

Hearing Date & Time: April 23, 2024, at 1:00PM

Objection Deadline: April 19, 2024, at 5:00PM

Hearing Location: 100 South Clinton Street, Syracuse, NY 13261

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK**

----- X
In re: : CHAPTER 11
THE ROMAN CATHOLIC DIOCESE OF SYRACUSE, : Case No. 20-30663-WAK
NEW YORK, :
Debtor. :
----- X

**THE CERTAIN INSURERS' (I) RESPONSE TO THE REVISED INSURANCE
NEUTRALITY LANGUAGE AND RELATED PROVISIONS OF THE THIRD
AMENDED PLAN AND (II) CONTINUED OBJECTION TO THE SOLICITATION
PROCEDURES ORDER**

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Interstate Fire & Casualty Company and Fireman's Fund Insurance Company (collectively, the "Interstate Insurers"), LMI,¹ Travelers Insurance Company Limited, Travelers Casualty and Surety Company, and Traveler's Indemnity Company (collectively with LMI and the Interstate Insurers, the "Certain Insurers"), by and through undersigned counsel, hereby submit this (a) "Response" to certain provisions of the *Third Amended Joint Chapter 11 Plan of Reorganization for The Roman Catholic Diocese of Syracuse, New York* [Dkt. No. 1817] (the "Third Amended Plan")² filed by the above-captioned "Debtor" and the Official Committee of Unsecured Creditors (the "Committee," together with the Debtor, the "Plan Proponents") on April 16, 2024;³ and (b)

¹ LMI include solvent Certain Underwriters at Lloyd's, London, subscribing Policy Nos. L73-05-17-01, SL3107/SLC 5115, SL3551/SLC 5577, SL4008/SLC 5995, and ISL3352/ICO5202; Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Company Ltd and/or London & Edinburgh Insurance Company Ltd as successor to London & Edinburgh General Insurance Company Ltd); RiverStone Insurance (UK) Limited (formerly known as Dai Tokyo Insurance Company (UK) Limited) of 161-163 Preston Road, Brighton, East Sussex, BN1 6AU with Company Number 01167327 (RIUK) on its own behalf and as successor in interest to Markel International Insurance Company Limited ("Markel") (formerly Terra Nova Insurance Company Limited) under the terms of a transfer under Part VII Financial Services and Markets Act 2000 with effect from 31 March 2017; Tenecom Limited as successor in interest to Sompo Japan Nipponkoa Insurance Company of Europe Ltd. (formerly known as The Yasuda Fire & Marine Insurance Company of Europe Ltd); Harper Insurance Limited f/k/a Turegum Insurance Company; Dominion Insurance Company Ltd.; Assicurazioni Generali S.p.A.; and River Thames Insurance Company Limited (as successor in interest to Unionamerica Insurance Company Limited (on its own behalf and in turn as successor in interest to certain business of St. Paul Travelers Insurance Company Limited (f/k/a St. Katherine Insurance Company Limited, St. Katherine Insurance Company Plc, and St. Paul International Insurance Company Limited))).

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Third Amended Plan.

³ With one exception (relating to Distribution Claims), and in accordance with the Court's directions at the April 11 hearing, the Certain Insurers have limited this Response to (a) Section 8.7.2 of the Third Amended Plan and (b) those provisions or issues that relate directly thereto. This is not, and shall not be deemed or construed to be: (x) a limitation on or waiver of any other or further objections to the Third Amended Plan or any related document (*e.g.*, any Plan Document or the proposed Confirmation Order) that the Certain Insurers have or may have; (y) a waiver of any changes that the Certain Insurers proposed to prior version(s) of the Third Amended Plan (or any related document), specifically including all such prior proposals that are not set forth herein

limited, “Continued Objection” to the *Order (I) Approving Disclosure Statement; (II) Approving Solicitation Packages and Distribution Procedures; (III) Approving the Form of Ballot and Establishing Procedures for Voting on Plan; (IV) Approving the 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* [Dkt. No. 1788-1] (the “Proposed Order”) and certain notices attached thereto. In support hereof, the Certain Insurers respectfully state as follows:⁴

I. THE THIRD AMENDED PLAN IS NOT YET INSURANCE NEUTRAL

1. The Third Amended Plan is a substantial step in the right – *i.e.*, insurance neutral – direction. It now contains a better provision to that effect in Section 8.7.2, omits the text imported from the Allocation Protocol, and reduces the exceptions to language (in, *e.g.*, Section 6.1) purporting to preserve the Non-Settling Insurers’ coverage defenses.⁵ These changes are all to the good. But they do not achieve insurance neutrality. That goal continues to elude the Plan Proponents (and the Third Amended Plan) for at least two reasons.

(*see generally* [Dkt. No. 1794-1]); or (z) approval or acceptance of the Third Amended Plan (or any related document) by the Certain Insurers. The Certain Insurers reserve all rights.

⁴ The Certain Insurers incorporate by reference, as if fully restated herein, all applicable objections from: (a) *The Interstate Insurers’ Objection to Approval of the Debtor’s Disclosure Statement* [Dkt. No. 1639]; (b) *The Interstate Insurers’ Objection to Approval of Amended Disclosure Statement* [Dkt. No. 1753]; and (c) *The Certain Insurers’ Objection to (I) Approval of the Second Amended Disclosure Statement and (II) Entry of the Accompanying Form of Order* [Dkt. No. 1793]. *See* [Dkt. No. 1753] at ¶ 16; *id.* at ¶ 16 n.58.

⁵ *See Notice of Filing of Redlines*, Ex. A [Dkt. No. 1819-1] (the “Current Redline”) at 17-19, 37-39, 52, 62-64. Unless otherwise noted herein, pincites to page numbers in the Current Redline refer to the number(s) located at the top of the page in the ECF-generated header.

