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Hearing Date: November 18, 2024
Hearing Time: 10:00 a.m.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Case No. 20-12345 (MG)
THE ROMAN CATHOLIC DIOCESE OF ROCKVILLE CENTRE, NEW YORK,	:	Chapter 11
Debtor.	:	

OBJECTION OF THE UNITED STATES TRUSTEE TO MOTION OF THE DEBTOR, PURSUANT TO SECTIONS 363 AND 105(A) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, FOR ENTRY OF AN ORDER (A) APPROVING THE SETTLEMENT AGREEMENTS, RELEASE AND BUYBACK WITH CERTAIN INSURERS AND OTHER PARTIES, AND (B) GRANTING RELATED RELIEF

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**TO: THE HONORABLE MARTIN GLENN,
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

William K. Harrington, the United States Trustee for Region 2 (the "United States Trustee"), respectfully submits this objection (the "Objection") to *the Motion of the Debtor, Pursuant to Sections 363 and 105(a) of the Bankruptcy Code And Bankruptcy Rule 9019, For Entry of an Order (A) Approving The Settlement Agreements, Release And Buyback With Certain Insurers And Other Parties, And (B) Granting Related Relief* [ECF Dkt. No. 3358] (the "Motion").[1] In support thereof, the United States Trustee respectfully states as follows:

I. PRELIMINARY STATEMENT

The Motion should be denied because the Debtor inappropriately seeks authorization for a Sale Order: (1) that presents as a *sub rosa* plan because it predetermines confirmation issues, which this Court expressly reserved for confirmation in the Disclosure Statement Order; (2) wherein the Debtor seeks to sell nondebtor assets, without the authorization of those holding an interest in such assets and, in some instances, in direct contravention of this Court's findings in the Disclosure Statement Order; (3) that contains releases and injunction provisions that violate Supreme Court precedent and contravene applicable state law and do not fall within section 363(f); and (4) that contains a bar order that extends far beyond the authority granted to this Court pursuant to section 363(f) to sell assets free and clear claims and interest. If the Sale Order is approved, creditors in these cases will lose important and valuable property rights without the important notice and other safeguards provided for in the confirmation process. Accordingly, the Court should deny the Motion and instead hear these issues in connection with confirmation.

[1] All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

II. FACTUAL BACKGROUND

General Background

1. On October 1, 2020 (the "Petition Date"), the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Case"). *See* ECF Dkt. No. 1.

2. On October 16, 2020, the United States Trustee appointed a committee of unsecured creditors (the "UCC"). *See Notice of Appointment of Official Committee of Unsecured Creditors* [ECF Dkt. No. 71].

3. The UCC members consist of abuse survivors.

4. The Debtor continues to operate and manage its properties as debtor and debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

The Status of the Plan and The Court's Disclosure Statement Related Order

5. On October 7, 2024, the Debtor filed the Plan [ECF Dkt. Nos. 3292] (as amended, revised, or modified, the "Plan"), and Disclosure Statement [ECF Dkt. Nos. 3291] (as amended, revised, or modified, the "Disclosure Statement"). Under the Plan, the Abuse Claims will be "channeled," and holders of Abuse Claims will only be able to look to a Trust for payment without any right to pursue direct claims against third parties. *See* Plan, Art. IX. The United States Trustee filed an objection to the Disclosure Statement. ECF Dkt. No. 3323.

6. On November 4, 2024, the Court entered an Order Regarding the Disclosure Statement for the Modified Plan of Reorganization [ECF Dkt. No. 3368] (the "Disclosure Statement Order"). In that Disclosure Statement Order, the Court addressed certain issues raised in the UST Objection.

7. Specifically, in connection with the United States Trustee's view that the "Plan's release and injunction provisions impermissibly bar claims against nondebtors without the

consent of affected claimants and violate the Supreme Court's ruling in *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071 (2024)," the Court found that these "are confirmation issues that have nothing to do with the adequacy of the Disclosure Statement. Accordingly, these objections are OVERRULED, and the issues may be raised at Confirmation if the UST so chooses . . ." *See* Disclosure Statement Order at 12.

8. In connection with the Insurance Settling Insurer Injunctions, described in the Motion, the Court noted that the claimants in this case must sign releases as a condition to receive their distribution, which the Court described as "in effect, an opt-in third party nondebtor release, backed up by an injunction and indemnity agreement." The Court continued, however, that "[w]hether the express contractual releases in favor of the Settling Insurers by the Abuse Claimants who receive substantial compensation from the $85.525 million paid by the Settling Insurers sufficiently distinguishes this case from [*In Johns-Manville Corp. v. Chubb Indemnity Insurance Co. (In re Johns-Manville Corp.*), 517 F.3d 62 (2d Cir. 2008)] may present confirmation issues that don't need to be resolved now." *See* Disclosure Statement Order at ¶ 17.[2]

9. Under the Plan, three classes of claims are impaired and allowed to vote. The first impaired class consists of the General Unsecured Claims against the Debtor (Class 3). The second and third consist of Abuse Claims against the Debtor or Additional Debtors, other than Post-Confirmation Claims against the Additional Debtors (Class 4), and the Convenience Claims against the Debtor (Class 6). *See* Plan, 6.

[2] The United States Trustee intends to argue at confirmation that these contractual releases at the time of distributions are coercive and not consensual, in that the claimants are bound by the releases regardless of whether they agree to sign the release. Worse, the claimants will not receive any distributions if they do not sign the contractual releases.

10. As set forth above, under the Plan, the Abuse Claims will be "channeled," and holders of Abuse Claims will only be able to look to a Trust for payment. *See* Plan, Art. IX.

11. Under the Plan, the Debtor states that the Trust will eventually be funded with more than $320 million over a period of four years:

> The Plan provides that the Trust will be established with a minimum cash contribution of $179.8 million on the Effective Date, augmented by an additional $23 million potentially payable on or within weeks of the Effective Date. Over the following four years, there are additional cash contributions to the Trust aggregating $35 million. As described below, it is anticipated that over $320 million will be contributed to the Trust.

See Disclosure Statement at 5 of 113.

Plan Provisions of Continuing Concern to the United States Trustee After the Disclosure Statement Order and as Relevant to the Motion.

12. The following are Plan provisions and definitions relating to the Channeling Injunction, the Settling Insurer Supplemental Injunction, and the other release and the exculpation provisions that are relevant to the arguments below.[3] Collectively, these provisions effectuate the Plan's non-consensual, nondebtor third-party releases. These provisions were identified as provisions of concern in the UST Objection.

The Channeling Injunction

13. The Plan's channeling injunction provides that:

> each holder of an Abuse Claim against the Protected Parties shall have such holder's Claim permanently channeled to the Trust, and (subject to Article XI.O) such Claim shall thereafter be asserted exclusively against the Trust and resolved in accordance with the terms, provisions, and procedures of the Trust. Holders of Channeled Claims (other than Non-Participating Post-Confirmation Claims) are enjoined from prosecuting any outstanding, or filing any future, litigation, Claims, or Causes of Action arising out of or related to such Abuse Claims against any of the Settling Insurers and (subject to Article XI.O) the Reorganized Debtor and Reorganized Additional Debtors and may not proceed in any manner against any

[3] Since the date of the filing of the Plan at ECF Dkt. No. 3292, certain provisions of the Plan have been modified. Such modifications generally do not address the concerns raised in the UST Objection to the Disclosure Statement.

> such Entities in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum, and are required to pursue their Abuse Claims solely against the Trust as provided in the Trust Documents.

Plan Art.I.C.

14. The Plan's "Channeling Injunction for Abuse Claims" provision, which releases and enjoins the ability of holders of Abuse Claims to pursue the Debtor, Additional Debtors and nondebtor third parties, is as follows:

> Other than Non-Participating Post-Confirmation Claims, pursuant to the Channeling Injunction set forth in Article XI, each holder of an Abuse Claim against the Protected Parties shall have such holder's Claim permanently channeled to the Trust, and (subject to Article XI.O) such Claim shall thereafter be asserted exclusively against the Trust and resolved in accordance with the terms, provisions, and procedures of the Trust. Holders of Channeled Claims (other than Non-Participating Post-Confirmation Claims) are enjoined from prosecuting any outstanding, or filing any future, litigation, Claims, or Causes of Action arising out of or related to such Abuse Claims against any of the Settling Insurers and (subject to Article XI.O) the Reorganized Debtor and Reorganized Additional Debtors and may not proceed in any manner against any such Entities in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum, and are required to pursue their Abuse Claims solely against the Trust as provided in the Trust Documents.

Plan, Art. III.C.

