

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

Case No. 20-30663-5-wak

The Roman Catholic Diocese of Syracuse,  
New York,

Chapter 11

Debtor.

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**THE LONDON MARKET INSURERS' BRIEF REGARDING THE ADEQUACY OF  
THE INSURANCE NEUTRALITY LANGUAGE IN THE THIRD AMENDED PLAN**

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Certain Underwriters at Lloyd’s, London, and London Market Companies<sup>1</sup> (together “London Market Insurers” or “LMI”), by and through their undersigned counsel, hereby explain the reasons that the insurance neutrality language (“INL”) in the *Third Amended Joint Chapter 11 Plan of Reorganization for the Roman Catholic Diocese of Syracuse, New York* (“Plan”),<sup>2</sup> filed April 16, 2024, by the Roman Catholic Diocese of Syracuse, New York (“Debtor”) and the Official Committee of Unsecured Creditors (together with the Debtor, “Plan Proponents”), is inadequate because it fails to protect LMI’s rights and allows for the Plan to increase LMI’s obligations. In support thereof, LMI respectfully state as follows:

## **I. OBJECTION**

The Plan Proponents’ revisions to the insurance neutrality language (“INL”) in Section 8.7.2 of the Plan<sup>3</sup> would perpetuate the impairment of LMI’s rights caused by the provisions of the Plan and its attached allocation protocol (“Allocation Protocol”).<sup>4</sup> On February 26, 2024, LMI and Interstate Fire & Casualty Company, National Surety Corporation, and Fireman’s Fund Insurance Company (“Interstate”) proposed the INL to be included in the Plan.<sup>5</sup> Subsequently, the

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<sup>1</sup> 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))).

<sup>2</sup> Doc. No. 1818.

<sup>3</sup> Doc. No. 1817.

<sup>4</sup> LMI incorporate by reference their prior objections. See Doc. Nos. 1637, 1639, 1753, 1759, & 1793.

<sup>5</sup> Declaration of Nathan Reinhardt, Ex. 1; see also Doc. No. 1802-2, § 8.7.2.

Plan Proponents filed the Plan, with changes that eviscerated the protections afforded by the INL to LMI, thereby defeating the purpose of the INL. To make the Plan insurance neutral, it must be revised to reverse the changes the Plan Proponents made, described below. If the Plan Proponents fail to make the revisions set out below, that failure will show beyond doubt their intent to impair LMI's rights and increase their burdens.

**A. Sections 8.7.2 Through 8.7.4**

Section 8.7.2 of the Plan, which was proposed by LMI with the intention of making the Plan insurance neutral, has been inappropriately revised by the Plan Proponents. The Plan Proponents also inserted Sections 8.7.3 and 8.7.4 to limit the INL as follows:

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 in the Confirmation Order~~), or any ~~other~~ 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 against a Non-Settling Insurer, including the Insurance Coverage Adversary Proceeding:<sup>6</sup>

a. constitute an adjudication, judgment, trial, hearing determination on the merits, finding, or conclusion,~~other determination, or evidence or suggestion of any such determination of law~~ establishing:

(i) or liquidating the liability (in the aggregate or otherwise) of (a) the Diocese, the ~~Reorganized 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)~~;<sup>7</sup>

(ii) the liability or obligation of the ~~Diocese, Reorganized~~ Diocese, Participating Parties, or Trust with respect to any Abuse Claim;<sup>8</sup>

<sup>6</sup> Doc. No. 1802-2, § 8.7.2; Plan, § 8.7.2. Capitalized terms not defined herein shall have the same meaning as defined in the Plan.

<sup>7</sup> Doc. No. 1802-2, § 8.7.2.a.(i); Plan, § 8.7.2.a.(i).

<sup>8</sup> Doc. No. 1802-2, § 8.7.2.a.(ii); Plan, § 8.7.2.a.(ii).

...

