of liability or the amount of damages on the Abuse Claims. *See* Tr. of Oct. 24, 2024 Hearing at 43:12–15, 46:5–7.

The Debtor instead devotes its good-faith discussion entirely to Bishop Barber's intent, the Mission Alignment Process, and the Committee's demand that the Debtor pay more. Debtor's Br. at 17–23. Nothing in that discussion supplies a statutory basis for the sweeping findings Section 12.12 requests, and an unsupported request for findings that would "tilt the playing field

in a subsequent coverage dispute" should be denied. *In re AIO US, Inc.*, 617 B.R. at 545. Nor may the Court prospectively find at confirmation that a Chapter 11 plan has been substantially consummated, as substantial consummation "requires significant progress toward finalization of the actions required by the plan and the commencement of distributions." *In re Lewis*, 515 B.R. 591, 595 (B.A.P. 9th Cir. 2014) ("Substantial consummation is defined as far more than plan confirmation.").

B. The Channeling Injunction extinguishes non-Debtor contribution claims without consent in violation of *Purdue Pharma.*

The Insurers objected that the Channeling Injunction and Section 13.14 enjoin the Non-Settling Insurers' contribution, subrogation, indemnity, and reimbursement claims against Settling Insurers and other non-debtors without insurer consent, which *Harrington v. Purdue Pharma L.P.,* 603 U.S. 204, 226 (2024), forbids. *See* Plan §§ 13.11, 13.11.1, 13.11.2, 13.14, 1.1.31.

The Debtor's Brief cites neither *Purdue Pharma* nor *In re Boy Scouts of America*, 137 F.4th 126 (3d Cir. 2025), and offers no authority for enjoining claims between non-debtor co-obligors, responding only that inter-insurer disputes over "reimbursement, contribution" are "preserve[d] for the appropriate forum" and "do not need to be decided at confirmation." Debtor's Br. at 64. Why that response fails is addressed below. *See infra* "The Plan Extinguishes Contribution Rights It Claims to Preserve."

C. The judgment reduction mechanism fails as a substitute for the contribution rights the Plan extinguishes.

The Pacific Insurers demonstrated that Sections 8.4, 8.5, 8.7, and 8.8.5 fail as a substitute for the extinguished contribution rights. *See* Plan §§ 8.4, 8.5, 8.7, 8.8.5. The Debtor's Brief responds to none of this: it does not defend the mechanics of Section 8.5, does not address *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 220–21 (1994), or *Eichenholtz v. Brennan*, 52 F.3d 478, 483–84 (3d Cir. 1995), and does not explain how the Trust may simultaneously serve as the forum for contribution claims and the adversary asserting the Settling Insurers' claims. *See*

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 10 of 25

Debtor's Br. at 64–69; Plan § 8.8.5. The defects in the judgment-reduction mechanism are addressed below. *See infra* "'The Plan Extinguishes Contribution Rights It Claims to Preserve."

D. The Plan impairs Insurers' contractual rights through multiple mechanisms.

The Insurers identified four specific impairments that survive the Section 8.3 neutrality language: (1) the restriction on claim objections; (2) the alteration of the insurers' right to control defense and settlement under Sections 8.1, 8.3, 8.6, and 8.9; (3) the Claim Enhancement structure that escalates a Litigation Claimant's Trust distribution from 10% to 100% based on the stage of litigation against the Non-Settling Insurers; and (4) the delayed discharge addressed above. *See* Plan §§ 5.2.2, 8.1, 8.3, 8.6, 8.9, 9.8.4.3–9.8.4.7, 13.3.

The Debtor's Brief offers only the conclusory assertion that the Insurance Assignment "does not expand coverage, waive policy defenses, or alter the insurers' obligations" and that "[t]he insurers retain all coverage defenses, policy limits, and contractual rights they would have if there were no assignment." Debtor's Br. at 65 (citing Plan § 8.3). The Claim Enhancement tiers are never mentioned, and the Debtor offers no explanation of how a graduated financial reward for prolonging litigation against the Non-Settling Insurers is consistent with the good-faith requirement or with the principle that insurance contracts pass through bankruptcy intact. *See Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381 (2019); *In re Boy Scouts of Am.*, 137 F.4th at 164–65; 11 U.S.C. § 1129(a)(1), (3).