15. As quoted directly from the Plan, the Plan's channeling injunction further provides that:

> 1. *Terms*.
> In consideration of the undertakings of the Protected Parties, their contributions to the Trust, and other consideration, and, where applicable, pursuant to their respective settlements with the Debtor or Additional Debtors and to further preserve and promote the agreements between and among the Protected Parties, and to supplement where necessary the injunctive effect of the discharge as provided in section 1141 and 524 of the Bankruptcy Code, and pursuant to sections 105 and 363 of the Bankruptcy Code:
>
> > 1. Any and all Channeled Claims are channeled into the Trust and shall be administered under the procedures and protocols and in the amounts established under the Plan and the Trust Documents as the sole and exclusive remedy for all Channeled Claimants;

> 2. all Entities that have held or asserted, currently hold or assert, or that may in the future hold or assert, any Channeled Claims shall be permanently and forever stayed, restrained, enjoined and barred from taking any action for the purpose of directly or indirectly asserting, enforcing, collecting, recovering, or receiving payments, satisfaction, or recovery from any Protected Party, including:
>
> a. commencing, conducting, or continuing, in any manner, whether directly or indirectly, any suit, action, or other proceeding of any kind in any forum with respect to any such Channeled Claim against any Protected Party or any property or interest in property of any Protected Party;
>
> b. enforcing, levying, attaching, collecting or otherwise recovering, by any manner or means, either directly or indirectly, any judgment, award, decree, or other order against any Protected Party or any property or interest in property of any Protected Party with respect to any such Channeled Claim;
>
> c. creating, perfecting, or enforcing in any manner, whether directly or indirectly, any Lien or Encumbrance of any kind against any Protected Party or any property or interest in property of any Protected Party with respect to any such Channeled Claim;
>
> d. asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment of any kind, whether directly or indirectly, against any obligation due to any Protected Party or any property or interest in property of any Protected Party with respect to any such Channeled Claim; and
>
> e. taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents with respect to any such Channeled Claim.
>
> The Channeling Injunction is an integral part of the Plan and is essential to the Plan's consummation and implementation. The channeling of the Channeled Claims, provided in this Article XI.D of the Plan, inures only to the benefit of the Protected Parties. In a successful action to enforce the injunctive provisions of this Article in response to a willful violation thereof, the moving party may seek an award of costs (including reasonable attorneys' fees) against the non-moving party, and such other legal or equitable remedies as are just and proper, after notice and a hearing.

Plan, Art.XI.D.

16. The Plan's Settling Insurer Supplemental Injunction provides as follows:

> Pursuant to sections 105(a), 363, and 1123 of the Bankruptcy Code, and in consideration of the undertakings of the Settling Insurers pursuant to the Insurance Settlement Agreements, including the Settling Insurers' purchase of the Subject Policies and all Related Insurance Claims free and clear of all Claims pursuant to section 363(f) of the Bankruptcy Code, this Plan hereby incorporates by reference,

> adopts, and ratifies (and the Confirmation Order shall adopt and ratify) the Settling Insurer Supplemental Injunction set forth in the Sale Orders (and, with respect to Ecclesia, imposes such injunction) in all respects.

Plan, Art.XI.E.

17. A "Protected Party" is defined as "the Debtor (including with respect to any act or omission occurring before September 1, 2017, the Diocesan High Schools), the Additional Debtors, and the Settling Insurers." Plan Art.I.A.161.143.

18. The Plan's "Provisions Relating to Channeling Injunctions and Settling Insurer Supplemental Injunction" includes the following inappropriate language:

> No Duplicative Recovery. In no event shall any holder of an Abuse Claim be entitled to receive any payment, reimbursement, or restitution from any Covered Party under any theory of liability for the same loss, damage, or other Claim that is treated by the Trust or is otherwise based on the same events, facts, matters, or circumstances that gave rise to the applicable Abuse Claim. For the avoidance of doubt, the Non-Settling Insurers remain fully liable for their obligations related in any way to the Abuse Claims, and their obligations are not reduced by the Debtor or Additional Debtors being in bankruptcy or by the distributions Class 4 Claimants receive, or are entitled to receive, based on the Plan. Determinations by the Abuse Claims Reviewer and/or any distributions entitled to be received from the Trust shall not constitute a determination of the Debtor's, the Additional Debtors', or any Co-Insured Party's liability or damages for Channeled Claims.

Plan, Art.XI.G.4.

19. The Plan's "Abuse Claim Objections" provision limits the legal rights of holders of Abuse Claims as follows:

> On and after the Effective Date, (i) no holder of an Abuse Claim in Class 4 may challenge the merit, validity, or amount of any other Abuse Claim in Class 4, (ii) any pending objections to an Abuse Claim in Class 4 shall be deemed withdrawn and (iii) the Trustee shall have the exclusive right to address Abuse Claims in Class 4 in accordance with the Plan and Trust Documents. Any pending appeals of an order disallowing an Abuse Claim shall be withdrawn and all such claims shall be treated in Class 4. Claims disallowed with leave to amend will also be treated in Class 4.

Plan, Art.III.B.4.d.

20. The Plan's "Imposition of Channeling Injunction" provision includes additional protection for the Protected Parties through the dilution of the assets of the Trust. Specifically, the Trust will provide indemnification for any claims brought against the Protected Parties, with such claims to be paid from Trust assets:

> The Trust shall defend, indemnify and hold harmless each of the Protected Parties from and against any and all Channeled Claims, as well as indemnify amounts to such parties for all reasonable fees, costs and expenses related to Channeled Claims (including such fees, costs and expenses reasonably incurred in connection with discovery).

Plan, Art. IV.D.

21. The Plan's "Gatekeeper Injunction" provision, which limits the ability of holders of Abuse Claims or other stakeholders from pursuing their legal rights in other forums without incurring the costs of first gaining permission from this Court, is as follows:

> Subject in all respects to this Article XI, no Enjoined Party may commence or pursue against any Protected Party (a) an Abuse Claim or (b) any other Claim or Cause of Action that arose or arises from or is related to an Abuse Claim, the Chapter 11 Cases, the negotiation of the Plan, the administration of the Plan or property to be distributed under the Plan, the wind-down or reorganization of the business of the Debtor, the Additional Debtors, the Reorganized Debtor, the Reorganized Additional Debtors, the administration of the Trust, or the transactions in furtherance of the foregoing without the Bankruptcy Court (i) first determining, after notice and a hearing, that such claim or cause of action represents a colorable claim against a Protected Party and (ii) subject in all respects to the Channeling Injunction and Settling Insurer Supplemental Injunction, specifically authorizing such Enjoined Party to bring such Claim or Cause of Action against any such Protected Party. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Claim or Cause of Action is colorable and, only to the extent legally permissible and as provided for in Article XII shall have jurisdiction to adjudicate the underlying colorable Claim or Cause of Action. For the avoidance of doubt, the Gatekeeper Injunction in this Article XI.H. does not apply to Claims seeking recovery from Non-Settling Insurers.

Plan, Art. V.XI.H.

22. The Plan's "Judgment Reduction" provides, in part, that "[t]he Settling Insurers shall retain their SI Contribution Claims" with certain caveats if the Court does not channel the

Insurer Contribution Claims to the Trust, or such Claims are not channeled for any reason. Plan, Art.X.1.a

The Parties Whose Claims Are Channeled Under the Channeling Injunction

23. "Channeled Claim" is defined as:

> any Abuse Claim, Insurer Contribution Claim, Medicare Claim, Extra-Contractual Claim, or any other Claim against the Debtor (including the Diocesan High Schools for Abuse occurring before September 1, 2017), Additional Debtors, Co-Insured Parties or Settling Insurers arising from or related in any way to an Abuse Claim or any of the Subject Policies; provided, however, an Abuse Claim of a holder of a Non-Participating Post-Confirmation Claim against a Settling Insurer or an Additional Debtor shall not be a Channeled Claim. For the avoidance of doubt, Channeled Claims do not include any Claims to the extent they are asserted against Excluded Parties or Non-Settling Insurers; provided, however, any Claims which assert liability against an Excluded Party or Non-Settling Insurer in conjunction with a Protected Party or Co-Insured Party shall in all events be Channeled Claims as to the Protected Party or Co-Insured Party.

Plan, Art. I.A.31.

24. Channeled Claims thus include Claims against any Protected Party—which includes, as noted above, the Additional Debtors and Settling Insurers. A "Settling Insurer" is defined as: "(a) Ecclesia, (b) LMI, (c) Evanston, (d) Lexington, (e) Allianz Insurers and (f) any other Insurer that enters into a settlement, sale or other transaction with the Trustee, the Debtor, the Additional Debtors, the Estates, or any successor thereto, that is approved pursuant to the Confirmation Order or separate order of the Bankruptcy Court, including any settlement, compromise, buyback or similar agreement concerning an Insurance Policy; provided, however, an Insurer shall not be a Settling Insurer to the extent such Insurer's Insurance Settlement Agreement is terminated in accordance with its terms." Plan Art.I.A.161.

