Russell W. Roten (SBN 170571)
Jeff D. Kahane (SBN 223329)
Timothy Evanston (SBN 319342)
Isabelle Cho (SBN 360275)
Timothy W. Evanston (SBN 319342)
SKARZYNSKI MARICK & BLACK LLP
333 South Grand Avenue, Suite 3550
Los Angeles, California 90017
Telephone: (213) 721-0650
rroten@skarzynski.com
jkahane@skarzynski.com
tevanston@skarzynski.com
icho@skarzynski.com

Catalina J. Sugayan
Yongli Yang (*pro hac vice*)
CLYDE & CO US, LLP
30 S Wacker Drive, Suite 2600
Chicago, IL 60606
Telephone: (312) 635-7000
Facsimile: (312) 635-6950
Catalina.Sugayan@clydeco.us
Yongli.Yang@clydeco.us

Attorneys for *Certain Underwriters at Lloyd's, London, and Certain London Market Insurers*

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole,

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

SUPPLEMENTAL OBJECTION TO THE DISCLOSURE STATEMENT IN SUPPORT OF DEBTOR'S MODIFIED FOURTH AMENDED PLAN OF REORGANIZATION

Date: April 10, 2026
Time: 8:00 a.m.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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LMI[1] object to the *Disclosure Statement in Support of Debtor's Modified Fourth Amended Plan of Reorganization* (Docket No. 2759) ("Disclosure Statement"), filed by the Roman Catholic Bishop of Oakland ("Debtor"). In support, LMI respectfully state as follows:

I. PRELIMINARY STATEMENT

The Disclosure Statement does not merit approval. The Debtor's Modified Fourth Amended Plan of Reorganization dated March 27, 2026 ("Debtor Plan") is patently unconfirmable and should not proceed to confirmation. The Debtor Plan is patently unconfirmable because it seeks findings about bad faith claims—claims which relate to insurance coverage and are governed by state law. Critically, the Bankruptcy Court has no jurisdiction over such claims. These claims do not relate to plan confirmation and should not be included in the Debtor Plan. Moreover, the Disclosure Statement fails to provide adequate information about the "No Insurer Reimbursement Obligation" under the Debtor Plan. Accordingly, based on the foregoing, LMI respectfully request that the Court deny approval of the Disclosure Statement.

II. RELEVANT FACTS

A. The LMI Policies

LMI may have subscribed to Excess Umbrella Policies on behalf of The Roman Catholic Bishop of Oakland effective for periods from March 12, 1962 to October 25, 1966 (collectively, the "LMI Policies").[2] These Excess Umbrella Policies are excess indemnity policies. The Debtor's

[1] LMI are Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 60034 issued to the Roman Catholic Bishop of San Francisco, and Nos. K 78318 and CU 3061 issued to the Roman Catholic Bishop of Oakland; Catalina Worthing Insurance Ltd f/k/a HFPI (as Part VII transferee of Excess Insurance Co. Ltd.); the Ocean Marine Insurance Company Limited (as Part VII transferee of the World Auxiliary Insurance Corporation Limited); River Thames Insurance Company Limited; Dominion Insurance Company Limited; Companhia de Seguros Fidelidade-Mundial f/k/a Fidelidade Insurance Company of Lisbon; and R&Q Gamma Company Limited (as Part VII transferee of Anglo French Ltd.).

[2] *See* RCBO-CC-0000001_0034 to RCBO-CC-0000001_0076. The Debtor designated these policies as confidential.

primary insurer(s) is responsible for the defense of any potentially covered claim until final resolution of the litigation.[3]

B. Bankruptcy and the Adversary Proceeding

On May 8, 2023, the Debtor filed a voluntary petition under title 11 of the United States Code ("Bankruptcy Code"). On June 22, 2023, the Debtor sued various defendant insurers and later amended the complaint on or about January 24, 2023 to add LMI as defendants (collectively, "Insurers," and together with Debtor, "Parties"), in this Court ("Adversary Proceeding").[4] This Adversary Proceeding is now before the District Court.[5]

III. ARGUMENT

A. The Disclosure Statement Does Not Merit Approval, Because the Debtor Plan is Patently Unconfirmable.

A bankruptcy court should not approve a disclosure statement if it describes a plan that is patently unconfirmable.[6]

"A plan is patently unconfirmable where (1) confirmation 'defects [cannot] be overcome by creditor voting results' and (2) those defects 'concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing.'"[7] If "the plan could not be

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[3] *Diamond Heights Homeowners Assn. v. Nat'l Am. Ins. Co.,* 227 Cal. App. 3d 563, 577 (1991) (holding that policy language similar to the Assistance and Co-operation Condition of the Umbrella Policies requires "the primary insurer ordinarily remains responsible for the defense until final resolution of the litigation").

