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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
BANKRUPTCY DIVISION

In re: ARCHBISHOP OF AGAÑA, a Corporation Sole, Debtor.	Chapter 11 Bankruptcy Case No. 19-00010 **PLAN PROPONENTS' OMNIBUS RESPONSE TO OBJECTIONS TO THE THIRD AMENDED PLAN** **Hearing Date:** October 3, 2022 **Hearing Time**: 8:30 a.m.

The Archbishop of Agaña, a Corporation Sole (the "**Debtor**") and Official Committee of Unsecured Creditors (the "**Committee**"; together the Debtor and Committee are the "**Plan Proponents**") submit the following response to objections (the "**Objections**") asserted against the *Third Amended Joint Chapter 11 Plan of Reorganization* (the "**Plan**"). The Plan Proponents make this Omnibus Response to the Objections:

1. *United States Trustee's Opposition to Confirmation of Third Amended Joint Chapter 11 Plan of Reorganization of the Archbishop of Agaña and Reservation of Rights* [ECF 944] (the "**UST Objection**");
2. *Limited Objection to Third Amended Joint Chapter 11 Plan of Reorganization for the Archbishop of Agaña; Reservation of Rights* [ECF 943] and *related Joinder filed by the McDonald Law Office, LLC* [ECF 947] (together "**the Lujan Objection");**
3. *Reservation of Rights of National Union to Confirmation of the Third Amended Joint Chapter 11 Plan of Reorganization Proposed by the Archbishop of Agaña and the Official Committee of Unsecured Creditors* [ECF 940] ("**National Union Reservation of Rights**");
4. *Continental Insurance Company's Objection to Joint Plan* [ECF 942] ("**CNA Objection**");
5. *Boy Scouts of America's Objection and Reservation of Rights to the Confirmation of the Third Amended Joint Chapter 11 Plan of Reorganization for the Archbishop of Agaña [ECF 948*] (the "**BSA Objection"**).
6. *Objection to the Chapter 11 Reorganization Proposed Plan by the Archbishop of Agaña and the Official Committee of Unsecured Creditors and Motion for the Return of Real Property to the Estate"*) [ECF No. 946] (the "**Pangelinan Objection)**;

(collectively the "**Objections**").

The Plan Proponents' responses to the Objections of a legal nature are addressed in the body of this Omnibus Response. The Plan Proponents' responses to Objections of a factual or declarative nature, such as requests to revise or clarify Plan language are summarized in the attached **Exhibit A**, and will be reflected a Fourth Amended Joint Plan to be filed prior to confirmation.

I. Response to the UST Objection

In resolution of the UST Objection, the Plan Proponents intend to make the modifications reflected on **Exhibit A**.

II. Response to the Lujan Objection

In resolution of the Lujan Objection, the Plan Proponents intend to make the modifications reflected on **Exhibit A**.

III. Response to the National Union Reservation of Rights

The Plan Proponents intend to cooperate with the AIG Insurers to avoid any conflict between the Plan and the Plan Proponents' settlement with the AIG Insurers.[1] The Plan Proponents will make modifications to the Plan consistent with the settlement with the AIG Insurers. The Plan Proponents reserve all rights.

IV. Response to the CNA Objection

The Continental Insurance Company ("CNA") argues that the Plan cannot be confirmed because it (i) unfairly discriminates against CNA's (non-existent) claims for reimbursement, contribution, "and the like," (ii) fails to provide for payment in full of CNA's (also non-existent) administrative claim, (iii) improperly assigns certain of the Debtor's insurance interests to the Trust, and (iv) improperly seeks a declaration that confirmation will not, in itself, trigger additional claims or defenses by CNA to providing insurance coverage. The Plan Proponents remain hopeful they will resolve their disputes with CNA, or at least agree to consolidate the issues into the pending-adversary. That said, CNA's Objections lack merit and have no support in well-settled law. For these reasons the CNA Objection should be overruled in its entirety.

[1] See ECF No. 939.

i. CNA Has Not Asserted, and Cannot Assert a Claim for Contribution, Subrogation, or Reimbursement.

CNA argues that the Plan unfairly cuts off its (unasserted) "claims" for "reimbursement, contribution, and the like."[2] CNA's hypothetical, unasserted claim is baseless and cannot delay approval of the Plan. First, as a threshold issue, CNA has not asserted any claim for contribution, subrogation, or reimbursement against the Debtor in this case, so CNA's argument on this point is neither ripe nor relevant to Plan confirmation. The Plan's failure to treat CNA's unasserted, inchoate claim does not present a judiciable controversy and should be overruled.[3] Second, CNA did not file a claim in this case before the claim deadline, which was August 15, 2019. Because CNA's purported claim would now necessarily be filed years after the relevant deadline, it would not be entitled to Plan-treatment similar to timely-filed claims.[4] Third, even if the Court were to ignore those fatal flaws, and it should not, CNA's purported claim would be barred as a matter of Guam insurance law.

Any claim CNA asserts against the Debtor for contribution, subrogation, or reimbursement is barred by the "anti-subrogation doctrine."[5] The anti-subrogation doctrine provides that "an insurer . . . has no right of subrogation against its own insured for a claim arising from the very

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[2] CNA Objection at para. 8. The Plan Proponents have no way to limit or even define with any specificity what "the like" might encompass, especially in terms of a purported claim that has not actually been asserted under any method recognized by the Bankruptcy Rules.

[3] *In re Dick Cepek, Inc.*, 339 B.R. 730, 734–35 (B.A.P. 9th Cir. 2006) (citations omitted) ("[J]usticiability requires that a dispute be ripe and present an actual controversy.").

[4] *Order Fixing Time For Filing Proofs Of Claims; Approving Proof Of Claim Forms; Providing For Confidentiality Protocols; And Approving Form And Manner Of Notice*, [ECF No. 168 at 5] ("Any entity that is required to file a proof of claim in this Chapter 11 case pursuant to the Bankruptcy Code, the Bankruptcy Rules, or this Order with respect to a particular claim against the Debtor, but that fails to do so by the applicable bar date, may not be treated as a creditor with respect to such claim for the purposes of voting on and distribution under any Chapter 11 plan proposed and/or confirmed in this case."); Fed. R. Bankr. P. 3003(c)(2).

[5] *White v. Allstate Ins. Co.*, 99 F.3d 1148, 1996 WL 601476 at *7 (9th Cir. 1996); *Longoria v. Hengehold Motor Co.*, 191 Cal. Rptr. 439, 440 (Cal. Ct. App. 1983) (holding there is no right for an insurer to bring a subrogation claim against its insured for coverage obligations, as that would violate "basic equity principles" and "sound public policy.").

risk for which the insured was covered."[6] To the best of the Plan Proponents' understanding, the entirety of CNA's purported claim for contribution or reimbursement would be based on amounts it might eventually be deemed obligated to pay pursuant to policies issued to the Debtor. CNA's entire claim would thus be based on a legally non-existent right to subrogation against its own insured for a claim arising from the very risk for which its insured was covered. Because CNA has no right to subrogate and seek contribution, indemnity, or any other form of reimbursement[7] from the Debtor for amounts that CNA is contractually obligated to provide, as a matter of law, it could not hold the claim that it alleges even if it had asserted the claim timely.[8]

b) CNA Does Not Have a Claim for Breach of Any Agreement.

CNA recently asserted an administrative claim by filing an adversary proceeding against the Debtor for, among other things, an alleged breach of a post-petition settlement that was never reduced to a signed writing and was, at all times, subject to Court approval.[9] No settlement agreement between the Debtor and CNA ever existed because, among other things, preconditions to consummation were never satisfied.[10] CNA cannot enforce an agreement that never existed.

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[6] *White*, 1996 WL 601476, at *7.