25. An "Insurer Contribution Claim" falls under the definition of a Channeled Claim and is defined as "all Claims, most commonly expressed in terms of contribution, indemnity, equitable indemnity, subrogation, or equitable subrogation, allocation or reallocation, or

reimbursement, or any other indirect or derivative recovery, by a Non-Settling Insurer against any Settling Insurer for the payment of money where such Non-Settling Insurer contends that it has paid more than its equitable or proportionate share of a Claim." Plan Art. I.A.111.

26. A "Co-Insured Party" falls under the definition of a Channeled Claim and is defined as "the (a) Additional Debtors, (b) Charities, (c) CYO, (d) Department of Education, (e) Seminary, (f) CemCo, (g) Catholic Press Association of The Diocese of Rockville Centre, Inc., (h) Catholic Health Services, and (i) the Other Parties." Plan Art. I.A.52.

27. An "Extra-Contractual Claim" falls under the definition of a Channeled Claim and is defined as:

> any Claim against any Insurer relating to: (a) allegations that any Insurer acted in bad faith or in breach of any express or implied duty, obligation or covenant, contractual, statutory or otherwise, including any Claim because of alleged bad faith; (b) failure to act in good faith; (c) failure to provide Insurance Coverage under any Insurance Policy; (d) violation or breach of any covenant or duty of good faith and fair dealing, whether express, implied or otherwise; (e) violation of any statute, regulation or code governing unlawful, unfair, or fraudulent competition, business, or trade practices, and/or untrue or misleading advertising, including any violation of any unfair claims practices act or similar statute, regulation, or code; (f) failure to investigate or provide a defense or an adequate defense; (g) any other act or omission of any Insurer of any type for which the claimant seeks relief other than coverage or benefits under a policy of insurance; (h) any Insurer's handling of any Claim or any request for Insurance Coverage, including any request for coverage for and/or defense of any Claim, including any Abuse Claim; (i) any Claim that, directly or indirectly relates to the Insurance Policies and any contractual duties arising therefrom, including any contractual duty to defend any party thereto against any Abuse Claims; and/or (j) the conduct of the parties regarding the negotiation of any Insurance Settlement Agreement.

Plan Art. I.A.92.

28. "Medicare Claim" is defined as "any Claim by the Centers for Medicare and Medicaid, and/or any agent or successor of the Centers for Medicare and Medicaid, charged with

responsibility for monitoring, assessing, or receiving reports made under MMSEA[4] or pursuing a Claim under MSP Provisions,[5] relating to any payments in respect of any Abuse Claim, including any Claim for reimbursement of conditional payments, and any Claim relating to reporting obligations." Plan Art. I.A.118.

29. Parties defined as a "Covered Party" are provided additional protection in the Plan's "Provisions Relating to Channeling Injunctions and Settling Insurer Supplemental Injunction," which includes a limitation of the rights of holders of Abuse Claims and other stakeholders to pursue their claims. *See* Art.XI.G.4 (language above). Covered Parties include "collectively, the following Entities: (a) the Debtor and the Reorganized Debtor, as applicable; (b) the Additional Debtors and the Reorganized Additional Debtors, as applicable; (c) any other Co-Insured Party; (d) any other Entity that is a "Named Assured" under the Insurance Policies and all other entities that may claim to be an "Assured," an "Additional Assured," or otherwise entitled to insurance coverage under the Insurance Policies, and (e) with respect to each of the foregoing Entities in clauses (a) through (d), such Entities' predecessors, successors, assigns, subsidiaries, affiliates, current and former officers, directors, principals, equity holders, trustees, members, partners, managers, officials, advisory board members, advisory committee members, employees, agents, volunteers, attorneys, financial advisors, accountants, investment bankers, consultants, representatives, and other professionals, and such Entities' respective heirs, executors, Estate, and nominees, including Parish Schools and Regional Schools, as applicable. For the avoidance of doubt, Covered Party does not include any Excluded Parties." Plan Art. I.A.50.

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[4] "MMSEA" is defined as "the Medicare, Medicaid, and SCHIP Extension Act of 2007." Plan Art.I.A.120.
[5] "MSP Provisions" is defined as "Medicare Secondary Payer statute, 42 U.S.C. §1395y(b), and its accompanying regulations." Plan Art.I.A.121.

The Releases

30. The Plan contains numerous additional embedded releases, including the following:

> Upon occurrence of the Effective Date, and in exchange for a general contractual release in the form set out in the Plan Supplement by all of the holders of Abuse Claims in the Charities CVAs and the CYO CVA as well as the other provisions of this Plan, (a) Charities shall make the Charities Contribution and the Non-Settling Insurance Rights Transfer to the Trust, and (b) CYO shall make the Non-Settling Insurance Rights Transfer to the Trust. In the event that the holder of the Abuse Claim in the CYO CVA does not contractually release CYO by the Effective Date, CYO shall not make the Non-Settling Insurance Rights Transfer to the Trust. In the event that no holders of Abuse Claims in the Charities CVAs contractually release Charities by the Effective Date, Charities shall not make the Non-Settling Insurance Rights Transfer and shall not make the Charities Contribution to the Trust. In the event that some, but not all, of the holders of Abuse Claims do not contractually release Charities by the Effective Date, then Charities shall make the Non-Settling Insurance Rights Transfer to the Trust, but Charities shall not make the Charities Contribution to the Trust.

Plan, Art.V.V.

> On the Effective Date, the Debtor and the Additional Debtors shall sell, pursuant to section 363(f) of the Bankruptcy Code, the Insurance Policies issued by Ecclesia to Ecclesia free and clear of all Liens, Claims, interests, charges, other Encumbrances and liabilities of any kind and, in exchange for the sale, complete and final satisfaction, settlement, and discharge of Ecclesia's obligations relating to Abuse Claims, and the releases, and other benefits provided to Ecclesia under the Plan, Ecclesia shall contribute the Ecclesia Contribution to the Trust Assets for the benefit of holders of Abuse Claims. For the avoidance of doubt, other than with respect to Ecclesia's obligations relating to Abuse Claims, all of the Debtor's, the Additional Debtors', the Estate's and the Covered Parties' policies, agreements, rights with respect to, and Causes of Action against or concerning, Ecclesia or an insurance policy or agreement issued by Ecclesia shall be fully reserved. Notwithstanding anything else herein to the contrary, but subject to the sale, settlement and release of the Covered Parties' rights against Ecclesia with respect to Abuse Claims, all of the Debtor's, Additional Debtor's or the Estate's policies, agreements, rights with respect to, and Causes of Action against or concerning, Ecclesia or an insurance policy or agreement issued by Ecclesia and, subject to the Ecclesia Contribution, all of the Debtor's or its Estate's right, title and interest in and to any and all shares and ownership interests in or of Ecclesia shall, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, vest in the Reorganized Debtor free and clear of all Liens, Claims, interests, charges, other Encumbrances and liabilities of any kind, including successor liability Claims. For the avoidance

> of doubt, other than with respect to the Ecclesia Contribution that shall be made to the Trust, neither the Trust, a Covered Party or an Insurer shall have any Claim or Cause of Action against Ecclesia, nor shall any holder of an Abuse Claim, including an Indirect Abuse Claim, have any Claim or Cause of Action on account of an Abuse Claim against Ecclesia.

Plan, Art.V.Q.

31. An "Indirect Abuse Claim," referred to in the release, means:

> [A]ny Claim for contribution, indemnity, reimbursement, or subrogation, whether contractual or implied by law (as those terms are defined by the applicable non-bankruptcy law of the relevant jurisdiction) that is attributable to, arises from, is based upon, relates to, or results from, an Abuse Claim, and any other derivative or indirect Abuse Claim of any kind whatsoever, whether in the nature of or sounding in contract, tort, warranty or any other theory of law or equity whatsoever.

Plan Art. I.A.102.

Relevant Motion Provisions

32. The following are provisions and definitions relating to the four separate Settlement Agreements by and among the Debtor, certain additional assureds, including the Debtor's parishes, and (i) Certain Underwriters at Lloyds and London Market Companies ("London Insurers"); (ii) Interstate Fire & Casualty Company, National Surety Corporation, and Fireman's Fund Insurance Company (collectively, "Interstate"); (iii) Evanston Insurance Company, as successor to Associated International Insurance Company ("Evanston"); and (iv) Lexington Insurance Company ("Lexington") and AIU Insurance Company ("AIU") (collectively with the London Insurers, Interstate, and Evanston, the "Settling Insurers"):

33. The term "Purchased Property"[6] means "the Subject Insurance Policies and the Extra-Contractual Claims. For the avoidance of doubt, Purchased Property does not include any WC Coverage." Settlement Agreement at 28.