E. The Trust's dual role as defense partner and adversary creates an irreconcilable conflict.

The Objection showed that the Trust is expected to cooperate with the Non-Settling Insurers in defending Abuse Claims under Section 8.6, while simultaneously prosecuting Debtor Extracontractual Insurance Actions against them under Section 8.9 and asserting the Settling Insurers' contribution claims against them under Section 8.8.5. *See* Plan §§ 8.6, 8.8.5, 8.9. The Debtor's Brief confirms the second of these roles, stating that the Debtor "again amended its complaint in the Coverage Action, this time asserting bad faith claims against certain of the Insurers. Debtor's Br. at 67 (citing Dkt. 3319; Dkt. 2760-2, § 8.9). Plan § 8.9 provides that, on or promptly after the Effective Date, the Survivors' Trust shall be substituted as plaintiff in the

Coverage Action for purposes of asserting Debtor Extracontractual Insurance Actions. Dkt. 2760-2, § 8.9. The Debtor identifies no enforceable mechanism ensuring that the cooperation obligations are honored by an entity it has now confirmed will be litigating against the parties entitled to that cooperation. *See* Plan §§ 8.6, 8.9. The Pacific Insurers' objection that an entity cannot serve as both cooperative defense partner and adversarial litigant goes unanswered. *See San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y*, 162 Cal. App. 3d 358, 364 (Ct. App. 1984).

F. The Exculpation Provision is overbroad and extinguishes Insurers' remedies.

The Objection established three defects in Section 13.6 and the definition of "Exculpated Parties": the absence of a temporal limitation confining exculpation to conduct between the Petition Date and the Effective Date; the inclusion of parties who are not estate fiduciaries, including the College of Consultors, the Finance Council, the Presbyteral Council, the Exit Facility Lender, and RCWC; and the provision's reach over breaches of cooperation and consent-to-settle obligations under the Non-Settling Insurer Policies. *See* Plan §§ 13.6, 1.1.65; *Blixseth v. Credit Suisse*, 961 F.3d 1074, 1081 (9th Cir. 2020); *In re Mallinckrodt PLC*, 639 B.R. 837, 883 (Bankr. D. Del. 2022); *In re Wash. Mut., Inc*., 442 B.R. 314, 350–51 (Bankr. D. Del. 2011). The Debtor's Brief addresses only the first, and only in response to the United States Trustee, asserting that "[t]he exculpation clause has been modified to include appropriate temporal limitations, "covering only conduct from the Petition Date through the Effective Date." Debtor's Br. at 70. The Debtor never defends the inclusion of the consultative bodies or the Exit Facility Lender as exculpated parties, and it never addresses the insurance consequence that exculpation would extinguish the Non-Settling Insurers' contractual remedies for cooperation failures falling short of willful misconduct or gross negligence. *See* Plan § 13.6; *In re Wash. Mut.*, *Inc.,* 442 B.R. at 350–51; *In re Boy Scouts of Am.*, 137 F.4th at 164–65. The Plan must state expressly that the exculpation provision does not apply to claims arising under or related to the Non-Settling Insurer Policies. *See* Objecting Insurers' Post-Trial Br., Ex. A, Dkt. 3415.

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 12 of 25

III. The Plan Fails to Allocate the Insured's Continuing Obligations

The Plan does not say what the Debtor contends regarding the Insurance Assignment. The Debtor asserts that the Insurance Assignment "transfers only the Debtor's rights and obligations as the insured" and "does not expand coverage, waive policy defenses, or alter the insurers' obligations." Debtor's Br. at 65. But the operative documents describe the assignment differently in different provisions, and the Debtor's own designee admitted that one cannot identify from the terms of the Plan which of the insured's continuing obligations accompany the assigned rights, which obligations remain with the Debtor, and who will perform them after confirmation. Counsel's post hoc characterization cannot cure that ambiguity.

Nor does the Debtor's incorporation of its Pretrial Brief supply the missing answer. Neither the Pretrial Brief nor the Debtor's Brief addresses the *cum onere* rule, under which the assignment of an insurance policy must be subject to all of the burdens and obligations attached to it. *See In re Am. Home Mortg. Holdings, Inc.*, 402 B.R. 87, 98 (Bankr. D. Del. 2009). Neither addresses the conflict between Sections 1.1.15 and 8.1 that the Objection identified, nor the principle that reasonable minds cannot be left to differ as to what conflicting insurance provisions mean and which of them controls. *See In re Pittsburgh Corning Corp.*, 453 B.R. 570, 589 (Bankr. W.D. Pa. 2011). The Objection's central point stands unrebutted.

