UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT NEW YORK
----------X

In re:

THE CHRISTIAN BROTHERS' INSTITUTE, *et al.*, Case No. 11-22820 (RDD)

Debtors. Chapter 11

----------X

MEMORANDUM OF LAW (I) IN SUPPORT OF CONFIRMATION OF THE DEBTORS' AND COMMITTEE'S FIRST AMENDED JOINT PLAN OF REORGANIZATION AND (II) IN REPLY TO VARIOUS OBJECTIONS FILED BY INSURERS, UNIMPAIRED CREDITORS AND THE CORPORATION OF THE CATHOLIC ARCHBISHOP OF SEATTLE

The Christian Brothers' Institute and The Christian Brothers of Ireland Inc., the debtors and debtors-in-possession (the "Debtors"), through their undersigned counsel, respectfully submit this memorandum of law in support of the issuance and entry of an order pursuant to section 1129 of the Bankruptcy Code, confirming the Debtors' and Committee's first amended joint plan of reorganization, dated December 6, 2013 (the "Plan"). As will be demonstrated below and in the accompanying affidavit of Kevin Griffith (the "Griffith Affidavit" or "Griff Aff."), as well as the certification of ballots required by the local bankruptcy rules, all of the confirmation requirements set forth in section 1129 of the Bankruptcy Code have been satisfied and consequently, the Court should confirm the Plan.

PROCEDURAL BACKGROUND

By order, dated December 10, 2013 (the "Disclosure Statement Order"), this Court approved the first amended joint disclosure statement, dated December 6, 2013 (the "Disclosure Statement") as containing "adequate information" as that term is defined in §1125 of the Bankruptcy Code and authorized the Debtor to solicit for acceptances or rejections of the Plan by sending the Disclosure Statement and Plan with an appropriate ballot to all creditors and other parties-in-interest. The Court further scheduled a hearing to consider confirmation of the Plan for January 9, 2014. The

Debtors have complied with the Disclosure Statement Order and mailed the solicitation package as well as other notices required by the Disclosure Statement Order to approximately 600 creditors and parties-in-interest. The Plan is the result of a collaborative effort between the Debtors, the Committee, and Providence Washington Insurance Company ("PW"). The Debtors, the Committee, and PW were involved in numerous plan mediation sessions and settlement conferences under the supervision of the Honorable Elizabeth S. Stong, United States Bankruptcy Judge for the Eastern District of New York.

The plan mediation involved numerous issues, including, without limitation, the following issues: (i) the estimated monetary value of the sexual abuse claims, taking into consideration a variety of factors, including numerous state statutes of limitation; (ii) insurance coverage issues; (iii) arriving at a fair process to deal with numerous claims filed by Canadian abuse survivors, in view of the winding down of Christian Brothers of Ireland in Canada ("CBIC") and the distributions received in the CBIC winding down by certain Canadian claimants who also filed claims in the Debtors' cases; (iv) Participating Party issues, including addressing the significant retirement and support claims asserted by the Debtors' brothers; and (v) addressing a means by which the Plan would not impact the rights of abuse survivors to pursue claims against joint tortfeasors and the like.

Consistent with §1122 of the Bankruptcy Code, the Plan classifies all Claims[1] into ten (10) Classes, four of which are unimpaired and deemed to have accepted the Plan; two of which are deemed to have rejected the Plan; and four of which are entitled to vote for or against the Plan.

Under the terms of the Plan each of Classes 4, 5, 6 and 8 (the "Voting Classes") are impaired under section 1124 of the Bankruptcy Code and, accordingly, are entitled to vote for or against the Plan. As such, the Debtors solicited acceptances or rejections of the Plan from the holders of Claims in the Voting Classes. As set forth in the certification of ballots submitted by the

[1] All capitalized terms not defined herein have the meaning ascribed to such terms in the Plan.

Claims Agent in compliance with Local Bankruptcy Rule 3018-1, each of the Voting Classes other than Classes 5 and 6, have accepted the Plan by the requisite statutory majorities in accordance with section 1126 of the Bankruptcy Code. In fact, the Voting Classes, which actually cast ballots overwhelmingly voted in favor of the Plan.[2]

In the event that the holders of Claims in Classes 9 and 10 which are deemed to have rejected the Plan, pursuant to section 1126(g) of the Bankruptcy Code notwithstanding such Classes' support or non-objection to the Plan, the Debtors intend to confirm the Plan pursuant to section 1129(b) of the Bankruptcy Code. Similarly, the Debtors intend to utilize section 1129(b) to confirm the Plan with respect to Classes 5 and 6, which Classes did not cast a single ballot for or against the Plan.

Section 1129(b) of the Bankruptcy Code provides that the Plan can be confirmed notwithstanding the fact that an impaired class has failed to accept the Plan and thus, section 1129(a)(8) of the Bankruptcy Code has not been satisfied. Section 1129(b)(1) of the Bankruptcy Code states that if all of the applicable requirements of section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8) are satisfied, the court shall confirm the Plan if such Plan does not discriminate unfairly and is "fair and equitable" with respect to the Class which has rejected the Plan or which is deemed to have rejected the Plan.

The Notice mailed to all Creditors' with the Disclosure Statement Order further provided that objections to confirmation of the Plan were to be filed on or before January 3, 2013. The following objections were filed to confirmation of the Plan: (i) objection of Pacific Indemnity Company ("Pacific") (ECF Doc. No. 630), (ii) joinder of Interstate Fire & Casualty Company to objection of Pacific (ECF Doc. No. 632), (iii) joinder of Maryland Casualty Company to objection of Pacific (ECF Doc. No. 638), (iv) joinder of Hanover Insurance Company and Massachusetts Bay Insurance Company to objection of Pacific (ECF Doc. No. 640), (v) limited objection of Aetna Inc.

[2] Not a single Class 4 Sexual Abuse Claim voted against the Plan. Class 5 which consists of Fraud Claims only contained 5 Claimholders. No ballots were cast by Class 5 Claimholders. Class 6 which consists of Physical Abuse Claims contained approximately 5 Claimholders. No ballots were cast by Class 6 Claimholders.

and certain affiliates (ECF Doc. No. 635), (vi) objection of Canandaigua National Bank and Trust (ECF Doc. No. 634), and (vii) objection of the Corporation of the Catholic Archbishop of Seattle (ECF Doc. No. 637).

STATEMENT OF FACTS

The Debtors refer this Court to the Griffith Affidavit and the Certification of Ballots, which are incorporated herein by reference, for the recitation of the pertinent facts.

ARGUMENT

Applicable case law dictates that, in considering confirmation of a plan of reorganization, a court should be guided by two important considerations. First, courts have an independent duty to ensure that a plan of reorganization satisfies each of the requirements of section 1129 of the Bankruptcy Code. See, e.g., Williams v. Hibernia National Bank (In re Williams), 850 F.2d 250, 253 (5th Cir. 1988); In re 8315 Fourth Ave. Corp., 172 B.R. 725 (Bankr. E.D.N.Y. 1994). Second, creditor democracy is integral to a chapter 11 case and should be afforded substantial deference in the absence of a clear impediment to plan confirmation. See, Matter of Mother Hubbard, Inc., 152 B.R. 189, 195 n.14 (Bankr. W.D. Mich. 1993). In a related context, the United States Supreme Court has emphasized that creditors should be permitted to decide what plan treatment is in their best interest. See, e.g., Norwest Bank Worthington v. Ahlers, 485 U.S. 197 (1988).

As set forth below, the Plan satisfies each of the requirements for confirmation under the Bankruptcy Code, and notwithstanding the limited objections filed by the Debtors' liability insurers and unimpaired creditors, the Court should confirm the Plan. In addition, as the certification of ballots demonstrates, each of the Voting Classes who actually cast ballots by overwhelming majorities voted to accept the Plan.

I. The Plan Satisfies the Requirements of Section 1129(a)(1) of the Bankruptcy Code

Under section 1129(a)(1) of the Bankruptcy Code, a plan must "comply with the

applicable provisions of the [Bankruptcy Code]".

The legislative history of section 1129(a)(1) explains that this provision refers to the provisions of sections 1122 and 1123 of the Bankruptcy Code governing the classification of claims and the contents of a plan. H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977). In re Johns-Manville Corp., 68 B.R. 618, 629 (Bankr. S.D.N.Y. 1986), aff'd in part, rev'd in part, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom; Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988). As demonstrated below, the Plan complies with the requirements of both sections 1122 and 1123 of the Bankruptcy Code.

A. The Plan Satisfies the Classification Requirements of Section 1122(a)

Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class if such claim or interest is substantially similar to the other claims or interest of such class. Under section 1122(a), the relevant inquiry is whether all claims of a class have substantially similar legal rights against the debtor. A plan proponent is afforded significant flexibility in classifying claims under section 1122(a) if there is a reasonable basis for the classification scheme and if all claims within a particular class are substantially similar. See, e.g., In re Chateaugay Corp., 89 F.3d 942, 949-950 (2d Cir. 1996). Courts have also held that the Bankruptcy Code prohibits the placement of dissimilar claims in a single class. Section 1122 of the Bankruptcy Code does not require a plan proponent to place all claims which share similar attributes in a single class if a reasonable basis exists for separate classification. See, e.g., In re Jersey City Medical Center, 817 F.2d 1055, 1060 (3rd Cir. 1987); In re Boston Post Road, Ltd., Partnership, 21 F.3d 477, 483 (2d Cir. 1994), cert. denied, 513 U.S. 109, 115 S.Ct. 897 (1995); In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc., 149 B.R. 306 (Bankr. E.D.N.Y. 1992).

