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*Counsel for the Official Committee of Unsecured  
Creditors***UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

Case No. 23-40523 WJL

Chapter 11

*In re:*THE ROMAN CATHOLIC BISHOP OF  
OAKLAND, a California corporation sole,

Debtor.

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' BRIEF IN  
RESPONSE TO MEMORANDUM  
CONCERNING CERTAIN ISSUES  
RAISED DURING JANUARY 21, 2025  
HEARING ON APPROVAL OF  
DISCLOSURE STATEMENT**

Judge: Hon. William J. Lafferty

Date: March 3, 2025

Time: 1:30 p.m. (Pacific Time)

Place: United States Bankruptcy Court  
1300 Clay Street, Courtroom 220  
Oakland, CA 94612

1 The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman  
2 Catholic Bishop of Oakland (the “**Debtor**” or the “**Diocese**”) files this brief in response to the  
3 *Memorandum Concerning Certain Issues Raised During January 21, 2025 Hearing on Approval*  
4 *of Disclosure Statement* [Dkt. No. 1673] (the “**Memorandum**”).<sup>1</sup>

5 In a prior pleading, the Insurers remarked that the Committee cannot just say “yes” to the  
6 Plan. *See* Docket No. 1583, 1:1. Putting aside the woefully insufficient sum the Debtor—a billion-  
7 dollar enterprise—seeks to pay childhood survivors of sexual assault and battery, the Committee  
8 cannot say “yes” to the Plan because, among other things, if the Insurers interpretation of the Plan  
9 is correct, the Debtor’s discharge from bankruptcy will deny survivors of sexual abuse  
10 (“**Survivors**”) fundamental rights to protect themselves against vexatious litigation waged by the  
11 Insurers. Indeed, counsel for one of the Insurers has stated: PLEVIN: “So, from my perspective,  
12 I don’t think the plan assigns bad faith rights that the debtor might have to the trust. And if it did,  
13 I think that would be a problem from our side.” Transcript of Hearing at 77:14-16, Jan. 8, 2025;  
14 *see also* Dkt. No. 1584, 11-23; 12:1-2 (“Here, any confirmed plan will provide Debtor with a  
15 discharge and Debtor then will not be at any future risk of having to pay an excess-of-limits  
16 verdict.”).<sup>2</sup>

17 The Debtor, for its part, believes it *is* assigning all of its rights to the Survivors’ Trust.  
18 January 8 Transcript at 65:23-66:7 (MOORE: “Whatever rights we have as to our insurance, we  
19 are giving them to the survivor’s trust. I feel like we’ve been very explicit about that. And so, if  
20 they want to fight with the insurers about bad faith, the insurers want to fight with them about bad  
21 faith, somewhere down the line, that’s a fight that can still happen. We are not attempting in any  
22 way to foreclose that.”).

23 *Clarifying the availability of bad faith claims post-confirmation is, however, easily*  
24 *fixable*. Ironically, a potential solution can be found in the very plan of reorganization the Insurers

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26 <sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to them in the  
27 Memorandum.

28 <sup>2</sup> The Transcript of Hearing, 23-40523, Jan. 8, 2025, (the “**January 8 Transcript**”) is  
attached as Exhibit 1 to the declaration of Gabrielle L. Albert in support of this brief, filed  
concurrently herewith (the “**Albert Dec.**”).

1 have touted several times: Madison Square Boys and Girls Club, Inc., where the plan of  
2 reorganization provides:

3 Notwithstanding the above, to preserve coverage under any Non-  
4 Settling Insurance Company's Abuse Insurance Policies, Class 4  
5 Claimants specifically reserve, and do not release, any Claims they  
6 may have against the Debtor, the Reorganized Debtor, or any other  
7 Covered Party that implicate coverage under any Non-Settling  
8 Insurance Company's Abuse Insurance Policies, but recovery is  
9 limited to the proceeds of the Non-Settling Insurance Company's  
10 Abuse Insurance Policies **and all other damages (including extra-**  
11 **contractual damages), awards, judgments over policy limits,**  
12 **penalties, punitive damages and attorney's fees and costs that may**  
13 **be recoverable against any Non-Settling Insurance Company**  
14 **because of their conduct regarding Insurance Coverage for, or**  
15 **defense or settlement of, any Abuse Claim, and recoveries for any**  
16 **such judgments or awards will be against only the Non-Settling**  
**Insurance Company** and Compensation Trust in accordance with  
the Plan and the Compensation Trust Documents and not at any time  
against any Covered Party or any property or interest in property of  
any Covered Party, beyond available Insurance Recoveries. **The**  
**Class 4 Claims will not be released or enjoined as against the**  
**Debtor, the Reorganized Debtor, or any other Covered Party for**  
**any Abuse Claim that may be covered under any Non-Settling**  
**Insurance Company's Abuse Insurance Policies until such Claims**  
**are settled** with the Debtor, the Reorganized Debtor, any other  
Covered Party and such Non-Settling Insurance Company or are  
fully adjudicated, resolved, and subject to Final Order, but recovery  
is limited as described above.

17 *In re Madison Square Boys & Girls Club, Inc.*, Case No. 22-10910 (SHL), First Amended Chapter  
18 11 Plan of Reorganization of Madison Square Boys & Girls Club, Inc. (Bankr. S.D.N.Y. 2022),  
19 Dkt. No. 515, Art. III.B.4 (emphasis added). Indeed, the Insurers have represented that this very  
20 plan of reorganization is the model for the Debtor's Plan. January 8 Transcript at 77:17-22  
21 (PLEVIN: "I should also point out that this structure that we're talking about here is not a first  
22 time out of the box structure. A very similar structure was adopted in the Madison Square Boys  
23 and Girls Club case before Judge Lane, which was another sexual abuse claim involving a  
24 nonprofit with dozens of claimants.").

25 With a few strokes of the pen, this issue can likely be remedied. But it is the Insurers who  
26 have grabbed the pen from the Debtor's hand and knowingly laid a trap for Survivors. If that trap  
27 ensnares a Survivor, he or she will have no ability to prevent the Insurers from litigating to the  
28 ends of the earth to avoid having to honor their contractual liability, all without consequence.

1           Exposing insurers to bad faith claims incentivizes them to fairly, promptly and equitably  
2 pay claims. *See, e.g., Kransco v. Am. Empire Surplus Lines Ins. Co.*, 23 Cal. 4th 390, 400, 2 P.3d  
3 1, 8 (2000), *as modified* (July 26, 2000). If an insurer fails to do so, they may be liable for  
4 judgments in excess of policy limits or other consequential damages caused by their conduct. *See*  
5 *id.* at 401. Thus, insurers face consequences if they do not live up to their contractual obligations.  
6 Under the Plan, these consequences are eliminated: an insurer denying claims in bad faith will  
7 face no repercussions. The most it will ever have to pay is capped by its policy limits. Without  
8 the risk of having to pay claims for more than its policy limits, an insurer may gamble with “house  
9 money,” knowing that even if its gambit fails, it will not have to pay for its mistake. It is easy to  
10 see that if damages for bad faith are eliminated by capping the Insurers’ exposure at policy limits,  
11 the incentives to act in good faith are eliminated.

12           California courts have crafted remedies to guard against overreach by insurance  
13 companies. *See, e.g., Crisci v. Sec. Ins. Co. of New Haven, Conn.*, 66 Cal. 2d 425, 431, 426 P.2d  
14 173, 177 (1967) (“[T]here is more than a small amount of elementary justice in a rule that would  
15 require that, in this situation where the insurer’s and insured’s interests necessarily conflict, ***the***  
16 ***insurer, which may reap the benefits of its determination not to settle, should also suffer the***  
17 ***detriments of its decision.***” (emphasis added)). California courts allow an insured—or an  
18 insured’s assignee—to pursue tort remedies where an insurer breaches its “covenant of good faith  
19 and fair dealing.” *See id.* This is because “[t]he availability of tort remedies in the limited context  
20 of an *insurer’s* breach of the covenant advances the social policy of safeguarding an insured in an  
21 inferior bargaining position who contracts for calamity protection, not commercial advantage.”  
22 *Kransco*, 2 P.3d at 8 (emphasis in original).