[4] *See The Roman Catholic Bishop of Oakland v. Pacific Indemnity, et al.,* Adversary Proceeding No. 23-04028, Doc. 1 (Bankr. N.D. Cal. 2023). Before any defendant responded, Debtor filed a first amended complaint. *Id.*, Doc. 2.

[5] *See The Roman Catholic Bishop of Oakland v. Pacific Indemnity et al.*, Nos. 24-00709, 24-00711, Doc. 125 (N.D. Cal. 2024).

[6] *In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012) citing *In re Silberkraus*, 253 B.R. 890, 899 (Bankr. C.D. Cal. 2000) and 7 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy, 1125.03[4] at 1125-23 (16th ed. 2011) ("most courts will not approve a disclosure statement if the underlying plan is clearly unconfirmable on its face").

[7] *In re Am. Capital Equip., LLC*, 688 F.3d 145, 155 (3d Cir. 2012).

confirmed, then the Court will not subject the estate to the expense of soliciting votes and seeking confirmation."[8] "If it appears there is a defect that makes a plan inherently or patently unconfirmable, the court may consider and resolve that issue at the disclosure stage before requiring the parties to proceed with solicitation of acceptances and rejections and a contested confirmation hearing."[9] "It is now well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed."[10]

1. The Bankruptcy Court Lacks Jurisdiction Over Bad Faith Claims

The Debtor Plan is patently unconfirmable because it seeks the following findings regarding potential "bad faith" claims against the insurers:

- " 'Insurance Claims' means all Claims, causes of action and enforceable rights against a Non-Settling Insurer whether sounding in contract, tort, or otherwise (including equity and bad faith)…"[11]
- "[A]ny such Abuse Claimant is not barred by this Section 5.14 from seeking extracontractual damages under the holding of *Hand v. Farmers Ins. Exchange*, 23 Cal. App. 4th 1847 (1994)…"[12]

The Disclosure Statement does not clearly explain the basis for the extracontractual bad faith claims, but such claims appear to be based on coverage issues governed by state law, not bankruptcy law. Bad faith claims are irrelevant and have nothing to do with plan confirmation and its requirements. If after confirmation, such facts arise, then the state court will address that in the normal course of business. The inclusion of bad faith claims in the Debtor Plan renders it patently unconfirmable, since the Bankruptcy Court has no jurisdiction over such claims.

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[8] *Arnold*, 471 B.R. at 586.

[9] *Am. Capital Equip.*, 688 F.3d at 154 (quoting *In re Larsen*, 2011 WL 1671538, at *2 n.7 (Bankr. D. Idaho May 3, 2011)).

[10] *In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999).

[11] Debtor Plan, § 1.1.94.

[12] *Id.*, § 5.14.

a. Statutes Define a Bankruptcy Court's Jurisdiction

"The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute."[13] "Two statutes govern jurisdiction over bankruptcy proceedings, 28 U.S.C. §§ 157 and 1334."[14] Federal bankruptcy jurisdiction over claims "is defined by 28 U.S.C. § 1334[.]"[15] That statute "provides that 'the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11…."[16]

Section 157(a) of the Bankruptcy Code divides jurisdiction into "core" and "non-core" matters. 28 U.S.C. § 157(b)-(c). The "core/non-core distinction is a critical one with respect to a bankruptcy court's adjudicative authority" and is "relevant to the scope of the bankruptcy court's powers upon referral: in core proceedings, the bankruptcy judge may issue final orders and judgments."[17] In contrast, in "non-core proceedings, the bankruptcy court's powers are more circumscribed: it must submit 'proposed findings of fact and conclusions of law' to the district court, which enters an order only after conducting de novo review."[18]

"Cases under title 11, proceedings arising under title 11, and proceedings arising in a case under title 11 are referred to as 'core' proceedings; whereas proceedings 'related to' a case under title 11 are referred to as 'non-core' proceedings."[19] Thus, "bankruptcy court jurisdiction potentially extends to four types of title 11 matters: (1) cases under title 11, (2) proceeding[s] ***arising under*** title 11, (3) proceedings ***arising in*** a case under title 11, and (4) proceedings ***related to*** a case under title 11."[20]

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[13] *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 (1995).