[7] *E.g.*, *Nat'l Union Fire Ins., Co. of Pittsburgh, Pa. v. Guam Hous. & Urb. Renewal Auth.*, 2003 Guam 19, ¶ 15, 2003 WL 2249799, at *3 (Guam Nov. 4, 2003) (insurer with a duty to defend is not entitled to reimbursement of defense costs).

[8] Fed. R. Bankr. P. 3003(c)(2) ("Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; **any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.**"); *see In re Trans Max Techs., Inc.*, 349 B.R. 80, 85 (Bankr. D. Nev. 2006) ("Thus, these claimants may not vote, and they do not have standing to object to the plan.").

[9] Complaint, ECF No. 1, Adv. P. 22-00001.

[10] *E.g.*, *Am. Prairie Constr. Co. v. Hoich*, 594 F.3d 1015, 1024 (8th Cir. 2010) ("Even if TSF and NCC had reached an agreement during TSE's bankruptcy proceedings, such agreement would be unenforceable. It is a recognized principle of bankruptcy law that a bankruptcy court is required to approve any compromise or settlement proposed in the course of a Chapter 11 reorganization before such compromise or settlement can be deemed effective.") (stating settlement agreement that the court failed to approve cannot be enforced by any of the parties to the settlement); *In re Bramham*, 38 B.R. 459, 465 (Bankr. D. Nev. Mar. 15, 1984) (citing *In re Lloyd, Carr and Co.*, 617 F.2d 882, 885 (1st Cir. 1980)); *see* ECF No. 892 at 6-8 (Plan Proponents' argument on same from the Disclosure Statement briefing).

Even if the purported agreement could be enforced, the Plan provides for the full and timely payment of all administrative claims and there is no factual basis for CNA's implicit argument that the Debtor could not pay its purported administrative claim timely.

CNA asserts that the Plan does not provide for payment of CNA's hypothetical administrative claim. CNA is simply wrong. The Plan explicitly states that the Debtor will pay all administrative claims on the Effective Date of the Plan, or promptly after allowance of such claim.[11]

CNA also seems to argue that the Debtor would not be able to fund payment of its alleged administrative claim should that administrative claim be deemed to exist.[12] CNA has not even quantified the amount of its supposed administrative claim, however, and thus has no identifiable basis to assert that the Debtor lacks the means to pay its purported claim.[13]

In fact, the Plan provides more than adequate means to fund administrative claims. Specifically, the Plan states that the Debtor will sell the FHP property and use half of the proceeds to fund administrative claims.[14] Further, the Plan provides that all liens on cash held by Bank of Guam and First Hawaiian Bank will be released, freeing up several million dollars of cash to fund the Plan.[15] Any remaining administrative expenses will be paid from the Debtor's cash on hand at the Effective Date. Because the Plan fully funds administrative expenses and provides more than adequate means to do so, CNA's objection should be overruled.

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[11] Plan Sec. 2.1(a).

[12] CNA Objection at ¶ 21.

[13] *See* Complaint, ECF No. 1, Adv. P. 22-00001 (alleging no facts supporting damages resulting from breach of the purported settlement agreement or alleging an amount certain for the breach).

[14] Plan Sec. 5.1(b)(2)(vii) (stating that the Debtor will use $500,000.00 of the FHP proceeds to pay First Hawaiian Bank's secured claim and that $250,000.00 of such proceeds will be used to fund administrative expenses).

[15] *See* Plan, art. IV.

c) The Debtor May Assign Its Post-Loss Insurance Rights to the Trust.

CNA objects to the Plan on the basis it impermissibly assigns to the Trust the benefits under the Debtor's insurance policies while leaving the Debtor with corresponding obligations.[16] CNA, without citing any supporting authority, argues this proposed assignment renders the Plan unconfirmable. The Bankruptcy Code expressly allows for such an assignment, however, even in the face of alleged contrary language in CNA's policies, and Guam law very likely allows the proposed assignment as well.

Bankruptcy Code Section 1123(a)(5)(B) allows a "transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan." Courts have held that Section 1123(a)(5)(B) permits the transfer of property notwithstanding any anti-assignment provision under a private contract or state law.[17]

Further, the "great majority of courts adhere to the rule that general stipulations in policies prohibiting assignments of the policy, except with the consent of the insurer, apply only to **assignments before loss**, and **do not prevent an assignment after loss**."[18] Most courts refuse to give effect to anti-assignment clauses where, as here, the events giving rise to an insurer's liability

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[16] CNA Objection at pp. 23-24.

[17] *In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355, 374, 378 (3d Cir. 2012) (holding that 11 U.S.C. §§ 1123(a)(5)(B) and 541(c)(1) preempt contractual prohibitions on assignment of insurance policy proceeds); *In re TK Holdings Inc.*, No. 17-11375 (BLS), 2018 WL 1306271, at *32 (Bankr. D. Del. Mar. 21, 2018); *In re Kaiser Aluminum Corp.*, 343 B.R. 88, 94-95 (D. Del. 2006) ("Bankruptcy Court did not err in concluding that the anti-assignment clauses in the Reorganizing Debtors' insurance policies are preempted by the Bankruptcy Code."); *In re A.P.I.*, 331 B.R. 828, 852-53 (Bankr. D. Minn. 2005), aff'd sub nom. *OneBeacon Am. Ins. Co. v. A.P.I., Inc.*, No. CIV 06-167, 2006 WL 1473004 (D. Minn. May 25, 2006) ("The Debtor is obligated to provide for the funding of the plan as a means of funding; the transfer to the trust of property rights like the insurance coverage is clearly contemplated by the statute; and the Debtor and the holders of asbestos-related claims are not to be penalized for the Debtor exercising those options"); *see In re Thrope Insulation Co.*, 677 F.3d 869, 889-90 (9th Cir. 2012) (analyzing whether enforcing anti-assignment clauses would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and specifically applying the doctrine, without limitation, to the goals of Section 524).

[18] § 35:8. *General rule that nonassignment clause applies only before loss*, 3 COUCH ON INS. § 35:8 (emphasis added); *see P. Coast Cas. Co v. Gen. Bonding & Cas. Ins Co*, 240 F. 36, 40 (9th Cir. 1917).

have already occurred. Courts do so because, once the loss has already occurred, an "insurer's risk cannot be increased by a change in the insured's identity."[19]

CNA's arguments on this point are not new. Other insurers have offered the same arguments when attempting to block confirmation of a Diocese's plan in other jurisdictions.[20] In each instance, reviewing Courts rejected CNA's arguments and allowed Diocese plans to assign the benefits of insurance policies to Survivor trusts.[21] The Court should likewise overrule CNA's objection in this case.

d) The Plan Does Not Violate Any Duty to Cooperate (Assuming One Exists).

CNA argues that Plan Section 6.7(a)(5) violates the Debtor's (purported) duty to cooperate with CNA because the Plan requires the Debtor to participate with the Trust in efforts to prove and liquidate coverages from CNA.[22] Even assuming that a duty to cooperate exists,[23] CNA's objection is misplaced because a cooperation clause does not, and cannot be used to, limit an insured's right to pursue coverage under an insurance policy.[24]

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[19] § 35:8. *General rule that nonassignment clause applies only before loss*, 3 COUCH ON INS. § 35:8

[20] *E.g.*, Objection of United States Fire Insurance Company to Corrected Third Amended Joint Chapter 11 Plan Of Reorganization Proposed By The Diocese Of Winona-Rochester And The Official Committee Of Unsecured Creditors, ECF No. 306 at 11, *In re Diocese of Winona-Rochester*, 18-3377 (Bankr. D. Minn.) ("The Plan is not insurance neutral because it (i) impermissibly overrides anti-assignment clauses in debtor insurance contract . . . .").

