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7 IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
8 BANKRUPTCY DIVISION

9 In re:
10 ARCHBISHOP OF AGAÑA,
11 a Corporation Sole,
12 Debtor.

Chapter 11 Bankruptcy

Case No. 19-00010

**MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS FOR DERIVATIVE
STANDING TO ENFORCE THE
AUTOMATIC STAY AND TAKE OTHER
ACTIONS**

Hearing Date: August 20, 2021 At 9:30 AM

16 The Official Committee of Unsecured Creditors (the "Committee") moves the Court for an
17 order granting the Committee derivative standing to enforce the automatic stay related to the
18 Debtor's rights under certain insurance policies. The motion is based on the Declaration of Robert
19 T. Kugler and the accompanying memorandum of law, along with the records, files, and
20 proceedings in this case.

22 RESPECTFULLY SUBMITTED this 21st day of July 2021.

24 STINSON LLP

25 /s/ Edwin H. Caldie

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**MEMORANDUM OF LAW IN SUPPORT
OF THE MOTION OF THE OFFICIAL
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Hearing Date: August 20, 2021 At 9:30 AM

The Official Committee of Unsecured Creditors (the "Committee") by and through its undersigned counsel, submits this memorandum of law in support of its motion for an order granting the Committee derivative standing to enforce the automatic stay related to the Debtor's rights and interests under certain insurance policies (the "Motion").

INTRODUCTION

The Committee requests standing to enforce the automatic stay to protect certain insurance interests held by the Archdiocese. The Archdiocese is an insured party under multiple insurance contracts issued to the Boy Scouts of America (the "BSA Insurance Policies"). The Archdiocese's contract rights in BSA Insurance Policies are likely worth millions of dollars to this estate and its creditors. Currently, parties in the Boy Scouts of America ("BSA") bankruptcy case are pursuing

1 settlements that could materially impair or even nullify entirely the Archdiocese's rights and
2 interests under BSA Insurance Policies.

3 Although the Archdiocese filed a claim in the BSA bankruptcy, the Archdiocese has
4 otherwise ignored these valuable rights. The Archdiocese did not identify its rights under BSA
5 Insurance Policies in its schedules and has not taken clear action to protect its rights under such
6 policies in the BSA bankruptcy case despite the Committee's requests that it do so. As a result, the
7 Committee now seeks standing to secure clarity on two points through an affirmative order of this
8 Court. Specifically, by this Motion, the Committee asks for leave to seek an order (i) identifying
9 the Archdiocese's interest in BSA insurance policies as an asset of the Archdiocese's estate, and
10 (ii) stating explicitly that the automatic stay applies to such estate interests.

11
12 The following is a summary of the policies that likely comprise the BSA Insurance
13 Policies:

Policy Dates	Insurer	Policy Number	Limit Description
1/1/1962-1/1/1963	INA	CGL191986	\$500,000 each person; \$1,000,000 each occurrence
1/1/1963-1/1/1964	INA	CGL204680	\$500,000 each person; \$1,000,000 each occurrence
1/1/1964-1/1/1965	INA	CGL212922	\$500,000 each person; \$1,000,000 each occurrence
1/1/1965-1/1/1966	INA	CGL 232470	\$500,000 each person; \$1,000,000 each occurrence
1/1/1966-1/1/1967	INA	CGL 248896	\$500,000 each person; \$1,000,000 each occurrence
1/1/1967-1/1/1968	INA	CLP 11200	\$500,000 each person; \$1,000,000 each occurrence
1/1/1968-1/1/1969	INA	GLP 151211	\$500,000 each person; \$1,000,000 each occurrence
1/1/1969-1/1/1970	INA	GLP 160981	\$500,000 each person; \$1,000,000 each occurrence
3/2/1969-1/1/1970	INA	XBC 43198	\$2,000,000 per occurrence
1/1/1970-1/1/1971	INA	BLB 51323	\$500,000 each person; \$1,000,000 each occurrence
1/1/1970-1/1/1971	INA	XBC 77302	\$2,000,000 per occurrence