[14] *Ed. Credit Mgmt. Corp. v. Kirkland* (*In re Kirkland)*, 600 F.3d 310, 315 (4th Cir. 2010).

[15] *Zinchiak v. CIT Small Bus. Lending Corp. (In re Zinchiak)*, 406 F.3d 214, 225 (3d Cir. 2005).

[16] *Celotex*, 514 U.S. at 307.

[17] *Mullarkey v. Tamboer (In re Mullarkey)*, 536 F.3d 215, 221 (3d Cir. 2008).

[18] *Id*.

[19] *In re Combustion Eng'g*., 391 F.3d 190, 225 (3d Cir. 2004).

[20] *Zinchiak*, 406 F.3d at 226 (emphasis added).

"The first of these categories, cases under Title 11, 'refers merely to the bankruptcy petition itself.'"[21] Clearly, bad faith claims are not bankruptcy cases, so the first category of bankruptcy court jurisdiction does not apply. For the reasons explained below, the Bankruptcy Court does not have jurisdiction over bad faith claims, so inclusion in the Debtor Plan is improper.

b. No "Arising Under" Jurisdiction

The Bankruptcy Court does not have "arising under" jurisdiction over bad faith claims. Bankruptcy courts have "original but not exclusive" jurisdiction over claims "arising under title 11[.]" 28 U.S.C. § 1334(b). "A claim 'aris[es] under Title 11' if it is a cause of action created by the Bankruptcy Code, and which lacks existence outside the context of bankruptcy."[22]

Bad faith claims are not causes of action created by the Code, nor do they lack existence outside the context of bankruptcy. To the contrary, bad faith claims are state law claims. The first basis of *core* jurisdiction is thus absent.

c. No "Arising In" Jurisdiction

The Bankruptcy Court does not have "arising in" jurisdiction over the bad faith claims. Bankruptcy courts have core jurisdiction over matters that can ***only*** arise in cases under Title 11, 28 U.S.C. § 1334(b). "Proceedings 'arising in' Title 11 are those proceedings that are not based on any right expressly created by Title 11, but nevertheless, would have no existence outside of the bankruptcy."[23] A matter does not satisfy "arising in" jurisdiction if it "would have existed whether

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[21] *In re Marcus Hook Dev. Park, Inc.*, 943 F.2d 261, 264 (3d Cir. 1991) citing *Wood v. Wood (In re Wood)*, 825 F.2d 90, 92 (5th Cir. 1987).

[22] *Kirkland*, 600 F.3d at 316.

[23] *A.H. Robins Co. v. Dalkon Shield Claimants Trust (In re A.H. Robins Co.)*, 86 F.3d 364, 372 (4th Cir. 1996).

or not the Debtor filed bankruptcy."[24] "In other words, a controversy arises in Title 11 when it would have no practical existence but for the bankruptcy."[25]

Hence, bad faith claims exist outside of bankruptcy under applicable state law and are not claims that could only arise in a bankruptcy case. The second and final basis for *core* jurisdiction is also absent.

d. No "Related to" Jurisdiction

Bankruptcy courts may exercise jurisdiction over claims "related to cases under title 11." 28 U.S.C. § 1334(b). The scope of "related to" jurisdiction "cannot be limitless."[26] Bankruptcy courts may not hear civil proceedings "that have no effect on the estate of the debtor."[27]

The Third Circuit, in *Pacor, Inc. v. Higgins,* articulated the test for determining 'related to' jurisdiction.[28] While *Pacor* has been overruled on other grounds, the test under *Pacor* "clearly remains good law."[29] The Ninth Circuit has adopted the *Pacor* test.[30]

"Under *Pacor*, bankruptcy courts have jurisdiction to hear a proceeding if 'the outcome could conceivably have any effect on the estate being administered in bankruptcy.'"[31] Conceivability is a "key word."[32] "An action is 'related to' a bankruptcy proceeding 'if [1] the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and [2] which

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[24] *Valley Historic Ltd. Partnership v. Bank of NY*, 486 F.3d 831, 836 (4th Cir. 2007).