[21] Fifth Amended Joint Chapter 11 Plan of Reorganization of the Diocese of Winona-Rochester, ECF No. 398 at 39, *In re Diocese of Winona-Rochester*, 18-3377 (Bankr. D. Minn.) ("The Non-Settling Insurers shall retain any and all coverage defenses, except any defense regarding or arising from the assignment and transfer of the Transferred Insurance Interests."); Findings of Fact and Conclusions of Law and Order Confirming Plan, ECF Nos. 404, 405, *In re Diocese of Winona-Rochester*, 18-3377 (Bankr. D. Minn.) (confirming the plan).

[22] CNA Objection at p. 9.

[23] CNA will not acknowledge that it issued policies to the Debtor—let alone policies that contain a so-called "cooperation clause."

[24] *Lafarge Corp. v. Hartford Cas. Ins. Co.*, 61 F.3d 389, 397 (5th Cir. 1995) (suggesting that the insurer cannot use the Cooperation Clause to require the insured to cooperate in the coverage litigation), overruled on other grounds by *Grapevine Excavation, Inc. v. Md. Lloyds*, 35 S.W.3d 1, 5 (Tex. 2000); *Bituminous Cas. Corp. v. Tonka Corp.*, 140 F.R.D. 381, 386 (D. Minn. 1992) ("This court rejects the conclusion that because an insured agrees to cooperate with the insurance company, in the event he is sued or otherwise makes a claim under the policy, that the insured

Plan Section 6.7(a)(5) states as follows:

> The Reorganized Debtor will cooperate and assist the Trust in enforcing any right or prosecuting any claim based on the Transferred Insurance Interests. This cooperation includes, but is not limited to, providing access to documents and electronic information and providing clergy, employees, agents, and volunteers to testify in depositions and at trial.[25]

CNA overstates the breadth of Plan Section 6.7(a)(5) by implying the section requires the Debtor to cooperate in any litigation against CNA. But Plan Section 6.7(a)(5) is expressly limited. It requires only that the Reorganized Debtor cooperate in "enforcing any right or prosecuting any claim based on the Transferred Insurance Interests." This would not require the Debtor, for example, to assist in the prosecution of any direct claim by a Survivor against CNA. In fact, the Plan preserves the Debtor's responsibility to cooperate with Non-Settling Insurers in the litigation of the merits of a Survivor claim. [26] Section 6.7(a)(5) does only what it says—it requires the Debtor to assist the Trust's pursuit of coverage under CNA's policies. Because an insured always has the right to sue its insurer to obtain coverage under the policy regardless of any cooperation language in a policy, and that is all that Section 6.7(a)(5) requires the Debtor to do,

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has thereby forever contractually waived the attorney-client privilege."); *Barney v. Aetna Cas. & Sur. Co.*, 185 Cal. App. 3d 966, 978, 230 Cal. Rptr. 215 (1986) ("The derogation of plaintiff's collateral right to counterclaim against Yoakum deprived her of the policy's benefits as surely as if Aetna unreasonably had refused to indemnify, defend or settle at all ...."); Rick Virnig, *The Insured's Duty to Cooperate*, 6 J. TEX. INS. L. 11, 12 (2005) ("While the Cooperation Clause surely precludes an insured from sabotaging the insurance company's interests, the clause does not require the insured to subjugate its own best interests.").

Mid-Continent Cas. Co. v. Petroleum Sols., Inc., 917 F.3d 352, 357 (5th Cir. 2019); Deborah Etlinger & Gary M. Case, *Defenses available to the insured—Cooperation clause inapplicable*, 3 Law and Prac. of Ins. Coverage Litig. § 36:19 ("The insured may be relieved of his duty to cooperate as a result of the position taken by his insurer regarding coverage.").

[25] Plan Sec. 6.7(a)(5).

[26] *E.g.*, Plan Sec. 8.1(b).

Section 6.7(a)(5) does not violate any purported duty to cooperate and CNA's Objection should be overruled.

e) The Confirmation of a Plan is Not a Coverage Defense.

Finally, CNA complains that Section 6.7(a)(2) of the Plan oversteps the Court's authority and decides future outcomes in CNA's pending coverage litigation. In reality, Section 6.7(a)(2) merely preserves the pre-bankruptcy status quo and leaves CNA and the Debtor's rights unaltered. The only pre-bankruptcy defense abrogated by this section relates to assignment of rights (as discussed above) to the Trust, which as a matter of bankruptcy law and non-bankruptcy law, cannot give rise to a coverage defense.

Section 6.7(a)(2) clarifies that CNA cannot assert new defenses (defenses that it did not have before the bankruptcy) and, in particular, defenses arising due to: (i) the fact that the Plan was confirmed, (ii) the fact the Debtor filed for bankruptcy, (iii) the fact that the Debtor proposed, negotiated, solicited, or requested confirmation of the Plan, or (iv) the fact that the Debtor proposed treatment of or protections to any Protected Party or Settling Insurer under the Plan. In other words, the Plan makes clear that the Debtor keeps its pre-bankruptcy rights as well and thus preserves the pre-bankruptcy rights of both contracting parties (both CNA and the Debtor).

Further, the language and impact of Section 6.7(a)(2) are consistent with prevailing law. Just as a debtor cannot generally use the bankruptcy process to modify an insurer's pre-bankruptcy coverage defenses, an insurer is not entitled to concoct new defenses to coverage as a result of a debtor's bankruptcy filing.[27] And the Bankruptcy Code explicitly invalidates *ipso facto*

[27] *See* Third Amended Plan of Reorganization of A.P.I., Inc., *In re A.P.I. Inc.*, Case No. 05-30073 (D. Minn. Bankr. Dec. 6, 2005) (ECF No. 492 at § 5.4(i)) (eliminating any coverage defenses "that is effected by operation of bankruptcy law as a consequence of confirmation of the Plan"); *In re A.P.I.*, 331 B.R. at 852. Similar non-reserved defenses also appear in other approved plans of reorganization. *See, e.g.*, Debtor's First Amended Plan of Reorganization, *In re Funds Admin. Servs., Inc.*, No. 05-95266-H4-11 (S.D. Tex. Bankr. June 7, 2006) (ECF No. 90 at 30) and *id.*, Order Confirming First Amended Plan of Reorganization (as Modified) (Aug. 23, 2006) (ECF No. 135); *In re Diocese of Winona-Rochester*, No. 18-33707 (Bakr. D. Minn. Oct. 14, 2021), Fifth Amended Chapter 11 Plan at Art. VIII (Oct. 11, 2021), ECF No. 398; Joint Statement of the Debtor, Creditors' Committee and United States Fire Insurance Company Regarding Agreed

defenses employed against debtors, such as contractual provisions stating that the filing of a bankruptcy case breaches a debtor's duties.[28]

Because the Plan is appropriately insurance neutral as to CNA, preserves CNA's pre-bankruptcy coverage defenses, and permissibly cuts-off any *ipso facto* coverage defenses CNA may allege arise from the bankruptcy filing and plan confirmation, the Court should overrule CNA's Objection.

V. Committee's Response to the BSA Objection

The BSA's objection is largely premised on the idea that there is an order confirming a plan in the BSA's bankruptcy case. But no such order exists yet and the BSA's plan has not been confirmed.[29] Both the BSA and the Plan Proponents share the same goals—to compensate

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Modifications to Certain Plan Provisions at ¶ 5 (Oct. 5, 2021), ECF No. 392; Order Confirming Plan, ECF No. 404; Confirming Findings and Conclusions at ¶ 22 (Oct. 14, 2021), ECF No. 405.

[28] 11 U.S.C. 541(c)(1) ("[A]n interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law— (A) that restricts or conditions transfer of such interest by the debtor; or (B)that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title. . . and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.").