23           With this context, the Insurers’ trap for Survivors is transparent: support a Plan that they  
24 know will eviscerate all bad faith remedies, and in doing so, strip Survivors of any leverage to  
25 affect fair settlements with the Insurers in a reasonable amount of time. In other words, the Plan  
26 will remove the normal state-law tools that a claimant could use to ensure that insurers do not  
27 improperly engage in years of litigation to avoid liability.

28

1 No amount of disclosure can adequately advise a Survivor of the trap the Insurers have  
2 laid. As this Court has acknowledged several times, this is not a case where a debtor assigns  
3 litigation and makes no representations or warranties regarding the strength of its claims. A  
4 hypothetical investor would understand the inherent risks of such an assignment. But where, as  
5 here, the very confirmation of the Plan may eviscerate a right—a right that is vital to making  
6 certain the Insurers negotiate in good faith—disclosure is, almost by definition, inadequate.  
7 Merely knowing the Insurers may (they will) seek to deprive Survivors of these protections makes  
8 quantifying the value of the insurance assignment much more difficult. Without the protections  
9 extra-contractual damages provide, there is no telling what a recalcitrant insurer will do to oppose  
10 paying a reasonable settlement demand. In turn, a Survivor cannot be adequately informed of what  
11 rights it is receiving, the chances of successfully exercising that right and, in turn, the value of that  
12 right.

13 Much has been said about whose rights are being impacted and when, seemingly in an  
14 effort to cloak what the Plan does and to whom. To be clear, the Plan threatens to release at least  
15 two distinct categories of rights that are essential to Survivors’ recovery from the Insurers in post-  
16 confirmation coverage litigation.

17 **First**, the Debtor is, according to the Insurers, releasing bad faith claims it holds against  
18 the Insurers—**for no consideration**. Because of the timing of the discharge and the damages cap  
19 on Survivors’ recovery, bad faith claims the Debtor may hold against the Insurers (that could  
20 otherwise be assigned to Survivors) will be released. *See, e.g., Hamilton v. Md. Cas. Co.*, 27 Cal.  
21 4th 718, 733, 117 Cal. Rptr. 2d 318, 329, 41 P.3d 128, 137 (2002) (“Where the underlying action  
22 has proceeded to trial and a judgment in excess of the policy limits has been entered against the  
23 insured, the insurer is ordinarily liable to its insured for the **entire amount of that judgment**,  
24 excluding any punitive damages awarded.” (internal citations omitted) (emphasis added));  
25 *Howard v. Am. Nat’l Fire Ins.*, 115 Cal. Rptr. 3d 42, 68 (Cal. Ct. App. 2010) (“An insured may  
26 recover for bad faith failure to settle, despite the lack of an excess judgment, where the insurer’s  
27 misconduct goes beyond a simple failure to settle within policy limits **or the insured suffers**  
28 **consequential damages apart from an excess judgment**.” (emphasis added)). While this release

1 is not a third-party release, it is a release of the Debtor's rights against the Insurers for no  
2 consideration. The Committee will challenge this release as part of plan confirmation.