A. The Third Amended Plan Is Internally Inconsistent

2. *First*, the Third Amended Plan still contains provisions that are inconsistent with, and not clearly subordinate to, Section 8.7.2. Section 11.1.1.a, for example, obligates the Court in any Confirmation Order to find that the Insurance Claims Assignment (or the alternate retention mechanism) “is authorized by, and does not conflict with, any provision of the Bankruptcy Code or other applicable law.”⁶ This language invites future mischief – *e.g.*, an argument before a coverage court that the conduct of the Trustee and/or Reorganized Debtor does not give rise to a coverage defense because a federal court (this Court) previously found that the Insurance Claims Assignment was “authorized by” both the “Bankruptcy Code” and “applicable [*i.e.*, state] law” – which is antithetical to the entire purpose of Section 8.7.2⁷ and insurance neutrality generally.⁸ Other provisions raise similar concerns.⁹

3. Worse, the potential for harm is particularly acute here since the Plan Proponents deleted language requiring reproduction of Section 8.7.2 in the Confirmation Order. This leaves open the possibility of a Confirmation Order – the form of which the Interstate Insurers have yet

⁶ Third Amended Plan, § 11.1.1.a.

⁷ See Third Amended Plan, § 8.7.2.b (“[I]t is expressly agreed . . . that the Neutrality Parties are not litigating any issue set forth in Section 8.7.2(a) hereof or any other Non-Settling Insurer coverage defenses, rights, obligations, or other coverage issue of any kind in this Chapter 11 Case.”).

⁸ *Cf. In re Glob. Indus. Techs.*, 645 F.3d 201, 214 n.32 (3d Cir. 2011) (“Whatever else the normal course of the insurance business may entail . . . it certainly ought not include judicial approval for liability manufactured by and for the benefit of the insured . . .”).

⁹ See, *e.g.*, Third Amended Plan, § 4.1 (providing that “the Trust shall automatically . . . assume . . . the right to pursue Insurance Claims against Non-Settling Insurers” without any reference to Section 8.7.2).

to see, despite requesting it repeatedly since February – containing provisions that conflict with, and will take precedence over, Section 8.7.2 due to Section 14.7.¹⁰

4. The internal discord further elevates the risk of an outcome like that in the *Fuller-Austin* trial court,¹¹ which is neither necessary¹² nor appropriate.¹³ To mitigate these risks – and to eliminate the internal inconsistencies underlying them – Section 11.1.1.a must be deleted in its entirety, and the Certain Insurers’ internal cross-references to Sections 8.7.2 and 6.2 (now 4.4)¹⁴ must be reinserted.¹⁵

¹⁰ See *id.*, § 14.7 (stating that the Confirmation Order “shall control and take precedence” if it “is inconsistent with any provision of the Plan or the Trust Documents.”); see also *id.*, § 14.13 (stating that the Third Amended Plan is “subject in all respects to Rule 408 of the Federal Rules of Evidence . . .”). The plan proponents in the *Diocese of Camden* bankruptcy did precisely that, filing shortly before trial a proposed confirmation order that sought a good faith finding with respect to the trust distribution procedures. See *In re Diocese of Camden*, 653 B.R. 309, 327 (Bankr. D.N.J. 2023) (“The Plan Proponents filed a revised proposed confirmation order . . . on October 4, 2022.”); *id.* at 331 (“The [t]rial commenced on October 6 . . .”).

¹¹ Letter from Harris B. Winsberg, counsel to the Interstate Insurers, to The Honorable Wendy A. Kinsella, Chief U.S.B.J. (Apr. 8, 2024) [Dkt. No. 1794] (the “Letter”) at 3 (citing and discussing *Fuller-Austin Insulation Co. v. Highlands Ins. Co.*, 38 Cal. Rptr. 3d 716 (Ct. App. 2006)).

¹² Compare Third Amended Plan, § 11.1.1.a, with 11 U.S.C. § 1129(a)(1) (requiring only that “[t]he **plan** compl[y] with the applicable provisions of [the Bankruptcy Code]” (emphasis added)), and *id.* § 1129(a)(3) (requiring only that the **plan** comply with applicable law).

¹³ Cf. *Glob. Indus. Techs.*, 645 F.3d at 212 (“‘Insurance neutrality’ is a meaningful concept where . . . a plan does not materially alter the quantum of liability that the insurers would be called to absorb.”).

¹⁴ The Certain Insurers in their Letter originally proposed changes to Section 6.2 (relating to Distribution Claims). See Letter at 5. The Court rejected this language during the April 11 hearing but indicated that a more modest version of a similar concept would be acceptable in Section 4.4. See Transcript of [Various Motions] Before Honorable Wendy A. Kinsella at 46:22-47:4, *In re The Roman Catholic Diocese of Syracuse, New York*, No. 20-30663 (Bankr. N.D.N.Y. Apr. 11, 2024) (the “April 11 Transcript”).

¹⁵ See generally Letter, Ex. A (the “Certain Insurer Redline”). A cross-reference to Section 4.4 should also be added to Section 12.13 of the Third Amended Plan.

B. Section 8.7.2 Is Inadequate in Current Form

5. *Second*, Section 8.7.2 (the insurance neutrality provision of the Third Amended Plan) is itself insufficient as a result of the Plan Proponents' revisions. The Plan Proponents effectively neutered the provision through a number of seemingly small, but cumulatively significant, modifications. They include the following:¹⁶

a. *Removal of Supervening Status.* Perhaps most importantly, the Plan Proponents denuded Section 8.7.2 of its status as a super-preemptory provision. These changes begin with the precatory paragraph in Section 8.7.2, from which the Plan Proponents removed the following phrase: "that purports to be preemptory or supervening."¹⁷ The Plan Proponents then inserted "subject to Sections 8.7.3 and 8.7.4" – both of which are new, and problematic additions (*see infra*) – into subsections (b), (d), and (e) of Section 8.7.2.¹⁸ Finally, the Plan Proponents removed the last sentence of the hanging paragraph in Section 8.7.2, which among other things required the incorporation of Section 8.7.2 (including all subsections) into the Confirmation Order.¹⁹

These modifications defeat the entire purpose of insurance neutrality language, which is to prevent a plan from affecting insurers' rights.²⁰ Neutrality language cannot fulfil that protective role if it is (or could be deemed or construed to be) subordinate to any other provision

¹⁶ A composite with redlines showing (a) the Plan Proponents' modifications to the Certain Insurers' proposed insurance neutrality language and (b) the Certain Insurers' responsive curative revisions is attached hereto as **Exhibit A**.