[29] The Plan Proponents appreciate the herculean task presented to the Delaware Bankruptcy Court in resolving confirmation of the BSA's plan. But the BSA Order did not confirm a plan, is not a final adjudication on the merits at this time, and may be subject to review and approval by the U.S. District Court for the District of Delaware. Further, to the extent the BSA Order purports to administer or determine the Debtor's rights or interest in property reposing in this bankruptcy estate, the Delaware Bankruptcy Court lacks jurisdiction to do so, 28 U.S.C. 1334(e), and the BSA Order can indeed be collaterally attacked for lack of subject matter jurisdiction in this case. *In re Burley*, 738 F.2d 981, 988 (9th Cir. 1984) ("Where identical suits are pending in two courts, the court in which the first suit was filed should generally proceed to judgment. It is also the general policy of the bankruptcy code that all proceedings in a bankruptcy case be conducted in the district in which the bankruptcy petition was filed, except where the code expressly specifies another venue."); *see Yale v. Natl. Indem. Co.*, 602 F.2d 642, 649 (4th Cir. 1979) ("[T]he final judgment was then subject to collateral attack only for lack of personal or subject matter jurisdiction . . . ."). Finally, to the extent BSA asserts the Plan Proponents are bound to the BSA Order, this is not so as to the Committee. The Committee is not bound to anything in the opinion, including under the doctrines of claim and issue preclusion, because the Delaware Court found the Committee lacked

Survivors fairly and reorganize the debtors in their respective cases. The Plan in this case does not interfere with the BSA's legal rights or with its proposed plan. Nonetheless, the BSA argues that the Plan (i) contains provisions that conflict with the Order issued by the court in Delaware, (ii) seeks to sell insurance policies that repose in the BSA's bankruptcy estate, (iii) treats BSA's alleged contingent and unliquidated claim unfairly, and (iv) as a result of this unfair treatment, is not in the best interest of creditors, (v) was not proposed in good faith, and (vi) contains various other provisions that could be read to abridge BSA's rights.

a) The Plan Does Not Undermine the BSA's Proposed Plan or the BSA Order.

BSA begins its Objection identifying concerns about the hypothetical effect of the Plan on the BSA's unconfirmed plan. Among these concerns are that the Plan (i) authorizes Survivors and the Trust to sue the BSA's settling insurers in violation of the BSA's plan and settlements, and (ii) fails to reduce Survivor payments to account for payments made to Survivors with claims in both cases.

i. The Plan is Insurance Neutral and Does Not Create New Claims or Preempt Legal Defenses.

All of BSA's concerns regarding claims against its insurers are addressed and resolved by express language in the Plan. With respect to Non-Settling Insurers, the Plan is clear that their pre-bankruptcy rights are not impaired.[30] And although the Plan may allow the Trust or a Survivor

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standing. "Because standing is jurisdictional, lack of standing precludes a ruling on the merits." *In re Greenstein*, BAP CC-14-1101-KIBRD, 2016 WL 305345, at *9 (B.A.P. 9th Cir. Jan. 26, 2016).

[30] Plan Sec. 8.4 ("The Plan is Neutral as to Non-Settling Insurer Rights. … [Except as provided in Sections 6.7(a)(2) and 8.1(a) nothing in the Plan, nothing in the Plan] (i) shall affect, impair, or prejudice the rights and defenses of any Non-Settling Insurer against the Debtor or any other insureds under any Non-Settling Insurer Policies, including any factual or legal defenses to any claim for insurance; (ii) shall affect, impair, or prejudice the rights and defenses of any Protected Party, the Trust, or any other insureds under Non-Settling Insurer Policies in any manner, including any factual or legal defenses to any claim for insurance; (iii) shall constitute a settlement or resolution of any Protected Party's liability to a Tort Claimant; (iv) **shall in any way operate to, or have the effect of, impairing or having any res judicata, collateral estoppel, or other preclusive effect on, any party's legal, equitable, or contractual rights or obligations under any Non-Settling Insurer Policy**; or (v) shall otherwise determine the applicability or nonapplicability of any provision of any Non-Settling Insurer Policy and any such rights and

to pursue litigation against a Non-Settling Insurer, the Plan does not preclude Non-Settling Insurers from using releases contained in the BSA's plan as a defense to the litigation and the Plan does not, in any way, permit a litigation party to violate another court's order or act in contravention of it. The Plan simply creates the possibility for litigation *if otherwise permitted by the law*.[31] Because the Plan does not diminish or limit the rights of BSA's insurers, the BSA's Objection should be overruled.

ii. The BSA Cannot Force This Debtor to Accept Protections Contained in the BSA's Unconfirmed Plan.

The BSA has also objected to the Trust Distribution Plan proposed in this case.[32] The BSA argues that the Debtor in this case is not allowed to pay any portion of a "Scouting related abuse claim" because those claims are channeled to a trust under the BSA's unconfirmed plan.[33] The BSA thus objects to the Trust Distribution Plan in this case because its protocols do not penalize Survivors with claims in both cases.[34]

First, the preliminary Order issued by Judge Silverstein in the BSA case expressly states that the Debtor is allowed to pay whatever claims it wishes to pay in this bankruptcy case.[35] The provisions of the Trust Distribution Plan in this case are thus completely consistent with Judge Silverstein's preliminary Order.

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obligations shall be determined under the Non-Settling Insurer Policy and applicable law.") (emphasis added).

[31] *E.g.*, Plan Section 8.1(a)("Non-Settling Insurers retain any defenses that they would be able to raise if the Claim for coverage were brought by the Archdiocese, the Reorganized Debtor, or any other Protected Party, except any defense regarding or arising from the assignment and transfer of the Transferred Insurance Interests . . . ."); Plan Section 8.4.

[32] BSA Objection at 5-6.

[33] BSA Objection at 7, lines 23-26;

[34] *Id.* at 8-9.

[35] BSA Objection at 8 (citing the BSA Order at 161).

Second, the BSA lacks standing to assert these objections because the BSA is attempting to enforce the rights of parties that they do not represent.[36] The BSA is essentially complaining that, under the Plan, the Debtor will needlessly pay Scouting related claims in this case because, if the BSA is able to confirm a plan at some point in the future, the BSA will also pay the Debtor's portion of fault for those claims. But the BSA and any trust proposed under its unconfirmed plan will not be harmed by the Debtor's payment of the Debtor's portion of its liability for these claims. In other words, even if the events contemplated by the BSA play out, which itself remains speculative, the BSA will suffer no cognizable injury.[37] Whether the Debtor chooses to pay Survivor claims is the Debtor's choice[38] and an issue to be considered by Survivors receiving distributions under Trust Distribution Plan. The BSA lacks standing to complain about these plan provisions and its Objections on this point should be overruled.

b) <u>The Plan Does Not Sell the BSA Insurer Policies and Does Not Alter Rights Relating to the BSA Insurers.</u>

The BSA further argues that Section 7.11(d) of the Plan authorizes the sale of the BSA's interest in Non-Settling Insurer Policies.[39] This Objection should be overruled because Judge Silverstein's preliminary Order actually permits the Debtor in this case to settle with BSA Insurers to the extent of the Debtor's interest in BSA Non-Settling Insurer policies.[40] If this protection

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[36] *Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 273-74 (2008) (prudential standing requires that a party must assert its own legal rights and may not assert the legal rights of another); *Shetty v. SunTrust Mortg., Inc.*, 696 Fed. Appx. 829, 830 (9th Cir. 2017) (unpublished). While the Committee acknowledges the BSA has filed a proof of claim and has met the threshold statutory hurdle to be heard under 11 U.S.C. §1109, BSA only has standing to assert objections to the Plan in which BSA has a direct stake. *In re Quigley Co.*, 391 B.R. 695, 703–05 (S.D.N.Y. 2008). The Court should not allow BSA to raise issues as to which BSA lacks constitutional and/or prudential standing.

