United States Bankruptcy Court
District Of New Jersey
Caption In Compliance With D.N.J. LBR 9004-1

DUANE MORRIS LLP
A Delaware Limited Liability Partnership
Sommer L. Ross, Esq.
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801
Telephone: (302) 657-4951
Email: SLRoss@duanemorris.com

Counsel for Certain Underwriters at Lloyd's, London and Certain London Market Companies

In Re: THE DIOCESE OF CAMDEN, NEW JERSEY, Debtor.	Chapter 11 Case No. 20-21257 (JNP)

LONDON MARKET INSURERS' OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) APPROVING DISCLOSURE STATEMENT; (B) ESTABLISHING PLAN SOLICITATION, VOTING, AND TABULATION PROCEDURES; (C) SCHEDULING A CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS TO PLAN CONFIRMATION; AND (D) GRANTING RELATED RELIEF[1]

[1] This Objection is intended to replace and supersede the original disclosure statement objection filed on 1/27/21 at Docket No. 380.

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Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively "London Market Insurers" or "LMI") hereby object to the *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code Describing Chapter 11 Plan Proposed by the Debtor-In-Possession*, filed on December 31, 2020, ECF No. 305 ("Disclosure Statement"); and the *Motion for Entry of an Order (A) Approving Disclosure Statement; (B) Establishing Plan Solicitation, Voting, and Tabulation Procedures; (C) Scheduling a Confirmation Hearing and Deadline for Filing Objections to Plan Confirmation; and (D) Granting Related Relief*, filed by the Diocese of Camden, New Jersey ("Debtor"), filed on February 16, 2021, ECF No. 415 ("Motion"), and respectfully state as follows:

I. INTRODUCTION

The Motion should be denied because (a) the Disclosure Statement describes a patently unconfirmable Chapter 11 Plan of Reorganization ("Plan"), (b) the Disclosure Statement provides inadequate and misleading information to creditors; and (c) the Motion provides a facially impossible confirmation schedule.

LMI have negotiated settlements in every single diocesan bankruptcy case in which LMI-subscribed policies have been at issue. Each such settlement was the product of a global mediation among the diocese, its related entities, its insurers, and the Tort Claimants (as defined in the Plan). The Plan does not provide for any mediation, let alone a global mediation. In LMI's experience, a global mediation is the most equitable and cost-effective process for resolution.

By the Motion, the Debtor precipitously attempts to seek confirmation to obtain a discharge prior to identifying its entire creditor pool. The Court set the bar date for June 30, 2021 ("Bar Date"). Until then, the Debtor cannot identify the Tort Claimants and the Debtor cannot solicit votes from unknown claimants. Until then, no mediation involving the insurers is

reasonably possible, because the insurers will be unable to ascertain their liability. However, in the Motion, the Debtor requests that solicitation of votes occur no later than March 31, 2021, and for the Plan confirmation hearing to be set for May 12, 2021, both of which are prior to the date that the Tort Claimants will have filed their proofs of claim. This would necessarily exclude many Tort Claimants from the Plan confirmation process.

The Plan is patently unconfirmable for at least two reasons. First, the Plan enjoins claims against "Covered Parties" (the definition of which is set forth below) without limiting such injunction to "derivative claims" (*i.e.*, claims for which the Debtor shares liability with one or more non-debtor entities, the liability for which arises out of the Debtor's conduct). However, controlling authority bars any injunction of claims against non-debtors that includes, as here, non-derivative claims, without the enjoined entities' consent. Moreover, the injunction does not meet the standard for approval of any injunction of claims by non-debtors. Second, the Plan fails to specify the Covered Parties' contribution to the reorganization, thereby preventing the Court from determining whether the Covered Parties are making a contribution that is critical to the feasibility of the reorganization, or whether the contribution is fair consideration for an injunction of claims against the Covered Parties. Further, the Plan expressly precludes any contribution by the Covered Parties from benefiting the Tort Claimants in any way.

Additionally, the Disclosure Statement provides inadequate and misleading information. It is inadequate because it does not disclose that any indemnity under the LMI Policies may be precluded by the fact that the Plan does not require the Trust (as defined in the Plan) to perform the Debtor's duties under such insurance policies. Thus, the conditions to LMI's indemnity obligations for covered ultimate net loss imposed on the Debtor will not be satisfied.

The Disclosure Statement is misleading because it includes statements that could lead the Tort Claimants to believe that, if they vote for the Plan, they will benefit from insurance settlements, without disclosing that the Plan makes no provision for such settlements. Nor is any such settlement likely given that the Plan makes no provision for an injunction of claims against settling insurers. The Disclosure Statement also fails to provide correct information regarding the LMI-subscribed insurance policies, and the Debtor's earlier settlement with LMI, which would give Tort Claimants the impression that more insurance coverage would be available to pay claims than actually exists. The Disclosure Statement is also vague regarding which funds will be made available to the Tort Claimants through the Trust.

Accordingly, LMI respectfully request that the Court deny approval of the Disclosure Statement.

II. BACKGROUND

A. The Insurance Policies Subscribed by LMI

LMI subscribed Combined Property, Casualty and Crime Insurance Policies effective from November 27, 1972 to November 27, 1986 ("Package Policies"), on behalf of the Debtor and certain related entities. The Package Policies effective from November 27, 1972 to November 27, 1986, provide General Liability Coverage on an "occurrence" basis. However, the Package Policy effective from November 27, 1985 to November 27, 1986, contains a Sexual Misconduct Exclusion.[2]

The Package Policies only require LMI to indemnify covered ultimate net loss (as defined in the Package Policies as set forth below); they are not required to defend or settle the

[2] The Debtor tendered an additional Package Policy, effective from November 27, 1986 to November 27, 1987, for which LMI have not confirmed subscription. To the extent this Policy exists, it likely provides "claims made" coverage and includes a Sexual Misconduct Exclusion.

underlying matters. Further, LMI's indemnity obligation can only be triggered after the following three conditions are met: (i) the Debtor resolved the claim through compromise or adjudication; (ii) the sum for which the Debtor seeks reimbursement arose out of a covered occurrence; and (iii) the Debtor has satisfied its self-insured retentions ("SIRs"). Several interrelated provisions explain the Debtor's and LMI's obligations under the Policies.

- The "Agreement C – General Liability" provision sets forth LMI's indemnity obligation:

> Underwriters hereby agree . . . to indemnify the Assured for all sums which the Assured shall be obligated to pay by reason of the liability imposed upon the Assured by law or assumed by the Named Assured under contract or agreement, for damages direct or consequential, and expenses, all as more fully defined by the term "ultimate net loss," on account of personal injuries . . . arising out of any occurrence happening during the period of Insurance.

See, e.g., Package Policies effective November 27, 1975/78, hereinafter referred to as "1975/78 Policy," at PAC-8.

- The Package Policies' definition for "Ultimate Net Loss" explains that LMI are obligated to reimburse the Debtor for:

> [T]he total sum which the Assured becomes obligated to pay by reason of personal injury or property damage claims, either through adjudication or compromise, after making proper deductions for all recoveries and salvages, and shall also include . . . expenses for doctors, lawyers, nurses, . . . and for litigation . . . *which are paid as a consequence of any occurrence covered hereunder*…. (emphasis added).

Id. at PAC-10.

- The Package Policies' "Loss Payments" provision specifies the timing of LMI's payment obligations:

> When it has been determined that Underwriters are liable under this Insurance, Underwriters shall thereafter promptly reimburse the Assured for all payments made in excess of the amounts stated in Subparagraphs A and B of the Limits Agreement. All adjusted claims shall be paid or made good to the Assured within thirty days after their presentation to [the Broker], and acceptance by Underwriters of satisfactory proof of interest and loss.

Id. at PAC-17.

- The Package Policies exclude coverage for voluntary payments. The Policies agree to indemnify the Debtor for sums it is "obligated to pay by reason of the liability imposed upon the Assured by law". *Id.* at PAC-8.

- The Package Policies require the Debtor to utilize a "Service Organization" to provide notice to excess insurers, administer claims, maintain records of claim details and payments, furnish monthly claim reports, and other. The provision provides:

> Insurance afforded under this Insurance is issued to the Assured on the express condition that the Assured undertakes to utilize at all times the services of [a Service Organization] ….
>
> This Service Organization shall perform the following duties:
>
> (a) Strictly discharge the Assured's obligation to the employees or members of the public.
>
> (b) Maintenance of accurate records of all details incident to payments.
>
> (c) Furnish inspection and safety engineering service.
>
> (d) Furnish monthly claims records on an approved form.
>
> The acceptance of these services shall be a condition precedent to any liability which may attach to the Underwriters in accordance with the terms and conditions of this Insurance.