Under the Plan, the classification scheme is reasonable and necessary to implement the Plan. All Claims within each Class are substantially similar to the other Claims. Griff Aff. ¶10. Specifically, the Class 4 sexual abuse claims while unsecured, are substantially different in nature

than ordinary unsecured claims classified in Class 8 of the Plan, Class 5 Fraud Claims (as these Claimholders have already obtained monies on account of their injuries), and Class 6 Physical Abuse Claims (which Claims are clearly barred by statute of limitations and only receiving $500 under the Plan).

Accordingly, the Plan satisfies section 1122(a) of the Bankruptcy Code.

B. The Plan Satisfies Each of the Requirements Contained in Sections 1123(a)(1)-(7) of the Bankruptcy Code

Section 1123(a) of the Bankruptcy Code contains eight requirements that must be included in every chapter 11 plan. The Plan fully complies with each such requirement.[3]

1. Section 1123(a)(1)

Section 1123(a)(1) of the Bankruptcy Code requires that a Plan designate classes of claims, other than claims of a kind specified in sections 507(a)(2), 507(a)(3) or 507(a)(8) of the Bankruptcy Code.

In accordance with this provision, Section V of the Plan adequately and properly classifies all Claims and accordingly, satisfies the requirements of Section 1123(a)(1) of the Bankruptcy Code. Griff Aff. ¶10.

2. Section 1123(a)(2)

Section 1123(a)(2) of the Bankruptcy Code requires that a Plan specify any class of claims or interests that is not impaired under a plan. In accordance with this provision, Section VI of the Plan identifies Classes 1, 2, 3 and 7 as not being impaired under the Plan.

3. Section 1123(a)(3)

Section 1123(a)(3) of the Bankruptcy Code requires that a Plan "specify the treatment of any class of claims or interests that is impaired under the Plan". In accordance with this provision, Section VII of the Plan specifies that treatment of each impaired Class of Claims.

[3] Section 1123(a)(8) only applies in individual chapter 11 cases and as such is not applicable herein.

Accordingly, the Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

4. Section 1123(a)(4)

Section 1123(a)(4) of the Bankruptcy Code requires a Plan to provide the same treatment for each claim or interest of a particular class, unless the holder of the claim or interest agrees to less favorable treatment of such particular claim or interest. With respect to each Class of Claims under the Plan, the Plan provides the same treatment for each Claim in such Class. Griff Aff. ¶10. Accordingly, the Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code.

5. Section 1123(a)(5)

Section 1123(a)(5) of the Bankruptcy Code requires a Plan to provide adequate means for the implementation of the Plan. Sections IX, X, and XI of the Plan provide adequate means for implementation of the Plan. Griff Aff. ¶10. Specifically, the Plan creates a trust to pay sexual abuse claims and provides for an allocation protocol to distribute monies that have been contributed to the Trust. In addition, the Plan provides that the Debtors' interests under various liability insurance policies are assigned to the Trust and provides a mechanism to preserve the benefit of the insurance policies. The Plan also contains various non-monetary commitments which are designed to assist in the healing process and to further reduce the likelihood of sexual abuse in the future.

Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

6. Section 1123(a)(6)

Section 1123(a)(6) of the Bankruptcy Code provides that a Plan shall "provide for the inclusion in the charter of the debtor. . . of a provision prohibiting the issuance of non-voting equity securities". As set forth in the Griffith Affidavit, this section does not apply as the Debtors' are not-for-profit corporations which do not have non-voting equity securities. Accordingly, the requirements of section 1123(a)(6) of the Bankruptcy Code have been satisfied by the Plan.

7. Section 1123(a)(7)

Section 1123(a)(7) of the Bankruptcy Code provides that a chapter 11 plan shall:

> "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director or trustee".

In accordance with section 1123(a)(7), the Plan provides that the Debtors' trustees shall continue in their present form after the Effective Date. In addition, Section XVII of the Plan also contains several non-monetary commitments which will further ensure that sexual abuse will not occur in the future or if does occur it will be dealt with in an appropriate manner. The Debtors' submit that such provisions comport with the interest of creditors as well as with public policy and, accordingly, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

C. The Assumption and Rejection of Executory Contracts and Unexpired Lease Provided for Under the Plan is Authorized by Section 1123(b)(2) and Section 365 of the Bankruptcy Code

Section 1123(b)(2) of the Bankruptcy Code provides:

Subject to subsection (a) of this section, a plan may --

* * *

(2) subject to section 365 of this title, provide for the assumption [or] rejection ... of any executory contract or unexpired lease of the debtor not previously rejected under such section . . . .

Under Section 365 of the Bankruptcy Code, a debtor may assume an executory contract or unexpired lease if: (i) outstanding defaults under the contract or lease have been cured under section 365(b)(1) of the Bankruptcy Code and (ii) the debtor's decision to assume such executory contract or unexpired lease is supported by a valid business justification. Similarly, the debtor may reject an executory contract or an unexpired lease if the decision to reject is supported by its sound business judgment. See, In re Klein Sleep Prods., Inc., 78 F.3d 18, 25 (2d Cir. 1996); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1089-99 (2d

Cir. 1993), cert. dismissed, 511 U.S. 1026 (1994); Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 42 (2d Cir. 1979); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re RLR Celestial Homes, Inc., 108 B.R. 36, 46 (Bankr. S.D.N.Y. 1989).

In the instant case, the Plan constitutes a motion by the Debtors' to assume, as of the Confirmation Date, all executory contracts and unexpired leases to which the Debtors' are party, except for those executory contracts or unexpired leases that have been expressly rejected on or before the Confirmation Date or are the subject of a pending motion to reject on the Confirmation Date.

The Debtors' decisions regarding the assumption and rejection of the executory contracts and unexpired leases are based on, and are within, the sound business judgment of the Debtors, are necessary to the implementation of the Plan, and are in the best interests of the Debtors', their estates, and their creditors. Accordingly, the requirements of section 1123(b)(2) and section 365 of the Bankruptcy Code have been satisfied.

II. The Plan Satisfies the Requirements of Sections 1129(a)(2)-(13) of the Bankruptcy Code

A. The Plan Satisfies the Requirements of Section 1129(a)(2) of the Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code requires that a plan proponent "comply with the applicable provisions of the Bankruptcy Code". The legislative history of section 1129(a)(2) explains that this provision incorporates the disclosure and solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code. S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978). See, In re Johns-Manville Corp., 68 B.R. at 630; H.R. Rep. No. 595, 95th Cong., 1st Sess. 412 (1977).

The Debtors' as the co-proponents of the Plan, have complied with all of the provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure governing notice, disclosure and solicitation of the Plan.

The Debtors' have filed with the clerk of the bankruptcy court its schedule of assets

and liabilities, and required monthly operating reports in the format promulgated by the United States Trustee. Griff Aff. ¶11. The Debtors' have provided good and sufficient notice of the Confirmation Hearing in accordance with the Disclosure Statement Order. The solicitation of votes from holders of Claims in the Voting Class was made only after the approval of the Disclosure Statement and was made in good faith and in compliance with the applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. The ballots of holders of Claims in the Voting Classes were properly solicited and tabulated.

The Debtors' have complied with all orders of this Court and have fulfilled their obligations and duties owed to creditors. Accordingly, the Debtors' have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code.

B. The Plan Satisfies the Requirements of Section 1129(a)(3) of the Bankruptcy Code

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law". The Second Circuit has construed the good faith provision to require a showing that the "plan was proposed with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected'". Kane v. Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988); In re Best Products Co., 168 B.R. 35, 72 (Bankr. S.D.N.Y. 1994), appeal dismissed, 177 B.R. 791 (S.D.N.Y. 1995), aff'd, 68 F.3d 26 (2d Cir. 1995). Generally, a plan is proposed in good faith "if there is a likelihood that the plan will achieve a result consistent with the standards prescribed under the code". In re Texaco, Inc., 84 B.R. 893, 907 (S.D.N.Y, 1988); In re Cellular Info. System, Inc., 171 B.R. 926 (Bankr. S.D.N.Y. 1994).

The Plan is based upon extensive arms-length negotiations between the Debtors, the Committee, certain of the Debtors' insurers, and other parties-in-interest. The fact that the Plan has been accepted by the holders of Claims in each of the Voting Classes with creditors casting ballots, demonstrates the informed decision of the holders of Claims and that the Plan is in their best interest and maximizes distributions available to them.

Finally, the Plan has been proposed with the legitimate and honest purpose of reorganizing the Debtors' business and providing for a fair resolution of the outstanding sexual abuse claims which will afford the Debtors' the benefit of a discharge and the ability to continue their mission of educating youth consistent with the tenets of the Catholic Church and providing other services to the needy. Accordingly, the Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code.