34. The term "Subject Insurance Policies" means "(i) the [relevant policies]; and (ii) all known and unknown contracts, binders, certificates, or policies of insurance or certificates of coverage to the extent sold, issued or subscribed by [the insurer(s)], on or before [stated date], and providing general liability insurance, whether primary, umbrella, excess or drop down, to the Debtor or any Additional Debtor; *provided*, *however*, if a Subject Insurance Policy that is not the [relevant policy] was not subscribed on behalf of a Diocese Signatory Party but provides coverage to a Diocese Signatory Party, then it is a Subject Insurance Policy only to the extent it insures the Diocese Signatory Party. Settlement Agreement at 33.

35. The term "Direct Action Claims" means the same as Abuse Claims or Misconduct Claims, except that they are asserted against [the insurer], instead of the Diocese Signatory Parties, the Non-Debtor Releasors or the Trust, for the recovery of insurance proceeds. Settlement Agreement at 13.

36. The Motion contains a proposed order at Exhibit A to the Motion (such proposed order, the "Sale Order"), which contains the following provisions:

> None of Interstate, the London Market Insurers, Evanston or Lexington have agreed to assume, and after the respective Closings, shall have any obligations by reason of the purchase of the Purchased Property under their respective Agreements with respect to, any liabilities of the Debtor, its subsidiaries or affiliates, the other Diocese Parties, and Covered Parties, with the exception of WC Coverage and the ISO Exception (each as and to the extent expressly provided in the Agreements). Without limiting the generality of the foregoing, none of Interstate, the London Market Insurers, Evanston or Lexington: (i) are assuming and following Closing

[6] Other than with respect to the Interstate. With respect to Interstate, "Purchased Property" means both (i) the Diocese Policies and (ii) the Extra-Contractual Claims of the Diocese Bound Parties, all as defined in the Interstate Agreement." Sale Order at 4.

> shall have no liability for any Claims arising from or relating to Abuse, Misconduct, the Purchased Property, or the Bankruptcy Case; and (ii) are assuming and, excluding only WC Coverage for WC Claims and the ISO Exception[6] (each as and to the extent expressly provided in the Agreements), shall following Closing have no liability with respect to the Debtor's, any Covered Party's, or any Diocese Party's obligations to Abuse Claimants, Misconduct Claimants, any other creditors, future claimants, or the Debtor's, any Covered Party's, or any Diocese Party's employees, in each case, by reason of the purchase of the Purchased Property under their respective Agreements.

Sale Order at 5.

> Upon the Closing with respect to each Agreement, and paying of their respective Settlement Amounts, the Purchased Property, thereunder, shall be amended to include the Sexual Abuse Exclusion, Time-Bar Exclusion, and Cancellation Endorsement; immediately thereafter, the Purchased Property shall be terminated and no longer in force or effect, exhausted in retrospect as to all coverages, and all Interests the Debtor or any other Entity (including without limitation any of the other Diocese Parties and Covered Parties) may have had, may presently have, or in the future may have, in such Purchased Property are extinguished, and upon Closing all such Entities (including without limitation the Diocese Parties and Covered Parties) hereby are forever barred, estopped, and permanently enjoined from asserting any such Interest against the Purchased Property, the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, as applicable;

Sale Order at 10.

> This Order and the Agreements shall be binding in all respects upon: (a) the Debtor and its Related Persons; (b) its estate; (c) the Diocese Bound Parties; (d) all creditors (including without limitation all Abuse Claimants and Misconduct Claimants); (e) all holders of Interests whether known or unknown (including but not limited to any Non-Settling Insurers and Covered Parties) against or on all or any portion of the Purchased Property; (f) the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities; (g) the Purchased Property; (h) the Future Claims Representative; (i) any Trustee that may be subsequently appointed in the Bankruptcy Case, whether pursuant to any plan of reorganization or liquidation (including without limitation the Plan), under Section 1104 of the Bankruptcy Code, or upon a dismissal or conversion of this Bankruptcy Case under Chapter 7 of the Bankruptcy Code; and (j) all persons and Entities receiving notice (or deemed to have received notice pursuant to this Order) of the Motion or the Sale Hearing.

Sale Order at 8.

> The Supplemental Settling Insurer Injunction. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, and in consideration of the undertakings of Interstate, the London Market Insurers, Evanston and Lexington pursuant to their respective Agreements, including Interstate's, the London Market Insurers', Evanston's and Lexington's purchase of the applicable Purchased Property and all insurance-related Claims free and clear of all Claims and Interests pursuant to Section 363(f) of the Bankruptcy Code as provided herein, any and all Entities that have held, now hold, or who may in the future hold any Claims or Interests (including without limitation all debt holders, all equity holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, Abuse Claimants, Misconduct Claimants, perpetrators, Covered Parties, any other additional insureds or named insureds, Non-Settling Insurers, the Diocese Bound Parties, and all others holding Claims or Interests of any kind or nature whatsoever, including, without limitation, those Claims released or to be released pursuant to the respective Agreements), which Claims or Interests are under, arise out of, relate to, or connect in any way with any of the Purchased Property, including, without limitation, (a) Other Parties Claims, Abuse Claims, Misconduct Claims, Future Misconduct Claims, Coverage Claims, Co-Insured Claims, Inbound Contribution Claims, Insurer Contribution Claims, Related Insurance Claims, Direct Action Claims and Post-Confirmation Claims and Channeled Claims, (b) the payment of any of the Claims identified previously, including, without limitation, Medicare Claims, and (c) all other Barred Claims or Interests, are hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, to assert, enforce or attempt to assert or enforce any such Claim or Interest against any of (x) the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities or Lexington Entities, (y) the assets or property of any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities or Lexington Entities, or (z) the Purchased Property, including, without limitation, by:
>
> (i) commencing or continuing in any manner any action or other proceeding of any kind against any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, or against the property of any of the foregoing;
>
> (ii) enforcing, attaching, collecting, or recovering, or seeking to accomplish any of the preceding, by any manner or means, any judgment, award, decree, or order against any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of

> the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, or against the property of any of the foregoing;
>
> (iii) creating, perfecting, or enforcing, or seeking to accomplish any of the preceding, any lien of any kind against any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, or against the property of any of the foregoing;
>
> (iv) asserting, implementing, or effectuating any such Claim of any kind against: (A) any obligation due to any of the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities, or Lexington Entities, as applicable, (B) any of the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities, or Lexington Entities, as applicable, or (C) the property of any of Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities, or Lexington Entities, as applicable;
>
> (v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of this Order; and (vi) asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against an obligation due to Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities or Lexington Entities, as applicable, or the property of any of the foregoing.
>
> The actions described in this [section] are "Enjoined Actions," and the injunction set forth herein is the "Supplemental Settling Insurer Injunction." The Supplemental Settling Insurer Injunction shall be a permanent injunction against the Enjoined Actions and may not be modified, dissolved, or terminated.

Sale Order at 12.

37. In the Motion, the Debtor is requesting the Court to authorize, pursuant to sections 105(a), 363(b), (f), and (m) of the Bankruptcy Code, the "Settling Insurer Supplemental Injunction." *See* Motion at ¶ 38.

38. The Debtor states in the Notice of the Motion that:

> **The "free and clear" sale contains certain releases, injunctions and other protective provisions in favor of the Settling Insurers. The sale proposes a Supplemental Settling Insurer Injunction that permanently enjoins all Entities who have held or asserted or may in the future hold or assert, any Claims from taking any action, directly or indirectly, for purposes of asserting, enforcing, or attempting to enforce any Barred Claim against the Settling Insurers, their Related Persons or property or assets of each.**

See Motion Notice (bold in original).

39. As stated above, pursuant to the Disclosure Statement Order, the Court has reserved at least some of the issues raised in the Motion until plan confirmation.

40. Approval of the Sale Order would bind the parties even if the Confirmation Order is vacated or the Effective Date otherwise does not occur. *See* Plan Art.X.D ("Notwithstanding anything to the contrary in the foregoing, neither the vacatur of the Confirmation Order nor the non-occurrence of the Effective Date shall affect the Sale Orders or Insurance Settlement Agreements, all of which shall continue in full force and effect to the extent set forth in the Insurance Settlement Agreements.").

III. ARGUMENT

A. The Motion Presents as a *Sub Rosa* Plan and Violates the Disclosure Statement Order by Deciding Issues that Should Await Confirmation.