A. The Plan's terms contradict the Debtor's description of the assignment.

Section 1.1.15 of the Plan defines Assigned Insurance Interests to include the Debtor's "responsibilities and obligations" under the Policies. Section 8.1, by contrast, allows only "an assignment of the . . . rights and interests" in those policies for the Survivors' Trust and Abuse Claimants "to directly receive proceeds and remedies for Insurance Actions." The TDP states that the Survivors' Trust "will receive all rights, claims, interests, benefits, responsibilities, and obligations of the Debtor in the Non-Settling Insurer Policies." TDP § 1.7, Dkt. 2867-6. But that description is expressly made "subject to the terms of the Plan (including without limitation Articles VIII and IX of the Plan)," and the Trust Agreement provides that the Plan controls over both the Trust Agreement and the TDP in the event of conflict. Survivors' Trust Agmt. § 1.9, Dkt. 2867-6; Plan §§ 1.1.15, 8.1. And as Mr. Bardos acknowledged, any obligation to an insurer

channeled to the Trust may be satisfied only as the Survivors' Trust Documents provide. These are documents that, as shown below, prohibit payment of insurer claims altogether. Plan § 13.11.1. The broadest description of the assignment is therefore the one with the least operative effect.

While the Trust documents conflict, resolving those terms would not resolve the issue, as the ambiguity exists within Article VIII of the Plan itself. Section 8.1.2 provides that the Survivors' Trust will "front[] obligations arising in any way out of any and all Abuse Claims." Section 8.1.3 provides that the Insurance Assignment "shall not relieve the Debtor, the Reorganized Debtor or the Released Parties from their respective obligations under the Abuse Insurance Policies as provided [under applicable Law]." The Debtor offers § 8.1.3 as protection for the Insurers and assurance that some party will fulfill the insured's obligations. Debtor's Br. at 66. But a provision that spreads the insured's continuing duties among several parties without allocating them, and without addressing how the discharge, injunction, and releases operate on them, gives the Insurers nothing enforceable against anyone.

At trial, Mr. Bardos, the witness most involved in preparing the Plan, could not answer how these ambiguities were meant to be resolved. Asked whether the obligation to pay an insurer's claim for reimbursement was being assigned, he answered, "I'm not sure," and gave the same answer when asked where in the Plan one would look for the answer. June 25, 2026 Tr. at 154:6–16. He could not say whether that obligation was assigned to the Survivors' Trust or retained by the Debtor. *Id.* at 154:17–156:18. He also could not identify any provision in any Plan document that sets out a mechanism for how an insurer is to be paid on a contribution, reimbursement, or other claim subject to the injunctions. *Id.* at 171:6–11.

Section 13.11.1 of the Plan provides that channeled claims "shall be treated, administered, determined, resolved and paid in the amounts as provided by the Survivors' Trust Distribution Plan and procedures established under this plan and the survivors' trust agreement as the sole and exclusive remedy for all holders of channeled claims." When asked, Mr. Bardos agreed that a claimant whose claim is channeled to the Survivors' Trust must look to those documents to determine how the claim will be paid. June 25, 2026 Tr. at 163:1–10. But Section 4.2 of the

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 14 of 25

TDP, titled "No Distribution Other Than For Abuse Claims," states: "For the avoidance of doubt, zero (0) points shall be allocated for any trust claim that is not an abuse claim." TDP § 4.2, Dkt. 2867–6. The Plan therefore channels insurer claims to a Trust whose governing documents affirmatively prohibit payment of those claims. The Debtor's Brief does not address this provision, does not explain how channeled insurer claims are to be paid, and does not identify any mechanism anywhere in the Plan documents that would permit the Trust to satisfy a contribution, reimbursement, or indemnity claim. *See* Debtor's Br. at 64–69.

The Survivors' Trustee also lacks authority to fill the gap. The Trustee's powers and duties, as described in Article 3.1 of the Trust Agreement, include obtaining insurance on Survivors' Trust property, enforcing Insurance Settlement Agreements, and prosecuting and defending actions related to any asset, liability, or responsibility of the Trust "except with respect to the Litigation Option." Survivors' Trust Agmt. §§ 3.1.7, 3.1.24, 3.1.29. That carve-out removes from the Trustee's powers the proceedings in which the insured's duties to cooperate in the investigation, defense, and settlement of claims arise. *See* Certain Insurers' Exhibits CI-7, CI-14, CI-19, CI-20. No provision grants the Trustee the ability to satisfy an insurer's claim for reimbursement or contribution. Section 3.2.3 then prohibits the Trustee from making "any transfer or distribution of Survivors' Trust Assets other than those authorized in this Survivors' Trust Documents," and § 1.5.7 makes Survivors' Trust Assets available for "liabilities of the Survivors' Trust with respect to the Beneficiaries," a term limited to holders of Class 4 and Class 5 Abuse Claims. Survivors' Trust Agmt. §§ 1.5.7, 1.10, 3.2.3. The Non-Settling Insurers are not Beneficiaries. The Trustee is thus both unfunded as to reimbursement claims and barred from paying them.