¹⁷ See Letter from Stephen A. Donato, counsel to the Debtor, to The Honorable Wendy A. Kinsella, Chief U.S.B.J., Ex. B [Dkt. No. 1802-2] (the "PP Redline") at 60; Third Amended Plan, § 8.7.2. Unless otherwise noted herein, pincites to page numbers in the PP Redline refer to the number(s) located at the top of the page in the ECF-generated header.

¹⁸ See PP Redline at 61-62; Third Amended Plan, §§ 8.7.2.b., d., e.

¹⁹ See PP Redline at 62-63; Third Amended Plan, § 8.7.2.

²⁰ See *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 217 (3d Cir. 2004).

in the plan or confirmation order. Section 8.7.2 therefore must supersede any provision contrary to it and cannot be peppered with exceptions. It must also, and for the same reasons, be included in the Confirmation Order.²¹

b. *Limitation on Actions.* The Plan Proponents added “against a Non-Settling Insurer” after the word “Action” each time it appears in Section 8.7.2.²² As a result, Section 8.7.2 by its terms is now limited to “Action[s] against a Non-Settling Insurer.”²³ This excludes Actions *by* a Non-Settling Insurer (*e.g.*, a declaratory judgment action), which inexplicably halves the reach of Section 8.7.2. There is no reasoned basis to limit insurance neutrality language in such a fashion, and it is patently prejudicial to do so. The phrase “against a Non-Settling Insurer” must be removed.

c. *Removal of “Reorganized Debtor.”* The term “Reorganized Diocese” was excised from every operative provision of Section 8.7.2²⁴ (including by deleting “Reorganized Diocese” from the definition of “Neutrality Party”).²⁵ Yet the Reorganized Diocese is one of the key players after the Insurance Claims Assignment: under the Third Amended Plan, the Debtor, Participating Parties, *and* the Reorganized Diocese are obligated to “observe and perform all Post-

²¹ This is particularly important here, given that the Confirmation Order – the form of which the Interstate Insurers have yet to see, despite requesting it repeatedly since February – “shall control and take precedence” if it “is inconsistent with any provision of the Plan or the Trust Documents.” Third Amended Plan, § 14.7; *see also id.*, § 14.13 (stating that the Third Amended Plan is “subject in all respects to Rule 408 of the Federal Rules of Evidence . . .”).

²² *See* PP Redline at 60, 62; Third Amended Plan, §§ 8.7.2, 8.7.2.c.-e.

²³ *E.g.*, Third Amended Plan, § 8.7.2.c.

²⁴ There is a notable exception to the Plan Proponents’ systematic exclusion of the Reorganized Diocese from Section 8.7.2. The proviso at the end of Section 8.7.2.e., which specifies that “all Insurer Contribution Claims” are channeled to the Trust, includes the Reorganized Diocese in the list of parties that the Insurers are prohibited from pursuing for an affirmative recovery based off of an Insurer Contribution Claim. *See* Third Amended Plan, § 8.7.2.e.

²⁵ *See* PP Redline at 25, 60-62; Third Amended Plan, §§ 1.1.123, 8.7.2.a.(i), (ii), (iv), 8.7.2.b., d., e.

Effective Date Insurance Obligations.”²⁶ More important, the Reorganized Diocese, not the Diocese, is the entity that will exist after the Effective Date.²⁷ If the insurance neutrality provision is to mean anything, the Reorganized Diocese clearly cannot be excluded from its scope (or the definition of “Neutrality Party”). The Reorganized Diocese must be reinserted into both.

d. *Removal of Reference to UNR Industries.* The Plan Proponents removed from Section 8.7.2.a.(i) the citation to *UNR Industries, Inc. v. Continental Casualty Co.*, 942 F.2d 1101 (7th Cir. 1991).²⁸ That reference, however, serves as a critical benchmark against an outcome like the result in that case. There, the Court of Appeals for the Seventh Circuit concluded that an agreement between a claimant committee and the debtor fixed the debtor’s liability to the claimants and – because the bankruptcy court approved a chapter 11 plan predicated on that agreed figure – resulted in a commensurate “loss” under the debtor’s insurance policies.²⁹ Preventing a repeat performance of *UNR Industries* is a foundational element of insurance neutrality. There is no legitimate reason to remove the citation here.

e. *Removal of “Good Faith” and Related Words.* The Plan Proponents deleted some combination of the words “appropriate,” “in good faith,” and “reasonable” from Sections 8.7.2.a.(iv)-(vi) (which, broadly, concern the liquidation and payment of Abuse Claims under the Third Amended Plan, and the related conduct of the Plan Proponents and others).³⁰ They also removed the phrase, “the negotiation, proposal, solicitation or approval of the Plan,” from Section

²⁶ Third Amended Plan, § 6.3.1.

²⁷ See *id.*, § 1.1.151.

²⁸ See PP Redline at 60; Third Amended Plan, § 8.7.2.a.(i).

²⁹ *UNR Indus.*, 942 F.2d at 1105.

³⁰ See PP Redline at 61; Third Amended Plan, § 8.7.2.a.(iv)-(vi).