The proposed Sale Order purports to bind abuse survivors and other parties in interest to the terms of the Settlement Agreements whether or not they sign the coercive release agreements outlined in the Plan. The Sale Order itself contains language that Plan does not trump the Sale Order's provisions. *See* Sale Order at § 28. In other words, the Sale Order would impose nondebtor releases and injunctions without even any pretense of consent, a result that cannot be reconciled with the Supreme Court's holding in *Purdue*. For many abuse survivors it will be a *fait accompli*. In addition, the approval of the Settlement Agreements will expand the rights that

the Settling Insurers currently have. The provisions that expand these rights, as discussed below, are embedded in the Sale Order and the Settlement Agreements, and should not be approved pursuant to a plan, let alone pursuant to theSale Order.

"It is well-established that courts may not approve settlements that have the effect of a sub rosa plan and accomplish an end run around the protection granted creditors in Chapter 11 of the Bankruptcy Code." *In re Miami Metals I, Inc.*, 603 B.R. 531, 536 (Bankr. S.D.N.Y. 2019) (*quoting In re Biolitec, Inc.*, 528 B.R. 261, 272 (Bankr. D.N.J. 2014)). Sub rosa plans are prohibited to prevent a debtor in possession from "enter[ing] into transactions that will, in effect, 'short circuit the requirements of [C]hapter 11 for confirmation of a reorganization plan.'" *In re Iridium Operating LLC*, 478 F.3d 452, 466 (2d Cir. 2007) (quoting *Pension Benefit Guar. Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc*.), 700 F.2d 935, 940 (5th Cir.1983)). Said another way, the doctrine prohibits efforts to "restrict any rights afforded to creditors in the [C]hapter 11 process, such as the right to vote on a proposed plan of reorganization in the manner they see fit." *In re Tower Auto. Inc.*, 241 F.R.D. 162, 166 (S.D.N.Y. 2006).

In *In re Genesis Glob. Holdco, LLC***,** 660 B.R. 439, 486 (Bankr. S.D.N.Y. 2024), the Honorable Judge Lane found that a settlement motion important to the overall resolution of the case was not a *sub rosa* plan because the settlement was being heard in the context of a plan. Given the provisions of the Sale Order, and the Court's previous rulings in the Disclosure Statement Order, this Motion should also be heard in the context of plan confirmation. Indeed, the Debtor has asserted in the Motion that the sale is an "integral part" of the reorganization plan:

> Here, the Settling Insurer Supplemental Injunction is an integral part of the Debtor's resolution with the Settling Insurers and is "essential . . . to a workable reorganization." *In re Johns-Manville Corp.*, 837 F.2d at 94. Through the proceeds generated by the sale, claimants will receive distributions without having to wait

> for the resolution of the adversary proceedings between the Debtor and the Settling Insurers.

Motion at ¶ 39.

As such, especially since the Plan outlines similar if not identical relief to what the Motion seeks, the hearing on the Motion should be adjourned to the time of confirmation to resolve overall issues relating to the insurance companies. This is especially the case because the Motion purports to release the Additional Debtors, entities that have not yet filed for bankruptcy relief but are expected to do so in the future. The Sale Order also would seem to decide certain issues impacting the Debtor's creditors and interest holders more properly resolved in the context of a hearing on the Plan:

> Without limiting the generality of the foregoing, the sale of the Purchased Property under the Agreements shall be free and clear of all Other Parties Claims, Abuse Claims, Misconduct Claims, Future Misconduct Claims, Barred Claims, Coverage Claims, Inbound Contribution Claims, Insurer Contribution Claims, Medicare Claims, Related Insurance Claims, Direct Action Claims, Post-Confirmation Claims, Non-Participating Post-Confirmation Claims, and any other Claims arising from or related in any way to an Abuse Claim, Misconduct Claim, or Future Misconduct Claim against or on all or any portion of the Purchased Property.

Sale Order at 13.

> Except as and to the extent expressly provided in their respective Agreements with respect to WC Coverage and ISO Exception, upon each respective Closing, as set forth in each individual Agreement, all persons and Entities (and their respective successors and assigns), including but not limited to all governmental, tax, and regulatory authorities, Diocese Parties, Covered Parties, Non-Settling Insurers, Abuse Claimants, Misconduct Claimants, and trade and other creditors, holding Interests (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) against, in, or with respect to the Purchased Property, including, without limitation, such Interests arising or accruing under or out of, in connection with, or in any way relating to the transfer of the Purchased Property to Interstate, the London Market Insurers, Evanston and Lexington, hereby are forever barred, estopped, and permanently enjoined from asserting such person's or Entity's Interests against the Purchased Property, the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and

> Lexington Entities, as applicable. Except as and to the extent expressly provided in their respective Agreements with respect to WC Coverage and the ISO Exception, effective upon the Closings of the respective Agreements none of the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, as applicable, shall have any liability for any Claims against the Debtor, its estate, or any of the other Diocese Parties or Covered Parties that arise under or relate in any way to any of the Purchased Property.

Sale Order at 14.

> [A]ll Interests the Debtor or any other Entity (including without limitation any of the other Diocese Parties and Covered Parties) may have had, may presently have, or in the future may have, in such Purchased Property are extinguished, and upon Closing all such Entities (including without limitation the Diocese Parties and Covered Parties) hereby are forever barred, estopped, and permanently enjoined from asserting any such Interest against the Purchased Property, the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, as applicable; *provided, however*, that WC Coverage and the ISO Exception (as and to the extent provided in the Agreements) are not released, barred, estopped, or enjoined.

Sale Order at 15.

These are exactly the types of non-consensual third-party releases that are improper and impermissible in the Plan. The Debtor stated in the Notice of the Motion that:

> **The "free and clear" sale contains certain releases, injunctions and other protective provisions in favor of the Settling Insurers. The sale proposes a Supplemental Settling Insurer Injunction that permanently enjoins all Entities who have held or asserted or may in the future hold or assert, any Claims from taking any action, directly or indirectly, for purposes of asserting, enforcing, or attempting to enforce any Barred Claim against the Settling Insurers, their Related Persons or property or assets of each.**

See Motion Notice (bold in original).

As stated above, at least some of the issues in the Motion are reserved in the Disclosure Statement Order until Plan confirmation. They should not be allowed in through a Sale Order.

B. In the Motion, the Debtor Seeks to Sell Property that Is Not Property of the Estate.

The filing of a bankruptcy case creates an estate that includes "interests of the debtor in property." 11 U.S.C. § 541(a)(1). The Bankruptcy Code allows a Debtor to sell or dispose of property of the estate. 11 U.S.C § 363(b). *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 598 U.S. 288, 292 (2023) ("Sears self-administered, and as a debtor in possession, Sears had statutorily qualified powers to dispose of the estate's property. §§ 1101, 1107, 363."). But nothing in the Bankruptcy Code allows a Debtor to sell property that it does not own. *In re Residential Capital, LLC*, No. 12-12020, 2012 WL 12906668 (Bankr. S.D.N.Y. Nov. 21, 2012). Here, the Debtor is attempting to sell to—as part of the Settlement Agreements—claims owned by third parties, including direct claims that creditor third parties may have against nondebtor third parties. The Motion seeks approval of the sale of assets that are not owned, and do not belong to, the Debtor. Most notably, the Sale Order extinguishes rights of claimants and sweeps in non-consensual third-party releases, which are potentially valuable assets that are held by claimants or others against the Settling Insurers. By way of example, the proposed Sale Order provides: "The Purchased Property constitutes property of the Debtor's estate, and the Debtor is the lawful owner of the Purchased Property and holds good title thereto." Sale Order at 6. "Purchased Property" in turn is defined to include "Extra-Contractual Claims." (*See* Settlement Agreement at 28). This is directly contrary to the Court's finding in the Disclosure Statement Order at 16-17: "The Extra-Contractual Claims that are barred by the insurance settlements are *not* estate property, and a bankruptcy court ordinarily does not have jurisdiction to bar creditors' assertion of such claims." (Emphasis added).

C. The Debtor Impermissibly Seeks to Impose Releases of Claims Held by Third Parties Against Nondebtors Without the Consent of the Affected Claimants.

In 2024, the Supreme Court held that the Bankruptcy Code does not authorize a Court to order the non-consensual release of a third-party's claim against a nondebtor third party. In *Harrington v. Purdue Pharma L. P.*, the Supreme Court of the United States of America observed:

> The Sacklers have not filed for bankruptcy and have not placed virtually all their assets on the table for distribution to creditors, yet they seek what essentially amounts to a discharge. They hope to win a judicial order releasing pending claims against them brought by opioid victims. They seek an injunction "permanently and forever" foreclosing similar suits in the future. 1 App. 279. And they seek all this without the consent of those affected. The question we face thus boils down to whether a court in bankruptcy may effectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*.