The consequence is that the Non-Settling Insurers must fund the defense and resolution of claims that may not be covered, with no counterparty obligated to reimburse them under *Buss* and *Blue Ridge*. The Debtor receives a discharge on the Effective Date. The Trust is prohibited from paying reimbursement amounts. Who, then, pays—if anyone?

The Debtor responds that reimbursement, contribution, and allocation disputes belong in another forum and need not be decided at confirmation. Debtor's Br. at 65. The Pacific Insurers

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 15 of 25

agree that coverage merits issues belong in the Coverage Action. But whether the Plan identifies a party obligated to answer for the insured's continuing duties is a confirmation question. Section 1129(a)(1) requires the Plan to resolve it on its face, and the Objecting Insurers have proposed language that would do so. Objecting Insurers' Post-Trial Br., Ex. A, Dkt. 3415.

B. *New Orleans* and *Norwich* are distinguishable because all Insurers settled.

The Debtor relies erroneously on the confirmation orders in *New Orleans* and *Norwich*. Debtor's Br. at 65 (citing Confirmation Order, *In re Roman Catholic Church of the Archdiocese of New Orleans*, No. 20-10846, Dkt. 4767 (Bankr. E.D. La. Dec. 8, 2025); Confirmation Order, *In re Norwich Roman Cath. Diocesan Corp.*, No. 21-20687, Dkt. 2053 (Bankr. D. Conn. June 13, 2025)). But neither case involved a "cramdown"; instead, in each case, the debtors' insurers settled before plan confirmation and bought back their policies, leaving only the proceeds of the sale. *See, e.g., New Orleans*, No. 20-10846, Dkts. 4720, 4721, 4722, 4723, 4724, & 4725 (orders approving six insurance-settlements on Nov. 26, 2025, before confirmation order entered on Dec. 8, 2025); *Norwich*, No. 21-20687, Dkt. 2049 (order approving Catholic Mutual Settlement Agreement).

None of the insurers in *New Orleans* or *Norwich* remained obligated to perform under an assigned policy or to look to an assignee for reimbursement. Neither court had occasion to decide what an assignment transfers when non-settling insurers remain. This case presents the question those cases did not: the Non-Settling Insurers remain with insurance contracts in force, and their right to defend continues after the Effective Date, along with the insureds' corresponding obligations.

Neither the *New Orleans* nor the *Norwich* confirmation order contains a finding that a plan may assign an insured's rights while leaving the insured's obligations unallocated.[6] An

[6] In contrast to the Debtor's Plan §§ 1.1.15 and 8.1, the plan in *Norwich* also did not assign the policies themselves; it assigned insurance "interests" that consisted of insurance claims and recovery proceeds only. *Norwich*, No. 21-20687, Dkt. 2053 at 31; Dkt 1935 at 18, 49 (*Norwich* Plan §§ 1.1.144, 9.1(a)) ("[T]he Diocese and each of the Participating Parties will be deemed to have assigned to the Trust the Diocese's and the Participating Parties' Transferred Insurance Interests," but the transfer "shall not be construed . . . as an assignment of the Non-Settling Insurer Policies."). The *Norwich* plan also expressly allocated the insured's obligations, stating *inter alia* that "the Trust's assumption of such responsibility shall not relieve the Diocese or the Participating Parties from any duty that such entities may have under the Non-Settling Insurer

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 16 of 25

order entered without insurer objection on that issue carries no precedential weight where, as here, objections are live.

Coverage issues are not before the Court, and the Pacific Insurers do not ask the Court to resolve them. Rather, the Pacific Insurers ask the Court to require the Debtor to amend the Plan to state clearly which of the insured's continuing obligations pass unimpaired to the Trust and which party answers for the remainder. Until the Plan does so, it cannot be confirmed consistent with § 1129(a)(1).

IV. The Code Does Not Permit a Piecemeal Discharge, and *Madison Square* and *Diocese of Buffalo* are Distinguishable

The Debtor argues that the delayed discharge under Plan § 13.3 is permissible under Section 1141(d) and consistent with *Madison Square* and *Diocese of Buffalo*. *See In re Madison Square Boys & Girls Club, Inc.*, No. 22-10910 (SHL), Dkt. 574 (Bankr. S.D.N.Y. July 21, 2023); *In re Diocese of Buffalo, N.Y.*, No. 21-20687, Dkt. 4221 (Bankr. W.D.N.Y. Oct. 1, 2025). Neither case supports the Plan.