8.7.2.a.(vii) (which recites that the Non-Settling Insurers were not involved in the plan process).³¹

Neither modification is consistent with principles of insurance neutrality.

To start, there is no basis to eliminate language stating that the Non-Settling Insurers were not involved with (and did not consent to) “the negotiation, proposal, solicitation, or approval of the Plan”;³² they indisputably were not and did not. The removal of the words “appropriate,” “in good faith,” and “reasonable” from Sections 8.7.2.a.(iv)-(vi) (as applicable) likewise is inappropriate. It effectively creates a loophole that permits a weaponization of the “good faith” finding under Section 1129(a)(3) of the Bankruptcy Code.³³ To address both of these issues, the language removed from subsections (iv)-(vii) must be reinserted.

f. *Removal of Enforcement Mechanism.* The enforcement mechanism in the hanging paragraph of Section 8.7.2 was modified to remove (a) language selecting this Court as the forum and (b) the fee-shifting provision.³⁴ Neither change is appropriate. Fee shifting is a reasonable measure to encourage compliance with Section 8.7.2 and applies prospectively to all Neutrality Parties equally. Moreover, the Plan Proponents elsewhere insisted that this Court retain jurisdiction to resolve claims by the Trustee of, e.g., the Debtor’s failure “to comply with any Post-Effective Date Insurance Obligation.”³⁵ That is conceptually indistinguishable from a claim arising out of the insurance neutrality provision; both are breach (of the plan) claims – so both should be heard by this Court. In short, there is ample reason to revert to the original version of the enforcement mechanism.

³¹ See PP Redline at 61; Third Amended Plan, § 8.7.2.a.(vii).

³² See PP Redline at 61.

³³ This is particularly true, and concerning, in light of Section 11.1.1.a.

³⁴ See PP Redline at 62; Third Amended Plan, § 8.7.2.

³⁵ Third Amended Plan, § 6.3.2.

g. *Addition of Sections 8.7.3 and 8.7.4.* Finally, the Plan Proponents added two, new subsections to Section 8.7.2: Section 8.7.3 and Section 8.7.4.³⁶ The first in relevant part provides that “the sole remedy of any Non-Settling Insurer for any failure by the Diocese, the Reorganized Diocese, or any Participating Party to observe and perform” any “duties or obligations that may exist under a Non-Settling Insurer Policy shall be limited to asserting” coverage defenses.³⁷ This language clearly attempts to prejudge an issue – the scope of the remedies available to the Non-Settling Insurers – that properly belongs to a coverage court. It must be removed for that reason alone.³⁸

The second provision, Section 8.7.4, is equally problematic. It states that “nothing set forth in Section 8.7.2” (*i.e.*, the entire insurance neutrality provision) “shall impair any provision of the Plan . . . as between and among (i) any Neutrality Parties who are not Non-Settling Insurers or (ii) any Person who is not a Neutrality Party and each of the Neutrality Parties.”³⁹ Irrespective of the purpose of this text – which is not particularly clear with respect to clause (ii) – the language is far too broad: it exempts *the entirety of Section 8.7.2*. That is unacceptable for obvious reasons, and it, too, must be removed.

* * *

6. In sum, the Third Amended Plan is not yet insurance neutral. It is internally inconsistent with respect to insurance neutrality, and the neutrality language itself is inadequate. For these reasons, and for those set forth in greater detail above, the Certain Insurers respectfully

³⁶ See PP Redline at 63; Third Amended Plan, §§ 8.7.3-8.7.4.

³⁷ See PP Redline at 63; Third Amended Plan, § 8.7.3.

³⁸ Cf. April 11 Transcript at 46:22-47:4 (denying the Certain Insurers’ requested waiver and release). The same result is appropriate here.

³⁹ See PP Redline at 63; Third Amended Plan, § 8.7.4.

submit that the Court should either (a) order the Plan Proponents to adopt the revisions identified herein or (b) deny approval of the *Disclosure Statement in Support of Third Amended Joint Chapter 11 Plan of Reorganization for The Roman Catholic Diocese of Syracuse, New York* [Dkt. No. 1818] (the “Disclosure Statement”) until they do so.

II. SECTION 4.4 SHOULD BE FURTHER MODIFIED

7. In addition to the insurance neutrality modifications set forth above, Section 4.4 of the Third Amended Plan should be revised as it relates to the Trust’s (in)ability to seek payment for Distributions from the Non-Settling Insurers. Section 4.4 in pertinent part now provides that the Trust will not “present any Non-Settling Insurer with a demand for payment of [a] Distribution.”⁴⁰ This addition admittedly follows the letter of the Court’s instruction at the April 11 hearing;⁴¹ however, the Certain Insurers respectfully submit that it misses the spirit of the underlying objection.

8. As the Interstate Insurers and others have detailed previously, the (now) Third Amended Plan contemplates two types of Abuse Claimants: Litigation Claimants and Distribution Claimants.⁴² Out of the two, only the former are eligible for Litigation Awards (a judgment or verdict)⁴³ on account of their underlying Abuse Claim⁴⁴ – meaning that Distribution Claimants who elect treatment *solely* as Distribution Claimants will never receive a judgment against the Debtor (or Participating Party(ies)) and will never liquidate their respective Abuse Claims under

⁴⁰ See Current Redline at 44-45; Third Amended Plan, § 4.4.

⁴¹ See April 11 Transcript at 46:22-47:4.

⁴² Third Amended Plan, § 4.3.1; see, e.g., *The Interstate Insurers’ Motion for Entry of Scheduling Order in Connection with any Confirmation Hearing* [Dkt. No. 1755] at ¶ 19 n.58.

⁴³ Third Amended Plan, § 1.1.106.