Harrington v. Purdue Pharma L. P., 144 S. Ct. 2071, 2081 (2024) (emphasis added).

This Motion closely parallels the situation in *Purdue*: numerous nondebtor third parties that have not filed for bankruptcy are seeking a judicial order releasing pending claims against them brought by abuse survivors. In *Purdue,* the Supreme Court held "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Harrington v. Purdue Pharma L. P.*, 144 S. Ct. at 2088. In fact, the Sale Order is worse than the Plan in how it deals with the issue of consent, as will be explained below in the last section.

Here the Debtor is attempting to provide impermissible non-consensual releases both through (i) the Plan and (ii) the Sale Order.

i. The Motion Contains Impermissible Non-Consensual Third-Party Releases by Incorporating the Releases in the Plan

As stated in the UST Objection to the Disclosure Statement, the United States Trustee has raised numerous issues with the Plan and if the Sale Order is granted, the United States Trustee and other parties in interest may lose the opportunity to meaningfully object to the Plan provisions—which were explicitly reserved for confirmation in the Disclosure Statement Order. Specifically, if the Court approves the Motion, the Court is also approving certain terms of the Plan that were the subject of the UST Objection (*see* Attachment U, a placeholder for the Plan that is not attached). The Court is also required to "incorporate by reference the releases and indemnities set forth in this Settlement Agreement." *See* Motion, Exhibit C (Settlement Agreement) at Section 2.2.5. Thus, the United States Trustee again raises its objections to the third-party releases in the Plan. The United States Trustee refers the Court to a full recitation of the impermissible third-party releases in the Plan in the UST Objection, which the United States Trustee incorporates by reference. As stated above, the Court preserved the United States Trustee's right to object to the third-party releases at the time of confirmation. The objections in the UST Objection are summarized as follows:

First, the Plan channels claims against nondebtors into the Trust and then limits recoveries for such claims to the assets in the Trust. I t then also enjoins any ability of parties to pursue those claims against the nondebtor entities. The Plan's channeling injunction provision states:

> Holders of Channeled Claims (other than Non-Participating Post-Confirmation Claims) are enjoined from prosecuting any outstanding, or filing any future, litigation, Claims, or Causes of Action arising out of or related to such Abuse Claims against any of the Settling Insurers and (subject to Article XI.O) the Reorganized Debtor and Reorganized Additional Debtors and may not proceed in any manner against any such Entities in any forum whatsoever, including any state, federal, or

> non-U.S. court or any administrative or arbitral forum, and are required to pursue their Abuse Claims solely against the Trust as provided in the Trust Documents.

See Plan Art.XI.G.4. Thus, the Plan precludes holders of Abuse Claims from recovering on their direct claims against certain Protected Parties including the Settling Insurers. In addition, the Plan provides "[f]rom and after the Effective Date, the Protected Parties shall not have any obligation with respect to any liability of any nature or description arising out of, relating to, or in connection with any Channeled Claims." *See* Plan Art.III.C. The Plan enjoins holders of "Channeled Claims" from pursing the Protected Parties.

To the extent the Debtor attempts to argue that it is relying on section 524 as authority for such a provision, such reliance is misplaced. In *Johns-Manville Corp.*, referred to in the Disclosure Statement Order, the Second Circuit Court of Appeals stated that "a bankruptcy court only has jurisdiction to enjoin third-party nondebtor claims that directly affect the res of the bankruptcy estate." *In re Johns-Manville Corp.,* 517 F.3d at 66. The Court concluded as well that the "the district court lacked subject matter jurisdiction to enjoin claims against Travelers [the insurance company] that were predicated, as a matter of state law, on Travelers' own alleged misconduct and were unrelated to Manville's [the debtor's] insurance policy proceeds and the res of the Manville estate." *Id.* at 68.

As also acknowledged by the *Johns-Manville Corp*. case but most recently in *Purdue*, section 524(g) was enacted in 1994 to expressly authorize nondebtor releases in a specific context: cases involving mass harm "caused by the presence of, or exposure to, asbestos or asbestos-containing products." See *Purdue*, 144 S. Ct. at 2085 (emphasis added) ("For asbestos-related bankruptcies—and only for such bankruptcies—Congress has provided that, '[n]otwithstanding' the usual rule that a debtor's discharge does not affect the liabilities of others on that same debt, § 524(e), courts may issue 'an injunction ... bar[ring] any action directed

against a third party' under certain statutorily specified circumstances. § 524(g)(4)(A)(ii).").
Section 524(g) is not applicable to the Debtor, or claims asserted against the Debtor, because this case does not involve asbestos.

Second, the Plan includes an additional injunction, the Settling Insurer Supplemental Injunction, which provides that the Settling Insurers and nondebtor third parties, are entitled to the release and injunction provisions contained in the Plan as if they were the Debtor or Additional Debtors entitled to a discharge under section 524.

Third, the Plan's definition of "Channeled Claims" also includes certain other claims against additional nondebtors, such as certain types of Claims against:

- nondebtor Settling Insurers, because the definition of "Channeled Claims" includes "any other Claim against the . . . Settling Insurers . . . .," and any "Insurer Contribution Claim," Plan Art.I.A.31, which is defined to include all claims by a Non-Settling Insurer against any Settling Insurer, Plan Art.I.A.111;

- nondebtor Insurers, who are included in the definition of "Extra-Contractual Claim" (defined as "any Claim against any Insurer relating to" an enumerated list of actions), Plan Art.I.A.92; and

- nondebtor "Co-Insured Parties," which are defined to include such nondebtors as the "(b) Charities, (c) CYO, (d) Department of Education, (e) Seminary, (f) CemCo, (g) Catholic Press Association of The Diocese of Rockville Centre, Inc., (h) Catholic Health Services, and (i) the Other Parties." Plan Art.I.A.51. As discussed above, a Channeled Claim includes "any other Claim against the . . . . Co-Insured Parties . . . arising from or related in any way to an Abuse Claim or any of the Subject Policies." Plan Art.I.A.31.

All of these nondebtors are receiving the benefit of a release or an injunction barring claims against them, without the claimants' consent. That is impermissible, as held in *Purdue,* as described above.

Fourth, the Plan's "Gatekeeper Injunction" provides the bankruptcy court with exclusive jurisdiction over numerous claims involving only nondebtors. Plan, Art.XI. H. This provision strips courts of jurisdiction and places exclusive jurisdiction in the Bankruptcy Court to

determine if claims by nondebtors against other nondebtors can proceed. It does so without the consent necessary for an Article I court to adjudicate whether these claims can proceed. *See Stern v. Marshall*, 564 U.S. 462, 503 (2011). And it bars these third parties from pursuing their claims in their preferred forum without their consent. There is no reason why another court of competent jurisdiction cannot determine the merits of claims brought before it. Nor is there any statute or other authority that permits this Court to enter an injunction against proceedings in other courts between nondebtors, requiring them instead to proceed in bankruptcy court.

Fifth, the Disclosure Statement Order amplifies the United States Trustee's concerns. Specifically, the Plan provides that as a condition of receiving distributions, claimants must sign a document that releases nondebtor third parties, including those who would be protected by the releases and injunctions in the Sale Order. As argued in the UST Objection, the coercive nature of this condition means the release is not consensual. But further, this release would not be signed until the time when distributions are being made. Thus, if the releases and injunctions in the Sale Order are approved, claimants will be deprived of their rights before the claimants would even execute such a release. There is not even any pretense of consent to the nondebtor releases and injunctions in the Sale Order. By the time anyone is asked to sign the release as the condition to receiving distributions under the Plan, the claimants' options will be to execute the release and receive a distribution or fail to do so and receive no distribution—but in either case, even if the release is not executed, the Sale Order will bar them from pursuing their claims. In other words, a survivor refusing to sign is not allowed to retain his or her claims against nondebtor third parties, nor is a survivor allowed to choose to receive his or her share of assets from the Debtor and retain its claims against nondebtor third parties—including for Extra-Contractual Claims that are not estate property.

In addition, if a non-signing survivor claimant will not receive a distribution unless signing a release, such treatment could provide for disparate treatment of survivors holding claims in Class 4. With non-signing survivors holding claims in Class 4 receiving $0—whether from the Debtor's assets contributed to the Trust or the Settling Insurer's contribution—and signing survivors receiving the distribution under the Trust, such disparate treatment could implicate section 1123.

In sum, the Debtor's attempt to draft around a recent Supreme Court holding fails for the reasons set forth herein and in the UST Objection.

ii. The Sale Order Contains Impermissible Non-Consensual Third-Party Releases.