Id. at PAC-4 to 5.

- There are General Conditions pertaining to the examination of books and records that provide:

> INSPECTIONS, AUDIT AND VERIFICATION OF VALUES:
>
> The Underwriters or their duly authorized representatives shall be permitted at all reasonable times during continuance of this Insurance to inspect the premises used by the Assured and to examine the Assured's books or records so far as they relate to coverage afforded by this Insurance.
>
> RECORDS:
>
> It is hereby understood and agreed that the records and books as kept by the Assured shall be acceptable to Underwriters in determining the amount of loss or damage covered hereunder.

Id. at PAC- 15.

- The Package Policies also require notice, cooperation and association in the defense as well as subrogation. The "Notice of Occurrence" Condition provides:

> [t]he Assured shall immediately notify Underwriters…of any occurrence, the cost of which is likely to result in payment by the Underwriters under this Insurance … [w]henever the Assured has information from which the Assured may reasonably conclude that an occurrence covered under Section II of this Insurance involves injuries or damages, notice shall be given to [the insurer]… as soon as practicable.

Id. at PAC-11.

- The "Claims" Condition provides:

> … Underwriters shall have the opportunity to be associated with the Assured in defense of any claims, suits, or proceedings relative to an occurrence wherein the opinion of the Underwriters, their liability under this Insurance is likely to be involved, in which case the Assured and Underwriters shall cooperate to the mutual advantage of both.

Id. at PAC-17.

- The "Subrogation" Condition provides:

> The Underwriters shall be subrogated to all rights which the Assured may have against any person or other entity in respect to any claim or payment made under this Insurance, and the Assured shall execute all papers required by the Underwriters and shall cooperate with the Underwriters to secure Underwriter's rights.…

Id. at PAC-18.

There is an "Assignment" provision that provides "Assignment of interest, under this Insurance shall not bind the Underwriters until the Underwriters' consent is endorsed hereon" *Id.* at PAC-18.

There is also a "Fraudulent Claims" provision that provides "If the Assured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Insurance shall become void and all claim hereunder shall be forfeited" *Id.* at PAC- 19.

The "Name of Insured" provision provides, in part: "It is agreed that The Diocese of Camden, New Jersey *et. al*. owns and/or operates Parishes, Schools, Cemeteries and other

Agencies under specific Names, and it is the intention of this Insurance to cover such Parishes, Schools, Cemeteries and Other Agencies or directly connected organizations as Named Assureds " (*Id.* at PAC-3).

Notably, the Debtor alleges that it settled 71 claims through the Independent Victim Compensation Program ending as of July 31, 2020 (Doc No. 305 at p. 37), but LMI did not start receiving claim notifications until October 13, 2020. Moreover, as of the date of this filing, the claim notifications have not included any Sex Abuse Proofs of Claim.

LMI also subscribed Excess Umbrella Liability Policies effective from November 27, 1972 to November 27, 1978 ("Excess Policies", and collectively with the Package Policies, the "LMI Policies") on behalf of the Debtor and certain related entities.[3]

B. The Insurance Coverage Action

On October 21, 2020, the Debtor filed an adversary action against several insurance companies, including LMI, in this Court ("Coverage Action"). Case No. 20-01573, Adv. Doc No. 1. The Complaint seeks declaratory relief regarding the rights and duties of the Debtor and several insurance companies, including LMI, with regard to the insurance policies. *Id.* at ¶¶ 64–72.

On November 25, 2020, the Debtor filed its First Amended Adversary Complaint ("Amended Complaint") in the Coverage Action. Coverage Action, Doc No. 10. The second count of the Amended Complaint has been dismissed as to LMI. Coverage Action, Doc. No. 41.

C. The Plan and Disclosure Statement

On December 31, 2020, the Debtor filed a Chapter 11 Plan and Disclosure Statement in the main bankruptcy case. Doc. Nos. 305-306.

[3] LMI may have subscribed to other Excess Policies effective from November 27, 1978 to November 27, 1983, for which LMI have not confirmed subscription.

The Plan defines "Channeled Claim" as follows:

> **1.12. Channeled Claim** means any Tort Claim or other Claim, including, but not limited to, those Claims based upon or in any manner arising from or related to any acts or omissions of any Covered Party including (i) for damages of any type, including bodily injury, personal injury, emotional distress, wrongful death, and/or loss of consortium, (ii) for exemplary or punitive damages, (iii) for attorneys' fees and other expenses, fees, or costs, and/or (iv) for any remedy at law, in equity or admiralty whatsoever, heretofore, now or hereafter asserted against any of the Covered Parties to the extent such Claim arises from the same injury or damages asserted as a Tort Claim against the Covered Parties that directly or indirectly arises out of, relates to, or is in connection with such Tort Claim or other Claim covered by the Channeling Injunction; *provided*, *however*, that "Channeled Claims" shall not include any Claim against (i) an individual who perpetrated an act of Abuse that forms the basis of a Tort Claim with respect to that Tort Claim; or (ii) any religious order, diocese (other than the Debtor itself), or archdiocese.

Plan at 3.

The Plan defines "Covered Parties" as follows:

> **1.25. Covered Parties** means any of (i) the Diocese; (ii) the Parish Parties; (iii) the Other Catholic Entities; (iv) each of the foregoing Persons' respective past, present, and future parents, subsidiaries, affiliates, holding companies, merged companies, related companies, divisions, and acquired companies; (v) each of the foregoing Persons' respective predecessors, successors and assigns; and (vi) solely to the extent of and in their capacity as such, any and all of the foregoing Persons' respective past and present employees, officers, directors, shareholders, principals, teachers, staff, members, boards, administrators, priests, deacons, brothers, sisters, nuns, other clergy or Persons bound by monastic vows, volunteers, agents, attorneys, and representatives, in their capacity as such. Nothing in the foregoing is intended to suggest that such Persons are "employees" or agents of the Diocese or subject to its control. An individual who perpetrated an act of Abuse that forms the basis of a Tort Claim is not a Covered Party. Section 6.1 of the Plan specifies the funding for the Plan, as follows:

Id. at 4. The Plan defines "Other Catholic Entities" as follows:

> **1.43. Other Catholic Entities (OCE)** shall mean past and present Catholic entities affiliated with the Diocese that carry out the various ministries of the Diocese. Notwithstanding the foregoing, the Other Catholic Entities do not include the Diocese or the Parishes. An individual who perpetrated an act of Abuse that forms the basis of a Tort Claim is not an Other Catholic Entity as to that Tort Claim.

Id. at 6. The Plan defines "Parish Parties" as follows:

> **1.44. Parish Parties** means all past and present parishes or Catholic schools within the Diocese. For avoidance of doubt, the Parish Parties shall include the following missions within the Diocese: Mater Ecclesiae Chapel, Inc., Saint Yi Yun II John Cherry Hill Korean Catholic Mission, Inc., Saint Andrew Kim Korean Catholic Mission, Inc., and Padre Pio Shrine in Buena Borough, N.J., Inc. Nothing in the foregoing is intended to suggest that such Persons are "employees" or agents of OCE or subject to its control. For avoidance of doubt, the term "Parish Parties" includes Diocesan Parishes, and OCE which are not Parishes, and are only combined herein for ease of reference. An individual who perpetrated an act of Abuse that forms the basis of a Tort Claim is not a Parish Party as to that Tort Claim.

Id.