⁴⁴ See *id.*, § 1.1.107.

any process or system other than the Allocation Protocol.⁴⁵ As a result, the liquidated value of any one Abuse Claim in this subset of Abuse Claimants could only ever be (a) the valuation assigned by the Abuse Claims Reviewer or (b) the total Distributions received by the Abuse Claimant.⁴⁶

9. It is not clear how a Non-Settling Insurer could ever – even theoretically – be responsible for covering such an Abuse Claim. The Third Amended Plan specifically provides that neither valuation described above “constitute[s] a determination of the [Debtor’s] or any Participating Party’s liability or damages for [Abuse Claims],”⁴⁷ and that the Distribution itself cannot be presented for payment to a Non-Settling Insurer.⁴⁸ This leaves the Trustee with nothing to submit to a Non-Settling Insurer: the only valuation(s) of such a Distribution-only Abuse Claim do(es) not establish the insured’s liability or damages, and the payment (Distribution) itself cannot be presented for coverage.⁴⁹

10. Despite all of this, the Third Amended Plan does not clearly prevent the pursuit of Non-Settling Insurers for the Abuse Claims underlying these solely-Distribution Claims.⁵⁰ To address resolve this issue, the Certain Insurers respectfully submit that Section 4.4 of the Third Amended Plan should be revised as follows:

⁴⁵ See *id.*, § 4.3.1.a.

⁴⁶ For the avoidance of doubt, the Certain Insurers do not admit (and specifically deny) that either figure would be a proper valuation of an Abuse Claim – to say nothing of legal liability for which indemnity would be owing.

⁴⁷ Third Amended Plan, § 2.3.5.e.

⁴⁸ *Id.*, § 4.4.

⁴⁹ Cf. *Hotel des Artistes, Inc. v. Gen. Accident Ins. Co. of Am.*, 775 N.Y.S.2d 262, 267 (App. Div. 1st Dept. 2004) (stating that, in respect of a policy obligating the insurer to “pay those sums that the [insured] becomes legally obligated to pay as damages . . .,” “three things must be shown” for coverage to exist: “(1) the [insured] is legally obligated to pay damages . . .” (internal quotations omitted)), *overruled in part on other grounds by KeySpan Gas E. Corp. v. Munich Reins. Am., Inc.*, 15 N.E.3d 1194, 1198 n.2 (N.Y. 2014).

⁵⁰ See, e.g., Third Amended Plan, § 12.2.4 (“The Trust may continue efforts to obtain recoveries from Non-Settling Insurers related to the Abuse Claims.”).

The Trust's act of making a Distribution to an Abuse Claimant is immaterial to, and shall not be construed as, a determination or admission of the Diocese's, any Participating Party's, or any Non-Settling Insurers' liability for, or damages with respect to, any Abuse Claim, nor will the Trust present any Non-Settling Insurer with a demand for payment of (i) said Distribution or (ii) any Abuse Claim that is treated solely as a Distribution Claim.

III. THE PROPOSED ORDER SHOULD NOT BE APPROVED

11. Finally, the Certain Insurers object to approval of the Proposed Order. In support hereof, the Certain Insurers: (a) incorporate by reference, as if fully set forth herein, their previous objection to approval of the Proposed Order;⁵¹ and (b) further state that they have not been provided with – and with one exception,⁵² are not aware of – any revisions to the Proposed Order or notices attached thereto.⁵³ Neither the Proposed Order nor any of the notices attached thereto should be approved and/or entered absent the modifications proposed by the Certain Insurers.

RESERVATION OF RIGHTS

The Certain Insurers reserve all rights to object to confirmation of the Third Amended Plan, including by raising other and further objections not set forth herein. The Certain Insurers further reserve the right to join in any argument or objection made by any other party relating to the adequacy of the Disclosure Statement and confirmability of the Third Amended Plan. Nothing

⁵¹ See *The Certain Insurers' Objection to (I) Approval of the Second Amended Disclosure Statement and (II) Entry of the Accompanying Form of Order* [Dkt. No. 1793].

⁵² The exception is the *Publication Notice of Hearing to Consider Confirmation of the Joint Chapter 11 Plan of Reorganization for The Roman Catholic Diocese of Syracuse, New York and Related Matters* [Dkt. No. 1819-3], which the Debtor modified and filed (as modified) on April 16. This modified version does not include the language that the Certain Insurers suggested previously. Compare *id.* at ¶ 5, with [Dkt. No. 1793-1] at 4.

⁵³ But cf. April 11 Transcript at 48:13-16 (“[THE COURT:] And the Court also needs a proposed disclosure statement order that, as you indicated, Mr. Donato, you would meet and confer [on] – some of the issues raised on the record here today by Mr. Winsberg.”).

herein shall be deemed an admission by the Certain Insurers as to the existence of, or coverage under, any insurance policies alleged to have been issued by the Certain Insurers.

CONCLUSION

WHEREFORE, the Certain Insurers respectfully request entry of an order: (a)(i) directing the Plan Proponents to adopt the plan revisions identified in this Response or (ii) in the alternative, denying approval of the Disclosure Statement until they do so; (b) sustaining the Continued Objection; and (c) granting to the Certain Insurers such other and further relief as is just and proper.