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Policy Dates	Insurer	Policy Number	Limit Description
1/1/1971-1/1/1972	INA	XBC 85370	\$2,000,000 per occurrence
9/21/1971-1/1/1972	Hartford	10CA43315	\$500,000 each person; \$1,000,000 each occurrence
1/1/1972 - 1/1/1974	Hartford	10CA43303	\$500,000 each occurrence
1/1/1972 - 1/1/1974	Hartford	10HUA43302	-
-	Hartford	10CA43329	\$500,000 each occurrence; \$500,000 agg.
1/1/1974-1/1/1975	Hartford	10HUA43335	\$2,000,000 per occurrence
1/1/1975-1/1/1976	Hartford	10CA43342E	\$500,000 each occurrence
1/1/1976-1/1/1977	Hartford	10CA43349E	\$500,000 each occurrence
1/1/1976-1/1/1977	National Union	BE1151559 & BE1151554	\$10,000,000 each occurrence
9/17/1976-9/17/1977	Lloyds' & Companies	76-10-08-02	\$5,000,000 each occurrence
1/1/1977-1/1/1978	Hartford	10CA43359 E	\$1,000,000 each occurrence
1/1/1977-1/1/1978	National Union	BE121P255 & BE1151590 *	\$10,000,000 each occurrence
1/1/1977-1/1/1978	Am RE	M-1027493	\$500,000 each occurrence
1/1/1978-1/1/1979	INA	GLP706452	\$500,000 per occurrence
1/1/1978-1/1/1979	National Union	CE1157777	\$500,000 per occurrence
1/1/1978-1/1/1979	First State	908854	\$10,000,000 per occurrence
1/1/1979-1/1/1980	INA	GLP706452	\$500,000 per occurrence
1/1/1979-1/1/1980	INA	XBC 151748	\$5,000,000 per occurrence
1/1/1979-1/1/1980	First State	927616	\$5,000,000 per occurrence
1/1/1980-1/1/1981	INA	GLP706452	\$5,000,000 each occurrence
1/1/1980-1/1/1981	Allianz	UMB 599346	\$5,000,000 per occurrence
1/1/1980-1/1/1981	Aetna	01XN2438WCA	\$10,000,000 per occurrence; \$10,000,000 Aggregate
1/1/1981-1/1/1982	INA	ISC1353	\$500,000 per occurrence
1/1/1981-4/1/1982	Transit	UMB 964076	\$5,000,000 per occurrence

Policy Dates	Insurer	Policy Number	Limit Description
1/1/1981-1/1/1983	First State and Underwriters	931255 & 931255A	\$10,000,000 per occurrence
1/1/1981-1/1/1983	First State and Underwriters	931257 & 931257A	\$10,000,000 per occurrence

The Committee estimates that over seventy (70) still-pending claims filed against the Archdiocese in this chapter 11 case implicate the BSA Insurance Policies. The contractual obligations of the BSA Insurers to the Archdiocese could thus represent a multi-million-dollar recovery for the Archdiocese's estate.

These rights held by the Archdiocese are currently at risk, however. Certain BSA Insurers, in coordination with the BSA, are proposing to sell BSA Insurance Policies back to their issuing insurance companies as part of the BSA's chapter 11 process. If this happens, it would extinguish the Archdiocese's rights under BSA Insurance Policies and prevent any recovery from the BSA's insurers for the Archdiocese or creditors in this case. In other words, if settlements currently contemplated in the BSA bankruptcy case are approved, a significant asset of this bankruptcy estate will likely be gone forever, and this estate (and its creditors) will receive little or nothing in exchange.

The Committee has asked the Archdiocese to take action to protect its insurance assets relating to BSA's insurers, but the Archdiocese has refused. The Committee has also asked to see the Archdiocese's analysis demonstrating that such protective action is either not needed or not justified. The Committee's request to see that analysis has gone unanswered and the Archdiocese's oral explanations for its failure to take action have been unconvincing. For this reason, the Committee feels an obligation to take action on its own and, by this Motion, the Committee seeks authority to do so.

1 **BACKGROUND**

2 Survivors of sexual abuse have filed approximately seventy (70) pending claims in the
3 Archdiocese's bankruptcy case that also implicate the BSA ("BSA Claims").¹ These BSA Claims
4 create liability for both the Archdiocese's insurers and the BSA's insurers. This is so because the
5 Archdiocese is covered by insurance policies issued to the BSA as a sponsor or chartering
6 organization of the BSA on the Island of Guam.²

7
8 In 2017, the Archdiocese began submitting Survivor claims to its direct insurers and also
9 to the BSA Insurers.³ Among the insurers' responding to the Archdiocese's claim tenders, Hartford
10 Accident and Indemnity Company First State Insurance Company, Twin City Fire Insurance
11 Company, and Navigators Specialty Insurance Company (collectively, "Hartford"), acknowledged
12 its obligation to defend the Archdiocese with respect to First State Insurance Company Policy No.
13 927616 (effective 1/1/1979-1/1/1980).⁴ Hartford acknowledged that the Named Insured
14 Endorsement in that policy included as Insureds:
15