C. The Plan Satisfies the Requirements of Section 1129(a)(4) of the Bankruptcy Code

Section 1129(a)(4) of the Bankruptcy Code requires that payments for services or for costs and expenses in or in connection with the plan and incident to the case, have either been approved, or are subject to approval, by this Court as reasonable. This section has been construed to require that all payments of professional fees which are made from estate assets be subject to bankruptcy court review and approval as to their reasonableness. See, e.g., In re Johns-Manville Corp., 68 B.R. at 632.

Section IV of the Plan provides for a procedure for this Court to hear and determine all applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the professionals out of or related to this chapter 11 case. Payments to all professionals will be subject to review and approval by this Court upon final application under sections 327, 328, 330, 503(b) or 1103 of the Bankruptcy Code. Accordingly, the Plan complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

D. The Requirements of Section 1129(a)(5) of the Bankruptcy Code Have Been Satisfied

Section 1129(a)(5) of the Bankruptcy Code requires that: (i) the plan proponent disclose the identity and affiliations of the proposed officers and directors of the reorganized debtor or any successor to the original debtor, (ii) the appointment of such officers and directors be consistent with the interests of creditors and equity security holders and with public policy, and (iii) the plan

proponent disclose the identity and compensation of any insiders to be retained or employed by the reorganized debtor.

In accordance with section 1129(a)(5)(A) of the Bankruptcy Code, the Disclosure Statement provides that the Debtors' current boards of trustees will continue to serve after the Effective Date. See Griff Aff. ¶ 14.

E. Section 1129(a)(6) of the Bankruptcy Code is Not Applicable

Section 1129(a)(6) of the Bankruptcy Code requires that any governmental regulatory commission having jurisdiction over the rates changed by the reorganized debtor in the operation of its business approve any rate change provided for in the plan. The Plan does not provide for any changes in the rates that require regulatory approval by any governmental agency. Griff Aff. ¶15.

F. The Plan Satisfies the Requirements of Section 1129(a)(7) of the Bankruptcy Code

Section 1129(a)(7) of the Bankruptcy Code requires that:

"with respect to each impaired class of claims or interests --

(A) each holder of a claim or interest of such class --

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date. . .

Section 1129(a)(7) is commonly known as the "best interest of creditors test". This test concerns individual creditors and equity interest holders rather than classes of claims and equity interests. See, In re Drexel Burnham Lambert Corp., Inc., 138 B.R. 723, 761 (Bankr. S.D.N.Y. 1992).

Under the "best interest of creditors test", this Court must find that, with respect to

each impaired class, each holder of an Allowed Claim in the Class has either accepted the Plan or will receive under the Plan property of a value, as of the Effective Date, that is not less than the amount the holder would receive or retain if the Debtors' were liquidated under chapter 7 of the Bankruptcy Code. See, In re Best Products Co., 168 B.R. at 72; In re Fur Creations by Variale, 188 B.R. 754, 759 (Bankr. S.D.N.Y. 1995).

As demonstrated in the Liquidation Analysis annexed to the Disclosure Statement as Exhibit "C", and as further detailed in ¶ 16 of the Griffith Affidavit, the members of each of Classes 4, 5, 6, 8, 9 and 10 will receive at least as much under the Plan as they would under a chapter 7 liquidation. Accordingly, the Plan satisfies the "best interest of creditors test" under section 1129(a)(7) of the Bankruptcy Code.

G. The Plan Satisfies the Requirements of Section 1129(a)(9) of the Bankruptcy Code

The Plan satisfies the requirements of all subsections of Section 1129(a)(9) of the Bankruptcy Code.

Section 1129(a)(9) states that "except to the extent that a holder of a particular claim has agreed to a different treatment of such claim, the plan provides that . . . ".

With respect to administrative claims (§507(a)(2)), such Claims may not be paid in full on the Effective Date. However, certain professionals have agreed to a payment arrangement with the Reorganized Debtors of the professional fees awarded by this Court. In this regard, Section IV of the Plan provides that each holder of an Administrative Claim shall be paid by the Debtors (a) upon the later of the Effective Date, the date upon which the court enters a final order allowing such administrative claim or (b) upon such other terms as may exist in accordance with the ordinary course of business of the Debtor or (c) as may be agreed between any holder of such Administrative Claim and the Debtors.

With respect to the Claims described in §1129(a)(9)(C) of the Bankruptcy Code (Priority Tax Claims), Article IV of the Plan provides that the holders of such Claims will be paid in

full over on the Effective Date unless otherwise agreed in writing.

H. The Plan Satisfies the Requirements of Section 1129(a)(10) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of a plan by at least one class of impaired claims, "determined without including any acceptance of the plan by any insider". The Plan satisfies Section 1129(a)(10) because class 4 (sexual abuse claims) which does not contain any insiders voted to accept the Plan. Therefore, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

I. The Plan Satisfies the Requirements of Section 1129(a)(11) of the Bankruptcy Code

Section 1129(a)(11) of the Bankruptcy Code requires this Court to find that:

> "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan".

Section 1129(a)(11) of the Bankruptcy Code is often referred to as the "feasibility test". The "feasibility test" requires this Court to make an independent determination as to whether the Plan is workable and has a reasonable likelihood of success. See, In re Woodmere Invs. Ltd., Partnership, 178 B.R. 346, 361 (Bankr. S.D.N.Y. 1995); In re 8315 Fourth Ave. Corp., 172 B.R. 725, 734-735 (Bankr. E.D.N.Y. 1994). As noted in Collier, a guarantee of success is not required:

> "Basically, feasibility involves the question of the emergence of the reorganized debtor in a solvent condition with reasonable prospects of financial stability and success. It is not necessary that success be guaranteed, but only that the plan present a workable scheme of organization and operation from which there may be a reasonable expectation of success."

5.L. King, Collier on Bankruptcy ¶1129.02, at 1129-61.11 (15th ed. 1996). See, also, In re U.S. Truck Co., 47 B.R. 932, 944 (E.D. Mich. 1985), aff'd, 800 F.2d 581 (6th Cir. 1986) ("feasibility does

not, nor can it require the certainty that a reorganized company will succeed").

The principal element of feasibility is whether there exists a reasonable probability that the provisions of the plan can be performed. The court in In re Clarkson, 767 F.2d 417 (8th Cir. 1985), stated:

> "The Second Circuit has declared that the feasibility test contemplates 'the probability of actual performance of the provisions of the plan'. . . The test is whether the things which are to be done after confirmation can be done as a practical matter. . .

Id. at 420 (citing Chase Manhattan Mortgage and Realty Trust v. Bergman (In re Bergman), 585 F.2d 1171, 1179 (2d Cir. 1978)). See, also, In re Greene, 57 B.R. 272, 278 (Bankr. S.D.N.Y. 1986).

To establish the feasibility of a reorganization plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan and maintain operations according to the plan, and such projections cannot be speculative, conjectural or unrealistic. Pan Am Corp. v. Delta Air, Inc., 175 B.R. 438, 508 (S.D.N.Y. 1994); In re Ridgewood Apartments of DeKalb County, Ltd., 183 B.R. 784 (Bankr. S.D. Ohio 1995); In re Leslie Fay Companies, Inc., 207 B.R. 764 (Bankr. S.D.N.Y. 1997). However, a plan proponent asserting plan feasibility need only demonstrate that there exists a reasonable probability that the plan provisions can be performed. In re Cellular Info. Systems, Inc., 171 B.R. at 945 (citing In re Drexel Burnham Lambert Group, Inc., 138 B.R. 723, 762 (Bankr. S.D.N.Y. 1992). Several courts have held that the "feasibility test" requires a bankruptcy court to find that it is more likely than not that the plan provisions can be performed. See, In re Consul Restaurant Corp., 146 B.R. 979, 984 (Bankr. D. Minn. 1992).

Here, Plan feasibility is easily satisfied by the fact that the Debtors' have on hand in their attorneys escrow account the monies required to fund their portion of the monies to be contributed to the Trust. Griff Aff. ¶ 20. In addition, the Debtors' have resources available to pay the remainder of the funds necessary to satisfy any and all professional fees awarded by this Court which have not been agreed to be deferred. See, Griff Aff. ¶ 18. In short, all of the transactions

necessary for the Plan to go effective are events which are capable of being satisfied without any contingencies, and all of which are events which can take place on the Effective Date or as otherwise required by the Plan, such as with respect to the sale of certain real estate.

J. The Plan Satisfies the Requirements of Section 1129(a)(12) of the Bankruptcy Code

Section 1129(a)(12) of the Bankruptcy Code requires that either all fees payable under 28 U.S.C. §1930 have been paid or that the plan provides for the payment of all such fees on the effective date of the Plan. As will be demonstrated at the confirmation hearing, all fees have been paid and will continue to be paid until a final decree is issued. Accordingly, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

K. Section 1129(a)(13) of the Bankruptcy Code is Not Applicable

Section 1129(a)(13) of the Bankruptcy Code provides that a plan shall provide for the "continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code...for the duration of the period the debtor has obligated itself to provide such benefits".

As stated in the Griffith Affidavit, the Debtor does not and did not immediately prior to the commencement of this proceeding provide any retiree benefits, as such term is defined in section 1114 of the Bankruptcy Code. Griff Aff. ¶ 23. However, the Debtors note that the Plan does provide in Section 6.4 that the Community Support Corporation will assume all liability for the support of the Debtors' brothers after the Effective Date. Accordingly, the provisions of section 1129(a)(13) of the Bankruptcy Code are not applicable to the Plan or have been satisfied.