[37] Payment of these claims does not concern the BSA or affect the BSA's rights, especially because the Plan provides recourse for "double payment" of a claim through Class 12.

[38] BSA Order at 161.

[39] The BSA argues that this approach is inconsistent with its unconfirmed plan and further contends that its unconfirmed plan is the only means by which anyone's interest in a BSA Insurance Policy can be settled. BSA Objection at 4, 7.

[40] The BSA Order emphatically dispels the BSA's contentions that the BSA plan is the ***sole*** means to settle with the BSA Insurers. The Delaware Court found that the Debtor's interest in the BSA

were not enough (and it is), the Plan in this case further requires that the Plan Proponents and/or the Trust refrain from violations of any bankruptcy stay and otherwise follow all appropriate legal processes in resolving this Debtor's interests in any BSA Insurance Policies.[41]

Nothing in the Plan requires that a settlement would reduce insurance proceeds available to the BSA under a BSA insurance policy. The BSA's concern is entirely hypothetical and is premised on what could potentially happen in the future if the Trust attempts to settle pursuant to terms that are in conflict with another court's order. Under such a circumstance, the Plan makes clear that the Trust would be bound by pre-existing, applicable law.[42] The Plan expressly states that no one may act to diminish the BSA's interest in any insurance policy unless the appropriate legal processes are followed, including seeking relief from stay when needed, and including providing necessary protections to the BSA in exchange.[43]

The Plan Proponents acknowledge that, with respect to potential, future settlements with BSA Insurers: (i) the Trust may need to enter into settlements expressly preserving the BSA's claim to all of the proceeds under the policies, (ii) the Trust may need to demonstrate to a court of competent jurisdiction that erosion of related limits will not diminish proceeds available to the

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Insurance Policies, if such interest exists, is property of the estate in this case and cannot be administered under the BSA's unconfirmed plan. BSA Order at 101. Only this Court has jurisdiction over the Debtor's interest in the BSA Policies and so the Plan properly administers those interests and only those interests.

[41] The Plan does not diminish the BSA's ability to collect proceeds from its insurers. BSA's real concern underpinning this argument, shared by the Delaware Court in Judge Silverstein's preliminary Order, is that ***if*** the Plan Proponents or Trust settle with the BSA's insurers, then such a settlement ***could*** reduce the policy proceeds available to the BSA under those policies. These concerns are addressed and undermined by the express terms of the settlement agreement with the AIG Insurers. *See generally* ECF No. 939. Further, the Plan Proponents will work with BSA to ensure the revised plan makes clear this concerning scenario can never come to fruition

[42] Plan Sec. 7.11(d) ("For the avoidance of doubt, and again notwithstanding anything in this Plan to the contrary, neither the Plan Proponents nor the Trustee will enter into any settlement (whether prior to, as of, or after the Effective Date) with a BSA Insurer that would potentially impair the interests of the BSA or any other co-insured party under a BSA insurance policy besides the Debtor, unless they first obtain approval from a court with relevant jurisdiction over such interest, including the U.S. Bankruptcy Court for the District of Delaware.").

[43] *Id.*

BSA, or (iii) the Trust may need to obtain Court approval in Delaware and/or secure consent from the BSA to otherwise impair its interest. These protections are expressly contemplated in the Plan.[44] The broad language of the Plan in this case strikes a balance that the BSA's unconfirmed plan did not. The Plan provides the Trust with necessary flexibility to negotiate a settlement of remaining insurance interests reposing in this estate, but also ensures that the BSA's insurance rights remain protected.

With respect to current proposals to settle with BSA Insurers, only one exists at this time. The BSA's concerns about diminished insurance proceeds are thus hypothetical as to all insurers other than AIG Insurers and the settlement with the AIG Insurers does nothing to violate any aspect of the BSA plan, Judge Silverstein's preliminary Order, or the Bankruptcy Code. Nothing in the settlement with the AIG Insurers requires a "buy back" of BSA insurance interests or diminishes the BSA's right to its policy proceeds. Likewise, nothing in the Plan permits a sale of the BSA's insurance interests unless appropriate approvals are first obtained and unless such sale otherwise conforms with applicable law. The settlement agreement with the AIG Insurers merely liquidates *this* Debtor's interests in the AIG Insurers Policies and, as noted above, such actions are expressly contemplated and allowed by Judge Silverstein's preliminary Order given the protections included in the Plan.[45] The Court should overrule the BSA's Objections on this issue.

c) The Plan Does Not Treat the BSA's Purported Claim Unfairly.

The BSA asserts that the Plan unfairly treats its contingent claim[46] for contribution, indemnity, and reimbursement because the Plan disallows the claim. But the Plan treats the BSA's claim exactly how Congress intended.[47] The BSA insists that the Plan Proponents go through a

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[44] Plan Sec. 7.11(c),(d).

[45] BSA Order at 101.

[46] Claim 210-1 (noting the claim is "unliquidated/ contingent" and is for "contribution, indemnification and/or reimbursement").

[47] 11 U.S.C. § 502 (e)(1) (2020); *In re Amatex Corp*., 110 B.R. 168, 171 (Bankr. E.D.Pa. 1990) (concluding that "Congress clearly meant to include all situations wherein indemnitors or contributors could be liable with the debtor within the scope of § 502(e)(1)(B)").

formal process to object to the claim despite the foregone conclusion that such claim "***shall***" be disallowed.[48] While the Plan Proponents view the BSA's insistence on form over substance as a waste of estate resources in this case and the BSA's case, the Plan Proponents have filed such a claim objection contemporaneously with this Response. Accordingly, the BSA's claim is now disallowed, pending the outcome of the objection.[49] The BSA has no hope of succeeding in defending against a claim objection as long its claim remains contingent.[50] Given that reality, the BSA's Objection should be overruled.

d) The Plan Proponents Will Amend Treatment of Class 12 Claims.

The BSA objects that the Plan improperly cuts off its ability to seek allowance of its purported claim at a future date and to transform that claim into a Class 12 Claim. While the Plan Proponents do not believe the BSA will ever establish grounds for allowance based on the equities of this case as required by 11 U.S.C. 502(j), the Plan Proponents will amend the plan to give the BSA a chance to present their arguments to reconsider disallowance, even after Plan confirmation. Accordingly, the Plan Proponents will amend the Plan as shown on Exhibit A to permit post-confirmation requests for allowance of disallowed Class 10, 11, and/or 12 Claims.

e) The Plan is in the Best Interest of Creditors.

The BSA asserts that the Plan fails to satisfy Section 1129(a)(7)) because it fails to provide Classes 10, 11, and 12 with more than what they would receive in a chapter 7. As a preliminary matter, the Debtor disagrees with the applicability of this provision to non-profit religious

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[48] 11 U.S.C. § 502 (e)(1).

[49] 11 U.S.C. 502(a) ("A claim or interest, is deemed allowed, **unless a party in interest** . . . objects."); *In re Shook*, 278 B.R. 815, 822 (Bankr. App. 9th Cir. 2002) ("If an objection to the proof of claim is filed, a "contested matter" is initiated. . . In that event, the proof of claim **will not be allowed until the bankruptcy court determines the proper amount of the claim**.").