Purdue held there is no authority in the Bankruptcy Code, other than section 524(g)'s provisions for asbestos cases, for imposing non-consensual third-party releases in an order confirming a chapter 11 plan. Parties cannot evade *Purdue* by attempting to impose non-consensual releases in other kinds of orders. As stated above, the Motion and Sale Order incorporate the non-consensual third-party releases in the proposed Plan. But in addition, the Sale Order itself contains non-consensual third-party releases that, as discussed above, do not fall within section 363(f). But the Debtor cannot achieve through a section 363 sale what it cannot get at plan confirmation. The impermissible releases that the Debtor seeks approval for in the Motion are in addition to the releases sought in the Plan and should not be included in the Sale Order. Any relief granted in the Sale Order should be limited to that which the Debtor is entitled under section 363.

First, pursuant to the Supplemental Settlement Insurer Injunction, which is referenced in the Plan, but is independently sought in the Motion, numerous third parties are being permanently barred from pursuing claims that they have against other nondebtor third parties.

More specifically the Supplemental Settlement Insurer Injunction states:

> [A]ny and all Entities that have held, now hold, or who may in the future hold any Claims or Interests (including without limitation all debt holders, all equity holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, Abuse Claimants, Misconduct Claimants, perpetrators, Covered Parties, any other additional insureds or named insureds, Non-Settling Insurers, the Diocese Bound Parties, and all others holding Claims or Interests of any kind or nature whatsoever, including, without limitation, those Claims released or to be released pursuant to the respective Agreements), which Claims or Interests are under, arise out of, relate to, or connect in any way with any of the Purchased Property . . . are hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, to assert, enforce or attempt to assert or enforce any such Claim or Interest against any of (x) the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities or Lexington Entities, (y) the assets or property of any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities or Lexington Entities." Such injunction includes stopping third parties from "commencing or continuing in any manner any action or other proceeding of any kind against any Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities.

Sale Order at 12. To summarize, under the Motion, all Entities are permanently barred from taking any action to assert or enforce any Claim against certain nondebtor third parties if the claim *relates to or is connected in any way with* any of the Purchased Property. Such broadly worded injunction goes beyond claims against the Purchased Property, but rather any action that "relates to" the Purchase Property. *See California Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc.,* 519 U.S. 316, 335, 117 S. Ct. 832, 136 L. Ed.2d 791 (1997) (Scalia, J., concurring) ("[A]pplying the 'relate to' provision according to its terms was a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else") *cited with approval in Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 149 (2009).

These claims of third parties against nondebtor third parties do not belong to the Debtor and thus cannot be sold pursuant to section 363. The claimant third parties are not parties to the agreements that the Debtor seeks to approve in the Motion, and the Debtor cannot release its claims without the consent of the affected claimant.

Second, the Sale Order contains additional offending provisions, including:

> [N]one of Interstate, the London Market Insurers, Evanston or Lexington: (i) are assuming and following Closing ***shall have no liability for any Claims arising from or relating to Abuse, Misconduct, the Purchased Property, or the Bankruptcy Case***; and (ii) are assuming and, . . . shall following Closing have no liability with respect to the Debtor's, any Covered Party's, or any Diocese Party's obligations to Abuse Claimants, Misconduct Claimants, any other creditors, future claimants, or the Debtor's, any Covered Party's, or any Diocese Party's employees, in each case, by reason of the purchase of the Purchased Property under their respective Agreements.

Sale Order at 5. These additional provisions provide that nondebtors—namely Interstate, the London Market Insurers, Evanston or Lexington—will have no liability for "any Claims" that are "relating to Abuse, Misconduct, the Purchased Property, or the Bankruptcy Case." *See* Sale Order at 5. These are classic third-party non-consensual releases that do not fall within the ambit of a section 363 sale and as to which the Debtor has not even sought consent.

Third, despite the Disclosure Statement Order's express holding that the Extra-Contractual Claims are not estate property, the term "Purchased Property" includes the Extra-Contractual Claims, and the Sale Order provides the following:

> Upon the Closing with respect to each Agreement, and paying of their respective Settlement Amounts, the Purchased Property, thereunder, shall be amended to include the Sexual Abuse Exclusion, Time-Bar Exclusion, and Cancellation Endorsement; immediately thereafter, the Purchased Property shall be terminated and no longer in force or effect, exhausted in retrospect as to all coverages, and ***all Interests*** the Debtor or ***any other Entity*** (including without limitation any of the other Diocese Parties and Covered Parties) ***may have had***, may presently have, or in the future may have, ***in such Purchased Property are extinguished, and upon Closing all such Entities*** (including without limitation the Diocese Parties and Covered Parties) ***hereby are forever barred, estopped, and permanently enjoined***

> ***from asserting any such Interest against the Purchased Property***, the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities, as applicable;

Sale Order at 10. And, as stated above, "Purchased Property" includes the "Extra-Contractual Claims," which under the Evanston Settlement Agreement is defined as:

> any Claim against any Evanston Entities seeking any type of relief, other than coverage or benefits, under or with respect to the Subject Insurance Policies. Extra-Contractual Claims include Claims for compensatory, exemplary, or punitive damages, or attorneys' fees, interests, costs, or any other type of relief, alleging any of the following with respect to (a) any Subject Insurance Policy; (b) any Claim allegedly or actually covered under a Subject Insurance Policy; or (c) the conduct of any Evanston Entities with respect to (a) or (b): (i) bad faith; (ii) failure to provide insurance coverage under any Subject Insurance Policy, including any failure to investigate or to provide a defense or adequate defense; (iii) failure or refusal to compromise and settle any Claim insured under any Subject Insurance Policy; (iv) failure to act in good faith; (v) violation or breach of any covenant or duty of good faith and fair dealing, whether express, implied, or otherwise; (vi) violation of any state insurance codes, state surplus lines statutes or similar codes or statutes; (vii) violation of any unfair claims practices act or similar statute, regulation or code, including any statute, regulation, or code relating to unlawful, unfair, or fraudulent competition, business, or trade practices, and/or untrue or misleading advertising; (viii) any type of misconduct; or (ix) any other act or omission of any type by Evanston Entities, for which the claimant seeks relief other than coverage or benefits under a Subject Insurance Policy. "Extra-Contractual Claims" further include all Claims relating to any Evanston Entities' (x) handling of any Claims under a Subject Insurance Policy, (y) conduct in negotiating this Settlement Agreement and/or the Plan, and (z) conduct in the settlement of any Claims. For the avoidance of doubt, all Extra-Contractual Claims are included within the Purchased Property.

Motion, Exh. B. at 13. As this Court held in the Disclosure Statement Order, such Extra-Contractual Claims are not limited to claims held by Debtors. *See* Disclosure Statement Order at 16-17 ("The Extra-Contractual Claims that are barred by the insurance settlements are not estate property, and a bankruptcy court ordinarily does not have jurisdiction to bar creditors' assertion of such claims."). The Extra-Contractual Claims include claims held by claimant third parties against nondebtor Evanston. This provision of the Sale Order eliminates any interest a third

party may have in these claims and forever bars the third party from pursuing such claims. And as discussed below, the Sale Order provides that it will stay in effect even in the event the Plan never goes effective.

Fourth, the Sale Order and Settlement Agreements contain other offending provisions including:

> This Order and the Agreements shall be binding in all respects upon: (a) the Debtor and its Related Persons; (b) its estate; (c) the Diocese Bound Parties; (d) all creditors (including without limitation all Abuse Claimants and Misconduct Claimants); (e) all holders of Interests whether known or unknown (including but not limited to any Non-Settling Insurers and Covered Parties) against or on all or any portion of the Purchased Property; (f) the Interstate Released Parties, Interstate's Related Persons, the LMI Entities, the Underwriter Third-Party Beneficiaries, and/or the Related Entities of the LMI Entities and the Underwriter Third-Party Beneficiaries, Evanston Entities and Lexington Entities; (g) the Purchased Property; (h) the Future Claims Representative; (i) any Trustee that may be subsequently appointed in the Bankruptcy Case, whether pursuant to any plan of reorganization or liquidation (including without limitation the Plan), under Section 1104 of the Bankruptcy Code, or upon a dismissal or conversion of this Bankruptcy Case under Chapter 7 of the Bankruptcy Code; and (j) all persons and Entities receiving notice (or deemed to have received notice pursuant to this Order) of the Motion or the Sale Hearing.

Sale Order at 8. This provision binds parties with Interests "whether known or unknown" and "all persons and Entities receiving notice (or deemed to have received notice pursuant to this Order)." This is hardly a consensual provision.