III. The Plan Satisfies the Requirements of Sections 1129(b) of the Bankruptcy Code

Section 1129(b) of the Bankruptcy Code sets forth certain requirements with respect

to confirmation of a plan of reorganization in the absence of unanimous class acceptance. Section 1129(b) is often referred to as "cram down".

Section 1129(b)(1) of the Bankruptcy Code provides that:

> "if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that it impaired under, and has not accepted, the plan.

As set forth above, the Plan satisfies each of the applicable requirements of section 1129(a). However, because classes 9 and 10 of the Plan are not receiving or retaining any property on account of their Claims or Interests, they are deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code. Even though classes 9 and 10 do not oppose confirmation, section 1129(b) may very well be applicable. See, In re Waterways Barge Partnership, 104 B.R. 776 (Bankr. N.D. Miss. 1989); In re Higgins Slacks Co., 178 B.R. 853 (Bankr. N.D. Ala. 1995). However, as set forth below, the Plan does not discriminate unfairly and is fair and equitable to classes 9 and 10. Similarly, since no creditors holding Claims in Classes 5 or 6 cast ballots for or against the Plan, confirmation under section 1129(b) may be necessary with respect to these Classes as well.

The Plan is fair and equitable with respect to Class 9 and 10 and does not discriminate unfairly against such Classes of Claims. Class 9 consists of penalty claims such as claims for punitive damages related to sexual abuse claims. At best, these claims constitute unsecured claims. Similarly, Class 10 consists of contingent reimbursement and/or indemnity claims which are disallowed as a matter of law under Section 502(e)(1)(B) of the Bankruptcy Code. Similarly, the Plan is fair and equitable with respect to Classes 5 and 6 which consists of holders of unsecured Claims. For the purpose of section 1129(b)(2) of the Bankruptcy Code, a plan is "fair and equitable" if:

(B) with respect to a Class of unsecured Claims - -

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property…

There is no class junior to unsecured creditors under the Plan. The Debtors are New York and Illinois not-for-profit corporations which have no shareholders. In Matter of Wabash Valley Power Association, 72 F.3d 1305 (7th Cir. 1995), cert. denied, 519 U.S. 965, 136 L. Ed. 2d 305, 117 S. Ct. 389 (1996), the Seventh Circuit held that the absolute priority rule is not applicable to nonprofit organizations because chapter 11 is "primarily designed" for profit seeking enterprises. In *Wabash*, the Seventh Circuit cited with approval In re Whittaker Memorial Hospital Ass'n., 149 B.R. 812 (Bankr. E.D. Va. 1993), for the proposition that the retention and control of a not-for-profit hospital by the same individuals who controlled it prior to bankruptcy did not violate the absolute priority rule. Similarly here, the fact that the Debtors' trustees will continue in management and control after confirmation of the Plan, does not amount to a junior interest retaining any property as the Debtors' trustees have no property interest in the Reorganized Debtors. As such, the Plan is fair and equitable with respect to Classes 5, 6, 9, and 10. The Plan does not unfairly discriminate against Classes 5, 6, 9, and 10 as there is a rational justification for their treatment under the Plan and such Classes have not voiced an objection to their treatment under the Plan. See, In re Sacred Heart Hospital of Norristown, 182 B.R. 413, 422 (Bankr. E.D. Pa. 1995).

In summary, the Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code because it (i) satisfies each of the provisions of section 1129(a), other than arguably section 1129(a)(8), (ii) does not unfairly discriminate against the holders of Claims in Classes 5, 6, 9, and 10, and (iii) is fair and equitable with respect to holders of Claims in Classes 5, 6, 9, and 10.

IV. The Plan Satisfies the Requirements of Sections 1129(d) of the Bankruptcy Code

Section 1129(d) of the Bankruptcy Code provides as follows:

> Notwithstanding any other provisions of this Section, on request of a party-in-interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 (15 U.S.C. §778). In any hearing under this subsection, the governmental unit has the burden of proof on this issue of avoidance.

In compliance with section 1129(d), the principal purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of section 5 of the Securities Act of 1933, as amended, and there has been no objection filed by any governmental unit alleging such avoidance. Accordingly, the requirements of section 1129(d) of the Bankruptcy Code have been satisfied.

V. The Third-Party Injunctive Relief Granted in Section XV of the Plan Comports with Case Law in This Circuit and Should be Approved as an Integral Component of the Plan

Sections 15.7 through 15.13 of the Plan contain various injunctions which prohibit various non-debtor third parties from taking any action to recover on their claims against other non-debtor third parties, such as Settling Insurers and/or Participating Parties. In the Second Circuit, a bankruptcy court in "unusual circumstances" may enjoin a creditor from suing a third party, provided the injunction plays an important part of the debtor's reorganization plan. In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2nd Cir. 2005). In *Metromedia*, the Second Circuit observed that non-debtor releases are proper only in "rare cases." Here, the Debtors submit that these cases are precisely the type of rare cases the Second Circuit was referring to in *Metromedia*. Although the Second Circuit indicated that there is no one factor or prongs for a bankruptcy court to consider in determining whether non-debtor releases are appropriate, the Court did provide certain examples such as (i) when the estate receives substantial consideration; (ii) the enjoined claims were channeled to a settlement fund rather than extinguished; and (iii) creditors voted in favor of the non-debtor

releases. The Second Circuit also specifically cited with approval the Dow Corning bankruptcy case which involved mass torts, which is analogous to the Debtors' chapter 11 cases.

Under the relevant provisions in Section XV of the Plan, the potential third-party claims are being channeled to the Trust. In addition, the Settling Insurers (at this time there is only one approved Settling Insurer) are providing substantial consideration. PW is paying $3.2 million which is approximately twenty percent of the initial cash contribution to the Trust. Additionally, the ballots sent to creditors specifically contained the language granting the injunctive relief in favor of the Settling Insurers and the Participating Parties. As Judge Gerber held in Adelphi Communications Corp., 368 B.R. 140, 268 (Bankr. S.D.N.Y. 2007), citing to *Metromedia* as well as the Seventh Circuit's decision in In re Specialty Equipment Co., 3 F.3d 1043, 1047 (7th Cir. 1993), a vote in favor of a plan can constitute consent to the non-debtor releases. See also, In re Calpine Corp., Case No. 05-60200, 2007 WL 4565223, at *10 (Bankr. S.D.N.Y. Dec. 19, 2007) (holders of claims…who (i) voted in favor of the plan or (ii) abstained from voting receive adequate notice of the third party releases in the plan and therefore were bound by such releases, absent an affirmative election to opt out of such releases). Finally, courts in this district have approved non-debtor releases where such releases are a "critical component" of a settlement embodied in a plan. See, In re Spiegel Inc., Case No. 03-11540 (BRL) 2006 WL 2577825 *7-8 (Bankr. S.D.N.Y. Aug. 16, 2006)

The Debtors submit that the narrowly tailored third-party injunctive relief provided in Section XV of the Plan is consistent with the above cited case law and should be approved. The claims of third parties against Settling Insurers and Participating Parties are channeled to the Trust. Substantial consideration has been provided which absent a settlement under the Plan would not have been achievable. Creditors who are affected by the third-party releases, overwhelmingly voted in favor of the Plan. In fact, not one single vote was received rejecting the Plan. Finally, other courts in mass tort bankruptcy cases have granted similar relief to insurers and/or other third parties which are necessary for a global resolution of significant liabilities against debtors and co-liable parties. See, In re Continental Airlines, 203 F.3d at 212-13 (3rd Cir. 2000).

VI. Debtors' Reply To Plan Confirmation Objections

A. Pacific Indemnity Company (Docket No. 630)("Pacific Objection"): Pacific objects to the Plan on the basis that the Plan is not insurance neutral, the Plan impermissibly assigns certain insurance rights to the Trust and the Court does not have the Constitutional authority to rule on the proposed assignment because there is no "case or controversy" to adjudicate and the Court is constrained by Stern v. Marshall, 541 U.S. ___, 131 S.Ct. 2594 (2011) ("Stern") from entering a final order confirming the Plan which approves the assignment of Pacific's insurance policies to the Trust. Several other insurance carriers (Interstate Fire & Casualty Company (Docket No. 632), Maryland Casualty Company (Docket No. 638) and Hanover Insurance Company and Massachusetts Bay Insurance Company (Docket No. 640))(collectively, the "Other Carriers") have filed objections that join in the Pacific Objection. None of the Other Carriers have submitted any points or authorities to supplement those submitted by Pacific. Therefore, the Debtors response to Pacific's Objection is applicable to the objections of the Other Carriers.

i. Jurisdiction: This Court has jurisdiction to determine whether the insurance assignment provisions of the Plan (Sections 11.1 and 11.2) are valid and do not defeat or impair the Insurance Coverage. A "case or controversy" exists because the Plan seeks the Court's determination that the assignment provisions do not defeat or impair the Insurance Coverage and Pacific contends that they are invalid and do defeat or impair the Insurance Coverage. See Pacific Objection, IV.D ("The Proposed Assignment Violates Both Non-Bankruptcy and Bankruptcy Law"). Pacific makes the conclusory statement that there is no case or controversy but does not provide any authority for why Plan Sections 11.1, 11.2, the Pacific Objection and the Other Carriers' objections do not constitute a controversy.