Diocese of Buffalo provides no support because the plan from which the Debtor draws its cited precedent was subsequently withdrawn as unconfirmable. The presiding judge has publicly stated his view that even the newly filed replacement plan may be unconfirmable, and the disclosure statement hearing on that replacement plan has not yet occurred.[7] A withdrawn, failed plan is not precedent for anything. Moreover, all the insurers in Buffalo have reached settlements that contemplate the buyback of their policies, leaving nothing to assign but the proceeds of the

---

Policies." *Id*. at 49 *(Norwic*h Plan § 9.1(c)). Likewise, the *New Orleans* confirmation order described the plan as transferring "[a]ll rights related to the Non-Settling Insurance Rights Transfer to the Settlement Trust," not the non-settling policies and their *obligation*s. *New Orleans,* No. 20-10846, Dkt. 4767 at 8. Unlike the *Plan here,* the New Orleans plan distinguished assigned rights from the policies and their obligations, clarified the limited obligations undertaken by the trust, and otherwise preserved "all rights, duties and obligations of the parties" under *the policie*s. *New Orleans,* No. 20-108*46, Dkt. 47*62 (New Orleans Plan §§ 7.2(b), 7.4) at 29–32 (defining transferred insurance "rights" broadly but expressly stating that the transfer was "not an assignment of any insurance policy itself").

[7] *See In re Diocese of Buffalo, N.Y.*, Hr'g Tr. at 93:23-94:14, Case No. 21-10322 (Bankr. W.D.N.Y. July 23, 2026) (Judge Bucki explaining there are a number of issues remaining with the amended Disclosure Statement and Plan filed on June 17, 2026, and expects sources of funding to be a big source of issues, but he will be hearing the Disclosure Statement issues on August 26th regardless).

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 17 of 25

sale. [8]

Madison Square is likewise distinguishable. As the London Market Insurers' Post-Trial Brief notes, in *Madison Square* the insurers "are not responsible for any Abuse Claims paid by the Survivors' Trust, and their liability extends only to claims pursued in the tort system." LMI Post-Trial Br. at 7. That structural difference is dispositive: there, the insurers had no exposure to claims resolved through the trust distribution process, while here, the deferred discharge manipulates when and how claims may be pursued against insurance coverage.

More fundamentally, Section 1141(d) does not authorize a claim-by-claim or piecemeal discharge, neither *Madison Square* nor any other authority the Debtor cites addresses this core defect. The Bankruptcy Code's discharge mechanism applies uniformly to all prepetition debts on the Effective Date. As the London Market Insurers have argued, "Section 524 refers to 'a discharge,' not multiple discharges," and "[b]ankruptcy courts do not grant or deny 'a discharge' piecemeal." LMI Post-Trial Br. at 6–7. Nothing in the Code authorizes the Plan to discharge the Debtor as to some Abuse Claims on the Effective Date while deferring discharge of Litigation Claims until "conclusion of any such litigation in a court of competent jurisdiction." Plan § 13.3.

As discussed in the Objecting Insurers' post-trial brief, the confirmation hearing record made clear that there is no bankruptcy purpose for this provision. When asked, Mr. Bardos testified only that "there's still more things that needed to be determined for the litigation discharge to take effect." June 25, 2026 Tr. at 177:8–12. When pressed on whether "conclusion" of litigation means the verdict in the underlying state action or the conclusion of the insurance coverage action, Mr. Bardos admitted he "can't tell" based on the language of the Plan. *Id*. at 181:6–182:4. This indeterminacy is itself a Code violation, as Section 1141 does not permit a claim to be split so that discharge applies to some portions of a given claim on one day and other portions on another.

The deferred discharge is also unnecessary to preserve the rights of claimants. Direct-

[8] *See In re Diocese of Buffalo, N.Y.*, Hr'g Tr. at 35:1-6, Case No. 21-10322 (Bankr. W.D.N.Y. June 10, 2026) (The Committee emphasized to the Court that "this is a case where we have a fully, fully, fully, fully settled Plan with Diocesan insurers, Parish-level insurers, Diocese and Parishes that is providing meaningful compensation for almost 900 survivors in this Diocese.").

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 18 of 25

action rights under California Insurance Code § 11580 require only that the underlying claim existed before confirmation and that a judgment has been obtained against the insured. The statute does not require that the insured entity remain undischarged. Mr. Bardos confirmed that the Plan already preserves everything necessary for the Litigation Option: the Litigation Option survives, the Debtor appears as a nominal party only, and the Plan preserves the Insurers' liability and coverage defenses. *See* June 25, 2026 Tr. at 185:17–23, 186:2–6. No witness identified any function the deferred discharge serves that the nominal-party mechanism does not already provide.