16 It is agreed that the Named Insured is as follows:

17 Boy Scouts of America

18 National, Regional and All Local Councils

19 All Scout Officials, Professional and Non-Professional Employees, Sponsors &
20 Charter Organizations, Donors & Volunteer Workers (whether registered or not)
21 solely with respect to scouting activities and as excess over other valid and
22 collectible insurance, Certificate Holders by specific request, any Leasing Dealer
23 as respects Automobiles leased by Boy Scouts of America.⁵

24 ¹ See BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC et al., (Bankr. D. Del. 20-
25 10343), Claim No. 6436 at 8-11 (summarizing claims relevant to the BSA and the BSA Insurance
26 Policies).

27 ² See, e.g., Declaration of Robert T. Kugler ("Kugler Dec.") Ex. C at 2.

28 ³ E.g., *id.*

⁴ Kugler Dec. Ex. D at 2.

⁵ *Id.*

1 The Archdiocese has consistently taken the position that it is an insured under that and similar
2 provisions in numerous other BSA Insurance Policies. Further, the Committee has been notified
3 that another of BSA's Insurers (Insurance Company of North America, or "INA") has
4 acknowledged a defense obligation for the Archdiocese for at least some of the claims implicating
5 its coverage period.⁶ The 1981 – 1982 INA Primary Policy, for example, states, under the header
6 "PERSONS OR ENTITIES INSURED," that "[t]he unqualified word "Insured" includes: (a) The
7 Named Insured, named in the Declarations of this policy; (b) Scout Officials and employees
8 whether or not registered with the Boy Scouts of America; units and their sponsors (charter
9 organizations), and all volunteers workers . . ."

11 On February 18, 2020, the BSA filed for relief under chapter 11 of title 11 of the United
12 State Code in the Bankruptcy Court for the District of Delaware (the "BSA Bankruptcy").⁷ On
13 November 13, 2020, the Archdiocese filed a proof of claim in the BSA Bankruptcy asserting
14 (i) claims for contribution as to any BSA claims for which the Archdiocese contributes payment
15 in this chapter 11 case, and (ii) claims for coverage as an insured under the BSA Insurance
16 Policies.⁸

18 On April 16, 2021, the BSA and Hartford filed notice of a Settlement Agreement and
19 Release in the BSA Bankruptcy (the "Hartford Settlement").⁹ As part of the Hartford Settlement,
20 the BSA agreed to sell-back to Hartford all insurance policies issued by Hartford to the BSA (the
21 "Hartford Policies").¹⁰ In addition, the Hartford Settlement requires that Hartford be provided with

23 ⁶ See, e.g., Kugler Dec. ¶ 10.

24 ⁷ The BSA cases are jointly administered under case 20-10343 (Bankr. D. Del.).

25 ⁸ BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC et al., (Bankr. D. Del. 20-10343),
26 Claim No. 6436.

27 ⁹ BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC et al., (Bankr. D. Del. 20-10343),
ECF No. 2624.

28 ¹⁰ Specifically, the Hartford Policies are described in the Hartford Settlement as:

1 the protection of any releases and channeling injunctions provided under the BSA's plan of
2 reorganization.¹¹ Both the policy buy-back and the proposed plan releases allow Hartford to escape
3 its obligations to the Archdiocese as an Insured under the Hartford Policies. The arrangement
4 channels the Archdiocese's rights under the Hartford Policies to a trust and limits the Archdiocese
5 recovery to an unspecified allocation¹² of the trust's corpus.

6
7 On June 8, 2021, the Committee requested that the Archdiocese provide a written analysis
8 and response to the Hartford Settlement and the BSA's plan to reorganize.¹³ Counsel for the
9 Archdiocese refused to provide a written response, but instead, on June 8, 2021, scheduled a phone
10 conference with counsel to the Committee to discuss the Archdiocese's justifications for inaction.¹⁴
11 On the call held on June 11, 2021 12:00 PM (Central), the Archdiocese's counsel stated that the
12 Debtor would be taking no action in the BSA case to preserve the estate's rights under the BSA

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14
15 (i) any and all liability insurance policies, known and unknown, issued or allegedly issued
16 by Hartford to the BSA as the first named insured, including each of the insurance policies
17 identified on Exhibit 1, and (ii) the BSA's Interests in any and all liability insurance
18 policies, known and unknown, issued or allegedly issued by Hartford to any other Person
19 that afford the BSA coverage with respect to Abuse Claims; provided, however, that
"Hartford Policies" shall not include (i) any portion of workers' compensation policies with
respect to Claims not discharged by the Plan and unrelated to Abuse Claims or (ii) any
portion of automobile liability policies with respect to Claims not discharged by the Plan
and unrelated to Abuse Claim.