3 **Second**, the damages cap on Survivors' recoveries likely eliminates any bad faith rights  
4 Survivors **directly** hold against the Insurers for an unreasonable, bad faith refusal to pay a final  
5 judgment. *See, e.g., Hand v. Farmers Ins. Exch*, 23 Cal App. 4th 1847, 1858 (Cal. Ct. App. 1994)  
6 ("[O]nce having secured a final judgment for damages, the plaintiff becomes a third-party  
7 beneficiary of the policy, entitled to recover on the judgment on the policy. At that point the  
8 insurer's duty to pay runs contractually to the plaintiff as well as the insured. And the plaintiff  
9 having also become a beneficiary of the covenant of good faith . . . , the duty to exercise good faith  
10 in not withholding adjudicated damages . . . owing to the plaintiff . . ."). Under California law, a  
11 claimant obtains a bad faith right for an insurer's failure to pay a judgment whether or not the  
12 policyholder assigns its insurance rights to the claimant.<sup>3</sup> Because confirmation of the Plan  
13 deprives Survivors of **direct** bad faith rights under the *Hand* case, the Plan, in essence, grants Non-  
14 Settling Insurers a non-consensual third-party release.<sup>4</sup>

15 In the Memorandum, this Court appears to conclude that the Plan does not violate the  
16 prohibition on imposing a release of non-debtor entities, here, the Insurers, on non-consenting  
17 creditors. *See* Memorandum, 4:8-17. The Court stated that:

18 this is not an instance in which a third-party entity is seeking a  
19 *release* of claims that may be asserted by the debtor's creditors—  
20 such a release is a contractual matter, and may be agreed to or not  
21 depending on the terms offered. In this instance it is the mere fact  
of confirmation of the Plan that, per the Insurers, will necessarily  
have the effect of eliminating bad faith claims.

22 The Committee respectfully disagrees with the Court. In *Purdue*, the Supreme Court  
23 framed the issue before it as: "[W]hether a court in bankruptcy may effectively extend to  
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25 <sup>3</sup> *See also* Transcript of Hearing at 62:12-15, 23-40523, Jan. 21, 2025, (PLEVIN: "[W]e've  
26 read the *Hand* case, and I don't disagree with Mr. Bair that that case is different in that it does  
appear to give claimants direct rights."). The Transcript of Hearing, 23-40523, Jan. 21, 2025, is  
27 attached as Exhibit 2 to the Albert Dec.

28 <sup>4</sup> Although the Debtor and the Insurers have represented that they intend to amend Section  
5.14 of the Plan to address the non-consensual third-party release issue, as of the date of filing of  
this brief, the Committee has not seen any proposed revised language.

1 nondebtors the benefits of a Chapter 11 discharge usually reserved for debtors. *Harrington v.*  
2 *Purdue Pharma L.P.*, 603 U.S. \_\_\_\_ (2024)). The answer to the question did not turn on whether a  
3 third-party was *seeking* the release or whether, under the terms of the plan, it would merely enjoy  
4 the benefits of the release. *See, e.g., id.* (“No one has directed us to a statute or case suggesting  
5 American courts in the past enjoyed the power in bankruptcy to discharge claims brought by  
6 nondebtors against other nondebtors, all without the consent of those affected.”). Thus, it is not  
7 the means through which a third-party release is received, it is whether or not a third-party release  
8 arises out of the plan at issue. Here, the language of the Plan caps the recovery for those pursuing  
9 the Litigation Option at an amount that would not include the potential to pursue the relevant  
10 Insurers for alleged bad faith conduct. The cap thus likely eliminates any bad faith rights Survivors  
11 ***directly*** hold against the Insurers for an unreasonable, bad faith refusal to pay a final judgment.  
12 Thus, on its face, the Insurers are poised to be released of future liability; including liability owed  
13 directly to Survivors. And, as this Court noted, making this result even more egregious is the fact  
14 that the Insurers are offering the Class 4 Claimants nothing in exchange for the complete  
15 elimination of a state law right.

#### 16 **RESERVATION OF RIGHTS**

17 The Committee reserves the right to raise additional objections and assert objections that  
18 remain undecided to any further Amended Disclosure Statement the Debtor files.

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1           **WHEREFORE**, for the reasons set forth in its prior objections to the Amended Disclosure  
2 Statement and herein, the Committee requests that this Court deny approval of the Amended  
3 Disclosure Statement and grant the Committee such other and further relief as this Court deems  
4 just and proper.

5 Dated: February 7, 2025

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