The Debtor's own representations to this Court confirm that the deferred discharge serves no purpose the Plan otherwise does not achieve. In January 2025, the Committee objected to the Third Amended Plan on the ground the Debtor now embraces: "Our issue here is the discharge. The timing of it we think is inappropriate. It should come later at the conclusion of each litigation claim." Jan. 21, 2025 Tr. at 68:19–22; *see also* Jan. 16, 2025 Tr. at 176:5–6 ("Our objection is to the structure and timing of the discharge in this plan."); *id.* at 176:21–23 ("What we're troubled by here is that the discharge goes into effect immediately on the effective date."). The Committee proposed the same remedy it has now obtained in substance, urging that "on the effective date, there's a covenant not to execute for the litigation" and that "that's how it's structured in other committee plans." *Id.* at 179:8–16. The Debtor opposed it. It told the Court that the Committee "wants to drive a wedge between us and the [I]nsurers because the [I]nsurers have a different view of what a discharge means, not what the [P]lan does," *id.* at 165:8–10, and that the insurers "just have a different view of what happens post-discharge," *id.* at 166:12–13. When the Court proposed adding clarifying language that the Plan was "indifferent" to any later bad faith claim, the Debtor accepted that solution rather than deferring the discharge. *Id.* at 172:15–173:3. The Third Amended Plan then went out for solicitation with a single discharge effective "as of the Effective Date," and the Debtor's redline confirms that provision was never altered. Third Am. Disclosure Statement, Art. XIII.C, Dkt. 1874 at 85; Dkt. 1872-1 at 85–86.

The Debtor's representation that no bad faith claim existed is equally difficult to reconcile with its present position. Asked in January 2025 whether the Third Amended Plan assigned bad

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 19 of 25

faith claims, Debtor's counsel answered, "We have not articulated, as we stand here today, a bad faith claim. We don't believe that those claims exist, otherwise we would have pled them in the district court litigation." Jan. 16, 2025 Tr. at 164:22–165:1. Counsel continued, "there is no bad faith claim today for me to assign. I'm assigning the possibility of a bad faith claim." *Id.* at 165:19–21. Asked whether the result was uncertain, counsel answered, "I don't think we are uncertain. The [D]ebtors are certain. That's why we propose the plan that we did." *Id.* at 166:7–8. The Debtor's insurance counsel told the Court that "there is no intent to negate any right that might come under the policy," that "we're not assigning claims," and that "[w]hether there might be a bad faith claim in the future, we don't know. It's the future. And frankly, for that to develop, it really is dependent upon what's presented to the insurers and how the insurers respond to that and the underlying claim." *Id.* at 182:24–183:8.

The Debtor assured the Court that the Plan presented no *Purdue Pharma* problem because "[t]here is no third part[y's] right today that is being extinguished." *Id.* at 173:6–15. The Debtor now defends a discharge structure whose operative effect is to keep the Debtor undischarged as a nominal defendant so that judgments may be entered against it and extracontractual exposure generated. The Debtor has amended its complaint in the Coverage Action to assert the very bad faith claims it told this Court did not exist. Debtor's Br. at 67. Its only response is that the "argument that this provision of the Plan is intended to manufacture bad faith claims is nonsense." *Id.* at 68. That answer contradicts the Debtor's own account on this record of how such claims come into being.

This reversal also undercuts the Debtor's only affirmative justification for Section 13.3. The Debtor says the provision has a "distinct and proper purpose: to effectuate the Litigation Option and permitting Abuse Claim Litigation to go forward post-confirmation." *Id.* But the Debtor previously told this Court that the Litigation Option worked without any deferral under a plan that discharged all Claims on the Effective Date. A provision that was unnecessary to an identical structure in 2025 cannot be necessary to it now. The Debtor also concedes that if "the Court holds the discharge provisions offend the Bankruptcy Code, the Debtor will modify them to bring them into compliance." *Id.* at 69. A provision the proponent is prepared to abandon on

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 20 of 25

request is not a structural necessity.

Neither *Madison Square* nor *Diocese of Buffalo* supply authority for the Plan's deferred discharge, and Section 1141(d) does not permit the discharge date to vary claim by claim, with litigation outcomes rather than plan confirmation fixing discharge for different aspects of a claim. The Court should decline to confirm the Plan unless Section 13.3 is removed or modified to provide a single, uniform discharge applicable to all Claims, including Abuse Claims, on the Effective Date.

V. The Plan Extinguishes Contribution Rights It Claims to Preserve

The Debtor's assertion that coverage, allocation and contribution are "determined in another forum" ignores the terms of the Plan itself. Following *Purdue Pharma*, the Bankruptcy Code does not permit a Chapter 11 plan to enjoin claims between non-debtors without consent. *Purdue Pharma,* 603 U.S. at 226. The Plan's Channeling Injunction does exactly this by extinguishing Non-Settling Insurers' contribution claims against Settling Insurers and channeling those claims to a Trust where the TDP provides no mechanism for payment.