20 BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC et al., (Bankr. D. Del. 20-10343),
21 ECF No. 2624 at 8.

22 ¹¹ *Id.* at 17.

23 ¹² *See, e.g.,* Objection Of The Tort Claimants' Committee To Debtors' Motion For Entry Of An
24 Order (i Approving The Disclosure Statement And The Form And Manner Of Notice, (ii)
25 Approving Plan Solicitation And Voting Procedures, (iii) Approving Forms Of Ballots, (iv)
26 Approving Form, Manner And Scope Of Confirmation Notices, (v) Establishing Certain Deadlines
In Connection With Approval Of The Disclosure Statement And Confirmation Of The Plan, And
(vi) Granting Related Relief, Boy Scouts Of America And Delaware BSA, LLC et al., (Bankr. D.
Del. 20-10343), ECF No. 3526 at 25-26 (describing inadequacy of disclosure with regard to the
Hartford Settlement including the amount and allocation of proceeds).

27 ¹³ Declaration of Robert T. Kugler ("Kugler Dec.") at Ex. A.

28 ¹⁴ Declaration of Robert T. Kugler ("Kugler Dec.") at Ex. B.

1 Insurance Policies.¹⁵ The Archdiocese stated that it was satisfied with the releases it would receive
2 under the BSA's plan and settlement proposals and found it a fair trade in return for foregoing its
3 rights under the Hartford Policies.¹⁶ The Archdiocese also noted it would not seek to enforce the
4 automatic stay in this chapter 11 case to protect the Archdiocese's rights as an Insured because it
5 believed the cost of these actions outweighed their benefit to the estate.¹⁷ The Committee cannot
6 sit idly by as the Archdiocese's rights under insurance policies that could yield millions of dollars
7 in recoveries are eliminated, in exchange for releases that do not provide any benefit to the
8 Archdiocese's creditors. The Committee thus respectfully asks the Court to grant the relief sought
9 by this Motion.

11 **REQUEST FOR RELIEF**

12 The Committee requests standing and authority to act on behalf of the Archdiocese and its
13 bankruptcy estate to enforce the automatic stay and protect the Archdiocese's rights under the BSA
14 Insurance Policies. At this stage, the Committee believes that it will be sufficient to seek an order
15 from this Court (i) identifying the Archdiocese's interest in BSA Insurance Policies as an asset of
16 the Archdiocese's bankruptcy estate, and (ii) stating affirmatively that the automatic stay applies
17 to such estate assets. To be clear, the Committee does not intend to seek authority to pursue an
18 adversary action to determine coverage under the BSA Insurance Policies or liability of the BSA
19 Insurers for Survivor claims at this time. The Committee merely wishes to preserve the status quo
20 until a confirmable plan is proposed in this case, which plan will address and resolve the
21 Archdiocese's rights under the BSA Insurance Policies.

24 **ARGUMENT**

26 ¹⁵ *Id.* ¶ 5.

27 ¹⁶ *Id.* ¶ 6.

28 ¹⁷ *Id.* ¶ 7.

1 "A creditor dissatisfied with the lack of action on the part of the debtor-in-possession may
2 petition the court to compel the debtor-in-possession to act or gain court permission to institute the
3 action itself."¹⁸

4 Courts consider four factors when deciding to grant a creditor's request to pursue a claim
5 on behalf of the debtor's estate:

- 6 1. Whether a demand has been made upon the statutorily-authorized party to take
7 action;
- 8 2. Whether the demand is declined;
- 9 3. Whether a colorable claim that would benefit the estate if successful exists,
10 based on a cost-benefit analysis performed by the court; and
- 11 4. Whether the inaction is justified in light of the debtor-in-possession's duties in
12 a chapter 11 case.¹⁹

13 Central to the Court's inquiry is whether the Committee's request "would forward the
14 reorganization effort, or to the contrary, might be a detriment."²⁰ The Committee's proposed
15 actions carry a minimal cost, but have the potential to return millions to the estate. For the reasons
16 that follow, the Court should grant the Committee authority to protect the Archdiocese's rights
17 under the BSA Insurance Policies.