Section 6.1 of the plan specifies the funding to be provided by Covered Parties and insurers, as follows:

> **(b) Funding**.
>
> a. Summary. This Plan will be funded from the sources and in the manner set forth in this Section.
>
> b. Contributions. Cash and other assets with an expected value of $10,000,000 will be paid or transferred, as applicable, to the Trust Account as provided in the Plan and as described herein subject to reversion if any proceeds are not needed to fund the Trust.
>
> i. Debtor Initial Cash Contribution. The Debtor will transfer $250,000 to the Trust Account within two (2) business days after the Confirmation Order has become a Non-Appealable Order (the "Debtor Initial Cash Contribution"). The Debtor Initial Cash Contribution will be primarily comprised of funds from the following sources:
>
> 1. non-restricted cash accounts held by the Diocese; and
>
> 2. an account established to hold the proceeds derived from the sale of Diocese properties during the course of this Chapter 11 case.
>
> ii. **Covered Party Cash Contribution**. It is anticipated that the Covered Parties will make contributions based upon an analysis of their financial capabilities over the lifetime of the Plan.
>
> iii. **Insurance Claims**. The Diocese will transfer to the Trust all Claims or Causes of Action that the Diocese holds against any and all Insurers. Any proceeds resulting from these Claims or Causes of Actions.

iv. **Future Debtor Contributions**. The Debtor will transfer Cash in the amount of $250,000 to the Trust Account in accordance each quarter following the transfer of the Debtor Initial Cash Contribution for ten (10) years (the "Future Debtor Contributions"). Any amounts received by the Trust from the Substantial Contribution Amounts or the Insurance Claim Amounts shall offset the Future Debtor Contributions.

Id. at 15-16.

Section 8.2 of the Plan includes the following injunction of claims between non-debtors:

8.2. Channeling Injunction. Channeling Injunction preventing prosecution of Channeled claims against Covered Parties.

(a) In consideration of the undertakings of the Covered Parties under the Plan, their contributions to the Trust, and other consideration, and pursuant to their respective settlements with the Debtor and to further preserve and promote the agreements between and among the Covered Parties and pursuant to Section 105 of the Bankruptcy Code:

a. any and all Channeled Claims are channeled into the Trust and shall be treated, administered, determined, and resolved under the procedures and protocols and in the amounts as established under the Plan and the Trust Agreement as the sole and exclusive remedy for all holders of Channeled Claims;

and

b. all Persons who have held or asserted, hold or assert, or may in the future hold or assert any Channeled Claims are hereby permanently stayed, enjoined, barred and restrained from taking any action, directly or indirectly, for the purposes of asserting, enforcing, or attempting to assert or enforce any Channeled Claim against the Covered Parties, including:

i. commencing or continuing in any manner any action or other proceeding of any kind with respect to any Channeled Claim against any of the Covered Parties or against the property of any of the Covered Parties;

ii. enforcing, attaching, collecting or recovering, by any manner or means, from any of the Covered Parties or the property of any of the Covered Parties, any judgment, award, decree, or order with respect to any Channeled Claim against any of the Covered Parties;

iii. creating, perfecting or enforcing any lien of any kind relating to any Channeled Claim against any of the Covered Parties or the property of the Covered Parties;

> iv. asserting, implementing or effectuating any Channeled Claim of any kind against:
>
> 1. any obligation due any of the Covered Parties;
>
> 2. any of the Covered Parties; or
>
> 3. the property of any of the Covered Parties.
>
> v. taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan; and
>
> vi. asserting or accomplishing any setoff, right of indemnity, subrogation, contribution or recoupment of any kind against any obligation due to any of the Covered Parties.

Id. at 22-23.

The Disclosure Statement states, *inter alia*,

> In order to resolve certain issues in this case, the Debtor and the Tort Claimants' Committee agreed to engage in mediation before the Honorable Michael B. Kaplan, Chief Judge of the United States Bankruptcy Court for the District of New Jersey. Chief Judge Kaplan has held numerous mediation sessions with the Tort Claimants' Committee and the Debtor. On December 4, 2020, Chief Judge Kaplan held an in-person mediation session with the Tort Claimants' Committee and the Debtor in Sewell, New Jersey. In addition to counsel for the Diocese, the Bishop of the Diocese, the Vicar General of the Diocese and the Diocesan Finance Officer attended the in-person mediation. Counsel for the Tort Claimants' Committee and counsel for the parishes, schools and mission within the territory of the Diocese attended the mediation. No individual members of the Tort Claimants' Committee attended. The mediation session lasted approximately 8 hours. Prior to the in-person mediation session, Chief Judge Kaplan held separate Zoom meetings with the Tort Claimants' Committee and the Debtor. Chief Judge Kaplan has also fielded numerous phone calls with the parties in an attempt to resolve issues in this matter.
>
> In addition to the mediation sessions with the Tort Claimants' Committee and the Debtor, Chief Judge Kaplan has also included the various insurance carriers in mediation sessions. To this end, Chief Judge Kaplan held virtual mediation session with counsel for the insurance carriers, the Tort Claimants' Committee and the Debtor on December 18, 2020 and December 31, 2020. In advance of these sessions, Chief Judge Kaplan also held a Zoom meeting with counsel for the insurance carriers.

Disclosure Statement at 46.

D. The Proposed Confirmation Schedule

On February 16, 2021, the Debtor filed the Motion. The Motion proposes and seeks approval of the following plan and confirmation schedule:

Event	Proposed Date
Record Date	March 24, 2021 at 11:59 p.m. (Prevailing Eastern Time)
Solicitation Date	No later than March 31, 2021
Rule 3018 Motion Filing Deadline	April 7, 2021 at 4:00 p.m. (Prevailing Eastern Time)
Rule 3018 Motion Hearing	April 28, 2021 at 10:00 a.m. (Prevailing Eastern Time)
Voting Deadline	May 5, 2021 at 11:59 p.m. (Prevailing Eastern Time)
Deadline for Objecting to Confirmation	May 5, 2021 at 4:00 p.m. (Prevailing Eastern Time)
Confirmation Hearing	May 12, 2021 at 10:00 a.m. (Prevailing Eastern Time)

Motion at p. 4.

Further, in the Motion the Debtor requests:

> that the Court establish March 24, 2021, at 11:59 p.m. (prevailing eastern time), or such other date as the Court sets for a hearing on this Motion (the "Record Date"), regardless of the date on which the Disclosure Statement Order is actually entered, for the purposes of determining: (a) creditors who are entitled to vote on the Plan, and (b) with respect to classes that are non-voting, the parties entitled to receive a Notice of Non-Voting Status.

Motion, at p. 9.

III. ARGUMENT

The Court should deny approval of the Disclosure Statement because it describes a patently unconfirmable Plan and contains misleading and inadequate information.

A. Scheduling a Confirmation Hearing is Premature.

The Debtor's attempt to confirm the Plan prematurely will waste the parties' money and resources.

The Court set the claims bar date for June 30, 2021. *See Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof,* Doc. No. 409. In the Motion, the Debtor proposes and seeks approval of dates that are unrealistic in light of the Bar Date, the Debtor has proposed a facially unconfirmable plan, and the Debtor has not sought any global mediation. The Debtor requests that the record date be set for March 24, 2021, which is roughly three months prior to the Bar Date. The Debtor requests that the record date be established for the purpose of determining "creditors who are entitled to vote on the Plan." *See* Motion, at p. 9. However, creditors who timely file claims by the Bar Date, but after the record date would not be entitled to vote on the Plan. Moreover, the universe of creditors is unknown until the Bar Date.

Further, (a) the Debtor seeks to send the solicitation package on or before March 31, 2021; (b) seeks a voting deadline of May 5, 2021; and (c) requests the confirmation hearing be set for May 12, 2021. *See* Motion, at p. 4. Moving to confirmation so precipitously excludes any creditor who files a timely claim, but does so after the Debtor's proposed record and confirmation dates. Moreover, the proposed dates are premature, because the Plan is patently unconfirmable. Until the Debtor addresses the flaws in the Plan (some of which are discussed below), there is no reason for the Court to address confirmation.

B. <u>The Plan Is Patently Unconfirmable.</u>

Controlling authority dictates that a bankruptcy court should deny approval of a disclosure statement that describes a patently unconfirmable plan.

Courts have recognized that "if it appears there is a defect that makes a plan inherently or patently unconfirmable, the Court may consider and resolve that issue at the disclosure stage before requiring the parties to proceed with solicitation of acceptances and rejections and a contested confirmation hearing." *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir.

