

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NEW YORK**

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In re:

The Diocese of Rochester,

Debtor.

Bankruptcy Case No. 19-20905-PRW  
Chapter 11

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The Diocese of Rochester,

Plaintiff,

v.

The Continental Insurance Company, Certain Underwriters at Lloyd's, London, Certain London Market Companies, The Dominion Insurance Company Limited, Stronghold Insurance Company Limited, CX Reinsurance Company Limited, Markel International Insurance Company Limited, Tenecom Limited, National Surety Corporation, Interstate Fire & Casualty Company, Colonial Penn Insurance Company, and HDI Global Specialty SE,

Defendants.

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Adv. Pro. No. 19-02021-PRW

**CERTAIN UNDERWRITERS AT LLOYD'S, LONDON AND HDI GLOBAL  
SPECIALTY SE'S REPLY IN SUPPORT OF THE  
DEBTOR'S MOTION TO APPROVE PROPOSED INSURANCE SETTLEMENTS TO  
FUND SURVIVOR COMPENSATION TRUST**

Certain Underwriters at Lloyd's, London and HDI Global Specialty SE, who subscribed severally and not jointly as their interests appear to primary and excess policies providing insurance to the Diocese of Rochester ("Debtor") and other Non-Debtor Diocesan Related Entities ("Related Entities") (collectively "Underwriters"<sup>1</sup>), by and through their attorneys, Clyde & Co. US LLP, hereby submit this Reply in Support of Debtor's Motion to Approve Proposed Insurance

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<sup>1</sup> Underwriters are defined in the Settlement Agreement found at Doc 190-2, filed on 05/20/22, pp. 26-27. Underwriters also includes non-defendant Convex Insurance UK Limited that severally subscribed to one or more of the above-mentioned policies issued to the Debtor.

Settlements to Fund Survivor Compensation Trust (“Debtor’s Motion”) (*See* Debtor’s Motion, filed 06/23/22, Docs. 1538 and 1538-2; *see also*, Motion, Adv. No. 19-02021, filed 05/20/22, Docs. 190 and 190-2). In support of this Reply, Underwriters respectfully state as follows:

## **I. INTRODUCTION**

To avoid duplicative briefing, Underwriters respectfully join the arguments advanced in the Reply of London Market Insurers in Support of Debtor’s Motion to Approve Proposed Insurance Settlement to Fund Survivor Compensation Trust (“LMI’s Reply Brief”) filed on 07/22/22, Doc. 1642 that address and refute the Official Committee of Unsecured Creditors’ Objection to Debtor’s Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust (“Opposition”) filed on 06/30/22, Doc. 1555, and as applied to the Diocese’s proposed settlement agreement with Underwriters (“Underwriters Settlement”, Doc. 1538-2).

Below, Underwriters will refute the Committee’s objections to the reasonableness of the Underwriters Settlement and the Diocese’s exercise of its business judgment by accepting the Agreement.

## **II. REPLY**

Courts in the Second Circuit analyze eight factors (i.e., the *Iridium* factors) when determining whether a settlement proposed under the Federal Rule of Bankruptcy Procedure 9019 is fair and equitable. *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 455 (2d Cir. 2007). Section B of LMI’s Reply Brief addresses the *Iridium* factors to which the Committee waived any argument; LMI’s arguments are incorporated fully herein. This Reply will address the following factors: (1) the balance between the possible litigation success and the settlement’s future benefits; and (3) the paramount interests of creditors, including the relative benefits to each class of creditors and the degree to which they either do not

object to or affirmatively support the proposed settlement, as it relates to the Underwriters Settlement. *See id.*

**A. The Underwriters Settlement is reasonable.**

**1. Factor 1: The Balance Between Possible Litigation Success and the Settlement's Future Benefits Weigh in Favor of Granting the Debtor's Motion.**

As a threshold matter, the Committee fails to address let alone rebut Underwriters' coverage positions vis-à-vis the 48 POC Claims tendered to Underwriters or provide any substantive analysis as to why presumed litigation success outweighs the Underwriters Settlement. As noted in Underwriters' Initial Brief, Underwriters declined coverage for 32 of the 48 tendered POC Claims because: the alleged abuse predates the applicable Policies' Continuity Date and therefore falls outside the Policies' Sexual Misconduct Coverage and Prior Acts Coverage; and/or, are subject to clear exclusions within the Policies. *See* Underwriters' Initial Brief, Doc. 1545, pp. 5-7.

