

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

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London and Certain London Market Companies*

In Re:

THE DIOCESE OF CAMDEN, NEW JERSEY,

Debtor.

Chapter 11

Case No. 20-21257 (JNP)

**LONDON MARKET INSURERS' OBJECTION TO THE THIRD MODIFIED EIGHTH
AMENDED PLAN OF REORGANIZATION**

Certain Underwriters at Lloyd's, London, Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Company Ltd. and London & Edinburgh Insurance Company Ltd.), RiverStone Insurance (UK) Ltd. (as successor in interest to Terra Nova Insurance Company Ltd), and Sompo Japan Nipponkoa Insurance Company of Europe Limited (f/k/a The Yasuda Fire & Marine Insurance Company of Europe Ltd.) (collectively "London Market Insurers" or "LMI"), by and through their undersigned attorneys, hereby file their Objection to the *Third Modified Eighth Amended Plan of Reorganization* filed jointly by the Diocese of Camden, New Jersey ("Debtor") and the Official Committee of Tort Claimant Creditors (the "Tort Committee" and collectively with the Debtor, the "Plan Proponents")¹ on February 23, 2024, Doc. 3659 ("Modified Plan"), and respectfully state as follows:

¹ LMI incorporate by reference herein and reassert their objections and motions in limine asserted at the confirmation hearing held between October 6, 2022 and December 1, 2022 in connection with the Debtor's *Eighth Amended Plan of Reorganization* [Dkt. No. 1725] ("Original Plan"), at the confirmation hearing held on November 20, 2023 in connection with the Debtor's *First Modified Eighth Amended Plan of Reorganization* [Dkt. No. 3373] ("First Modified Plan"), and their written objections asserted in connection therewith, including, but not limited to, (a) *The London Market Insurers' Objection to the Debtor's Eighth Amended Plan of Reorganization* [Dkt. No. 2401] ("LMI Preliminary Objection"); (b) *The Insurers' Preliminary Objection to the Eighth Amended Plan of Reorganization for the Diocese of Camden, New Jersey* [Dkt. No. 2410] ("Certain Insurers' Preliminary Objection"); (c) *The Insurers' Post-Trial Brief in Opposition to the Eighth Amended Plan of Reorganization* [Dkt. No. 3079] ("Insurers' Post Trial Brief"); (d) *The Letter Brief* filed with the Court in connection with the Insurers' Post-Trial Brief [Dkt. No. 3080] ("Insurers' Letter Brief"); (e) *The Certain Insurers' Objection to First Modified Eighth Amended Plan of Reorganization* [Dkt. No. 3493] ("Insurers' First Modified Plan Objection"); and (f) *The Certain Insurers' Objection to Second Modified Eighth Amended Plan of Reorganization* [Dkt. No. 3616] ("Insurers' Second Modified Plan Objection"). LMI reserve all objections and appellate rights in connection with the Court's Memorandum Decision Denying Confirmation of Eighth Amended Plan (Aug. 29, 2023) [Dkt. No. 3336] (hereinafter the "Memorandum Decision"); the Court's Oral Decision Denying Confirmation of the Modified Eighth Amended Plan (Dec. 15, 2023) [Dkt. No. 3574] (hereinafter, the "Oral Decision"); and the Court's Oral Decision Denying Confirmation of the Second Modified Eighth Amended Plan (February 16, 2024) [Dkt. 3649] (hereinafter, the "Second Oral Decision"), and do not waive any rights or objections by limiting their objections herein to whether the Modified Plan complies with this Court's Memorandum Decision, its Oral Decision and its Second Oral Decision. To the extent that alternative text is proposed herein or in the redlines attached as exhibits hereto, it is proposed with the intent of

I. PRELIMINARY STATEMENT

As discussed before the Court on November 14, 2023, Certain Insurers² and Plan Proponents agreed, and the Court has stated, that all prior objections to prior versions of the Modified Plan are preserved.³

The Modified Plan still does not comply with the Court's Memorandum Decision, the Oral Decision, and the Second Oral Decision (collectively, "Court's Opinion"). Specifically, the Second Oral Decision directs "the Debtor and OCE⁴ to perform their obligations under the policies."⁵ However, as discussed below, the Modified Plan and Proposed Confirmation Order do not state that the Debtor and the Other Catholic Entities⁶ will retain all obligations under the Non-Settling Insurer Policies.

Accordingly, LMI respectfully request that the Court deny confirmation of the Modified Plan.

conforming to the directives of the Court in its Memorandum Decision, its Oral Decision, and Second Oral Decision without waiving any of LMI's rights and objections to plan confirmation or appellate rights with regard to the Court's Memorandum Decision, its Oral Decision, and its Second Oral Decision.

² "Certain Insurers" include LMI, Interstate Fire & Casualty Company, and Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, Federal Insurance Company, and Illinois Union Insurance Company.

³ Transcript of Hearing Before the Honorable Jerrold N. Poslusny, Jr. United States Bankruptcy Judge, November 14, 2023 at 62-63.