(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;<sup>9</sup>

(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;<sup>10</sup>

(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 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<sup>11</sup>

(vii) that any Non-Settling Insurer was invited to participate in or participated in, consulted on, negotiated, and/or consented to ~~the negotiation, proposal, solicitation or approval of the Plan~~, the Allocation Protocol, the Trust Documents and other Plan Documents<sup>12</sup>

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~~ Non-Settling Insurer may have under any Non-Settling Insurer Policy or applicable ~~nonbankruptcy~~ 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

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<sup>9</sup> Doc. No. 1802-2, § 8.7.2.a.(iv); Plan, § 8.7.2.a.(iv).

<sup>10</sup> Doc. No. 1802-2, § 8.7.2.a.(v); Plan, § 8.7.2.a.(v).

<sup>11</sup> Doc. No. 1802-2, § 8.7.2.a.(vi); Plan, § 8.7.2.a.(vi).

<sup>12</sup> Doc. No. 1802-2, § 8.7.2.a.(vii); Plan, § 8.7.2.a.(vii).

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., "Neutrality Party" 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; Chapter 11 Case.~~<sup>13</sup>

c. 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,<sup>14</sup>

d. 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's Policy or with respect to Insurance Claims, or any policyholder's legal, equitable or contractual rights under any Non-Settling Insurer's Policy or with respect to Insurance Claims. The ~~Non-Settling Insurers, the Diocese and Reorganized Diocese, the Participating Parties, and the Trust~~ 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 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;<sup>15</sup> or

e. 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 ~~Reorganized Diocese, the Diocese, the 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) 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

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<sup>13</sup> Doc. No. 1802-2, § 8.7.2.b; Plan, § 8.7.2.b.

<sup>14</sup> Doc. No. 1802-2, § 8.7.2.c; Plan, § 8.7.2.c.

<sup>15</sup> Doc. No. 1802-2, § 8.7.2.d; Plan, § 8.7.2.d.

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.<sup>16</sup>

On and after entry of the Confirmation Order, no Neutrality Party shall assert anything to the contrary of this Section 8.7.2, ~~in any manner,~~ in any Action against a Non-Settling Insurer [sic]. 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.~~<sup>17</sup>

8.7.3 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 PostEffective 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.<sup>18</sup>

8.7.4 Preservation of Plan Provisions Among Persons Other Than NonSettling 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 Insurers or (ii) any Person who is not a Neutrality Party and each of the Neutrality Parties.<sup>19</sup>

**B. Section 8.7.2 Must Supersede Any Contrary Provision**

The Plan Proponents removed the phrase “that purports to be preemptory or supervening”<sup>20</sup> in the first sentence of Section 8.7.2, which defeats the purpose of the INL. To protect LMI, the INL must supersede any contrary provision to it in the Plan and any document related to the Plan

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<sup>16</sup> Doc. No. 1802-2, § 8.7.2.e; Plan, § 8.7.2.e.

<sup>17</sup> *Id.*

<sup>18</sup> Doc. No. 1802-2, § 8.7.3; Plan, § 8.7.3.

<sup>19</sup> Doc. No. 1802-2, § 8.7.4; Plan, § 8.7.4.

<sup>20</sup> Doc. No. 1802-2, § 8.7.2; Plan, § 8.7.2.



(not merely the Confirmation Order) to ensure that LMI are not affected by the contrary provisions in those documents.<sup>21</sup>

The concept of “insurance neutrality” was developed in the *Combustion Engineering* case. However, the clause was referred to as “super-preemptory language”, for the very reason that it was intended to override all contrary provisions.

Thus, the Plan Proponents must reinsert this phrase into Section 8.7.2.

**C. The INL Must Apply to Decisions Made by the District Court**

The Plan Proponent deleted the phrase “~~or issued or affirmed by~~, the District Court,”<sup>22</sup> implying an intention to argue that the INL does not apply to any order by the District Court in affirming a plan of reorganization. At minimum, the deletion of “affirmed by” also creates unnecessary ambiguity. Hence, the Plan Proponents must reinsert this phrase in Section 8.7.2 to protect LMI’s rights.