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20 ¹⁸ *In re Spaulding Composites Co., Inc.*, 207 B.R. 899, 903 (B.A.P. 9th Cir. 1997); *see also In re*
21 *Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986)("[I]f an aggrieved creditor
22 believes that the debtor-in-possession has failed to fulfill its duty to prosecute actions, then the
23 creditor must bring this to the attention of the court by an appropriate motion. This promotes the
fair and orderly administration of the bankruptcy estate by providing judicial supervision over the
litigation to be undertaken.").

24 ¹⁹ *In re Roman Cath. Bishop of Great Falls, Montana*, 584 B.R. 335, 338–39 (Bankr. D. Mont.
25 2018) (citing *In re Yellowstone Mountain Club, LLC*, 2009 WL 982207 *6 (Bankr. D.Mont.
26 2009)); *see also Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988)
27 ("While the circumstances under which a creditors' committee may sue are not explicitly spelled
out in the Code, the bankruptcy courts have generally required that the claim be colorable, that the
debtor-in-possession have refused unjustifiably to pursue the claim, and that the committee first
receive leave to sue from the bankruptcy court.").

28 ²⁰ *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986).

1 **I. The Committee Demanded the Archdiocese Enforce the Automatic Stay and the**
2 **Archdiocese Refused.**

3 The first two factors are clearly satisfied. The Committee requested, in writing on June 8,
4 2021, that the Archdiocese take action (or explain its inaction) to protect its interest in the BSA
5 Bankruptcy. During the June 10, 2021 meeting of counsel, the Archdiocese's attorneys made clear,
6 by both their refusal to provide a written response and their affirmative verbal statements, that the
7 Archdiocese would not seek to enforce the stay to protect the estate's interest in the BSA Insurance
8 Policies.²¹

10 **II. The Committee Requests Authority to Pursue Plausible Claims.**

11 The Committee satisfies the third factor because the proposed actions to define and enforce
12 the automatic stay are "colorable" and will provide value to the estate. A creditor's proposed action
13 is "colorable" if it would survive a motion to dismiss.²² Establishing a colorable claim is a low
14 standard that is easily met.²³ To meet this standard, the Committee need only show that, with the
15 alleged facts taken as true, it would have a plausible claim or cause of action.²⁴

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22 ²¹ Kugler Dec. ¶¶ 3-7.

23 ²² *In re Roman Cath. Bishop of Great Falls, Montana*, 584 B.R. 335, 339 (Bankr. D. Mont. 2018)
24 ("[T]he Diocese does not dispute that the Committee's claims challenging the affiliates' interests
25 are indeed colorable, *i.e.*, that they could surely survive a motion to dismiss.").

26 ²³ *See, e.g., Adelpia Comm'ncs Corp. v. Bank of America NA (In re Adelpia Commc'ns Corp.)*,
27 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005) (holding that the requisite standard for presenting a
28 "colorable" claim is not a difficult one to meet); *Official Comm. of Unsecured Creditors v. Hudson
United Bank (In re America's Hobby Ctr.)*, 223 B.R. 275, 288 (Bankr. S.D.N.Y. 1998) (observing
that only if the claim is "facially defective" should standing be denied).

29 ²⁴ *E.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[A] complaint must contain sufficient factual
matter, accepted as true, to state a claim to relief that is plausible on its face.") (citations omitted).

1 a) *The Committee has a Colorable Claim that the BSA Insurance Policies Are Property*
2 *of the Bankruptcy Estate.*

3 The automatic stay prohibits "any act to obtain possession of property of the estate or of
4 property from the estate or to exercise control over property of the estate."²⁵ It is well-settled law
5 that policies insuring debtor entities constitute property of such debtors' bankruptcy estates.²⁶ It is
6 also well-settled that an insured may enforce policy provisions made for its benefit.²⁷

7
8 If this Motion is granted, the Committee will seek orders from the Court confirming that
9 the Archdiocese's rights as an insured under the BSA Insurance Policies are indeed property of
10 this estate and protected by the automatic stay.²⁸ The Committee has stated a colorable basis to
11 pursue such an order. Specifically, the Committee has presented facts demonstrating (i) the
12 existence of BSA Insurance Policies; and (ii) the fact that the Archdiocese is an insured under the
13 BSA Insurance Policies.