⁴ The Court uses the term "OCE" to mean what the Modified Plan defines as "Other Catholic Entities."

⁵ Second Oral Decision at 15.

⁶ Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Modified Plan.

II. BACKGROUND

On January 12, 2024, Certain Insurers objected to the Second Modified Plan of Reorganization.⁷ On February 16, 2024, the Court issued the Second Oral Decision.⁸ In the Second Oral Decision, the Court stated that objections must be filed no later than seven days after a modified plan is filed.⁹ On February 23, 2024, the Plan Proponents filed the Modified Plan.¹⁰ Hence, the objection deadline is March 1, 2024. On February 23, 2024, the Plan Proponents also filed the *Order Confirming Third Modified Eighth Amended Plan of Reorganization* (“Proposed Confirmation Order”).¹¹

III. THE MODIFIED PLAN AND PROPOSED CONFIRMATION ORDER ARE INCONSISTENT WITH THE COURT’S OPINION.

The Modified Plan must be revised to be consistent with the Court’s Opinion.

LMI previously objected because the plan was ambiguous as to who will perform the obligations under the Non-Settling Insurer Policies.¹² In response, the Court stated,

Therefore, the second modified plan requires the Debtor and OCE to perform their obligations under the policies¹³.... The decision and plan both define [the SIR] and specify the Debtor is required to perform its obligations, so this proposed modification is rejected.¹⁴

⁷ Dkt. No. 3616.

⁸ Dkt. No. 3649.

⁹ Second Oral Decision at 31.

¹⁰ Dkt No. 3659.

¹¹ Dkt. No. 3661.

¹² Insurers’ Second Modified Plan Objection at 13-15; 17.

¹³ Second Oral Decision at 15.

¹⁴ Second Oral Decision at 28.

Because the Court held that the Debtor and the Other Catholic Entities are responsible for performing their obligations under the Non-Settling Insurer Policies, the Modified Plan cannot be confirmed until it has been revised to reflect the Second Oral Decision.

A. Section 7.2.1 Is Inconsistent with the Court's Opinion.

The Modified Plan states, in pertinent part, “*the Debtor and the Other Catholic Entities shall have no further financial obligations under this Plan or the Plan Documents other than the obligations required to be paid to the Trust in Section 7.2.2 of this Plan.*”¹⁵

This wording contradicts the Court's holding. First, if the Debtor, and the Other Catholic Entities are responsible for the obligations under the Non-Settling Insurer Policies, then the statement that “the Debtor and the Other Catholic Entities shall have no further financial obligations under this Plan or the Plan Documents,” improperly contradicts the Court's holding.

To correct this error, the Debtor's and Other Catholic Entities' obligations under the Non-Settling Insurer Policies must not be limited by section 7.2.2.1. Thus, LMI propose the deletion of the quoted language, and the addition of the following language, which is colored in red, to Section 7.2.1 of the Modified Plan:

Notwithstanding the forgoing, the Debtor and the Other Catholic Entities shall have no further financial obligations under this Plan or the Plan Documents other than the obligations (i) to the Trust in Section 7.2.2 of this Plan; (ii) and **under the Non-Settling Insurer Policies, which obligations are unaffected by the Plan, Plan Documents, and Confirmation Order.**

Without these changes, the Modified Plan is inconsistent with the Court's Opinion, and the Modified Plan cannot be confirmed.

B. Section 7.3.3 Is Inconsistent with the Court's Opinion.

The Modified Plan also states,

¹⁵ Modified Plan at 7.2.1 (emphasis added).

... if a court of competent jurisdiction enters a Final Order determining that the Insurance Assignment is valid, the Trust shall assume responsibility for, and be bound by, only such obligations of the Covered Parties under the Non-Settling Insurer Policies as are necessary to enforce the Transferred Insurance Interests.¹⁶

Because the Modified Plan states the Trust will be the entity that takes on the obligations under the Non-Settling Insurer Policies it also contradicts the Court's holding. In addition, it makes it unclear as to which obligations, and which entity or entities, the Debtor and the Other Catholic Entities, or the Trust, will be responsible for the duties and obligations under the Non-Settling Insurer Policies. To remedy these contradictions, LMI propose that section 7.3.3 be replaced with the following language:

Following the Effective Date, whether or not a court of competent jurisdiction enters a Final Order determining that the Insurance Assignment is valid, the Debtor and the Other Catholic Entities shall continue to perform all of their obligations and duties under the Non-Settling Insurer Policies.

The Plan Proponents should add this language to the Proposed Confirmation Order, as well as to a further modified plan. Without these changes, the Modified Plan and the Court's holding are inconsistent, and the Modified Plan should be denied.

IV. CONCLUSION

For the foregoing reasons, the Court should deny confirmation of the Modified Plan, unless the proposed language has been implemented.

Respectfully submitted,

Dated: March 1, 2024

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¹⁶ *Id.* at 7.3.3.

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