2012) (quoting *In re Larsen,* 2011 Bankr. LEXIS 1621, 2011 WL 1671538, at *2 n.7 (Bankr. D. Idaho May 3, 2011)); *see also In re Main St. AC, Inc*., 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) ("It is now well accepted that a court may disapprove of a disclosure statement . . . if the plan could not possibly be confirmed."); *accord In re Miller*, No. 96-81663, 2008 Bankr. LEXIS 4831, 2008 WL 191256, at *3 (Bankr. W.D. La. Jan. 22, 2008); *In re El Comandante Mgmt. Co*., 359 B.R. 410, 415 (Bankr. D.P.R. 2006); *In re Mahoney Hawkes, LLP*, 289 B.R. 285, 294 (Bankr. D. Mass. 2002); *In re Phoenix Petroleum Co*., 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001); *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000); *In re Brass Corp*., 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996); *In re Felicity Assocs., Inc*., 197 B.R. 12, 14 (Bankr. D.R.I. 1996); *In re Cardinal Congregate I*, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); *In re Dakota Rail, Inc*., 104 B.R. 138, 143 (Bankr. D. Minn. 1989); *In re Unichem Corp*., 72 B.R. 95, 100 (Bankr. N.D. Ill. 1987); *In re Monroe Well Serv., Inc*., 80 B.R. 324, 333 (Bankr. E.D. Pa. 1987).

The Plan is patently unconfirmable because: (a) it would enjoin non-derivative claims against the Covered Parties; and (b) it fails to specify the consideration to be paid by the Covered Parties for the Channeling Injunction.

1. The Channeling Injunction Impermissibly Would Enjoin Non-Derivative Claims.

Controlling precedent bars the Channeling Injunction (as defined in the Plan) from enjoining non-derivative claims.

a. Derivative claims

"In the bankruptcy context, if a plaintiff's claim against a third party is based upon: (1) the plaintiff's claim against a debtor (the debtor's liability); and (2) the debtor's claim against the third party (the third party's liability to the debtor), then the plaintiff's claim is derivative." *In re W.R. Grace & Co.*, 607 B.R. 419, 424 (Bankr. D. Del. 2019). Thus, derivative claims require

two sets of liability for the same claim. First, a plaintiff (here a Tort Claimant) must have a claim against the Debtor. Second, the Tort Claimant must have a claim against a Covered Party that exists because of the Debtor's conduct. If the Tort Claimant has a claim against a Covered Party because of the Covered Party's conduct, that claim is not a derivative claim. *See MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 90-91 (2d Cir. 1988).

b. Non-derivative claims may not be enjoined under Section 105

Derivative claims against a non-debtor may be enjoined by a plan. Non-derivative claims may not be enjoined. "The Bankruptcy Code precludes the use of § 105(a) to extend a channeling injunction to non-derivative third-party actions against a non-debtor." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 202 (3d Cir. 2004), *as amended* (Feb. 23, 2005).

Here, the Channeling Injunction enjoins both derivative and non-derivative claims, which is impermissible.

It enjoins all Channeled Claims against the Covered Parties:

> b. all Persons who have held or asserted, hold or assert, or may in the future hold or assert any Channeled Claims are hereby permanently stayed, enjoined, barred and restrained from taking any action, directly or indirectly, for the purposes of asserting, enforcing, or attempting to assert or enforce any Channeled Claim against the Covered Parties

Plan at 22. The Plan defines Channeled Claims broadly to include any Tort Claim against any Covered Party, and are not limited to just those claims for which the Debtor has liability. The Plan defines Channeled Claim in pertinent part as:

> any … Claim, …whatsoever, heretofore, now or hereafter asserted against any of the Covered Parties to the extent such Claim arises from the same injury or damages asserted as a Tort Claim against the Covered Parties **that directly or indirectly arises out of, relates to, or is in connection with** such … Claim covered by the Channeling Injunction.

Plan at 3 (emphasis added). Thus, the Channeling Injunction would enjoin both derivative and non-derivative claims; it is not limited to enjoining derivative claims as required by *Combustion Engineering*. For that reason, the Plan is patently unconfirmable.

2. The Channeling Injunction Cannot Be Approved Because the Plan Fails to Specify How the Covered Parties' Contributions Make the Plan Feasible.

In order for a court to approve a plan that calls for a third-party injunction, the debtor must show that that the injunction is both necessary to the organization and fair. *Gillman v. Continental Airlines (In re Continental Airlines),* 203 F.3d 203, 214 (3d Cir. 2000) (holding that a third-party injunction would only be proper under § 105(a) if the proponents of the injunction demonstrated with specificity that such an injunction was both necessary to the reorganization and fair); *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 206 (3d Cir. 2011) (same).

In *Continental Airlines*, the Third Circuit outlined the factors to consider when determining whether non-debtor entities are entitled to relief:

(1) "whether the release and permanent injunction were fair to Plaintiffs and were given in exchange for reasonable consideration;"

(2) whether the success of the debtor's reorganization "bore any relationship to the release and permanent injunction" of the third-party actions;

(3) "the non-debtors provided a critical financial contribution to the [debtor's] plan that was necessary to make the plan feasible in exchange for receiving a release of liability" for the third-party actions; and,

(4) whether the third-party actions propelled the debtor into bankruptcy.

Cont'l Airlines, 203 F.3d at 215; *see also United Artists Theatre Co. v. Walton*, 315 F.3d 217, 227 (3d Cir. 2003) ("Added to these requirements is that the releases "were given in exchange for fair consideration."); *Quad/Graphics, Inc. v. One2One Communs., LLC (In re One2One Communs., LLC)*, Civil Action No. 13-1675 (JLL), 2016 U.S. Dist. LEXIS 78305, at *19 (D.N.J. June 13, 2016) ("Even assuming that the *Continental* applies, entirely absent from the

Bankruptcy Court's decision is a discussion of consideration. "The question of necessity requires demonstration that […] the releases have provided a critical financial contribution to the debtor's plan that is necessary to make the plan feasible in exchange for receiving a release of liability." *In re Genesis Health Ventures, Inc.,* 266 B.R. 591, 607 (Bankr .D. Del. 2001). It is clear that under the *Continental* line of cases, "fair consideration" is a "requirement" for the courts to consider. *See United Artists Theatre Co. v. Walton*, 315 F.3d 217, 227 (3d Cir. 2003)").

Here, the Plan fails to provide the information necessary for the Court to determine that (i) the Covered Parties' financial contribution is critical to making the Plan feasible; and (ii) the contribution is fair consideration for the Channeling Injunction. In fact, the Covered Parties' financial contribution has no effect at all on the feasibility of the Plan, and hence cannot be fair consideration. The Court cannot make the required determination, because the Plan leaves it open as to what amounts might be contributed by the Covered Parties, or even who might decide the amount of such contributions stating passively:

> ii. **Covered Party Cash Contribution**. It is anticipated that the Covered Parties will make contributions based upon an analysis of their financial capabilities over the lifetime of the Plan….

Plan at 16. That language fails to provide any basis whatsoever for the Court to make the determinations necessary to approve an injunction benefiting the Covered Parties.

Moreover, additional language in the same section of the Plan precludes the Court from finding the Covered Parties Cash Contribution provides *any benefit whatsoever* to those Tort Claimants enjoined by the Channeling Injunction. Section 6.1(b)b.(iv) states, in pertinent part: "Any amounts received by the Trust from the Substantial Contribution Amounts or the Insurance Claim Amounts shall offset the Future Debtor Contributions." Plan at 16. No matter how much the Covered Party Cash Contributions will be, they will not add a single penny to the amounts

received by channeled Tort Claimants, because every penny added will reduce the Debtor's contribution by one penny. Possibly, the Debtor would end up paying nothing.

Therefore, the Plan is patently unconfirmable, and the Disclosure Statement cannot be approved.

C. The Disclosure Statement Provides Inadequate and Misleading Information

1. Applicable Law

Before a debtor may transmit a disclosure statement to the holders of claims or interests, the Court must approve it as containing "adequate information." 11 U.S.C. § 1125(b); *Oneida Motor Freight, Inc. v. United Jersey Bank,* 848 F.2d 414, 417 (3d Cir. 1988). Indeed, "[i]t is essential that bankruptcy proceedings be transparent, candid and always operate in that spirit." *See e.g.*, *In re Linda Vista Cinemas, L.L.C.*, 442 B.R. 724, 735 (Bankr. D. Ariz. 2010).

The Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . .

11 U.S.C. § 1125(a). The primary purpose for a disclosure statement is to give creditors the requisite information they need to decide whether to accept the plan. *In re Monroe Well Serv., Inc.,* 80 B.R. 324, 330 (Bankr. E.D. Pa. 1987); *see also In re Monnier Bros.,* 755 F.2d 1336, 1342 (8th Cir. 1985); *In re Stanley Hotel*, Inc., 13 B.R. 926 (Bankr. D. Colo.1981). Sufficient financial information must be provided so that a creditor can make an "informed judgment" whether to accept or reject the plan. *In re Jeppson,* 66 B.R. 269, 289 (Bankr. D. Utah 1986)*; In re Civitella,* 15 B.R. 206 (Bankr. E.D. Pa. 1981); *In re Northwest Recreational Activities, Inc.,* 8 B.R. 10 (Bankr. N.D. Ga. 1980).