14
15 The Archdiocese has a distinct and independent legal interest in the BSA Insurance
16 Policies, and the Archdiocese's interest is property of the Archdiocese's bankruptcy estate.²⁹
17 Moreover, it is the Committee's understanding that many of the BSA Insurance Policies have no

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20 ²⁵ 11 U.S.C. § 362(a)(3).

21 ²⁶ *In re Spaulding Composites Co., Inc.*, 207 B.R. 899, 906 (B.A.P. 9th Cir. 1997).

22 ²⁷ *Northwestern Mut. Ins. Co. v. Farmers' Ins. Group*, 76 Cal. App. 3d 1031 (4th Dist. 1978); *see*
23 *also New Hampshire Ins. Co. v. United States*, 92 F.3d 1193, 1996 WL 436509 at *4 (9th Cir.
24 1996)(unpublished)("[T]he United States is entitled as an additional insured to enforce the terms
25 of the policy against the insurer as a third party beneficiary even though it was not an actual party
26 to the insurance contract.").

27 ²⁸ *In re Petters Co., Inc.*, 419 B.R. 369, 376 (Bankr. D. Minn. 2009) (recognizing that "any
28 individual insured has a contractually-distinct status that runs directly between itself and the
insurer," so that "the right to receive payment on a covered claim [is] the property of that insured
itself"); *see also In re Circle K Corp.*, 121 B.R. 257, 261 (Bankr. D. Ariz. 1990)("[A]ctions 'related
to' the bankruptcy proceedings against the insurer or against officers or employees of the debtor
who may be entitled to indemnification under such policy or who qualify as
[an] additional [insured] under the policy are to be stayed under section 362(a)(3).").

²⁹ *In re Petters Co., Inc.*, 419 B.R. at 376.

1 aggregate policy limits and afford significant coverage per occurrence for both BSA and the
2 Archdiocese.

3 Assuming for purposes of this Motion that all the facts alleged in support of this Motion
4 are true, the Committee has established a colorable claim that the BSA Insurance Policies are
5 property of the estate, and the Court should permit the Committee to pursue actions to confirm the
6 estate's interests.
7

8 b) *The Committee has a Colorable Claim that the Hartford Settlement Disposes of*
9 *Property of the Estate.*

10 The automatic stay prohibits acts to obtain possession of property interests of the debtor.³⁰
11 Courts consistently hold that an attempt by a coinsured to settle or payout proceeds on insurance
12 rights belonging to the estate is a violation of the automatic stay:
13

14 Property of the estate is defined in § 541 as “all legal or equitable interests of the
15 debtor in property (wherever located) as of the commencement of the case.” It
16 includes intangible or contingent interests of the debtor as well as intangible
17 property itself. If these insurance proceeds are property of the bankruptcy estates,
the litigation and arbitration proceedings, to the extent they seek monetary
judgments or reach monetary settlements payable from the proceeds, would be acts
to obtain property of the estate.³¹

18 While this is an unusual case in which the anticipated actions of one bankruptcy debtor (BSA) will
19 impact the estate of another bankruptcy debtor (the Archdiocese), there exists no bankruptcy-to-
20 bankruptcy exception for violations of the automatic stay.³² Accordingly, the Hartford and other
21 BSA insurers cannot buyback the BSA Insurance Policies or secure a release of its obligations to
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25 ³⁰ 11 U.S.C. § 362(a)(3)(2020).

26 ³¹ *In re Metro. Mortg. & Sec. Co., Inc.*, 325 B.R. 851, 855 (Bankr. E.D. Wash. 2005).

27 ³² *Palmdale Hills Prop., LLC v. Lehman Commer. Paper, Inc. (In re Palmdale Hills Prop., LLC)*,
28 654 F.3d 868, 875-6 (9th Cir. 2011) (actions taken by one debtor in its bankruptcy case that affect
the rights of another debtor in its bankruptcy case violate the automatic stay in the latter debtor's
bankruptcy case).

1 the Archdiocese without first obtaining leave from *this* Court.³³ The Committee has stated a
2 colorable claim that such settlements would violate the automatic stay and the Court should grant
3 the Committee authority to protect the estate.