The Ninth Circuit has expressly held that "the specific provisions of [S]ection 524 displace the court's equitable powers" to grant injunctive relief in favor of non-debtor third parties. *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989). Contribution claims among insurers are claims among co-obligors that exist independently of the debtor's estate. The Plan cannot extinguish those claims without consent, let alone channel them to a trust that makes no provision for payment, and then characterize the result as "preservation."

Section 8.4 purports to allow Non-Settling Insurers to assert Contribution claims against the Trust and receive a set-off, providing that if a Non-Settling Insurer's 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." (Plan § 8.4.) But Section 8.5 limits Contribution claims against "the Survivors' Trust (as successor to the Debtor)" to "the payment of a deductible or self-insured retention" only and restricts the remedy to judgment reduction rather than affirmative recovery. Plan § 8.5. These provisions cannot be reconciled. A judgment-reduction mechanism can serve as an adequate substitute for

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 21 of 25

extinguished Contribution rights only if it provides dollar-for-dollar credit automatically, without preconditions. *See McDermott, Inc. v. AmClyde*, 511 U.S. 202, 220–21 (1994); *Eichenholtz v. Brennan*, 52 F.3d 478, 483–84 (3d Cir. 1995). Section 8.5 fails that test because it affords no credit at all where the Non-Settling Insurer's Contribution claim exceeds the award to the Litigation Claimant, where the Litigation Claimant is unsuccessful, or where a claim is withdrawn or a defense verdict is returned and defense costs go unreimbursed.

A Chapter 11 plan cannot block a non-settling insurer's right to recover amounts that should have been paid by settling insurers, and the Third Circuit has held that a judgment reduction clause is "intolerable" where it accompanies the release of contribution and indemnity claims against settling insurers. *In re Boy Scouts of Am.*, 137 F.4th at 167–68 (reversing confirmation and requiring revision of plan to include contribution remedy for insurers paying defense costs attributable to settling insurers). That holding stands unrebutted on this record. The Plan channels Contribution claims to a Trust that provides zero points for such claims while limiting the remedy under Section 8.5 to judgment reduction for defense costs alone, and Section 8.8.5 arms that same Trust with the Settling Insurers' own contribution claims to assert against the Non-Settling Insurers. Plan §§ 8.5, 8.8.5. The Plan thus extinguishes the very claims the Debtor says are "preserved." Under *Purdue Pharma* and *Am. Hardwoods*, that structure is impermissible.

VI. No Insurance Valuation Evidence Was Admitted or Admissible, and Judicial Estoppel Does Not Apply

The Debtor admits that "an assignment of key insurance rights to Survivors[] … cannot currently be valued," but then devotes an entire section to asserting that the Insurance Assignment has "***tremendous value***." Debtor's Br. at 1, 50–51 (emphasis added). The Court's *in limine* order established the strict boundary between confirmation and coverage litigation issues. *See, e.g.,* June 12, 2026 Tr. at 73:6–10 (COURT: "I am not going to do is make a bunch rulings about coverage issues or insurance other than the bankruptcy effectiveness . . . . Beyond that, I'm not touching it.").

The Debtor's witnesses all testified that they did not look into the value of insurance. Mr.

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 22 of 25

Moore testified that he did not look at valuation of the Diocese's insurance policies. Moore Dep. Tr. at 17:21–24, 18:1–14, 19:3–5. Dr. Martin likewise testified that she did not evaluate the value of the Debtor's insurance. Martin Dep. Tr. at 45:3–13, 64:16–23; *see also* Dkt. 3081 at 6–8. The Debtor's other experts similarly neither reviewed the policies nor disclosed any insurance-valuation analysis. *See* Dkt. 3081 at 1, 7–9.[9] Indeed, the Court granted the Insurers' motion *in limine* and precluded the experts from testifying on insurance coverage or valuation at confirmation. *See* June 12, 2026 Tr. at 92:10–13 (COURT: "I'm going to grant this with respect, certainly, to any opinions they would have about particular policies or the particular value of policies or the coverage dates of policies or anything along those lines.").

The Debtor's Brief relies on Mr. Bardos's testimony, but Mr. Bardos testified only that the Debtor believed the transferred contractual rights "have potentially significant value" to Survivors. June 25, 2026 Tr. at 53:3–10. The Court characterized that as establishing a "good faith belief" sufficient for a plan proponent to "rely on the possibility of that asset as a benefit to creditors." *Id.* at 47:14–19. The Court made clear that whether insurance existed, what it covered, and in what amount could not be established through Mr. Bardos or otherwise addressed at the confirmation hearing. *Id*. at 42:25–43:24.