Bankruptcy Courts may not approve disclosure statements that include inadequate or misleading information. *See, e.g.*, *Monroe Well,* 80 B.R. at 330. The Debtors' obligation to provide adequate and accurate information cannot be overemphasized. *Oneida,* 848 F.2d at 417. Thus, a debtor must excise or clarify vague and ambiguous statements in a disclosure statement before a court can approve it. *See, e.g.*, *In re Pettit*, 18 B.R. 6, 8 (Bankr. E.D. Ark. 1980).

2. The Disclosure Statement Fails to Disclose that the Insurance Assigned to the Trust May Be Limited by the Insurers' Rights and Defenses

The Disclosure Statement lacks adequate information, because it fails to disclose that LMI contend that the payment of any Tort Claims under the LMI Policies is subject to the conditions, terms, and exclusions under the LMI Policies.

The proposed funding for the Plan includes the following assignment of rights under the Debtor's insurance policies to a trust:

> iii. **Insurance Claims**. The Diocese will transfer to the Trust all Claims or Causes of Action that the Diocese holds against any and all Insurers. Any proceeds resulting from these Claims or Causes of Actions.

Plan at 15-16. What the second sentence means is unclear.

The Debtor is a self-insured that purchased excess indemnity coverage from LMI. LMI's obligation is triggered only after exhaustion of any Self-Insured Retention ("SIR") amounts. Self-insurers are under the same duty to defend and to contribute defense costs as an insurance company. *In re EnCap Golf Holdings, LLC*, 2008 WL 3193786, at *4 (Bankr. D.N.J. Aug. 4, 2008) (finding insurer had no obligation to make payments under the policy because the self-insured retention had not been exhausted)*; see also In re Patriot Contracting Corp.,* 2006 WL 4457346, at *3 (Bankr. D.N.J. May 31, 2006)*; Colony Nat'l Ins. Co. v. Control Bldg. Servs., Inc.,* 2015 WL 7296034, at *9 (D.N.J. Nov. 18, 2015) (entering default judgment that insurer

was not obligated to defend or indemnify insolvent Named Insured unless and until the Insured satisfied the SIR.).

LMI contend that if there is an absence of performance of the Debtor's contractual obligations under the LMI Policies, there will be no indemnity for any Tort Claims. The Plan, however, does not discuss Debtor's contractual obligations as a self-insured under the LMI Policies; it does not discuss the validity of any assignment of these obligations; and it does not impose the contractual obligations required for coverage under the LMI Policies on the Trust. The Package Policies condition LMI's duty to indemnify upon the Debtor's fulfillment of its duties in the first instance as a self-insured. As noted above, self-insurers are under the same duty to defend and to contribute defense costs as an insurance company. *See People ex rel. Spitzer v. ELRAC, Inc.*, 745 N.Y.S. 2d 671, 674-75 (Sup. Ct. 2002) (citing 1 Couch on Insurance 3d § 10:7 (1995)); *EnCap Golf,* 2008 WL 3193786, at *4; *Patriot Contracting,* 2006 WL 4457346, at *3; *Colony Nat'l Ins.,* 2015 WL 7296034, at *9. Furthermore, "[s]elf-insurance . . . has been defined as a representation by the self-insured entity that it has the financial means to pay any judgments against it." *Consol. Edison Co. of New York v. Liberty Mut*., 749 N.Y.S.2d 402, 403–04 (N.Y. Sup. Ct. 2002). The Debtor as a self-insurer has the duty to defend the underlying lawsuits. By purchasing excess indemnity coverage from LMI with self-insured retentions, the Debtor represented that it has the financial means to uphold its duty to defend vigorously claims against it. *Id.*, 749 N.Y.S.2d at 404. The LMI Policies provide indemnity coverage for ultimate net loss incurred for personal injury claims arising from an occurrence where there is legal liability for damages and expenses that have been either "imposed upon the Assured by law" or "assumed by the Named Assured under contract or agreement." Insuring Agreement C- General Liability, 1975/78 Policy, at PAC-8. To the extent a claimant's

allegations and injuries are not credible or the claim is subject to liability defenses, there would be no legal liability.

The term "ultimate net loss" is defined as

> the total sum which the Assured becomes obligated to pay by reason of personal injury or property damage claims, either through adjudication or compromise, after making proper deductions for all recoveries and salvages, and shall also include . . . expenses for doctors, lawyers, nurses, . . . and for litigation . . . which are paid as a consequence of any occurrence covered hereunder.

Definition of Ultimate Net Loss, *Id.* at PAC-10. This requires an "Assured" (*i.e.*, the Debtor) to satisfy two preconditions to payment: (i) the matter is resolved through compromise or adjudication; and, (ii) the sum is paid as a consequence of an occurrence covered by the Policy. *Id*.

Therefore, under the Package Policies, LMI do not have a duty to defend or settle, only to indemnify covered ultimate net loss. The duties of defense and reasonable settlement are those of the Assured, *i.e.,* the Debtor. LMI have no obligation to indemnify until after an underlying matter is resolved and only in excess of the Diocese's self-insured retention ("SIRs"), and only if the claim is covered.

LMI contend that the assignment to the Trust under the Plan, as structured, creates at least four barriers to LMI indemnifying the Trust for Tort Claims; this does not even include coverage defenses. First, neither the Trust Administrator (as defined in the Plan), nor the Tort Claims Reviewer's (as defined in the Plan) liquidation of a Tort Claimant's claim amount under the Tort Claimant Distribution Plan,[4] either defends the Tort Claims or even considers the Debtor's "legal liability" in settling claims. 1975/78 Package Policy at PAC-8.

[4] The "Tort Claimant Distribution Plan" is Exhibit F to the Disclosure Statement.

Second, as a condition precedent to coverage, the Package Policies require the Debtor to utilize a "Service Organization" to provide notice to excess insurers, administer claims, maintain records of claim details and payments, furnish monthly claim reports, and other. *Id*. at PAC-4 to 5. The Plan provides for no utilization of a Service Organization by the Trust.

Third, the Debtor is required to satisfy other conditions precedent to coverage, including notice, cooperation, access to books and records, and protecting LMI's subrogation and contribution claims. *Id*. at PAC-11; PAC–15; PAC-17; PAC-18.

Fourth, the Package Policies contain a condition as to the timing of "Loss Payments". *See* Section IV. General Conditions at PAC-17.

If, despite the patent flaws in the Plan, the Court is inclined to approve the Disclosure Statement, then it should require the Debtor to revise Section 6.1(b)(ii), as follows:

> iii. **Insurance Claims**. The Diocese will transfer to the Trust all Claims or Causes of Action that the Diocese holds against any and all Insurers. ~~Any proceeds resulting from these Claims or Causes of Actions.~~
>
> The London Market Insurers contend that the LMI Policies provide excess indemnity coverage to the Diocese, which undertook the obligations of a self-insured, and if there is an absence of performance of the Diocese's contractual obligations under the LMI Policies, then there will be no indemnity for any Tort Claims. The London Market Insurers state the Plan does not discuss the validity of any assignment of these obligations or impose the contractual obligations required for coverage on the Trust and this will limit or entirely vitiate any payments by the London Market Insurers to the Trust.

Unless the Debtor adds the above language to the Disclosure Statement, approval of the Disclosure Statement should be denied, because the Disclosure Statement omits material information.

3. The Disclosure Statement Contains Misleading Information as to What the Plan Provides

Here, the Disclosure Statement provides information that does not assist, but rather, misleads creditors. The Disclosure Statement provides information regarding the mediation session with the Official Committee of Tort Claimant Creditors, as well as the insurers.