4 c) *The Committee has a Reasonable Basis to Believe that the BSA Bankruptcy Case Will*
5 *Continue to Threaten Property of the Archdiocese's Estate.*
6

7 The BSA has already entered into one settlement, and it is likely to enter into additional
8 settlements and proposals, that divest the Archdiocese of its interests under BSA Insurance Policies
9 as part of the BSA Bankruptcy.³⁴ Further, the BSA Insurers apparently do not intend to seek leave
10 of this Court before doing so. It is therefore necessary to make clear through an affirmative court
11 order that the Archdiocese's interests in the BSA Insurance Policies constitute property of the
12 Archdiocese's bankruptcy estate and that such interests are thus subject to the automatic stay.

13 **III. The Archdiocese's Inaction Is Unreasonable under the Circumstances.**
14

15 The fourth factor requires that the Court analyze the Debtor's refusal to act by weighing
16 the costs of the proposed actions against the benefit to the estate. Analyzing a debtor's refusal to
17 take action with respect to estate assets "focuses on whether a clear benefit to the estate can be
18 identified or whether only insignificant benefits would be realized."³⁵ A court should not, however,
19 conduct a mini-trial to evaluate a request for derivative standing, but instead weigh the potential
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23 ³³ *In re Forty-Eight Insulations, Inc.*, 133 B.R. 973, 979 (Bankr. N.D. Ill. 1991), *aff'd*, 149 B.R.
24 860 (N.D. Ill. 1992) (denying injunction in favor of insurer that would abridge the rights of non-
25 debtor additional insured to seek coverage from the insurer) ("Additional insureds possess the
same rights as the named insureds under an [sic] insurance policies.").

26 ³⁴ *BOY SCOUTS OF AMERICA AND DELAWARE BSA, LLC et al.*, (Bankr. D. Del. 20-
27 10343), Fourth Amended Chapter 11 Plan of Reorganization, Doc 5484 at 101-107 (providing
insurance related injunctions).

28 ³⁵ *In re Foster*, 516 B.R. 537, 542-43 (B.A.P. 8th Cir. 2014), *aff'd*, 602 Fed. Appx. 356 (8th Cir.
2015).

1 costs against the plausible benefits of the action.³⁶ To justify its requests and overcome the
2 Archdiocese's protests, the Committee must only show that its proposed actions represent a
3 sensible expenditure of the estate's resources.³⁷ Here, the Committee seeks only to establish, by
4 affirmative Order of this Court, that the Debtor's rights as an Insured under BSA Insurance
5 Contracts are property of this bankruptcy estate and thus subject to the automatic stay imposed by
6 11 U.S.C. § 362.

8 A debtor-in-possession owes fiduciary duties to its creditors and must act with diligence to
9 preserve the assets of the bankruptcy estate.³⁸ The Archdiocese has provided no formal written
10 statement to the Committee to justify its inaction. The statements from Archdiocese's counsel on
11 the issues are not grounded in the applicable facts and relevant law. At the outset of this
12 bankruptcy, the Archdiocese supported the pursuit of its rights under the BSA Insurance Policies,
13 as demonstrated by the Archdiocese's decision to submit claims to the BSA Insurers and as detailed
14 in the coverage correspondence between the Archdiocese's counsel and the BSA Insurers attached
15 to this Motion. The Archdiocese now asserts that actions to protect the Archdiocese's insured
16 interest would cost the estate millions and would be unlikely to produce any different result. To
17 the best of the Committee's understanding, no factual event or substantive change in the Debtor's
18 analysis of the assets at issue has occurred since the outset of the case that accounts for the Debtor's
19 change in position.

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22 Further, the Committee does not seek authority to obtain coverage declarations or to
23 liquidate claims into judgments. At this time, the Committee seeks authority only to obtain an

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25 ³⁶ See, e.g., *In re Adelpia Comm'ns. Corp.*, 330 B.R. 364, 386 (Bankr. S.D.N.Y. 2005).

26 ³⁷ *Id.*

27 ³⁸ *In re Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986) ("[T]he debtor's directors
28 bear essentially the same *fiduciary* obligation to creditors and shareholders as would a trustee for
a debtor out of possession . . ."). See generally *Commodity Futures Trading Comm'n v. Weintraub*,
471 U.S. 343, 355 (1985)("The fiduciary duty of the trustee runs to shareholders as well as to
creditors.").

1 order stating that the insurance assets at issue repose in the Debtor's bankruptcy estate and that, as
2 a result, the automatic stay applies to such assets. Stated another way, the Committee seeks only
3 to preserve the status quo, so that any potential coverage litigation or pursuit of insurance proceeds
4 remain available to the estate later in the case.