Of the remaining 16 POC Claims subject to Underwriters' full reservation of rights, only nine claims were filed before the Bar Date. The Committee asserts, without justification, that it is improper to discount the value of late-filed claims. (Opposition at p. 31). However, absent evidence that the untimeliness was excusable, those claims are barred. *See, e.g., In re U.S.H Corp of New York*, 223 B.R. 654, 658 (Bankr. S.D.N.Y 1998)(finding Debtor's publication notices satisfied due process requirements and hence, late-filed claims by 'unknown' creditors were time-barred); *see also Jane Doe J.J. v. William Bettinelli*, Case No. 21-2916 (7th Cir. July 18, 2022) (affirming dismissal of sexual abuse claim against USA gymnastics filed after the bar-date because claimant did not present evidence that she would was known creditor and was thus entitled to actual notice of the bar-date order).

Further, of the nine timely-filed POC Claims subject to Underwriters' reservation of rights, Underwriters have significant coverage and/or liability defenses to each claim. *See* Mulligan Decl., Doc. 1546, at p. 12. Thus, the first *Iridium* factor weighs in favor of the Underwriters Settlement.

**2. Factor 3: The Interests of Creditors Weigh in Favor Granting the Debtor's Motion.**

The Court must evaluate the benefits the creditors will receive through settlement against the risks of not settling. *See Geltzer v. Original Soupman Inc. (In re Soup Kitchen Int'l, Inc.)*, 506 B.R. 29, 44 (“[A] debtor may seek approval of a settlement over major creditor objections as long as it carries its burden, . . . including [that] the paramount interests of creditors[] weighs in favor of settlement.”). The Underwriters Settlement confers substantial “tangible benefits”; its approval is the next step towards an approved Chapter 11 Plan of Reorganization (“Plan”) paying \$147,750,000 to a Trust for the benefit of Proof of Claim (“POC”) Claimants.

In addition, settlement avoids erosion of the available policy limits through incurred defense costs. Such benefit is sizeable, given that the Debtor tendered to Underwriters POC on behalf of 48 POC Claimants (“POC Claims”) and of those, 16 POC Claims are subject to Underwriters' full reservation of rights. *See* Mulligan Decl., Doc. 1546, at ¶¶ 28, 38 a-c and Ex. 1. Hence, without a settlement, Underwriters would defend against each reserved POC Claim and pay all Defense Costs (as defined in the Primary Policies) up to the available policy limits. *See Id.* at Exs. 2 through 5. As only the Primary Policies' Prior Acts Coverage is implicated by the 16 POC Claims, and the available aggregate limit per Policy is \$750,000 excess of a \$250,000 Self-Insured Retention (“SIR”) minus any erosion, it is likely that there will be significant erosion of the available limits before the POC Claimants receive any benefit from the policies. *Id.* at ¶ 9.

For example, assuming the median cost to defend each claim is \$375,000<sup>2</sup>, the total estimated defense expenses would be \$6,000,000. This amount far exceeds the \$750,000 aggregate limit in each of the potentially implicated policies. The Underwriters Settlement maximizes the total pay-out to POC Claimants by avoiding the erosion of limits through incurred costs attendant with litigation.

The Underwriters Settlement also provides the substantial “intangible benefits” of: advancing the Chapter 11 Case toward Plan confirmation; payment to the POC Claimants after Plan confirmation, rather than waiting years for litigation in the tort system and the erosion of available limits; and, the maintenance of the POC Claimants’ privacy. Therefore, the third *Iridium* factor weighs in favor of the Underwriters Settlement.

**B. The Diocese properly Exercised its business judgment by agreeing to Underwriters Settlement**

As noted in LMI’s Reply Brief, the Committee’s challenges to the Debtor’s business judgement are conclusory assertions unmoored by the facts or law. The approval of the Underwriters Settlement and other insurer settlements will generate \$107,250,000. At trial, Underwriters will introduce evidence showing that the combined \$147,750,000 contribution by the Insurers, Debtor and its related entities, will provide an average per claim payment that well exceeds the average per claim payment in other diocesan abuse bankruptcy cases.

The Underwriters Settlement in particular maximizes payout to the POC Claimants in light of the available coverage defenses under the Underwriters Policies and avoids further depletion of Diocesan assets. Through the Agreement, the Debtor avoids unnecessary costs litigating its

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<sup>2</sup> See LMI’s Brief, Doc. 1543, pp. 24-25 (explaining that the average defense of an abuse claim typically costs from \$250,000 to \$500,000).

liability and coverage and ensures that the available limits provide sole benefit to the POC Claimants.

### III. CONCLUSION

For the foregoing reasons, this Court should grant the Debtor's Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust and in particular, the Underwriters Settlement.

Dated: July 22, 2022

Respectfully submitted,

/s/ Catalina J. Sugayan

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## CERTIFICATE OF SERVICE

The undersigned certifies that, on July 22, 2022, pursuant to Fed. R. Civ. P. 5, a true and correct copy of the foregoing *Certain Underwriters at Lloyd's, London and HDI Global Specialty SE's Reply in Support of Debtor's Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust* was filed with the Clerk of Court using the CM/ECF System, which will send notification of such filing to the attorneys of record at the email addresses on file with the Court.

/s/ Preetha Jayakumar