> In order to resolve certain issues in this case, the Debtor and the Tort Claimants' Committee agreed to engage in mediation before the Honorable Michael B. Kaplan, Chief Judge of the United States Bankruptcy Court for the District of New Jersey. Chief Judge Kaplan has held numerous mediation sessions with the Tort Claimants' Committee and the Debtor. On December 4, 2020, Chief Judge Kaplan held an in-person mediation session with the Tort Claimants' Committee and the Debtor in Sewell, New Jersey. In addition to counsel for the Diocese, the Bishop of the Diocese, the Vicar General of the Diocese and the Diocesan Finance Officer attended the in-person mediation. Counsel for the Tort Claimants' Committee and counsel for the parishes, schools and mission within the territory of the Diocese attended the mediation. No individual members of the Tort Claimants' Committee attended. The mediation session lasted approximately 8 hours. Prior to the in-person mediation session, Chief Judge Kaplan held separate Zoom meetings with the Tort Claimants' Committee and the Debtor. Chief Judge Kaplan has also fielded numerous phone calls with the parties in an attempt to resolve issues in this matter.
>
> In addition to the mediation sessions with the Tort Claimants' Committee and the Debtor, Chief Judge Kaplan has also included the various insurance carriers in mediation sessions. To this end, Chief Judge Kaplan held virtual mediation session with counsel for the insurance carriers, the Tort Claimants' Committee and the Debtor on December 18, 2020 and December 31, 2020. In advance of these sessions, Chief Judge Kaplan also held a Zoom meeting with counsel for the insurance carriers.

Disclosure Statement, at page 46.

This statement is misleading because it implies that the funds to be paid under the Plan could include settlement funds paid by insurers. However, such settlements cannot occur under the Plan, because it fails to provide for them. The Disclosure Statement fails to disclose that the Plan does not provide in any way for a settlement with the insurers. There is no provision for an injunction in favor of insurers that settle, and it is extremely unlikely that any insurer would settle without such protection; such an injunction has been ordered in every diocesan case in

which LMI have been involved. Nor does it disclose that any settlement with insurers would require material amendments to Plan provisions. Moreover, the Disclosure Statement fails to explain that the only mediation that has occurred was over procedural issues. Not only has no substantive mediation occurred, none is in prospect. The parties to this case have not even discussed whom they would accept as a mediator. Thus, to be approved, the Disclosure Statement should be revised to add the following to the above-quoted provisions:

> The Plan does not provide, in any way, for settlements with insurers, and London Market Insurers contend that the Plan would have to be substantially amended if any of the Debtor's insurers were to settle.

Absent this important clarification, the Disclosure Statement misleads Tort Claimants into believing that settlements with insurers will contribute to payment of their claims, when rather the opposite is true given the Debtor's failure to lay the groundwork for a substantive mediation or provide for a settlement with its insurers in the Plan.

4. The Disclosure Statement Contains Misleading Information as to the LMI Policies and Prior Settlement

The Disclosure statement mischaracterizes the LMI Policies in two ways. It states:

> From November 27, 1972 to November 27, 1987 the Diocese had underlying coverage with Lloyd's of London ("Lloyd's), with a self-insured retention of $50,000 from 1973 to 1975 and $75,000 from 1975 to 1987, and also had excess layers and aggregates.

Disclosure Statement at 36.

The LMI Policies were not issued by Lloyd's of London. The LMI Policies were severally subscribed by Certain Underwriters at Lloyd's, London and Certain London Market Companies, each in their respective, several share, as their interests appear on such Policies. Moreover, the LMI Policy incepting on November 27, 1985, and the purported Policy incepting on November 25, 1986, have Sexual Misconduct Exclusions precluding coverage for Tort Claims. The purported Policy incepting on November 25, 1986, is also claims made, and

therefore provides no coverage for claims made after its policy period. The Disclosure Statement should be amended to correct the above errors, as follows:

> From November 27, 1972 to November 27, 1986, Certain Underwriters at Lloyd's and Certain London Market Companies (collectively "London Market Insurers") subscribed to insurance policies on behalf of the Diocese, with a self-insured retention of $50,000 from 1972 to 1975 and $75,000 from 1975 to 1986, and also had excess layers. The London Market Insurer Policy incepting on November 27, 1985 was endorsed with a Sexual Misconduct Exclusion.
>
> London Market Insurers contend that the Diocese has not established the existence of a policy subscribed by them incepting on November 25, 1986 and that if such a policy does exist, it likely provided liability coverage on a claims made basis and was endorsed with a Sexual Misconduct Exclusion.

The Disclosure Statement also mischaracterizes the scope of the release in the Debtor's settlement agreement with LMI ("LMI Agreement"). It states:

> per a settlement agreement with Lloyd's dated April 29, 2010 and May 5, 2010, the Diocese does not have coverage for any abuse claims for which money was demanded before October 22, 2009, or for claims identified in said settlement agreement. However, the settlement agreement does not preclude coverage for claimants who were only receiving payments for therapy, and for claimants who were unknown to the Diocese.

Disclosure Statement at 36.

The release in the LMI Agreement actually includes the following: (i) claims identified in an attachment B thereto; (ii) anyone identified as a victim or potential victim of sexual abuse where such victim demanded or received compensation from the Diocese at any point in time up to and including October 22, 2009 (but not victims who only received counselling, or victims who reported sexual abuse to the Diocese but did not seek counselling or compensation); and, (iii) others who at the time did not allege abuse during the LMI policy periods.

Given that the Debtor has not shared complete claims-related information with LMI, LMI will be unable to determine if a Tort Claimant falls within the scope of the release without conducting discovery.

The Disclosure Statement should be amended to correct these factual errors, as follows:

> From November 27, 1972 to November 27, 1986, Certain Underwriters at Lloyd's and Certain London Market Companies (collectively "London Market Insurers") subscribed to insurance policies on behalf of the Diocese, with a self-insured retention of $50,000 from 1972 to 1975 and $75,000 from 1975 to 1986, and also had excess layers. The London Market Insurer Policy incepting on November 27, 1985 and the purported Policy incepting on November 25, 1986, have Sexual Misconduct Exclusions that preclude coverage for Tort Claims.

Absent the inclusion of the corrected wording, the Disclosure Statement should not be approved.

5. The Disclosure Statement Fails to Disclose that the Trust Administrator Has a Disabling Conflict Relating to the Administration of the Debtor's Insurance Policies.

Given the discussion in III.C.2, *supra*, the disclosure of the assignment of Insurance Claim Amounts to the Trust, in section IX.(b).iii. of the Disclosure Statement, is inadequate and misleading, because the Trust Administrator has an irreconcilable conflict in pursuing insurance proceeds from LMI.

The conflicting duties imposed on the Trust Administrator by the Plan creates the conflict. First, as discussed above, the "Assured" named in the LMI Policies has the duty to defend claims vigorously, and is responsible for paying SIRs under the LMI Policies. *See, e.g., EnCap Golf,* 2008 WL 3193786, at *4*; Patriot Contracting.,* 2006 WL 4457346, at *3*; Colony Nat'l Ins.,* 2015 WL 7296034, at *9.

Second, the Trust Administrator has a duty of loyalty to the trust's beneficiaries under applicable New Jersey state law. *See* Trust Agreement, section *See* Exhibit D to the Disclosure Statement, Diocese of Camden Plan Trust Agreement, ("Trust Agreement"), section 11.11; *Braman v. Cent. Hanover Bank & Tr. Co.*, 138 N.J. Eq. 165, 185, 47 A.2d 10, 24 (1946). Thus, the Trust Administrator cannot act contrary to the beneficiaries' interests. "The most fundamental duty owed by the trustee to the beneficiaries of the trust is the duty of loyalty . . . ."

In re Accounting of Ex'rs of Koretzky, 8 N.J. 506, 528, 86 A.2d 238 (1951); *see also Wolosoff v. CSI Liquidating Trust*, 205 N.J. Super. 349, 359, 500 A.2d 1076 (App. Div. 1985). "A trustee must "administer the trust solely in the interest of the beneficiaries." *Branch v. White*, 99 N.J. Super. 295, 306, 239 A.2d 665 (App. Div.), *certif. denied*, 51 N.J. 464, 242 A.2d 13 (1968). A trustee, therefore, must not act "contrary to the legitimate interests and expectations of the beneficiaries . . . ." *Coffey v. Coffey*, 286 N.J. Super. 42, 53, 668 A.2d 76 (App. Div. 1995), *certif. denied*, 144 N.J. 172, 675 A.2d 1121 (1996).

The Trust Administrator's obligation, as a self-insured under the LMI Policies to defend claims vigorously is diametrically opposed to the fiduciary obligation not to act contrary to the interests and expectations of the beneficiaries. On the one hand, if the Trust Administrator breaches the duty to defend claims vigorously, then coverage under the policies could be lost, which would be to the detriment of the Trust beneficiaries. On the other hand, a vigorous defense could result in the denial of claims of potential Trust beneficiaries. This conflict is fundamental and unavoidable under the Plan, and must be disclosed in the Disclosure Statement.