[50] *In re Caribbean Petroleum Corp.*, 566 Fed. Appx. 169, 173-74 (3d Cir. 2014) (unpublished) (citations omitted) (emphasis added).

entities.[51] "Section 1129(a)(7)(A) requires a determination whether a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization."[52] "To measure value, the Court must contrive a hypothetical chapter 7 liquidation conducted on the effective date of the plan."[53] The Plan Proponents can easily demonstrate that in either a chapter 7 or chapter 11, Claimants in Class 10 and Class 11 Claims would receive nothing because they are not entitled to any recovery under 11 U.S.C. § 502(e)(1). Moreover, the Plan provides that if a Class 10 or Class 11 Claim ever becomes allowed (i.e., is no longer contingent and/or unliquidated) then it would be a Class 12 Claim entitled to treatment, and very likely would recover in full. But, as shown in the liquidation analysis provided in Exhibit 1 to the Disclosure Statement, in a chapter 7 scenario, all classes of unsecured creditors (i.e., Class 12 Claims) would very likely receive far less than payment in full. Accordingly, the Plan easily passes the best-interest-of-creditor test.

f) The Plan is Proposed in Good Faith.

The BSA argues that the hard-fought compromise between the Committee and the Debtor, brokered after years of effort and investment by the mediator, Bankruptcy Judge Robert J. Faris, constitutes a bad-faith attempt to harm creditors in this case. The BSA's argument may be a reaction to the Plan Proponents' vigorous objections to the BSA's plan.[54] In any event, the

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[51] *See* Third Amended Disclosure Statement Regarding Plan of Reorganization, dated May 25, 2005 at 85-86, *In re Roman Catholic Church of the Diocese of Tucson aka the Diocese of Tucson*, Case No. 4-bk-04-04721-JMM (Bankr. D. Ariz. May 2005) (analogizing to chapter 9 test requiring only "a reasonable effort by the [church] debtor that is a better alternative to the creditors than dismissal of the case" (internal quotation marks, citation omitted). The Committee does not join the Debtor in this argument, takes no position on its merits, and reserves all related rights.

[52] *In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) (citing *In re Sierra-Cal*, 210 B.R. 168, 171-172 (Bankr. E.D. Cal. 1997)).

[53] *Id.*

[54] Notably, on the argument of the Plan Proponents and the Lujan Firm, the BSA Order found that the BSA's attempt to administer property that reposed in this bankruptcy estate likely violates the automatic stay in this case. BSA Order at 101.

BSA's Objection on this issue ignores well-established facts on the record in this case demonstrating conclusively that the Plan is being proposed in good faith.

A plan is filed in good faith if "[proponents] have a basis for expecting that a reorganization can be effected" and that the plan comports with the objectives and purposes of the Bankruptcy Code.[55] The Plan in this case essentially provides for the payment of every allowed Claim in full, with the exception of the Claims held by Survivors. But the BSA appears to argue that the Debtor should have done more to diminish further any awards to Survivors for the apparent purpose of making the BSA's bankruptcy case simpler.[56] The BSA's unconfirmed plan proposes to pay Survivors, on average, substantially less than the average Survivor is likely to recover in this case.[57] Despite this fact, the BSA argues that the Debtor had a fiduciary duty to elect an option that would have treated its creditors far less favorably.[58] The BSA's positions conflict directly, of course, with the Debtor's fiduciary duty to maximize returns for creditors in *this* case.

The BSA argues that "**numerous** provisions in the Plan, which originated with the Committee's competing plan proposal, serve no legitimate restructuring purpose."[59] The BSA only identifies one aspect of the Plan, however, that purportedly falls within its broad accusation. Specifically, the BSA complains that the Plan attempts to preserve the Debtor's interest in the BSA Insurance Policies.[60] But this complaint makes little sense. As Judge Silverstein

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[55] *Provident Mut. Life Ins. Co. of Philadelphia v. University Evangelical Lutheran Church of Seattle*, 90 F.2d 992, 995 (9th Cir. 1937); *accord In re Mann Farms, Inc*., 917 F.2d 1210, 1214 (9th Cir. 1990)*; In re Hewitt*, 16 B.R. 973, 981 (Bankr. Alaska 1982). *Cf. In re Prometheus Health Imaging, Inc*., 705 Fed. Appx. 626, 627 (9th Cir., 2017) ("[A] plan is ... filed in [bad] faith if it represents an attempt ... to achieve objectives outside the legitimate scope of the bankruptcy laws.).

[56] BSA Objection at 11-12.

[57] For example, under the BSA's unconfirmed plan, based on the noncontingent funding of $2,484,200,000.00, the 82,209 BSA claimants would receive, on average, $30,218.10. *See* BSA Order at 1, 23 (indicating that 82,209 unique claims were filed in the BSA case) and *id.* at 70-71 (describing the sources of BSA plan funding).

[58] BSA Objection at 11-12.

[59] BSA Objection at 12.

[60] BSA Objection at 12.

acknowledges in her preliminary Order, the Debtor's interest in BSA insurance policies constitutes property of this bankruptcy estate.[61] It is therefore, of course, the *duty* of both the Debtor and the Committee to maximize the value of these estate assets to pay creditors in this case. With this in mind, the "restructuring purpose" behind pursuing the Debtor's rights to its own property seems quite clear: to maximize creditor recoveries.

The Plan proposes what the Debtor and Committee believe, after years of discussion and negotiation, to be the best available outcome for the estate and its creditors. Most importantly, the Plan offers the best opportunity for Survivors, who effectively comprise the only allowed, impaired class of creditors, to realize the highest and best possible resolution. For these reasons, the Plan is proposed in good faith and the BSA's Objection should be overruled.

g) Plan Proponents' Response to Technical Modifications

The BSA concludes its objection with a series of belt and suspender objections based on least five separate Plan provisions.[62] These objections concern potential findings related to these Plan provisions (which findings have not even been proposed by the Plan Proponents), as well as the BSA's concerns that the Provisions could be read in a way contrary to the stated intentions of the Plan Proponents. The Plan Proponents intend to work with the BSA to provide clarification on points of confusion, or to identify clarifying edits to the Plan, but the Plan Proponents do not believe that any concerns identified in the final section of the BSA's Objection present a substantive obstacle to confirmation of the Plan under 11 U.S.C. § 1129.

VI. Committee Response to the Pangelinan Objection

Zita Pangelinan and Victoria Pangelinan, as co-administrators of the estates of Engracia Diaz Pangelinan and Francisco Sablan Pangelinan, (collectively, the "Pangelinan Estate") object to the Plan's proposed sale free and clear of certain property donated to the Debtor by Engracia

[61] BSA Order at 101.

[62] BSA Objection at 13.

Diaz Pangelinan and Francisco Sablan Pangelinan (together the "Grantors") to the Trust.[63] The Pangelinan Objections should be overruled for three reasons. First, the Pangelinan Estate has no cognizable interest in the properties in question under Guam law. Second, even if the Pangelinan Estate did retain an interest in the properties in question as a matter of Guam law, the Court could not give effect to that interest pursuant to applicable provisions of the Fair Housing Act. Third, even if the Court were to find that the Pangelinan Estate could assert an interest, the Bankruptcy Code would still authorize the Court to transfer the property at issue to the Trust, free and clear of the Pangelinan Estate's interest, and preserve the Pangelinan Estate's interest in related proceeds.

a) The Deeds Failed to Reserve a Transferable Interest in Real Property and the Pangelinan Estate has No Legal Right, Title, or Interest.

The Pangelinan Estate's purported interest in real property under the Plan is not recognized as a valid interest under Guam law. The Pangelinan Estate asserts that the proposed transfer of Lot 247-2, Agat ("AGT7") and Lot 248, Agat ("AGT8") violates the conditions set forth in the respective deeds for those parcels and that the property should, accordingly, be returned to the Pangelinan Estate.[64] But the Grantors of AGT7 and AGT8 did not preserve a cognizable legal interest in the real property sufficient to effectuate a forfeiture of the Archdiocese's interest, and therefore, the Pangelinan Estate cannot enforce the purported deed conditions or demand the return of the property.