Fifth, the Sale Order contains injunctions that are in fact just hidden non-consensual third-party releases. For example, the Settlement Agreements contemplate that the chapter 11 Plan will contain certain injunctions in favor of the Settling Insurers, including the "channeling injunction" and "gatekeeper injunction." These would be approved without any further review by the Court. The Supreme Court has already held "the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Harrington v.*

Purdue Pharma L. P., 144 S. Ct. at 2088. The Debtor cannot provide non-consensual releases or injunctions in a Plan nor can the Debtor do so in a Sale Order.

D. The Motion Has Other Deficiencies, All of Which Warrant Its Denial.

First, further highlighting the lack of consent to the nondebtor releases and injunctions in the Sale Order, the proposed Sale Order provides that those who do not object to the motion have waived their right to object at the Plan stage or otherwise. *See* Sale Order at 6. Those who are holders of interests subject to bona fide dispute under section 363(f)(4) or (b) and can likewise be compelled to accept monetary satisfaction under section 363(f)(5). *Id*.

Second, the proposed Sale Order provides that objections are overruled and anyone who objected or reserved rights "is enjoined from taking any action" that "relates (directly or indirectly) in any way to any of the Purchased Property." *See* Sale Order at 7. Further, the Debtor is asking the Court to make a good faith finding under section 363(m). *See* Motion at ¶ 45. Such language could be interpreted to enjoin parties from appealing. In addition, such language could be read as enjoining objections to confirmation, whether by the United States Trustee or other claimants, as those would "relate to" Purchased Property.

Third, the proposed Sale Order provides that the Court retains exclusive jurisdiction to enforce agreements regardless of whether the Plan has been confirmed. Sale Order at 14. This again expands the Court's gatekeeping functions inappropriately, as was argued in the UST Objection and which the Court agreed to defer to the confirmation hearing. *See* Disclosure Statement Order, n. 7 ("Sale and confirmation orders and plans often contain provisions regarding the bankruptcy court's gatekeeping function. Whether such provisions can assign exclusive jurisdiction to the bankruptcy court is questionable. *See In re Old Carco LLC*, 347

B.R. 347, 355−56 & n.3 (Bankr. S.D.N.Y. 2022). This issue can be raised in connection with confirmation").

Fourth, regardless of the purpose of the exclusive jurisdiction provision, depending on the nature of the direct claims, this Court may not have constitutional authority to bar such direct claims between nondebtors under the guise of a Sale Order. *See Stern v. Marshall*, 564 U.S. 462, 503 (2011).

Fifth, the proposed Sale Order provides the Confirmation Order cannot vary the terms of the Order. *See* Sale Order at 14 ("Nothing contained in any plan confirmed in the Bankruptcy Case or any order of this Court confirming such plan shall conflict with or derogate from the provisions of the Agreements or the terms of this Order."). In addition, approval of the Sale Order would bind the parties even if the Confirmation Order is vacated or the Effective Date otherwise does not occur. *See* Plan Art.X.D ("Notwithstanding anything to the contrary in the foregoing, neither the vacatur of the Confirmation Order nor the non-occurrence of the Effective Date shall affect the Sale Orders or Insurance Settlement Agreements, all of which shall continue in full force and effect to the extent set forth in the Insurance Settlement Agreements."). Such statements are contrary to the Court's holding that the validity of the nondebtor releases and injunctions are primarily confirmation issues. *See generally* Disclosure Statement Order.

Sixth, the proposed Sale Order is unclear on what effect denial of confirmation would have on the injunctions and third-party releases in the Sale Order, if the Sale Order has already been entered.

Seventh, an injunction may only be granted pursuant to an adversary proceeding. The Sale Order purports to enjoins creditors from asserting claims by incorporating the Supplemental Plan Injunction. Bankruptcy Rule 7001(7), however, provides that a party seeking an injunction

must commence an adversary proceeding, except when a plan provides for such relief. *See* Bankruptcy Rule 7001(7), *see also In re Saint Vincent's Catholic Med. Ctrs*., 445 B.R. 264, 270 (Bankr. S.D.N.Y. 2011) ("A proceeding to obtain an injunction . . . must be brought as an adversary proceeding pursuant to . . . Rule . . . 7001(7) and a showing of irreparable harm must be made. Courts have been near universal in reversing injunctions which have been issued without compliance with Rule 7001." (citation and internal quotation marks omitted), *aff'd*, 581 F. App'x 41 (2d Cir. 2014)). Because section 363 does not authorize the issuance of an injunction, the Sale is not a plan, and the Debtor has not commenced an adversary proceeding, there is no authority to permit the sale order to issue an injunction. *See In re On-Site Sourcing*, *Inc.*, 412 B.R. 817, 825 n.6 (Bankr. E.D. Va. 2009) ("There is no provision for issuing injunctions in § 363. Injunctions may be available in the context of a § 363 sale but must be obtained by commencing an adversary proceeding.") (citing Fed. R. Bankr. P. 7001(7)).

Eighth, the Sale Order provides that it will not be stayed and will be immediately effective. *See* Sale Order at 13-14 ("Notwithstanding the provisions of Bankruptcy Rule 6004 or any applicable provisions of the Local Bankruptcy Rules, this Order shall not be stayed for 14 days after the entry hereof but shall be effective and enforceable immediately upon entry, sufficient cause therefor having been established. Time is of the essence in approving the Sale Transaction, and the Parties intend to close the Sale Transaction as soon as practicable."). Such waiver of the 14-day stay should not be permitted. If a party that objects to a sale intends to appeal, the 14-day stay should not be reduced to less than the amount of time sufficient to allow the objecting party to seek a stay, unless the court determines that the need to proceed sooner outweighs the objecting party's interests. *In re Borders Group, Inc.*, 453 B.R. 477, 486 (Bankr. S.D.N.Y. 2011). The United States Trustee, among other parties, may seek to appeal an order

approving the Sale. The Debtor has already benefited from the expedited procedure in obtaining approval of this Motion. At this point, because it is not clear how long it will take to effectuate the Sale, an immediate waiver of the 14-day stay may not provide sufficient time to seek a stay pending appeal. Accordingly, the 14-day stay should not be waived.

E. The Relief in the Motion Goes Beyond The Relief Requested in the Disclosure Statement or the Plan Warranting the Denial of the Motion.

Not only does the Motion seek relief that has no statutory basis, but it also impermissibly seeks relief outside of the parameters of the Plan. Particularly when dealing with a plan of such complexity and important survivor claims, the plan should be crystal clear as to how claimants rights will be impacted. A particularly confusing example is the disconnect between the Plan and Motion regarding "direct action claims." While the Plan is silent as to these claims, the Motion not only addresses these claims but appears to materially alter the rights of survivors with respect to these claims. *See* Settlement Agreement at 13 (defining "Direct Action Claims" as "the same as Abuse Claims or Misconduct Claims, except that they are asserted against [the insurer], instead of the Diocese Signatory Parties, the Non-Debtor Releasors or the Trust, for the recovery of insurance proceeds"). These inconsistencies beget confusion for those voting on the Plan and for how the Plan will be implemented. For these reasons alone any relief sought in the Motion that is outside the proposed Plan should be stricken. But more importantly, by separating the relief sought from the proposed Plan, the proponents are attempting to manipulate the Plan voting process. Unlike the Plan, creditors are not entitled to vote on the Motion. *See, e.g.*, *In re Diocese of Camden*, 653 BR 722, 745 (Bankr. D.N.J. 2023) (denying approval of a similar insurance motion because inter alia "[t]he Insurance Settlement was originally intended to be part of a plan that was never put to a vote, so the Court cannot look to any voting returns to find whether creditors are in favor of the Insurance Settlement.").

In addition, because the Supplemental Settling Insurer Injunction is in the Sale Order, and the Sale Order would still be in effect even if the Plan does not go effective without the need for the claimants to sign a release at all, approval of the Sale Order would allow the Insurers to receive relief that they would not get in the Plan. To be sure, even though the Settlement Agreements contain a condition precedent of having the Plan Confirmation Order entered, *see* Settlement Agreement at 17, there is no condition precedent that the Plan go effective. In other words, the Sale Order and the Settlement Agreements can be effective regardless of whether the Plan is. In addition, because the Settlement Agreement states that it "is effective on the date that the Approval Order becomes a Final Order," approval of the releases contained in the Sale Order and Settlement Agreements can occur prior to the hearing on Plan confirmation. Thus, the proposed Sale Order would deprive the UST and other parties in interest of their right to object at confirmation because such releases will have been decided in the approval of the Motion.

Finally, the Motion does not even mention the existence of a contractual release provision although the Plan would require such for claimants to receive a distribution.

IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, the United States Trustee respectfully requests that the Court (i) sustain this Objection and deny the Motion and (ii) grant such other relief as is just and appropriate.

Dated: New York, New York
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Respectfully submitted,

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