The Debtor should, therefore, add the following statement to Section X.E.(a) of the Disclosure Statement:

> LMI contend that the Trust Administrator's duties under the LMI policies pose an irreconcilable conflict, and the Trust Administrator cannot both (i) vigorously defend claims, and (ii) act only in the interests of the Trust's beneficiaries, each as required by New Jersey law. Thus, the Trust Administrator might be unable to obtain any proceeds from the LMI Policies, and could thus be in breach of the Trust Administrator's duties to the Tort Claimants and Future Tort Claimants.

Absent the addition of the foregoing, the Court should deny approval of the Disclosure Statement.

IV. CONCLUSION

For the foregoing reasons, the Disclosure Statement should not be approved until it and the Plan have been amended accordingly.

Respectfully submitted,

Dated: March 10, 2021

By: */s/ Sommer L. Ross*

Sommer L. Ross, Esq.
Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801
Telephone: (302) 657-4951
Facsimile: (302) 657-4900
E-mail: slross@duanemorris.com

and

Russell W. Rotten, Esq. (Admitted *Pro Hac Vice*)
Jeff D. Kahane, Esq. (Admitted *Pro Hac Vice*)
Andrew E. Mina, Esq. (Admitted *Pro Hac Vice*)
Duane Morris LLP
865 South Figueroa Street, Suite 3100
Los Angeles, CA 90017-5450
Telephone: (213) 689-7400
Facsimile: (213) 402-7079
E-mail: rwroten@duanemorris.com
E-mail: jkahane@duanemorris.com
E-mail: amina@duanemorris.com

and

Catalina Sugayan, Esq. (Admitted *Pro Hac Vice*)
Preetha Jayakumar, Esq. (Admitted *Pro Hac Vice*)
Clyde & Co.
55 West Monroe Street, Suite 3000
Chicago, IL 60603
Telephone: (312) 635-7000
E-mail: catalina.sugayan@clydeco.us
preetha.jayakumar@clydeco.us

Counsel for Certain Underwriters at Lloyd's, London and Certain London Market Companies

United States Bankruptcy Court
District Of New Jersey
Caption In Compliance With D.N.J. LBR 9004-1

DUANE MORRIS LLP
A Delaware Limited Liability Partnership
Sommer L. Ross, Esq.
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801
Telephone: (302) 657-4951
Email: SLRoss@duanemorris.com

Counsel for Certain Underwriters at Lloyd's, London and Certain London Market Companies

In Re:	Chapter 11
THE DIOCESE OF CAMDEN, NEW JERSEY,	Case No. 20-21257 (JNP)
Debtor.	

CERTIFICATION OF SERVICE

I, Sommer L. Ross, hereby certify under penalty of perjury the following:

1. I am an attorney at Duane Morris LLP and represent Certain Underwriters at Lloyd's, London and Certain London Market Companies (collectively, "LMI") in the above-captioned case.

2. On March 10, 2021, I caused a true and correct copy of the following document filed in the above-captioned case on behalf of LMI to be served upon the parties identified in the chart attached hereto using the mode of service indicated in said chart.

LONDON MARKET INSURERS' OBJECTION TO THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) APPROVING DISCLOSURE STATEMENT; (B) ESTABLISHING PLAN SOLICITATION, VOTING, AND TABULATION PROCEDURES; (C) SCHEDULING A CONFIRMATION HEARING AND DEADLINE FOR FILING OBJECTIONS TO PLAN CONFIRMATION; AND (D) GRANTING RELATED RELIEF

Dated: March 10, 2021

/s/ Sommer L. Ross
Sommer L. Ross

DESCRIPTION	NAME	ADDRESS	EMAIL	METHOD OF SERVICE
Counsel for Certain Abuse Plaintiff	Andreozzi + Foote	Attn: Benjamin D. Andreozzi, Esq. 4503 N. Front Street Harrisburg, PA 17110		First Class Mail
Counsel for Horizon Healthcare Services, INC. d/b/a Horizon Blue Cross Blue Shield of New Jersey	Becker LLC	Attn: Allen J. Underwood II 354 Eisenhower Parkway Plaza II, Suite 1500 Livingston, NJ 07039	ajunderwood@becker.legal	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Bendit Weinstock, PC	Attn: K. Raja Bhattacharya, Esq. 80 Main Street, Suite 260 West Orange, NJ 07052	kbhattacharya@benditweinstock.com	First Class Mail and Email
Counsel for PNC Bank, N.A.	Buchanan Ingersoll & Rooney PC	Attn: Mark Pfeiffer, Esq. Two Liberty Place 50 S. 16th Street, Suite 3200 Philadelphia, PA 19102	mark.pfeiffer@bipc.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	D'Arcy Johnson Day, P.C.	Attn: Andrew J. D'Arcy, Esq. 3120 Fire Road Egg Harbor Township, NJ 08243	ad@djd.law	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Dalton & Associates, P.A.	Attn: Laura J. Simon, Esq. 1106 West Tenth Street Wilmington, DE 19806		First Class Mail
Counsel for Certain Abuse Plaintiff	Edelstein Law, LLP	Attn: Jay L. Edelstein 230 S. Broad Street, Suite 900 Philadelphia, PA 19102	jedelstein@edelsteinlaw.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Gianforcaro Law	Attn: Gregory G. Gianforcaro, Esq. 80 South Main Street Phillipsburg , NJ 08865		First Class Mail
Counsel for Certain Abuse Plaintiff	Herman Law	Attn: Jeff Herman, Esq. 434 West 33rd Street, Penthouse New York, NY 10001		First Class Mail
Internal Revenue Service	Internal Revenue Service	Centralized Insolvency Operation2970 Market StreetMail Stop 5 Q30 133Philadelphia, PA 19104-5016		First Class Mail
Internal Revenue Service	Internal Revenue Service	Centralized Insolvency Operation P.O. Box 7346 Philadelphia, PA 19101-7346		First Class Mail
Counsel for Certain Abuse Plaintiff	Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins PC	Attn: Heidi Weintraub, Laurel Peltzman 1000 Haddonfield-Berlin Road Suite 203 Voorhees, NJ 08043	hweintraub@lawjw.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Jeff Anderson & Associates, P.A.	Attn: Jeffrey R. Anderson, Esq. 505 Thornall Street, Suite 405 Edison, NJ 08837		First Class Mail

DESCRIPTION	NAME	ADDRESS	EMAIL	METHOD OF SERVICE
Counsel for Certain Abuse Plaintiff	Kline & Specter, P.C.	Attn: David K. Inscho, Esq. 1525 Locust Street, 19th Floor Philadelphia, PA 19102	david.inscho@klinespecter.com	First Class Mail and Email
Counsel for Iron Stone Real Estate Partners	Kurtzman|Steady, LLC	Attn: Jeffrey Kurtzman 2 Kings Highway West, Suite 102 Haddonfield, NJ 08033	kurtzman@kurtzmansteady.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Laffey, Bucci & Kent LLP	Attn: Brian D. Kent 371 Hoes Lane, #200 Piscataway, NJ 08854		First Class Mail
Counsel for Certain Abuse Plaintiff	Levy Baldante Finney & Rubenstein, P.C.	Attn: John W. Baldante, Esq. 89 North Haddon Avenue, Suite D Haddonfield, NJ 08033	baldante@levybaldante.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Locks Law Firm, LLC	Attn: Karl Friedrichs 801 North Kings Highway Cherry Hill, NJ 08034	kfriedrichs@lockslaw.com	First Class Mail and Email
Counsel to the Official Committee of Tort Claimant Creditors	Lowenstein Sandler LLP	Attn: Jeffrey D. Prol; Brent Weisenberg; Michael Papandrea; Colleen M. Maker; Kenneth A. Rosen One Lowenstein Drive Roseland, NJ 07068	jprol@lowenstein.com bweisenberg@lowenstein.com mpapandrea@lowenstein.com cmaker@lowenstein.com krosen@lowenstein.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Marino Associates	Attn: Joseph Auddino, Esq. 301 Wharton Street Philadelphia, PA 19174	jauddino@marinoassociates.net	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Martin Gunn & Martin, PA	Attn: William J. Martin216 Haddon Avenue, Suite 420PO Box 358Westmont, NJ 08108	wjmartin@martingunn.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Matthews & Associates	Attn: David P. Matthews, Esq. 2905 Sackett Street Houston, TX 77098		First Class Mail
Counsel for New Jersey Self-Insurers Guaranty Association	McElroy, Deutsch, Mulvaney & Carpenter, LLP	Attn: Jeffrey Bernstein 570 Broad Street Newark, NJ 07102	JBernstein@mdmc-law.com	First Class Mail and Email
Counsel for New Jersey Self-Insurers Guaranty Association	McElroy, Deutsch, Mulvaney & Carpenter, LLP	Attn: Nicole Leonard 225 Liberty Street 36th Floor New York, NY 10281	nleonard@mdmc-law.com	First Class Mail and Email
Co-Counsel to Debtors	McManimon, Scotland & Baumann, LLC	Attn: Richard D. Trenk, Robert S. Roglieri, Anthony Sodono III 75 Livingston Avenue, Second Floor Suite 201 Roseland, NJ 7068	rtrenk@msbnj.com rroglieri@msbnj.com asodono@msbnj.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	McOmber McOmber & Luber PC	Attn: Matthew A. Luber, Meghan A. Clearie 39 East Main Street Marlton, NJ 08053	mal@njlegal.com mac@njlegal.com	First Class Mail and Email