To enforce a gift condition contained in a deed, a grantor must express his or her intent that, upon violation of the condition, the grantor has the right to terminate the transfer and/or

[63] The Plan Proponents will not address the Pangelinan Estate's arguments that the Santa Rita parish is a distinct legal entity. This matter was adjudicated by the Plan Proponents in Adv. P. No. 19-00001 (Bankr. D. Guam), and the Pangelinan Estate's position was rejected by this Court.

[64] Pangelinan Objection at 6.

reenter the property.[65] This power to terminate the conveyance upon a later event is commonly known as a "condition subsequent" and is a future interest in real property.[66] The recognition and enforcement of such restrictive conditions are strongly disfavored by courts.[67] To overcome the strong presumption against these conditions, courts require an express manifestation of intention by the grantor to impose a condition subsequent **and** retain a right to reclaim the property.[68] To this end, courts require language in the deed similar to "upon the express condition," as well as language stating either (i) that the grantee shall forfeit title or (ii) that the grantor retains the right to re-enter, upon a breach of such express condition.[69] Where "no appropriate words are used to show an intention to create a condition subsequent" the grantor retains no legal interest in the property.[70]

Here, the Court can look at the language in the deeds and conclude they contain nothing approaching the express language required to create a future interest in AGT7 or AGT8:

> TO HAVE AND TO HOLD all and singular the above-granted premises, with the appurtenances, unto said Donee, its successors and assigns, forever, for the purpose of aiding and benefiting the Parish of the Village of Santa Rita, Guam.[71]

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[65] *Beran v. Harris*, 91 Cal. App. 2d 562, 565 (Cal. App. 4th Dist. 1949) (citing *Rosecrans v. Pacific Elec. Ry. Co.*, 134 P.2d 245 (1943)).

[66] *See* Restatement (First) of Property §§ 45, 57 155 (1936).

[67] *Beran v. Harris*, 91 Cal. App. 2d 562, 564–65 (Cal. App. 4th Dist. 1949) (citing *Buttram v. Finley*, 37 Cal. App. 2d 459, 464 (Cal. App. 3d Dist. 1940)).

[68] *Id.*

[69] *Id.* ("Reciting in a deed that it is in consideration of a certain sum, and that the grantee is to do certain things, is not an estate upon condition, not being in terms upon condition, nor containing a clause of re-entry or forfeiture.") (quotations omitted) (citations omitted).

[70] *Beran v. Harris*, 91 Cal. App. 2d 562, 565 (Cal. App. 4th Dist. 1949).

[71] Deed for AGT7 and AGT8 (citied in Disclosure Statement at 64).

Likewise, to the extent the deeds created some other kind of legal interest, such interest is an invalid restraint on the Debtor's ability to alienate AGT7 and AGT8 and is invalid under Title 21 GCA § 1254 and 21 G.C.A. § 1266.[72]

Because the deed conveying AGT7 and AGT8 conveyed title to the Debtor in fee simple absolute, and without any cognizable or enforceable condition restricting the nature of the Debtor's absolute fee-interest, the Pangelinan Estate has no right, title, or interest in these parcels, has no standing to object to the Plan, and has no ability to enforce the language of the deed. For these reasons the Pangelinan Estate's Objection and motion should be overruled.

b) The Fair Housing Act Prohibits Restrictions on Vacant Land and Residential Real Property that Limit Use to a Religious Group or Denomination.

Even if the deed restrictions at issue did create an enforceable condition subsequent, and they do not, the enforcement of such restrictions would violate the Federal Fair Housing Act.[73] The Fair Housing act makes it unlawful "[t]o refuse to sell or rent ... or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin."[74] Courts extend these prohibitions to invalidate deed provisions that likewise discriminate based on protected status.[75] The relevant restriction in the Fair Housing Act apply to "dwellings," which, by definition include vacant land.[76] In *United States v. Columbus Country Club*,[77] the refusal by Knights of Columbus, "to permit the sale or lease of dwellings to non-Catholics constitute[d] unlawful housing discrimination on the basis of religion, in violation of .

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[72] *See Ueda v. Bank of Guam*, 2005 Guam 23 (Guam Nov. 23, 2005).

[73] 42 U.S.C. § 3601, et seq.

[74] *U.S. v. Columbus Country Club*, 915 F.2d 877, 880 (3d Cir. 1990) (citing 42 U.S.C. § 3604).

[75] *See Harmony Haus Westlake, LLC v. Parkstone Prop. Owners Assn., Inc.*, 468 F. Supp. 3d 800, 805 (W.D. Tex. 2020) (noting that deed restrictions used to exclude disabled persons from living in single family neighborhoods violates the FHA).

[76] *Columbus Country Club*, 915 F.2d at 881.

[77] 915 F.2d at 883.

. . 42 U.S.C. §§ 3604(a), (b) and (c)."[78] Based on the provisions of the Fair Housing Act, neither the Grantors of AGT7 and AGT8, nor their heirs, are permitted under the Fair Housing Act to restrict the use or sale of any vacant land, or any dwelling on the land, solely to the members of a certain religion, *i.e.*, Catholics in Santa Rita, Guam. Accordingly, enforcing the language of the deed restrictions would violate the Fair Housing Act and deems the restrictions void.

c) The Plan Provides an Alternative to Adjudication of the Pangelinan Estate's Dispute Through Confirmation.

Courts do not allow the bare assertion of an interest in real property to obstruct a sale free and clear under the Bankruptcy Code, but instead consider a party's claim to an interest only if there is an "objective basis for either a factual or legal dispute" of such interest.[79] Even in instances where a party satisfies this standard, courts may allow the sale of the property at issue and limit the objecting party's recourse to recovering from the proceeds of the sale.[80]

Consistent with this approach, if the Court determines that the Pangelinan Estate's asserted interest has some validity, the Plan provides that the real property at issue may be sold free and clear anyway, but that the Pangelinan Estate would then be able to recover the value of its interest from the proceeds of that sale.[81] For these reasons, the Pangelinan Estate cannot demand return of AGT7 and AGT8, but may, at best, preserve their rights as against the proceeds

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[78] *United States v. Columbus Country Club*, No. CIV. A. 87-8164, 1992 WL 189403, at *3 (E.D. Pa. July 30, 1992) (on remand).

[79] *In re Gaylord Grain L.L.C.*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004).

[80] *E.g.*, *In re Federico*, 07-21245-B-7, 2009 WL 2905855, at *3 (E.D. Cal. Sept. 8, 2009) (holding that a bankruptcy court honors a party's due process rights when it authorizes the sale of disputed property based on substantial evidence that the Debtor holds a valid interest in the property but preserves the lien that attaches to the proceeds of the sale).

[81] Plan Sec. 6.16 ("If the Court determines at the confirmation hearing for this Plan that a person(s) other than the Debtor holds an interest in the Real Property Assets, which interest is subject to a bona fide dispute, such interest will transfer only to the proceeds of any sale by the Trust of the respective Real Property Asset(s), and in no event will any person's interest cloud title, affect the Trustee's ability to sell the Real Property Asset(s), or entitle the interested party(ies) to recourse against the Trust in excess of the net-sale proceeds of the respective Real Property Asset(s)").

of the sale of these parcels under the express conditions of the Plan and Sections 363(f)(4), 1223, and 1124 of the Bankruptcy Code.

CONCLUSION

The Plan satisfies all the conditions required by Bankruptcy Code Section 1129(a),(b) and has been proposed for the purpose of providing the best possible return to the Archbishop's creditors. For all of these reasons the Objections should be overruled and the Plan should be confirmed.

RESPECTFULLY SUBMITTED this 27th day of, 2022.