Dated: April 19, 2024

PARKER, HUDSON, RAINER & DOBBS LLP

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EXHIBIT A

Section	Plan Proponents' Revisions	Certain Insurers' Modifications
1.1.123 ¹	“Neutrality Party” <u>Parties</u> means, collectively, (i) the Diocese and Reorganized Diocese ; (ii) the Participating Parties; (iii) the Committee; (iv) the Trustee; (v) the Abuse Claimants; (vi) the Abuse Claims Reviewer; and (vii) all Non-Settling Insurers.	<u>Neutrality Parties</u> means, collectively, (i) the Diocese <u>and Reorganized Diocese</u> ; (ii) the Participating Parties; (iii) the Committee; (iv) the Trustee; (v) the Abuse Claimants; (vi) the Abuse Claims Reviewer; and (vii) all Non-Settling Insurers.
8.7.2	Insurance Neutrality. Nothing in the Plan, the Allocation Protocol, the Trust Documents, the other Plan Documents, any Confirmation Order (including any other provision that purports to be preemptory or supervening), or any other <u>in the Confirmation Order</u>), or any judgment, order, finding of fact, conclusion of law, determination or statement (written or verbal, on or off the record) made by the Bankruptcy Court or issued or affirmed by the District Court, or entered by any other court exercising jurisdiction over the Bankruptcy Case, including in any judgment, order, writ or opinion entered on appeal from any of the foregoing, shall in any Action <u>against a Non-Settling Insurer</u> , including the Insurance Coverage Adversary Proceeding:	Insurance Neutrality. Nothing in the Plan, the Allocation Protocol, the Trust Documents, the Plan Documents, any Confirmation Order (including any provision in the Confirmation Order <u>that purports to be preemptory or supervening</u>), or any judgment, order, finding of fact, conclusion of law, determination or statement (written or verbal, on or off the record) made by the Bankruptcy Court, the District Court, or entered by any other court exercising jurisdiction over the Bankruptcy Case, including in any judgment, order, writ or opinion entered on appeal from any of the foregoing, shall in any Action against a Non-Settling Insurer , including the Insurance Coverage Adversary Proceeding:
8.7.2.a.(i)	[. . .] or liquidating the liability (in the aggregate or otherwise) of (a) the Diocese, the Participating Parties, or the Trust, with respect to any Abuse Claims; or (b) any Non-Settling Insurer with respect to any Insurance Claim; including, inter alia, on the basis of the decision in UNR Industries, Inc. v. Continental Casualty Co., 942 F.2d 1101 (7th Cir. 1991);	[. . .] or liquidating the liability (in the aggregate or otherwise) of (a) the Diocese, the Participating Parties, or the Trust, with respect to any Abuse Claims; or (b) any Non-Settling Insurer with respect to any Insurance Claim, <u>including, inter alia, on the basis of the decision in UNR Industries, Inc. v. Continental Casualty Co., 942 F.2d 1101 (7th Cir. 1991);</u>

¹ This definition, as proposed by the Certain Insurers, was located in the body of Section 8.7.2; the Plan Proponents ultimately moved it, with the changes shown here, to Section 1.1.123.

<i>Section</i>	<i>Plan Proponents' Revisions</i>	<i>Certain Insurers' Modifications</i>
8.7.2.a.(ii)	[. . .] the liability or obligation of the Diocese, Reorganized Diocese, Participating Parties, or Trust with respect to any Abuse Claim;	[. . .] the liability or obligation of the Diocese, <u>Reorganized Diocese</u> , Participating Parties, or Trust with respect to any Abuse Claim;
8.7.2.a.(iv)	[. . .] that it is reasonable, appropriate, in good faith, or consistent with the terms and conditions of any Non-Settling Insurer Policy for any of the Diocese, the Reorganized Diocese, the Participating Parties, or the Trust, to settle, allow, assign any value to, liquidate, and/or pay (or present to any Non-Settling Insurer for payment) any Abuse Claim on any terms or conditions contemplated by the Plan, the Allocation Protocol (including any procedures, matrices or criteria used or considered in valuing, estimating or allowing Abuse Claims thereunder), any other Plan Documents, or any other document or agreement;	[. . .] that it is reasonable, <u>appropriate,</u> in good faith, or consistent with the terms and conditions of any Non-Settling Insurer Policy for any of the Diocese, <u>Reorganized Diocese</u> , the Participating Parties, or the Trust, to settle, allow, assign any value to, liquidate, and/or pay (or present to any Non-Settling Insurer for payment) any Abuse Claim on any terms or conditions contemplated by the Plan, the Allocation Protocol (including any procedures, matrices or criteria used or considered in valuing, estimating or allowing Abuse Claims thereunder), any other Plan Documents, or any other document or agreement;
8.7.2.a.(v)	[. . .] that the Plan, any other Plan Document, or any other document or agreement (including any procedures, matrices or criteria used or considered in valuing, estimating or allowing Abuse Claims thereunder) are reasonable; appropriate or entered into in good faith, or consistent with any procedures that were used to evaluate, settle, or pay Abuse Claims against the Diocese and the Participating Parties before the Petition Date or under the terms and conditions of any Non-Settling Insurer Policy or applicable nonbankruptcy law;	[. . .] that the Plan, any other Plan Document, or any other document or agreement (including any procedures, matrices or criteria used or considered in valuing, estimating or allowing Abuse Claims thereunder) are reasonable; <u>appropriate or entered into good faith,</u> or consistent with any procedures that were used to evaluate, settle, or pay Abuse Claims against the Diocese and the Participating Parties before the Petition Date or under the terms and conditions of any Non-Settling Insurer Policy or applicable nonbankruptcy law;
8.7.2.a.(vi)	[. . .] that the conduct of the Protected Parties, the Committee, or the Abuse Claimants, in connection with the negotiation, development, settlement and/or implementation of the Plan (including the aggregate value	[. . .] that the conduct of the Protected Parties, the Committee, or the Abuse Claimants, in connection with the negotiation, development, settlement and/or implementation of the Plan (including the aggregate value or amount of the DOS Entities'