**D. The Plan Proponents Cannot Limit Section 8.7.2 to Actions Against a Non-Settling Insurer**

The Plan Proponents limit the scope of Section 8.7.2 by inserting the phrase “against a Non-Settling Insurer.” This phrase would prevent LMI from benefiting from the INL in any Action brought by LMI against the Trust, the Debtor, Reorganized Debtor or Participating Parties. Moreover, if LMI were to bring a coverage action against a non-debtor Participating Party, then such improper change would exclude the application of the INL in that action. There is no reason to limit the protections afforded to LMI to actions against LMI. LMI must be free to rely on the INL in any action, including those brought by LMI. The effect of this insertion is to burden LMI unfairly. Hence, the Plan Proponents must delete the phrase “against a Non-Settling Insurer” to

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<sup>21</sup> *Id.*

<sup>22</sup> Doc. No. 1802-2, § 8.7.2; Plan, § 8.7.2.

make the Plan insurance neutral.

**E. The Changes to Subsection (a) of Section 8.7.2 Impair LMI's Rights**

The Plan Proponents' revisions to subsection (a) impair LMI's rights.

**1. The removal of the "Reorganized Diocese" impairs LMI's rights**

The removal of the words "Reorganized Diocese" from sub-subsections (i), (ii), and (iv), and subsections (d) and (e), above, would impair LMI's rights.<sup>23</sup> The Plan requires the Reorganized Diocese to perform all insurance obligations, including defending against Abuse Claims.<sup>24</sup> Additionally, if the Court does not approve the Insurance Claims Assignment but affirms the Plan, the Reorganized Diocese will retain the Insurance Claims and is obligated by the Plan to pursue Insurance Claims against LMI.<sup>25</sup> However, because of the deletion of the words "Reorganized Diocese", the INL would not apply in such actions.

**2. The deletion of the *UNR Industries* citation impairs LMI's rights**

Further, the deletion of the citation to *UNR Industries, Inc. v. Continental Casualty Co.*, 942 F.2d 1101 (7th Cir. 1991) impairs LMI's rights. *UNR Industries* involved a coverage dispute between a bankrupt asbestos manufacturer and its excess insurer.<sup>26</sup> Facing thousands of asbestos

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<sup>23</sup> The Plan defines the "Reorganized Diocese" as either the Debtor, after the Effective Date occurs, or a newly formed corporation at the Debtor's election. Third Amended Plan, § 1.1.151 ("Reorganized Diocese means (i) the Diocese, on and after the Effective Date, after giving effect to the operative provisions of the Plan, or (ii) at the sole and exclusive option of the Diocese, a new corporation, formed in accordance with Article 5 of the New York Religious Corporations Law or other applicable law, which, pursuant to the Plan, shall take title to the Residual Assets on and after the Effective Date. For the avoidance of doubt, the formation of any entity described in clause (ii) above, shall not discharge or waive the Diocese's liability for any Litigation Claim, for which a Litigation Claimant may have recourse pursuant to the Plan and Plan Documents.").

<sup>24</sup> See e.g., Third Amended Plan, §§ 1.1.63 ("DOS Entities' Post-Effective Date Costs means all fees and expenses reasonably incurred ... the Reorganized Diocese ... in connection with performing any of their respective duties or obligations under the Plan with respect to any Abuse Claims or Insurance Claims..."); 6.3.1 ("Notwithstanding the Insurance Claims Assignment... the Reorganized Diocese... shall, for purposes of preserving and maintaining as much insurance coverage as possible for the sole and exclusive benefit of the Trust, and subject to the Trust's payment of any DOS Entities' Post-Effective Date Costs in accordance with Section 8.10, observe and perform all Post-Effective Date Insurance Obligations.").

<sup>25</sup> Third Amended Plan, § 8.2.4.b.