5
6 Based on detailed elements of the Debtor's insurance analysis shared with Committee
7 counsel in 2019, as well as oral analysis shared with the Committee by Debtor professionals, the
8 Committee concluded early in this case that the BSA Insurance Policies have a value of millions
9 of dollars to this estate. It will not cost the Committee millions of dollars to secure an order stating
10 that the insurance assets at issue are subject to the automatic stay. The Committee should be
11 permitted to proceed in the limited manner identified in this Motion.

12 **CONCLUSION**

13 The Committee seeks authority to clearly define, protect, and preserve assets of the estate
14 on behalf of its constituency. Such an effort is fundamental to every bankruptcy case and is a
15 cornerstone of the Bankruptcy Code. Although the Archdiocese has filed a claim in the BSA
16 bankruptcy case memorializing its interest in BSA insurance policies, it is unwilling to take
17 additional action to preserve and protect the rights at issue. The Committee asks for standing to
18 defend the rights of the Archdiocese in these insurance policies. If standing is granted the
19 Committee will seek an order (i) identifying the Archdiocese's interest in BSA Insurance Policies
20 as an asset of the estate, and (ii) stating affirmatively that the automatic stay applies to such estate
21 assets. The Committee's proposed actions are reasonable and necessary under the circumstances
22 and will cost the estate little, particularly compared to the potential value of the estate assets at
23 issue. For these reasons and others set forth above, the Court should grant the Committee derivative
24 standing.

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RESPECTFULLY SUBMITTED this 21st day of July 2021.

STINSON LLP

/s/Edwin H. Caldie _____

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7 IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
8 BANKRUPTCY DIVISION

9 In re:
10 ARCHBISHOP OF AGAÑA,
11 a Corporation Sole,
12 Debtor.

Chapter 11 Bankruptcy

Case No. 19-00010

**ORDER GRANTING MOTION OF THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR
DERIVATIVE STANDING TO ENFORCE
THE AUTOMATIC STAY AND TAKE
OTHER ACTIONS**

15 This matter is before the Court on the motion (the "Motion") of the Official Committee of
16 Unsecured Creditors (the "Committee") for derivative standing to enforce the automatic stay and
17 take other actions. Based on the Motion, the files, records, and proceedings in this matter,
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19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 20 1. The Committee has made a demand on the debtor Archbishop of Agana (the "Debtor") to
21 take action to enforce the automatic stay imposed by 11 U.S.C. § 362 with respect to the
22 debtor's interest in certain insurance policies, insurance proceeds, rights as an insured under
23 any insurance policies, and/or any similar insurance interest of the estate.
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- 2. The Debtor has refused to take action as requested by the Committee.
- 3. In its Motion, the Committee has stated and plausibly described the following:
 - a. that certain insurance rights and interests of the Debtor defined in the Motion as the "BSA Insurance Policies" are property of the Debtor's estate;
 - b. that the automatic stay protects the Debtor's rights and interests in the BSA Insurance Policies;
 - c. that there are pending actions outside of this Court that purport to dispose of the Debtor's rights and interests in the BSA Insurance Policies;
 - d. that taking action to protect the Debtor's rights and interests in the BSA Insurance Policies has the potential to achieve a substantial award to the estate;
 - e. that the cost to protect the Debtor's rights and interests in the BSA Insurance Policies is not more than the potential benefits; and
 - f. based on the costs of acting and potential benefits to the estate, the Debtor is not justified in refusing to protect its rights and interests in the BSA Insurance Policies.
- 4. There is a sufficient basis in law and fact to grant the Committee standing to act on behalf of the Debtor to protect the estate's insurance rights and interests.
- 5. Nothing in this Order is a finding, determination, or conclusion as to the Committee's claims in the Motion, other than that they are plausibly asserted for purposes of the Motion.
- 6. Nothing in this Order shall be construed to in any way abridge or determine the rights of any party as to the claims asserted by the Committee in the Motion.

IT IS HEREBY ORDERED:

The Committee's Motion is GRANTED as follows.

- 7. The Committee is granted standing and authority to act on behalf of the debtor-in-possession to seek an order from this Court stating that (i) the Archdiocese of Agana's interests under insurance policies issued to the Boy Scouts of America constitute an asset

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of the Archdiocese of Agana's bankruptcy estate; and (ii) the automatic stay imposed by 11 U.S.C. § 362 applies to the Archdiocese of Agana's interests under insurance policies issued to the Boy Scouts of America.

SO ORDERED.