Stern does not limit this Court's jurisdiction to determine the validity of the insurance assignments because the Court has specific power under Sections 1123(a)(5)(B) and 1123(b)(3)(B) to

transfer the Debtors' property (e.g. the insurance policies) and to appoint the Trustee as a representative of the estate, all in connection with confirmation of a plan. Confirmation of a plan of reorganization is a core, if not primary, goal of Chapter 11 and the tools that enable a debtor to propose a meaningful plan include assertion of the transfer and appointment powers ensconced in the Bankruptcy Code. The transfer and assignment power therefore involve a 'public right" that this Court can adjudicate, even in the context of private contractual rights. In re Refco Inc., 461 B.R. 181, 187 -188 (Bankr. S.D.N.Y. 2011)(Stern does not preclude a final bankruptcy court judgment relying on authority that flows from a federal scheme and that enables bankruptcy judge to manage bankruptcy process, including confirmation of plan). In In re Federal-Mogul Global Inc., 684 F.3d 355, 374 (3rd Cir. 2012), the Third Circuit held that the word "notwithstanding" in Section 1123(a) of the Bankruptcy Code showed a clear congressional intent to allow the transfer of rights under private contracts. The Court stated:

> "The plain language of § 1123(a) evinces clear congressional intent for a preemptive scope that includes the transactions listed under § 1123(a)(5) as 'adequate means' for the plan's implementation, including the transfer of property authorized by 1123(a)(5)(B). The plain language also reaches private contracts enforced by state common law, and overcomes the presumption against preemption."

684 F.3d 374

The Third Circuit also touched upon certain policy considerations that further support the assignment of insurance policies to a trust as part of the settlement of a mass tort bankruptcy. Specifically, the Court noted that assignment to a personal injury trust did not impose a greater risk on insurers than that which they had originally bargained for. As noted below, the Plan Proponents have modified Sections 11.1 and 11.2 of the Plan to add additional limits on the scope of the assignment of insurance obligations. The Pacific Objection fails to even cite or discuss the Third

Circuit's exhaustive opinion in Federal Mogul which was decided after Stern.

Pacific seems to confuse the issue of the validity of the insurance assignments, which clearly flow from a federal regulatory scheme, e.g. the Bankruptcy Code, and the resolution of the pending coverage action. This Court is not being asked to make **any** determination on coverage as part of the Plan confirmation process, rather, this Court is just authorizing and approving the assignment of whatever rights the Debtors have under the insurance policies as an adequate means for the Plan's implementation as required under Section 1123(a) and specifically authorized pursuant to Section 1123(a)(5)(B). The coverage action will proceed subject to all of the defenses raised and reserved by Pacific, as well as the Other Carriers, such as Hanover, which has commenced an adversary proceeding seeking to deny coverage.

ii. Debtors' Assignment of Insurance Rights to the Trust Without Insurer Consent is Permissible Pursuant to Both Non-Bankruptcy and Bankruptcy Law, State Law in Each Applicable State Allows the Assignment of Insurance Rights For Losses that Have Occurred Prior to the Assignment

Pacific contends that the Plan is unconfirmable because it provides for an assignment of the Debtors' rights and obligations under its Insurance Policies to the Trust. Pacific's objections to the assignment and appointment of the Trustee as Estate Representative are without merit.

Although Pacific concedes that "[s]ome cases do hold that the assignment of insurance policy benefits for losses that have accrued prior to the time of the transfer is permissible under non-bankruptcy law," its concession understates the extent to which virtually all states allow such assignments without insurer consent. According to Couch on Insurance:

> Although there is some authority to the contrary [citing only Tyler v. National *Life & Accident Ins.* Co., 48 Ga. App. 338, 172 S.E. 747 (1934)], the great majority of courts adhere to the rule that general stipulations in policies prohibiting assignments of the policy, except with the consent of the insurer, apply only to assignments before loss, and do not prevent an assignment after

> loss, for the obvious reason that the clause by its own terms ordinarily prohibits merely the assignment of the policy, as distinguished from a claim arising under the policy, and the assignment before loss involves a transfer of a contractual relationship while the assignment after loss is the transfer of a right to a money claim. The purpose of a no assignment clause is to protect the insurer from increased liability, and after events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity.

§35.8, Couch on Insurance, 3rd Edition (2013)

It is noteworthy that Pacific fails to cite to any case applying state law that it asserts would be applicable to the Insurance Policies at issue in the Pacific Objection, which does not adhere to the above rule. Pacific issued insurance policies to Seattle Archdiocese and to the Congregation of Christian Brothers for risks at specified locations in Washington State. Washington State law allows assignments of policy rights for covered events that have already occurred, notwithstanding any policy provision requiring consent for such assignments. The Supreme Court of Washington, in Public Util. Dist. No. 1 v. Int'l Ins. Co., 124 Wn.2d 789, 800-801; 881 P.2d 1020, 1027 (1994), held that:

> The purpose of a no-assignment clause in an insurance contract is to protect the insurer from increased liability. After the events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity. The assignments in this case occurred long after the activities giving rise to liability.
>
> Two Washington appellate court cases support the assertion that assignments after a loss are valid. See, Kiecker v. Pacific Indem. Co., 5 Wn. App 871, 877, 491 P.2d 244 (1971) ("After a loss has occurred and rights under the policy have accrued, an assignment may be made without the consent of the insurer, even though the policy prohibits assignments."); Kagele v. Aetna Life & Cas. Co., 40 Wn. App. 194, 197, 698 P.2d 90 ("It is well established that a claim by an insured against his insurer may be assigned to the injured party."), review denied, 103 Wn.2d 1042 (1985).

Id.

Likewise, Illinois (the location of Debtor CBOI) law allows the assignment of policy rights without insurer consent after a covered loss has occurred:

> Once a covered loss has occurred, the insured's assignment of its right to liability coverage or a defense relating to those losses does not require consent from the insurer because the assignment is essentially the assignment of payment of a claim already accrued, a claim consisting of the right to a defense and indemnification.

Illinois Tool Works, Inc. v. Commerce and Industry Ins. Co., 2011 Ill. App (1st) 093084, 962 N.E. 1042, 1053 (2011).

Pacific concedes that New York (the location of Debtor CBI) law similarly holds "that the assignment of insurance policy benefits for losses that have accrued prior to the time of the transfer is permissible under non-bankruptcy law. See, e.g., Globecon Group, LLC v. Hartford Fire Insurance Co., 434 F.3d 165 (2nd Cir. 2006)."

Pacific Objection at ¶14.

iii. Debtors' Assignment of Certain Limited Obligations to the Trust is Permissible

Pacific also contends that the Plan is unconfirmable because it provides in Section 11.2 for an assignment of Debtors' obligations under its Insurance Policies to the Trust. However, Pacific concedes that the Debtors are not being relieved of their obligations under the policies which concession in itself should be the basis for overruling the objection (Pacific Objection at ¶13). Regardless, in an attempt to reach an amicable resolution, counsel for Pacific, Debtors and the Committee have been negotiating changes to the Plan to address Pacific's concerns. In that regard, Debtors and the Committee have proposed to modify the language of Sections 11.1 and 11.2 to clarify that the only obligations being transferred to the Trust are narrowly limited to those that "are

necessary, if any, to enforce such assigned rights to Insurance Claims and Insurance Recoveries against the Non-Settling Insurers." Moreover, those proposed sections continue to provide, as they did in the First Amended Plan, that the Debtors maintain their responsibility for their obligations under the policies: "provided, however, that the Trust's assumption of such responsibility shall not relieve the Debtors, the Reorganized Debtors or the Participating Parties from any obligation that such entities may have under the Insurance Policies." In addition, Section 11.7 of the First Amended Plan expressly provides that the Reorganized Debtors will be required to meet their obligations pursuant to a defending Non-Settling Insurer's policy's cooperation clause. Section 11.7 provides that Reorganized Debtors will "cooperate, in accordance with the terms of any applicable Insurance Policy, with a Non-Settling Insurer that is providing a defense to such a Claim." Further, Section 11.7 helps to ensure such cooperation by providing that the Trust will pay for "out of pocket costs, including attorneys' fees incurred by the Reorganized Debtors as a consequence of such cooperation."

Pursuant to the amended Sections 11.1 and 11. 2, along with Section 11.7, the Plan provides that the Debtors and Reorganized Debtors maintain responsibility for their obligations under the Insurance Policies. Moreover, because the Plan preserves all of the insurers' defenses to coverage (other than any based on the assignment of insurance rights or appointment of the Trustee to enforce such rights), if those obligations are not met, Insurers maintain all their non-bankruptcy law rights in that regard, which they had prior to the assignment to the Trust.

iv. Even if State Law Prohibited the Plan's Assignment and Appointment of the Trustee as Estate Representative, Sections 541(c) and 1123 Preempt Any Such State Law.