<sup>26</sup> *UNR Indus., Inc. v. Cont'l Cas. Co.*, 942 F.2d 1101, 1103 (7th Cir. 1991).

claims, the manufacturer filed bankruptcy.<sup>27</sup> In the bankruptcy case, the manufacturer and the committee of asbestos claimants agreed that the aggregate value of the asbestos claims would be \$254 million dollars.<sup>28</sup> Following confirmation, the manufacturer sued its excess insurer, alleging its responsibility for at least some of \$254 million dollar amount.<sup>29</sup> The bankruptcy court issued a judgment in favor of the manufacturer.

On appeal, the Seventh Circuit found that the manufacturer's agreement with the Committee as to the aggregate value of the asbestos claims was a "loss" against the manufacturer, triggering the insurer's obligations--despite the fact that the insurer's policies only provided coverage for individual claims.<sup>30</sup> Hence, the excess insurer could not contest the amount of the manufacturer's liability. Here, for the Plan to be insurance neutral, the Reorganized Diocese, the Trust, and the Abuse Claimants must not be allowed to utilize confirmation of the Plan in a similar manner.

To prevent such an outcome, the reference to *UNR Industries* must be reinserted in Section 8.7.2.

### **3. The deletions of "good faith" impair LMI's rights**

The Plan Proponents' deletion of the phrases "entered into in good faith" and "in good faith" in the above sub-subsections (v) and (vi) impairs LMI's rights. These deletions would allow the Trust and/or the Reorganized Diocese to argue that any good faith finding by the Court would prevent LMI from asserting the coverage defenses that payments made under the Allocation Protocol were not reasonable nor made in good faith.<sup>31</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 1105 (7th Cir. 1991) (citing UNR's Disclosure Statement, March 14, 1989, p. 11).

<sup>29</sup> *Id.* at 1103.

<sup>30</sup> *Id.* at 1104-06.

<sup>31</sup> *See, e.g., HS Equities, Inc. v. Hartford Acc. & Indem. Co.*, 609 F.2d 669 (2d Cir. 1979) (Court held an insurer liable to indemnify a stockbroker after settlement of the underlying matter occurred in good faith and despite the lack

Thus, the phrases containing the words “good faith” and “reasonable” must be reinserted into Section 8.7.2 to make the Plan insurance neutral.<sup>32</sup>

**4. The deletion of the phrase “negotiation, proposal, solicitation or approval of the Plan” impair LMI’s rights**

The Plan Proponents deleted the phrase “the negotiation, proposal, solicitation or approval of the Plan” in sub-subsection (vii), which prejudices LMI’s rights. This deletion would allow the Plan Proponents to assert that LMI consented to the negotiation, proposal, solicitation and/or approval of the Plan.<sup>33</sup> LMI did not, and has not, so consented. Consequently, this phrase must also be reinserted into Section 8.7.2.

**F. The Revisions to Subsections (b) – (e) Impair LMI’s Rights**

The Plan Proponents’ changes in subsections (b) – (e) impair LMI’s rights.

**1. The INL must supersede all contrary provisions to protect LMI**

The INL must supersede all contrary provisions in all documents. Otherwise, it does not protect LMI fully. As mentioned before, the insertion of the phrases “against a Non-Settling Insurer,” or “in any Action Against any Non-Settling Insurer” in subsections (c), (d), (e), and the paragraph following (e), would improperly limit the protections afforded by the INL solely to actions brought against LMI, and would not be effective in actions brought by LMI. These phrases must be deleted.

**2. The deletion of the “Reorganized Diocese” impairs LMI’s rights**

As mentioned above, the Plan Proponents must reinsert the phrases “Reorganized Diocese” and “Reorganized Diocese, the Diocese, the Participating Parties or the Trust (as applicable)” in

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of proof for certain allegations in the underlying complaint); *Atl. Mut. Ins. Co. v. Truck Ins. Exch.*, 797 F.2d 1288, 1296 (5th Cir. 1986) (“New York law provides that when an insurer unjustifiably refuses to defend, it cannot escape liability for the reasonable settlement of a covered risk.”).