Nor can the Debtor supply the missing valuation evidence by pointing to a single prepetition payment. For example, Debtor's reference to a $3.5 million prepetition settlement is equally unavailing. That settlement concerned a 2015 claim arising from alleged abuse after 2005, not a CVA claim. Further, the payment did not come from a Non-Settling Insurer; rather, $3 million of it represented Catholic Mutual's molestation charge limit—*i.e.*, the Debtor funded the payment through its arrangement with Catholic Mutual.

[9] The same is true regarding the Committee's experts. The Pacific Insurers and LMI separately moved to exclude insurance testimony from Paul Shields and Randi Rosen. *See* Dkt. 3080 *(Pacific Insurers' and LMI's Mot. in Limine Regarding Certain Expert Testimony of the Official Committee of Unsecured Creditors on Insuranc*e) at 1–2. Mr. Shields confirmed that he had not reviewed the insurance policies and was not offering an opinion on insurance coverage. *Id.* at 2–3, 5–7 (citing Shields Dep. Tr. at 81:20–24, 82:4–8, 82:24–25). Ms. Rosen likewise confirmed that she had not reviewed the policies and was not offering an insurance opinion. *Id.* at 3–4, 6–8 (citing Rosen Dep. Tr. at 21:23–22:7, 61:22–62:3). The Committee's third expert was subject to a separate stipulation and order providing that her report and testimony would not be introduced or admitted against the Insurers, including to establish claim values for coverage purposes. *Id.* at 2 (citing Dkts. 2995, 3005).

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 23 of 25

Nor does judicial estoppel apply here. That doctrine applies only when a party takes a position clearly inconsistent with an earlier position, *succeeded* in persuading a court to accept the earlier position, and would derive an unfair advantage from the inconsistency. *See New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001); *Hamilton v. State Farm Fire & Cas. Co*., 270 F.3d 778, 782–83 (9th Cir. 2001). The Debtor cannot identify a ruling where it prevailed on a position that the assignment had a particular value—indeed, the Debtor lost that issue when the Court's *in limine* ruling excluded insurance valuation and coverage from the confirmation record. *See* June 12, 2026 Tr. at 92:10–13.

JOINDER

The Pacific Insurers join in the arguments set forth in the post-trial reply briefs submitted by the Westport Insurance Corporation, Travelers Casualty & Surety Company, Continental Casualty Company, and the London Market Insurers.

CONCLUSION

The Plan cannot be confirmed as written, because it leaves the insured party's continuing obligation unallocated, channels contribution and reimbursement claims to a Trust whose governing documents prohibit payment of those claims, defers discharge in a manner the Bankruptcy Code does not authorize, and extinguishes inter-insurer rights without consent in violation of *Purdue Pharma*. The Debtor's Brief leaves most of the Pacific Insurers' pre-hearing objections unanswered and instead relies on the assertion that these disputes belong in another forum, even as the Plan extinguishes the claims it purports to preserve.

The Objecting Insurers proposed language that would cure these defects, but the Debtor has to date refused to engage. The Court should deny confirmation unless the Plan is modified to: (1) clearly allocate the insured's obligations between the Trust and the Reorganized Debtor; (2) remove or correct the deferred discharge; (3) remove the non-consensual injunction of inter-insurer claims; and (4) provide enforceable remedies for contribution and reimbursement.

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 24 of 25

Dated: August 19, 2026

By: */s/ Tancred V. Schiavoni*

TANCRED V. SCHIAVONI (*pro hac vice*)
O'MELVENY & MYERS LLP
1301 Avenue of the Americas, Suite 1700
New York, NY 10019
Telephone: (212) 326-2000
Facsimile: (212) 408-2419
Email: tschiavoni@omm.com

ALEXANDRA J. WOLTER (S.B. #317951)
400 South Hope Street, Suite 1900
Los Angeles, CA 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Email: awolter@omm.com

HANNAH V. L. GEORGE (*pro hac vice*)
1625 Eye Street, NW
Washington, DC 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
Email: hgeorge@omm.com

Attorneys for
Pacific Indemnity Company,
Century Indemnity Company as successor to
CCC Insurance Company as successor to
Insurance Company of North America,
Pacific Employers Insurance Company, and
Westchester Fire Insurance Company

Case: 23-40523 Doc# 3454 Filed: 08/19/26 Entered: 08/19/26 20:43:22 Page 25 of 25