The conclusion that Sections 541(c) and 1123 apply to insurance policies and are preemptive of state law is nearly hornbook law. Pacific does not even address preemption and fails

to inform the Court that the Ninth Circuit has ruled that Pacific's own cited authority, Henkel Corp., v. Hartford Accident & Indemnity Co., 62 P.3d 69 (Cal. 2003), is inapplicable in a bankruptcy context. In re Thorpe Insulation Co., 677 F.3d 869, 889 (9th Cir. 2012). See also, In re Federal-Mogul Global Inc., 684 F.3d 355, 374 (3rd Cir. 2012); In re Combusion Eng'g, Inc., 391 F.3d 190, 219 (3d Cir. 2004); In re St. Clare's Hosp. and Health Center, 934 F.2d 15 (2d Cir. 1991)(insurance policies are property of the estate); In re Tribune Co. Fraudulent Conveyance Litigation, 499 B.R. 310, 319 (S.D.N.Y. 2013)(citing Integrated Solutions, Inc. v. Svc. Support Specialties, Inc., 124 F.3d 487, 493 (3d Cir.1997) for proposition that Congress intended preemption under Sections 541(c) and 1123) and In re Kaiser Aluminum Corp., 343 B.R. 88 (D.Del. 2006)(non-asbestos case).

v. The Plan is Insurance Neutral

Pacific complains that the Plan is not "insurance neutral" and that, therefore, the Plan is not confirmable. As a threshold matter, Pacific cites to no case that holds that a Plan must be insurance neutral in order to be confirmed; its cases merely deal with an insurer's *standing t*o object to a plan. In any event, the Plan is insurance neutral because it imposes no additional obligations on insurers, does not alter any insurance policy, makes no determinations as to insurance coverage, does not purport to bind insurers to any determinations of liability or damages and preserves all of the Non-Settling Insurer's coverage defenses, other than the defense that the assignment of policy rights or the appointment of the Trustee to enforce such rights voids or reduces insurance coverage. As set forth above, it is well established that the enforceability of policy provisions that restrict such rights preempted by bankruptcy law and, thus, do not render the Plan unconfirmable.

Despite claiming that the existing insurance neutrality provision comes up "woefully short" and providing its own proposed terms, Pacific has done little to elucidate the claimed

shortcomings of the existing insurance neutrality provision in the context of the First Amended Plan. However, as Pacific has indicated, Debtors and the Committee have been working with Pacific and certain other insurers' counsel over a period of several weeks to address their concerns about the Plan's insurance neutrality. Debtors and the Committee have explained to Pacific and other insurers' counsel that Pacific's proposed insurance neutrality provisions go beyond insurance neutrality and contain language and provisions that are inconsistent with the Plan. However, as noted, Debtors' and the Committee's counsel have been working together to develop mutually acceptable insurance neutrality language, including lengthy conference calls on January 2nd and 3rd. As a result, the Committee's and Debtors' counsel provided Pacific's and certain other insurers' counsel with revised insurance neutrality provisions and a judgment reduction provision that they believe addressed Pacific's concerns, late on January 3, 2014 and on January 5th. A copy of those revised provisions are attached hereto as **Exhibit A**. If Pacific agrees to the proposed insurance neutrality and judgment reduction provisions then, of course, this part of the Pacific Objection is moot. If Pacific does not agree, the Debtors submit that the proposed insurance neutrality and judgment reduction provisions are more than adequate to meet the threshold of insurance neutrality.

The proposed provisions provide that nothing in the Plan, Confirmation Order or in any Plan Document modifies any of the terms of any Insurance Policy (11.7.1) and preserves all of insurers' defenses to any Insurance Claim, except to the extent that insurers assert a defense based on the assignment of policy rights or the appointment of the Trustee to enforce such rights (11.7.5). As requested by Pacific, the proposed provisions provide that neither the liquidation and payment of claims by the Trust nor the review by the Abuse Claims Reviewer constitute a trial, an adjudication on the merits or evidence of liability or damages in any litigation with Reorganized Debtors or Non-Settling Insurers or constitute a determination of the reasonableness of the amount

of any Abuse Claim, either individually or in the aggregate with other Abuse Claims, in any litigation of Insurance Claims with any Non-Settling Insurers. (11.7.4). The proposed provisions provide that nothing in the Plan, Confirmation Order or in any Plan Document imposes any additional obligations on an insurer and that its obligations are determined in accordance with the policy terms and applicable non-bankruptcy law (11.7.6). Likewise, they do not provide any claimant a right to directly sue an insurer. (11.7.7). Further, the proposed provisions specify that there is no determination that anyone is an insured under any insurance policy or that any insurer owes any duty to defend or indemnify anyone with respect to any Claim (11.7.8). The proposed provisions also preserve the Reorganized Debtors' defenses to any Claim and the right of any defending Non-Settling Insurer to assert such underlying defenses (11.7.9). The proposed revisions also consolidate other provisions of the Plan that preserve the Debtors' insurance rights (11.7.2 and 11.7.3). Finally, the proposed provisions add a judgment reduction provision as Section 11.8. That section provides a judgment reduction mechanism in the event that any insurer obtains a judicial determination or binding arbitration award that, but for the channeling injunction in Section 15.10 of the Plan, it would be entitled to obtain a sum certain from a Settling Insurer as a result of a claim for contribution, subrogation, indemnification, or other similar claim against a Settling Insurer.

In short, the First Amended Plan was already insurance neutral. The proposed insurance neutrality and judgment reduction provisions further ensure that the Plan is insurance neutral.

B. <u>Canandaigua National Bank and Trust</u> (Docket No. 634): Canandaigua National Bank and Trust, a Class 2 secured creditor, objected to the Plan to ensure that the Plan does not impair its right to receive postpetition interest. The Debtors believe that the Plan's treatment of Class 2 creditors addresses this issue because Class 2 creditors are unimpaired.

Nonetheless, the Debtors will include the following provision in the confirmation order: "The Plan does not alter Canandaigua National Bank and Trust's rights regarding payment under the notes, mortgages and other security instruments between the Debtors and Canandaigua National Bank and Trust, including the right to receive post-petition interest."

C. Aetna, Inc. and Certain Affiliated Entities (Docket No. 635): Aetna, Inc. and certain affiliated entities ("Aetna") filed an objection to ensure that the Debtors continue to make payments under the Aetna Agreements and that it may assert post-assumption any overpayment or other claims that may arise under the Aetna Agreements relating to pre-assumption events. The Debtors intend to make the payments due under the Aetna Agreements and the Debtors agree to Aetna's reserved and retained rights. The Debtors will include the following provision in the confirmation order: "The Debtors shall make all payments due and owing to Aetna, Inc. and certain affiliated entities ("Aetna") that are due and payable under those prepetition agreements with Aetna ("Aetna Agreements") and, following assumption of the Aetna Agreements, Aetna retains any overpayment or other claims that may arise under the Aetna Agreements relating to pre-assumption events."

D. The Corporation of The Catholic Archbishop of Seattle (Docket No. 637): The Corporation of The Catholic Archbishop of Seattle ("Seattle AD") (the holder of a claim that is the subject of a pending objection and the holder of a contingent contribution claim that is disallowed by Bankruptcy Code section 502(e)(1)) objected to the Plan on two grounds: First, that the Plan does not comply with applicable provisions of the Bankruptcy Code and second, that the Plan has not been proposed in good faith. Other than citations to the Bankruptcy Code, Seattle AD does not cite a single authority in support of its objection. The offending provision of the Plan is the Debtors' highly negotiated discharge which enables the Abuse Survivors to continue litigation

against the Seattle AD and other joint tortfeasors which may subject them to joint liability for sexual abuse. A negotiated discharge is contemplated by Section 1141(d)(2) which provides that the statutory discharge may be modified by a plan or a plan confirmation order. In the mediation before Judge Stong, the Committee agreed to allow the Debtors to retain certain assets in consideration for the negotiated discharge. Absent this negotiated discharge, the Committee, which consisted entirely of Abuse Survivors (over 300 of whom have voted to accept the Plan) would not have reached a consensual resolution of this case and the Debtors' ability to continue their mission and afford security for their retired and ailing members would have been jeopardized.

A debtor's discharge is for the benefit of the debtor and not for the benefit of third parties. Ordinarily, a party, such as the Seattle AD, lacks standing to assert the rights of a third party such as the Debtors. See, In re Johns-Manville Corp., 68 B.R. 618, 623 (Bankr. S.D.N.Y. 1986) ("[N]o party may successfully prevent the confirmation of a plan by raising the rights of third parties who do not object to confirmation.") Thus, the Seattle AD should not be afforded standing to object to the Debtors' highly negotiated discharge. While the Seattle AD may be in negotiation with the Debtors and Sexual Abuse survivors to resolve its own exposure, the Seattle AD has not cited a single legal authority supporting its assertion that it should be the beneficiary of the consensual resolution of claims between the Debtors and Sexual Abuse survivors. The Court should only be concerned with whether the Debtors' discharge provides the Debtors with sufficient protections to ensure that they will not require further financial reorganization and not be exposed to litigation for abuse which occurred prior to the chapter 11 filings. The Debtors believe the limited carveout from the discharge does not interfere with the Debtors' fresh start.