STINSON LLP

/s/*Robert T. Kugler*

Robert T. Kugler

EXHIBIT A - TO PLAN PROPONENT RESPONSE TO PLAN OBJECTIONS

OBJECTING PARTY	CITATION	OBJECTION SUMMARY	PLAN SECTION	PROPOSED REVISIONS[1]
UST	ECF No. 944 at 10	Exculpation Clause is overly broad.	Section 13.4	Replace Section 13.4 with the following: From and after the Effective Date, the Debtor, the Debtor's professionals, the Committee, the Committee's Professionals, and the Estate's officers, directors, and employees acting as fiduciaries in this case "Section 13.4 Exculpated Parties" shall not have nor incur any liability for, and shall be released from, any Claim, Cause of Action or liability to any holder of a Claim, or to any other party in interest, for any act or omission that occurred after the Petition Date through and including the Effective Date during and in connection with the administration of this Chapter 11 case (but not including transactions and event occurring in the ordinary course of the Debtor's business during the pendency of the case) including the formulation, negotiation, or pursuit of confirmation of the Plan, the consummation of the Plan, and the administration of the Plan or the property to be distributed under the Plan; provided, however, this Section 13.4 shall not: (1 release or exculpate any Section 13.4 Exculpated Party from liability for any Claims, Causes of Action or liabilities arising from the gross negligence, willful misconduct, fraud, or breach of the fiduciary duty of loyalty of any Section 13.4 Exculpated Party, in each case subject to determination of such by Non-Appealable Order of a court of competent jurisdiction, (2) limit the rights of any holder

[1] These revisions are only those proposed in direct response to Objections filed in this case. Other parties have reached out to the Plan Proponents with concerns and the Plan Proponents will provide a comprehensive set of revisions in a forthcoming Fourth Amended Joint Plan prior to the Court's deadline for filing plan modifications.

OBJECTING PARTY	CITATION	OBJECTION SUMMARY	PLAN SECTION	PROPOSED REVISIONS[1]
				of a claim or equity interest to enforce rights arising under this Plan, and (3) limit the liability of the Section 13.4 Exculpated Parties and their respective professionals for sanctions under Rule 9011 or any similar rule, statute, or doctrine as determine by Final Order of a court of competent jurisdiction. Provided, further, that any Section 13.4 Exculpated Party shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities (if any) under the Plan. Without limiting the generality of the foregoing, the UCC and the Section 13.4 Exculpated Parties shall be entitled to and granted the benefits of Section 1125(e) of the Bankruptcy Code and, as applicable, the Channeling Injunction.
UST	ECF No. 944 at 12	Discharge and Injunction improperly includes release of ordinary course liability.	Section 13.2	Modify 13.2 to include the language in red: Except as otherwise expressly provided in the Plan or in the Confirmation Order, on the Effective Date, the Archdiocese will be discharged from, and its liability will be extinguished completely in respect to, any Claim and debt, whether reduced to judgment or not, liquidated or unliquidated, contingent or noncontingent, asserted or unasserted, fixed or not, matured or unmatured, disputed or undisputed, legal or equitable, known or future, based on conduct occurring before the Confirmation Date, including, without limitation, all interest, if any, on any such Claims and debts, whether such interest accrued before or after the Petition Date, and including all Claims and debts of the kind specified in Bankruptcy Code Sections 502(g), 502(h), and 502(i), whether or not

OBJECTING PARTY	CITATION	OBJECTION SUMMARY	PLAN SECTION	PROPOSED REVISIONS[1]
				a Proof of Claim is filed or is deemed filed under the Bankruptcy Code Section 501, such Claim is allowed under Bankruptcy Code Section 502, or the holder of such Claim has accepted the Plan. Notwithstanding anything in the foregoing sentence, the injunction provided for in this Section 13.2 shall not discharge or enjoin the Debtor or Reorganized Debtor from any liabilities arising from transactions and events occurring in the ordinary course of the Debtor's business during the pendency of the case arising within the scope of 28 U.S.C. § 959.
UST	ECF No. 944 at 13	The Trustee's discharge is premature and overly broad	Trust Agreement Section 4.5	Modify Trust Agreement Section 4.5 to include language shown in red: Upon Post-Confirmation Termination of the Trust and accomplishment of all activities described in this Article, the Trustee and the Trustee's Professionals shall, subject to the requirements for notice and a hearing pursuant to Section 8.2 of this Trust Agreement, be discharged and exculpated from liability, and the Trustee's bond (if any), shall be exonerated except for acts or omissions resulting from the recklessness, gross negligence, willful misconduct, knowing and material violation of law, or fraud of the Trustee or his designated agents or representatives. The Trustee may, at the expense of the Trust, seek an order of the Bankruptcy Court confirming the discharges, exculpations, and exoneration referenced in this Section.

EXHIBIT A - TO PLAN PROPONENT RESPONSE TO PLAN OBJECTIONS

OBJECTING PARTY	CITATION	OBJECTION SUMMARY	PLAN SECTION	PROPOSED REVISIONS[1]
UST	ECF No. 944 at 14	Discharge of Trustee is overly broad	Trust Agreement Section 8.2	Modify Trust Agreement Section 8.2 to include language shown in red and remove language in blue : At any time when the Bankruptcy Case is open, the Trustee shall file with the Bankruptcy Court a motion for approval of any accounting described in Section 8.1 of this Trust Agreement. After notice and a hearing, notice of which shall be served on the Reorganized Debtor and the Beneficiaries, the Bankruptcy Court may approve the accounting and the Trustee shall be discharged from all liability, to the Trust, any Beneficiary, or any Person who has or may have a claim against the Trustee or Trust for acts or omissions in the Trustee's capacity as Trustee, except with respect to any act of gross negligence or intentional wrongdoing, related to any assets listed and transactions detailed in the accounting. ~~Any claim of liability arising out of the Trustee's gross negligence or intentional wrongdoing must be raised with the Bankruptcy Court within 30 days after the filing of any accounting~~.
Lujan	ECF No. 943 at 2-3	Definition of Affiliate, as incorporated into the definition of AoA Entity could be interpreted to release the Vatican.	Definitions at 10(d) "AoA Entity"	Add Definitions, 10(g): Notwithstanding anything in this definition, none of the following are an AoA Entity: (i) the Holy See, (ii) the Vatican, or (iii) the Supreme Pontiff.

EXHIBIT A - TO PLAN PROPONENT RESPONSE TO PLAN OBJECTIONS

OBJECTING PARTY	**CITATION**	**OBJECTION SUMMARY**	**PLAN SECTION**	**PROPOSED REVISIONS**[1]
Lujan	ECF No. 943 at 3	Plan could release persons not included under the definition of Protected Parties	Various	Add Section 13.8: Unless specifically stated otherwise, nothing in this Plan, including but not limited to the Supplemental Settling Insurer Injunction, the Channeling Injunction, or any Insurer Settlement Agreement, shall be construed or interpreted to release, waive, enjoin, or otherwise limit a Class 3 Claimant's or a Class 4 Claimant's claim(s) against any Person who is not a Protected Party.
BSA	ECF No. 948 at 13	Plan impermissibly abrogates creditors' rights under Section 502(j).	Plan Section 4.12	Replace Section 4.12(a) with the following language: Class 12 consists of allowed, non-contingent Claims for contribution, indemnity, equitable indemnity, subrogation, or equitable subrogation, or reimbursement, or any other indirect or derivative recovery, by any Person or Entity against a Protected Party, which claim relates to or arises from Abuse. For the avoidance of doubt any such claim for contribution, indemnity, equitable indemnity, subrogation, or equitable subrogation, or reimbursement, or any other indirect or derivative recovery that was disallowed as of the Effective Date is not a Class 12 Claim unless and until such Claim is allowed, after notice and a hearing, pursuant and subject to applicable provisions of the Bankruptcy Code and/or Bankruptcy Rules, including but not limited to Bankruptcy Code Section 502(j).