Section	Plan Proponents' Revisions	Certain Insurers' Modifications
	or amount of the DOS Entities' Cash Contributions), the other Plan Documents, or any related documents or agreements was, is, or will be reasonable, appropriate, in good faith, or consistent with the terms and conditions of any Non-Settling Insurer Policy or applicable nonbankruptcy law;	Cash Contributions), the other Plan Documents, or any related documents or agreements was, is, or will be <u>reasonable, appropriate, in good faith, or</u> consistent with the terms and conditions of any Non-Settling Insurer Policy or applicable nonbankruptcy law;
8.7.2.a.(vii)	[. . .] that any Non-Settling Insurer was invited to participate in or participated in, consulted on, <u>negotiated,</u> and/or consented to the negotiation, proposal, solicitation or approval of the Plan, the Allocation Protocol, the Trust Documents and other Plan Documents; and	[. . .] that any Non-Settling Insurer was invited to participate in or participated in, consulted on, negotiated and/or consented to the <u>negotiation, proposal, solicitation, or approval of the Plan, the</u> Allocation Protocol, the Trust Documents and other Plan Documents; and
8.7.2.b.	have any res judicata, collateral estoppel or other preclusive effect against any Neutrality Party with respect to any matter set forth in Section 8.7.2(a) hereof, or shall otherwise prejudice, diminish, impair, or affect (under principles of waiver, estoppel, or otherwise) any defense, Claim or right any Neutrality Party <u>Non-Settling Insurer</u> may have under any Non-Settling Insurer Policy or applicable nonbankruptcy <u>non-bankruptcy</u> law with respect thereto. Without limiting the foregoing, <u>but subject to Sections 8.7.3 and 8.7.4 below,</u> it is expressly agreed by all Neutrality Parties that, for purposes hereof, the Neutrality Parties are not litigating any issue set forth in Section 8.7.2(a) hereof or any other Non-Settling Insurer coverage defenses, rights, obligations, or other coverage issue of any kind in this bankruptcy case, For purposes of this Section 8.7.2, <u>"Neutrality Party"</u> means, collectively, (i) the Diocese and Reorganized Diocese; (ii) the Participating Parties; (iii) the Committee; (iv) the Trustee; (v) the Abuse Claimants; (vi)	have any res judicata, collateral estoppel or other preclusive effect with respect to any matter set forth in Section 8.7.2(a) hereof, or shall otherwise prejudice, diminish, impair, or affect (under principles of waiver, estoppel, or otherwise) any defense, Claim or right any Non-Settling Insurer may have under any Non-Settling Insurer Policy or applicable non-bankruptcy law with respect thereto. Without limiting the foregoing, but subject to Sections 8.7.3 and 8.7.4 below, it is expressly agreed by all Neutrality Parties that the Neutrality Parties are not litigating any issue set forth in Section 8.7.2(a) hereof or any other Non-Settling Insurer coverage defenses, rights, obligations, or other coverage issue of any kind in this Chapter 11 Case.

Section	Plan Proponents' Revisions	Certain Insurers' Modifications
	the Abuse Claims Reviewer; and (vii) all Non-Settling Insurers; Chapter 11 Case.	
8.7.2.c.	constitute a decision on any matter at issue or which may be raised as an issue in any Action <u>against a Non-Settling Insurer</u> , including the Insurance Coverage Adversary Proceeding. Thus, any judgment, order, finding of fact, conclusion of law, determination or other statement of the Bankruptcy Court or issued or affirmed by the District Court in this Bankruptcy Case, or entered by any other court exercising jurisdiction over the bankruptcy case, including any Confirmation Order or the Allocation Protocol and/or other Plan Documents and any finding, conclusion or determination entered in connection therewith, is not intended – and shall not be construed – to constitute a finding, conclusion or determination regarding any matter set forth in Section 8.7.2(a) hereof or any other issue for any insurance coverage purpose whatsoever, and the Neutrality Parties shall not contend otherwise in any Action <u>against a Non-Settling Insurer</u> ;	constitute a decision on any matter at issue or which may be raised as an issue in any Action against a Non-Settling Insurer , including the Insurance Coverage Adversary Proceeding. Thus, any judgment, order, finding of fact, conclusion of law, determination or other statement of the Bankruptcy Court or issued or affirmed by the District Court in this Bankruptcy Case, or entered by any other court exercising jurisdiction over the bankruptcy case, including any Confirmation Order or the Allocation Protocol and/or other Plan Documents and any finding, conclusion or determination entered in connection therewith, is not intended – and shall not be construed – to constitute a finding, conclusion or determination regarding any matter set forth in Section 8.7.2(a) hereof or any other issue for any insurance coverage purpose whatsoever, and the Neutrality Parties shall not contend otherwise in any Action against a Non-Settling Insurer ;
8.7.2.d.	<u>subject to Sections 8.7.3 and 8.7.4 below</u> , impair any Non-Settling Insurer's legal, equitable, or contractual rights under any Non-Settling Insurer's <u>Insurer</u> Policy or with respect to Insurance Claims, or any policyholder's legal, equitable or contractual rights under any Non-Settling Insurer's <u>Insurer</u> Policy or with respect to Insurance Claims. The Non-Settling Insurers, the Diocese and Reorganized Diocese, the Participating Neutrality Parties, and the Trust shall retain, and be permitted to assert, <u>in any Action against any Non-Settling Insurer</u> , all Claims and/or defenses,	subject to Sections 8.7.3 and 8.7.4 below , impair any Non-Settling Insurer's legal, equitable, or contractual rights under any Non-Settling Insurer Policy or with respect to Insurance Claims, or any policyholder's legal, equitable or contractual rights under any Non-Settling Insurer Policy or with respect to Insurance Claims. The Neutrality Parties shall retain, and be permitted to assert, in any Action against any Non-Settling Insurer , all Claims and/or defenses, including any coverage defenses related to the Abuse Claims, the Insurance Claims and/or the Non-Settling Insurer Policies, notwithstanding any