DESCRIPTION	NAME	ADDRESS	EMAIL	METHOD OF SERVICE
Counsel for Certain Abuse Plaintiff	Merson Law, PLLC	Attn: Matthew G. Merson, John K. Merson 150 East 58th Street, 34th Floor New York, NY 10155	mmerson@mersonlaw.com	First Class Mail and Email
U.S. Trustee for the District of New Jersey	Office of The United States Trustee	Attn: Jeffrey M. Sponder, Lauren Bielskie One Newark Center, Suite 2100 1085 Raymond Boulevard Newark, NJ 07102	jeffrey.m.sponder@usdoj.gov lauren.bielskie@usdoj.gov	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Pogust Millrood, LLC	Attn: Harris L. Pogust, Gabriel C. Magee 161 Washington ZStreet, Suite 940 Conshohocken, PA 19428	hpogust@pogustmillrood.com gmagee@pogustmillrood.com	First Class Mail and Email
Claims Agent	Prime Clerk	Attn: Michael J. Hill One Grand Central Place 60 East 42nd Street, Suite 1440 New York, NY 10165	camdenteam@primeclerk.com serviceqa@primeclerk.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Rebenack, Aronow & Mascolo, LLP	Attn: J. Silvio Mascolo, Esq. 111 Livingston Avenue New Brunswick, NJ 08901	JMascolo@ram.law	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Seeger Weiss LLP	Atn: Carlos Rivera, Esq. 55 Challenger Road, 6th Floor Ridgefield Park, NJ 07660		First Class Mail
Counsel for Certain Abuse Plaintiff	Sheffet & Dvorin, PC	Attn: Ethan Jesse Sheffet, Esq. 88 Pompton Avenue Verona, NJ 07044	ethansheffet@gmail.com	First Class Mail and Email
Counsel for Certain Abuse Plaintiff	Slater Slater Schulman, LLP	Attn: Adam P. Slater 89 North Haddon Avenue, Suite D Haddonfield, NJ 08033		First Class Mail
Counsel for Certain Abuse Plaintiff	The Braslow Firm, LLC	Attn: Derek T. Braslow, Esq. 230 Sugartown Road, Suite 20 Wayne, PA 19087		First Class Mail
Debtors	The Diocese of Camden, New Jersey	631 Market Street Camden, NJ 08102		First Class Mail
Counsel for Certain Abuse Plaintiff	Williams Cedar, LLC	Attn: David M. Cedar, Esq. 8 Kings Highway West, Suite B Haddonfield, NJ 08033	dcedar@williamscedar.com	First Class Mail and Email
Counsel for Certain Parishes, a Mission and Certain Schools	Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.	Arthur J. Abramowitz, Esquire 308 Harper Drive Suite 200 Moorestown, NJ 08057	aabramowitz@shermansilverstein.com	First Class Mail and Email
Seton Hall University	Archer & Greiner, P.C.	Jerrold S. Kulback, Esquire Three Logan Square 1717 Arch Street, Suite 3500 Philadelphia, PA 19103	jkulback@archerlaw.com	First Class Mail and Email

DESCRIPTION	NAME	ADDRESS	EMAIL	METHOD OF SERVICE
Interstate Fire & Casualty Company	Rivkin Radler LLP	Michael J. Jones, Esq. Siobhain P. Minarovich. Esq. 25 Main Street Court Plaza North, Suite 501 Hackensack, NJ 07601-7082 and Peter P. McNamara, Esq. 926 RXR Plaza Uniondale, NY 11556-0926	michael.jones@rivkin.com Siobhain.Minarovich@rivkin.com Peter.McNamara@Rivkin.com	First Class Mail and Email
Interstate Fire & Casualty Company	Moss & Barnett	Charles E. Jones, Esq. 150 South Fifth Street, Suite 1200 Minneapolis, MN 55402	charles.jones@lawmoss.com	First Class Mail and Email
Wells Fargo Vendor Financial Services, LLC		Christine R. Etheridge Bankruptcy Administration Wells Fargo Vendor Financial Services, LLC fka GE Capital Information Technology Solutions c/o A Ricoh USA Program f/d/b/a IKON Financial Services P. 0. Box 13708 Macon, GA 31208-3708		First Class Mail
Official Committee of Unsecured Trade Creditors	Porzio, Bromberg & Newman, P.C.	Warren J. Martin Jr., Esq. Rachel A. Parisi, Esq. John S. Mairo, Esq 100 Southgate Parkway Morristown, NJ 07962	wjmartin@pbnlaw.com raparisi@pbnlaw.com jsmairo@pbnlaw.com	First Class Mail and Email
Certain Parishes, a Mission and Certain Schools	Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.	Bruce S. Luckman, Esq. 308 Harper Drive, Suite 200 Moorestown, NJ 08057	bluckman@shermansilverstein.com	First Class Mail and Email
Lincoln Automotive Financial Services, servicer for CAB EAST LLC	Law Firm of John R. Morton, Jr.	John R. Morton, Jr., Esquire 110 Marter Avenue, Suite 301 Moorestown, NJ 08057 and Lincoln Automotive Financial Services National Bankruptcy Service Center P.O. Box 62180 Colorado Springs, CO 80962		First Class Mail

DESCRIPTION	NAME	ADDRESS	EMAIL	METHOD OF SERVICE
Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America	SQUIRE PATTON BOGGS (US) LLP	Mark D. Sheridan, Esq. Jason King, Esq. 382 Springfield Avenue, Suite 300 Summit, NJ 07401	mark.sheridan@squirepb.com Jason.king@squirepb.com	First Class Mail and Email
Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America	O'Melveny & Myers	Times Square Tower 7 Times Square New York, NY 10036 Attn: Tancred Schiavoni, Esq.	tschiavoni@omm.com	First Class Mail and Email
Diocese of Camden Trusts, Inc., The Tuition Assistance Fund, Inc., Diocese of Camden Healthcare Foundation, Inc., The Diocesan Housing Services Corporation of the Diocese of Camden, Inc., Catholic Charities, Diocese of Camden, Inc., Padre Pio Shrine, Buena Borough, N.J., Inc.	Flaster/Greenberg, P.C.	Damien Nicholas Tancredi, Esq. Commerce Center 1810 Chapel Avenue West Cherry Hill, NJ 08002	Damien.Tancredi@flastergreenberg.com	First Class Mail and Email
Granite State Insurance Co.	RIKER DANZIG SCHERER HYLAND & PERRETTI LLP	Headquarters Plaza One Speedwell Avenue Morristown, New Jersey 07962-1981 Attn: Joseph L. Schwartz, Esq. Michael J. Rossignol, Esq.	jschwartz@riker.com mrossignol@riker.com	First Class Mail and Email
Lexington Insurance Co.	RIKER DANZIG SCHERER HYLAND & PERRETTI LLP	Headquarters Plaza One Speedwell Avenue Morristown, New Jersey 07962-1981 Attn: Joseph L. Schwartz, Esq. Michael J. Rossignol, Esq.	jschwartz@riker.com mrossignol@riker.com	First Class Mail and email