CONCLUSION

Based upon the foregoing the Debtors submit that the Plan complies with all of the

requirements of section 1129 of the Bankruptcy Code as well as the other applicable provisions of the Bankruptcy Code. Accordingly, the Debtors respectfully requests that the Court overrule the objections filed to confirmation of the Plan, confirm the Plan, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 6, 2014

Respectfully submitted,

Tarter Krinsky & Drogin LLP
Attorneys for The Christian Brothers' Institute and The Christian Brothers of Ireland Inc. Debtors and Debtors-in-Possession

By: /s/ Scott S. Markowitz
Scott S. Markowitz (SSM-0849)
1350 Broadway, 11th Floor
New York, New York 10018
(212) 216-8000

EXHIBIT A

10.12.3 The Bankruptcy Court's jurisdiction to approve an agreement under this Section shall include jurisdiction to determine the adequacy of notice of a motion to appoint a future claims representative and to approve an agreement with the future claims representative.

SECTION XI
INSURANCE MATTERS

11.1 Transfer of Insurance Rights.

On the Effective Date, and without any further action by any party, the Debtors, the Reorganized Debtors, and each of the Participating Parties will be deemed to have assigned to the Trust the Debtors', the Reorganized Debtors', and the Participating Parties' rights to all Insurance Claims and Insurance Recoveries against the Non-Settling Insurers. The foregoing transfer shall be effective to the maximum extent permissible under applicable law and the terms of the Insurance Policies and shall not be construed: (a) as an assignment of the Insurance Policies or (b) to entitle any person or entity to Insurance Coverage other than those persons or entities entitled to such coverage under the terms of the Insurance Policies. The determination of whether the assignment of Insurance Claims provided for in Section 11.1 is valid, and does not defeat or impair the Insurance Coverage shall be made by the Bankruptcy Court at the Confirmation Hearing. If a party in interest fails to timely file an objection to the proposed assignment by the deadline for filing objections to confirmation of this Plan, that party in interest shall be deemed to have irrevocably consented to the assignment and will be forever barred from asserting that the assignment in any way affects the ability of the Trust to pursue Insurance Claims and Insurance Recoveries, or either of them, from the Non-Settling Insurers, and each of them, or Insurance Coverage. In the event that the Bankruptcy Court determines that the assignment of the Insurance Claims and Insurance Recoveries is valid and does not defeat or impair the Insurance Coverage, following the Effective Date, the Trust shall assume responsibility for, and be bound by, ~~all of the~~ only such obligations of the Debtors and Participating Parties under the Insurance Policies as are necessary, if any, to enforce such assigned rights to Insurance Claims and Insurance Recoveries against the Non-Settling Insurers; provided, however, that the Trust's assumption of such responsibility shall not relieve the Debtors, the Reorganized Debtors or the Participating Parties from any obligation that such entities may have under the Insurance Policies. Nothing contained in Section 11.1 shall affect the rights and remedies of a Person or Entity who is not a Participating Party but is a co-insured with the Debtors or is asserting rights under an Insurance Policy.

11.2 Appointment of Trustee as Estate Representative to Enforce Insurance Rights and Obtain Insurance Recoveries.

Pursuant to the provisions of Section 1123(b)(3)(B) of the Bankruptcy Code, the Trustee is hereby appointed as the representative of the Debtors' estate for the purpose of retaining and enforcing the Debtors' and the Debtors' Estates' rights to Insurance ~~Coverage~~Recoveries and for Insurance Claims with respect to the Abuse Claims against the Debtors. All Insurance Recoveries by the Reorganized Debtors and the Participating Parties will be paid to the Trust. The determination of whether the appointment of the Trust as the Debtors' and the Debtors' Estates' representative provided for in Section 11.2 is valid and does not defeat or impair the Insurance Coverage, shall be made by the Bankruptcy Court at the Confirmation Hearing. If a party in interest fails to timely file an objection to the proposed appointment by the deadline for filing

objections to confirmation of this Plan, that party in interest shall be deemed to have irrevocably consented to the appointment and will be forever barred from asserting that the appointment in any way affects the ability of the Trust to pursue Insurance Claims and Insurance Recoveries, or either of them, from the Non-Settling Insurers, and each of them, or Insurance Coverage. In the event that the Bankruptcy Court determines that the appointment is valid and does not defeat or impair the Insurance Coverage, following the Effective Date, the Trust shall assume responsibility for, and be bound by, ~~all of the~~ only such obligations of the Debtors and Participating Parties under the Insurance Policies as are necessary, if any, to act as the representative of the Debtors' estate for the purpose of retaining and enforcing the Debtors' and the Debtors' Estates' rights to Insurance Recoveries and for Insurance Claims against the Non-Settling Insurers; provided, however, that the Trust's appointment shall not relieve the Debtors, the Reorganized Debtors or the Participating Parties from any obligation that such entities may have under the Insurance Policies. Nothing contained in Section 11.2 shall affect the rights and remedies of a Person or Entity who is not a Participating Party but is a co-insured with the Debtors or is asserting rights under an Insurance Policy.

11.3 Consequences of Determination That Assignment or Appointment is Invalid.

The determination of whether the assignment of Insurance Claims provided for in Section 11.1 is valid, and does not defeat or impair the Insurance Coverage or that the appointment of the Trust as the Debtors' and the Debtors' Estates' representative provided for in Section 11.2, is valid and does not defeat or impair the Insurance Coverage, shall be made by the Bankruptcy Court at the Confirmation Hearing. In the event that a Final Order is entered holding that (a) the assignment of Insurance Claims provided for in Section ~~11.1, or that~~11.1 and (b) the appointment of the Trust as the Debtors' and the Debtors' Estates' representative provided for in Section ~~11.2, is~~11.2 are each invalid or would defeat or impair the Insurance Coverage with respect to an Insurance Policy, as to such Insurance Policy, the assignment and/or appointment, as the case may be, will be deemed not to have been made. If the assignment and~~/or~~ appointment ~~is not~~are deemed to have not been made, the Debtors, the Reorganized Debtors, and each of the Participating Parties will retain the Insurance Claims under such Insurance Policy.

11.3.1 At the request of the Trust, the Reorganized Debtors and the Participating Parties will assert their Insurance Claims to the extent requested by the Trust against any Non-Settling Insurer. All Insurance Recoveries by the Reorganized Debtors and the Participating Parties will be paid to the Trust. The Reorganized Debtors and Participating Parties will select and retain counsel to pursue their Insurance Claims pursuant to this Section 11.3, subject to the Trustee's approval, which approval shall not be unreasonably withheld

11.3.2 ~~Notwithstandingthe~~Notwithstanding the terms of Sections 11.1 through and including 11.3.1, the division of Insurance Recoveries under Sections 7.1.13 and 7.1.14 are binding on the Trust.

11.3.3 The Reorganized Debtors agree to cooperate with the Trust with respect to the Insurance Claims. The Reorganized Debtors will provide the Trustee and its counsel with all discovery requests, pleadings, moving documents and other papers which the Reorganized Debtors intend to make or file with respect to the Insurance or Claims and any related counterclaims against the Non-Settling Insurers prior to making such requests or filing. The

Reorganized Debtors agrees to keep the Trustee advised of any settlement discussions regarding any litigation against a Non-Settling Insurer and will involve the Trust's counsel in all settlement discussions where offers or counter-offers are presented.

11.3.4 The Trust shall pay the reasonable attorneys' fees, costs and expenses allowed by the Bankruptcy Court that are incurred by the Reorganized Debtors in pursuing their Insurance Claims pursuant to this Section 11.3.

11.3.5 The Trust shall, in addition to reasonable attorneys' fees, costs and expenses provided for in Section 11.3.3, reimburse the Reorganized Debtors for any reasonable out of pocket costs and expenses they incur as a direct consequence of pursuing such Insurance Claims, but will not compensate the Reorganized Debtors for any time any of their employees expend. Upon receipt by the Reorganized Debtors, all Insurance Recoveries received by the Reorganized Debtors on account of such Insurance Claims shall be deemed to be held in trust for the benefit of the Trust and shall be remitted by the Reorganized Debtors to the Trust as soon as practicable following the Reorganized Debtors' receipt of such Insurance Recoveries.

~~**11.4 Preservation of Insurance Rights.**~~

~~Nothing in this Plan shall be construed to impair or diminish in any way any Non-Settling Insurers obligations under any Insurance Policy. No provision of this Plan shall impair or diminish any Non-Settling Insurer's legal, equitable, or contractual obligations relating to the Insurance Policies issued by the Non-Settling Insurers or the Insurance Claims against the Non-Settling Insurers in any respect. In the event that any court determines that any provision of this Plan impairs or diminishes any Non-Settling Insurer's obligations with respect to the Insurance Claims or Insurance Recoveries, such provision of this Plan shall be given effect only to the extent that it shall not cause such impairment or diminishment.~~

11.4 ~~11.5~~ Post-Judgment Actions Against Non-Settling Insurers.

In the event that the Trust or any Abuse Claimant obtains a judgment against the Reorganized Debtors, the Reorganized Debtors will cooperate with the Trust or Abuse Claimant in the pursuit of any action brought by the Trust or Abuse Claimant against a Non-Settling Insurer that the Trust contends provides Insurance Coverage for such judgment. Reorganized Debtors agree that they will provide the Trust or Abuse Claimant with any non-privileged and relevant documents and information reasonably requested by the Trust or Abuse Claimant in pursuit of such an action. The Trust agrees that it will reimburse the Reorganized Debtors for any reasonable out of pocket costs they incur, including attorneys' fees, as a direct consequence of such cooperation, but will not compensate the Reorganized Debtors for any time any of their employees expend.