<sup>32</sup> Doc. No. 1802-2, § 8.7.2.a.(vi); Plan, § 8.7.2.a.(vi).

<sup>33</sup> *Id.*

subsection (e).<sup>34</sup> Otherwise, the omission prejudices LMI's rights.

### **3. The INL cannot be subject to other provisions**

The insertion of the phrases "subject to Sections 8.7.3 and 8.7.4 below" in the above subsections (d) and (e) are inappropriate.<sup>35</sup> As more fully explained below in paragraphs I.G and I.H, these insertions limit the INL and should not be included in the Plan.

### **4. The deletion of the enforcement mechanism in the INL further impairs LMI's rights**

The Plan Proponents also deleted the INL's enforcement mechanism in the paragraph immediately after subsection (e) as follows:

~~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.~~<sup>36</sup>

The INL requires an enforcement mechanism to protect not only LMI's rights, but also the rights of the other Neutrality Parties, *i.e.*, the Diocese; the Participating Parties; the Committee; the Trustee; the Abuse Claimants; the Abuse Claims Reviewer; and all Non-Settling Insurers. If any of the foregoing long list of persons were to sue LMI, the plaintiff would almost certainly argue that the INL is not binding as to such plaintiff. If the issue were to be left to a state court judge personally sympathetic to the plaintiff, that judge could rule that the INL is not binding. LMI must have the remedy of returning to this Court for enforcement of the INL, along with the recovery of attorneys' fees and costs. Hence, the Plan Proponents must reinsert the above deleted wording.

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<sup>34</sup> Doc. No. 1802-2, § 8.7.2.e; Plan, § 8.7.2.e.

<sup>35</sup> Doc. No. 1802-2, §§ 8.7.2.d, 8.7.2.e; Plan, §§ 8.7.2.d, 8.7.2.e.

<sup>36</sup> Doc. No. 1802-2, § 8.7.2.e.; Plan, § 8.7.2.e.

**5. The Court must incorporate the INL in any confirmation order to fully protect LMI's rights**

Finally, the Court must incorporate the INL in any Confirmation Order to ensure that a subsequent court adjudicating a coverage action finds the INL to be effective. To do otherwise would create an unnecessary ambiguity as to whether the INL is enforceable.

**G. Section 8.7.3 Impairs LMI's Rights**

The above Section 8.7.3 inappropriately seeks an insurance coverage finding from the Court in this bankruptcy case. That section would presumably supersede and re-write applicable state law on coverage. The remedies available to LMI for breach or non-performance of conditions precedent are clearly not within the jurisdiction of this Court. No provision of the Bankruptcy Code permits such a finding.

Section 8.7.3 should be deleted.

**H. Section 8.7.4 Impairs LMI's Rights**

The above Section 8.7.4 eliminates the very purpose of the INL, in the first place, to wit, insuring that the INL will not be undermined or diminished by wording in the Plan or any documents related to the Plan. The whole point is that the INL is "super-preemptory". The wording of Section 8.7.4 is incredibly convoluted and vague, and its meaning indecipherable. It is perhaps an attempt to create enough uncertainty so as to allow a litigant in another court to argue that the INL is not effective. The Court should delete this section.

**II. CONCLUSION**

Based on the foregoing, if the Plan Proponents do not revise the INL to be consistent with the above, the Court should deny approval of the Third Amended Disclosure Statement.

Dated: April 19, 2024

Respectfully submitted,

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

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In re:

Case No. 20-30663-5-wak

The Roman Catholic Diocese of Syracuse,  
New York,

Chapter 11

Debtor.

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**CERTIFICATE OF SERVICE FOR  
THE LONDON MARKET INSURERS' BRIEF REGARDING THE ADEQUACY OF  
THE INSURANCE NEUTRALITY LANGUAGE IN THE THIRD AMENDED PLAN**

I, Russell Roten, declare that I caused the above-referenced document to be served by means as indicated on the attached.

Dated: April 19, 2024

By: /s/ Russell Roten

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