Section	Plan Proponents' Revisions	Certain Insurers' Modifications
	including any coverage defenses related to the Abuse Claims, the Insurance Claims and/or the Non-Settling Insurer Policies, notwithstanding any provision of the Plan, Allocation Protocol, the Trust Documents, the other Plan Documents, the Confirmation Order, any findings of fact and/or conclusions of law with respect to the confirmation of the Plan, or any Final Order or opinion entered on appeal from the Confirmation Order; or	provision of the Plan, Allocation Protocol, the Trust Documents, the other Plan Documents, the Confirmation Order, any findings of fact and/or conclusions of law with respect to the confirmation of the Plan, or any Final Order or opinion entered on appeal from the Confirmation Order; or
8.7.2.e.	<u>subject to Sections 8.7.3 and 8.7.4 below</u> , impair any Non-Settling Insurer's Insurer Contribution Claims, which may be asserted as a defense or counterclaim against the Reorganized Diocese, the Diocese, the Participating Parties or the Trust (as applicable) in any Action <u>against any Non-Settling Insurer</u> , including the Insurance Coverage Adversary Proceeding. To the extent the Insurer Contribution Claims of a Non-Settling Insurer are determined to be valid, the liability (if any) if of such Non-Settling Insurer to the Reorganized Diocese, the Diocese, the Participating Parties or the Trust (as applicable) Trust shall be reduced by the amount of such Insurer Contribution Claims. <u>For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7.2, all Insurer Contribution Claims shall be channeled to the Trust in accordance with Section 12.5.1 of the Plan and no Insurer Contribution Claim shall be the basis for any affirmative recovery against the Diocese, the Reorganized Diocese, or any Participating Party.</u>	subject to Sections 8.7.3 and 8.7.4 below , impair any Non-Settling Insurer's Insurer Contribution Claims, which may be asserted as a defense or counterclaim against the <u>Reorganized</u> Diocese, the <u>Diocese, the</u> Participating Parties or the Trust (as applicable) in any Action against any Non-Settling Insurer , including the Insurance Coverage Adversary Proceeding. To the extent the Insurer Contribution Claims of a Non-Settling Insurer are determined to be valid, the liability (if any) of such Non-Settling Insurer to the <u>Reorganized Diocese, the Diocese, the Participating Parties or the Trust (as applicable)</u> Trust shall be reduced by the amount of such Insurer Contribution Claims. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7.2, all Insurer Contribution Claims shall be channeled to the Trust in accordance with Section 12.5.1 of the Plan and no Insurer Contribution Claim shall be the basis for any affirmative recovery against the Diocese, the Reorganized Diocese, or any Participating Party.
8.7.2 [hanging ¶]	On and after entry of the Confirmation Order, no Neutrality Party shall assert anything to the contrary of this Section	On and after entry of the Confirmation Order, no Neutrality Party shall assert anything to the contrary of this Section 8.7.2

Section	Plan Proponents' Revisions	Certain Insurers' Modifications
	<p>8.7.2, in any manner, in any Action <u>against a Non-Settling Insurer</u>. Each Neutrality Party shall be entitled to enforce this Section 8.7.2 in the Court, and, if successful, shall be entitled to its fees and costs incurred in such enforcement. The precatory language of this Section 8.7.2 of the Plan, and each of its subsections from Section 8.7.2(a) through (e) shall be incorporated, verbatim, in any Confirmation Order, and are deemed incorporated hereby.</p>	<p>in any Action against a Non-Settling Insurer. Each Neutrality Party shall be entitled to enforce this Section 8.7.2 <u>in the Court, and, if successful, shall be entitled to its fees and costs incurred in such enforcement.</u> <u>The precatory language of this Section 8.7.2 of the Plan, and each of its subsections from Section 8.7.2(a) through (e) shall be incorporated, verbatim, in any Confirmation Order, and are deemed incorporated hereby.</u></p>
8.7.3	<p><u>Denial of Coverage as Sole Remedy.</u> Notwithstanding anything to the contrary in Section 8.7.2, the sole remedy of any Non-Settling Insurer for any failure by the Diocese, the Reorganized Diocese, or any Participating Party to observe and perform any Post-Effective Date Insurance Obligations (if any) or any other duties or obligations that may exist under a Non-Settling Insurer Policy shall be limited to asserting any defenses to providing insurance coverage under the applicable Non-Settling Insurer Policy and nothing in this Plan shall serve as a basis for any Non-Settling Insurer to seek or be granted any affirmative relief against the Diocese, the Reorganized Diocese, or any Participating Party.</p>	<p>Denial of Coverage as Sole Remedy. Notwithstanding anything to the contrary in Section 8.7.2, the sole remedy of any Non-Settling Insurer for any failure by the Diocese, the Reorganized Diocese, or any Participating Party to observe and perform any Post-Effective Date Insurance Obligations (if any) or any other duties or obligations that may exist under a Non-Settling Insurer Policy shall be limited to asserting any defenses to providing insurance coverage under the applicable Non-Settling Insurer Policy and nothing in this Plan shall serve as a basis for any Non-Settling Insurer to seek or be granted any affirmative relief against the Diocese, the Reorganized Diocese, or any Participating Party.</p>
8.7.4	<p><u>Preservation of Plan Provisions Among Persons Other Than Non-Settling Insurers.</u> For the avoidance of doubt, nothing set forth in Section 8.7.2 shall impair any provision of the Plan, including, without limitation, the Diocese Discharge, the Channeling Injunction, or any other release or injunctive provisions set forth in the Plan, as between and among (i) any Neutrality Parties who are not Non-Settling</p>	<p>Preservation of Plan Provisions Among Persons Other Than Non-Settling Insurers. For the avoidance of doubt, nothing set forth in Section 8.7.2 shall impair any provision of the Plan, including, without limitation, the Diocese Discharge, the Channeling Injunction, or any other release or injunctive provisions set forth in the Plan, as between and among (i) any Neutrality Parties who are not Non-Settling</p>

<i>Section</i>	<i>Plan Proponents' Revisions</i>	<i>Certain Insurers' Modifications</i>
	<u>Insurers or (ii) any Person who is not a Neutrality Party and each of the Neutrality Parties.</u>	Insurers or (ii) any Person who is not a Neutrality Party and each of the Neutrality Parties.