11.5 ~~11.6~~ Settlement with Non-Settling Insurers.

Following the Effective Date, the Reorganized Debtors shall not enter into a settlement agreement affecting any Insurance Policy or Insurance Policies with any Non-Settling Insurer without the express written consent of the Trust, which consent may be granted or withheld at the Trust's sole and absolute discretion. Following the Effective Date, the Reorganized Debtors authorize the Trust to exclusively act on their behalf to negotiate a settlement with any

Non-Settling Insurer on account of such Insurance Claims. Such settlements may provide for the Non-Settling Insurer to become a Settling Insurer.

11.6 ~~11.7~~ Cooperation with Non-Settling Insurer in Defense of Claims.

Without limiting its obligations pursuant to Section 11.1, in the event that the Trust or any Abuse Claimant prosecutes an action against the Reorganized Debtors, the Reorganized Debtors will cooperate, in accordance with the terms of any applicable Insurance Policy, with a Non-Settling Insurer that is providing a defense to such a Claim. The Trust agrees that it will reimburse the Reorganized Debtors for any reasonable out of pocket costs, including attorneys' fees, they incur as a direct consequence of such cooperation, but will not compensate the Reorganized Debtors for any time any of their employees expend.

11.7 ~~11.8~~ Insurance Neutrality.

11.7.1 Nothing in the in the Plan, Confirmation Order or in any Plan Document modifies any of the terms of any Insurance Policy.

11.7.2 Nothing in the Plan, in the Confirmation Order or in any Plan Document shall impair or diminish any Non-Settling Insurer's legal, equitable, or contractual obligations relating to the Insurance Policies, or the Insurance Claims against the Non-Settling Insurers in any respect. Subject to collateral estoppel and res judicata, in the event that any court determines that any provision of this Plan impairs or diminishes any Non-Settling Insurer's obligations with respect to the Insurance Claims or Insurance Recoveries, such provision of this Plan shall be given effect only to the extent that it shall not cause such impairment or diminishment.

11.7.3 ~~Other than as expressly provided in this Section XI, no provision of this Plan shall diminish or impair the right of any Insurer to assert any defense to any Insurance Claim.~~ The fact that the Trust is liquidating and paying~~/~~ or reserving monies on account of the Abuse Claims shall not be construed in any way to diminish any obligation of any Insurer under any Insurance Policy to provide Insurance Coverage to the Debtors, the Debtors' Estates or the Reorganized Debtors for Abuse Claims. The duties and obligations, if any, of the Non-Settling Insurers under each Non-Settling Insurer's Insurance Policy shall not be impaired, altered, reduced or diminished by: (a) the discharge granted to the Debtors under the Plan pursuant to Section 1141(d) of the Bankruptcy Code, (b) the exonerations, exculpations and releases contained in the Plan or (c) the Channeling Injunction.

11.7.4 Neither the Trust's payment or reserving monies on account of the Abuse Claims nor the Abuse Claims Reviewer's review of an Abuse Claim shall: (1) constitute a trial, an adjudication on the merits or evidence of liability or damages in any litigation with Reorganized Debtors or Non-Settling Insurers or (2) constitute, or be deemed, a determination of the reasonableness of the amount of any Abuse Claim, either individually or in the aggregate with other Abuse Claims, in any litigation of Insurance Claims with any Non-Settling Insurers.

11.7.5 Except to the extent, if at all, that Sections11.1 through 11.3 of the Plan diminish or impair the right of any Insurer to assert any defense to any Insurance Claim, no provision of this Plan, the Confirmation Order or in any Plan Document shall diminish or impair the right of any Insurer to assert any defense to any Insurance Claim.

11.7.6 Nothing in the Plan, in the Confirmation Order or in any Plan Document, shall impose any additional obligation on any Non-Settling Insurer to provide a defense for, settle, or pay any judgment with respect to, any Claim. A Non-Settling Insurer's obligations, with respect to any Claim, shall be determined by and in accordance with the terms of the Insurance Policies and with applicable non-bankruptcy law.

11.7.7 Nothing in the Plan, in the Confirmation Order or in any Plan Document shall grant to any Person any right to sue any Insurer directly, in connection with a Claim, or any Insurance Policy. Such rights shall be determined by and in accordance with the terms of the Insurance Policies and with applicable non-bankruptcy law.

11.7.8 Nothing in the Plan, in the Confirmation Order or in any Plan Document shall constitute a finding or determination that any Debtor and/or third party is a named insured, additional insured or insured in any other way under any Insurance Policy; or that any Insurer has any defense or indemnity obligation with respect to any Claim.

11.7.9 Nothing in the Plan, in the Confirmation Order or in any other Plan Document shall diminish or impair the Reorganized Debtors' defenses to liability in connection with any Abuse Claim, and the right of any Non-Settling Insurer that is defending Reorganized Debtors to assert any such underlying defenses to liability.

11.7.10 Nothing in this Section 11.7 negates or undoes the voluntary alteration of an Insurer's rights should it elect to become a "Participating Party" under the Plan.

11.8 Judgment Reduction.

In connection to any action by the Trust to enforce Insurance Rights with respect to an Insurance Policy issued by a Non-Settling Insurer and subject to Section 15.10 of the Plan, in the event that any Insurer obtains a judicial determination or binding arbitration award that, but for Section 15.10 of the Plan, it would be entitled to obtain a sum certain from a Settling Insurer as a result of a claim for contribution, subrogation, indemnification, or other similar claim against a Settling Insurer for such Settling Insurer's alleged share or equitable share, or to enforce subrogation rights, if any, of the defense and/or indemnity obligation of such Settling Insurer for any Claims released or resolved pursuant to any settlement agreement with a Settling Insurer; then Debtors, Trustee or other Participating Party, as applicable, shall voluntarily reduce its judgment or Claim against, or settlement with, such other Insurer to the extent necessary to satisfy such contribution, subrogation, indemnification, or other claims against such Settling Insurer. To ensure that such a reduction is accomplished, such Settling Insurer shall be entitled to assert this Section 11.8 as a defense to any action against it brought by any other Insurer for any such portion of the judgment or Claim and shall be entitled to request that the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect such Settling Insurer and the Released Parties pursuant to a settlement agreement with a Settling Insurer from any liability for the judgment or Claim. Moreover, if a Non-Settling Insurer asserts that it has a Claim for contribution, indemnity, subrogation, or similar relief against a Settling Insurer, such Claim may be asserted as a defense against the Trust or Debtor in any litigation of an Insurance Claims (and the Trust or Debtor may assert the legal and equitable rights of such Settling Insurer in response thereto); and to the extent such a Claim is determined to be valid by the court presiding over such

action, the liability of such Non-Settling insurer to the Trust, Debtor or other Participating Party shall be reduced dollar for dollar by the amount so determined. The Bankruptcy Court shall retain jurisdiction to determine the amount, if any, of any judgment reduction pursuant to the terms of this Section 11.8.

SECTION XII
MEANS FOR IMPLEMENTATION OF THE PLAN

12.1 Debtors' Funding of Plan.

On or before the Effective Date, Cash in the total amount of not less than $16.5 million in the aggregate shall be contributed by wire transfer to the Trust by or on behalf of the Debtors and Providence Washington.

12.2 Participating Party or Settling Insurer Settlement Contribution.

On or before the Effective Date, contributions to the Trust by or on behalf of a Participating Party or Settling Insurer shall be contributed by wire transfer to the Trust.

12.3 Providence Washington Settlement Agreement.

Pursuant to Sections 363(f), 1123(a)(5)(D) and 1123(b)(3) of the Bankruptcy Code, the provisions of the "Settlement Agreement, Release and Policy Buyback" between The Christian Brothers' Institute and Providence Washington is a compromise of claims between the parties thereto as well as a sale and buy back by Providence Washington of certain insurance rights and policies free and clear of any and all liens, claims and interests, all as set forth therein. Nothing herein is intended to affect any prior orders of the Bankruptcy Court approving the Providence Washington Settlement Agreement or any rights, duties or remedies contemplated therein. For the avoidance of any doubt, Providence Washington is a Settling Insurer.

12.4 Debtors Waiver and Release of Estates' Causes of Action Against Participating Parties and Settling Insurers.

In consideration of the contributions and other consideration to be provided by each Participating Party and Settling Insurer, the Debtors irrevocably and unconditionally, without limitation, shall release, acquit, and forever discharge such Participating Party and Settling Insurer from any and all Causes of Action of the Estates against any Participating Party or Settling Insurer, or the property thereof, such release to be effective upon the Effective Date.

12.5 Additional Documentation; Non-Material Modifications.

From and after the Effective Date, the Trustee, the Reorganized Debtors, and the Participating Parties shall be authorized to enter into, execute, adopt, deliver and/or implement all contracts, leases, instruments, releases, and other agreements or documents necessary to effectuate or memorialize the settlements contained in this Plan without further Order of the Bankruptcy Court. Additionally, the Trustee, the Reorganized Debtors, and the Participating Parties may make technical and/or immaterial alterations, amendments, modifications or supplements to the terms of any settlement contained in this Section XII, subject to Bankruptcy Court approval, provided that