[25] *Grausz v. Englander*, 321 F.3d 467, 471 (4th Cir. 2003) (citation and internal quotation marks omitted).

[26] *Celotex Corp.*, 514 U.S. at 308.

[27] *Id*. at 308, n. 6.

[28] *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

[29] *Stoe v. Flaherty*, 436 F.3d 209, 216 (3d Cir. 2006) citing *In re Federal-Mogul Global, Inc.*, 300 F.3d 368, 381 (3d Cir. 2002).

[30] *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455 (9th Cir. 1988).

[31] *Resorts Int'l Fin., Inc. v. Price Waterhouse & Co. (In re Resorts Int'l Inc.)*, 372 F.3d 154, 164 (3d Cir. 2004).

[32] *Id*.

in any way impacts upon the handling and administration of the bankrupt estate.'"[33] The two components of the *Pacor* "related to" test are not satisfied here, as discussed below.

(1) The Outcome of Bad Faith Claims Will Not Affect the Debtor's Rights, Liabilities, Options, or Freedom of Action

Bad faith claims are not related to the Debtor's bankruptcy case, because the outcome of such claims would have no impact on the Debtor's rights, liabilities, options, or freedom of action. Such bad faith claims are separate extracontractual claims governed by state law. Hence, such claims have no conceivable effect on a debtor in bankruptcy.

(2) The Outcome of Bad Faith Claims Will Not Impact the Administration and Handling of the Debtor's Estate

Even if a claim, *arguendo*, would affect a debtor's rights, liabilities, options, or freedom of action, such claim can "relate to" a bankruptcy case only if its outcome impacts the estate's administration and handling.[34] Specifically, only claims that affect the arrangement, standing, or priorities of the Debtor's *creditors* can affect the administration and handling of the estate.[35] The bad faith claims could have no such effect.

In *Pacor*, "[a]ny judgment obtained would thus have no effect on the arrangement, standing, or priorities of [the debtor's] creditors."[36] The Third Circuit held "[t]here would therefore be no effect on administration of the estate."[37] In *Zale*, the Fifth Circuit held that bankruptcy court could not enjoin bad faith claims by third parties (like the Litigation Claimants here) against the insurers, because the bankruptcy court did not have jurisdiction over the bad faith claims.[38] Here, the bad faith claims will not impact the arrangement, standing, or priorities of the Litigation Claimants so there is no

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[33] *Id.*

[34] *See Pacor*, 743 F.2d at 995-96; *Valley Historic*, 486 F.3d at 836; *Celotex Corp.*, 514 U.S. at 307 n. 5.

[35] *Pacor*, 743 F.2d at 995-96.

[36] *Id.* at 995-96.

[37] *Id.* at 996.

[38] *In re Zale Corp.*, 62 F.3d 746, 755-56 (5th Cir. 1995).

conceivable effect on the Debtor's bankruptcy case. Accordingly, because the outcome of the bad faith claims (1) will not affect the Debtor's rights, liabilities, options or freedoms of action and (2) will not impact the handling and administration of the Debtor's bankruptcy estate, the Bankruptcy Court has no related to jurisdiction over the claims. The Debtor Plan's language referencing bad faith claims renders the Debtor Plan patently unconfirmable.

B. <u>The Disclosure Statement Provides Inadequate and Misleading Information.</u>

The Disclosure Statement does not merit approval because it contains inadequate and misleading information.

To merit approval, a disclosure statement must contain "adequate information"[39] that describes a confirmable plan.[40] The term "adequate information" is statutorily defined to mean:

> ... information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.[41]

While the concept of adequate disclosure is flexible, "there nevertheless is an irreducible minimum."[42] "An informed judgment cannot be made without information about the plan and about how the provisions of the plan will be put into effect."[43] Similarly, "every disclosure statement needs an explanation of why the proposed means of implementation will be adequate to the task."[44] The disclosure statement must inform the average creditor what it will receive and when and what

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[39] 11 U.S.C. § 1125(a)(1) (stating "Adequate Information" means: "information of a kind, and in sufficient detail. . . that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, . . . in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information…"); *see also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994).

[40] 11 U.S.C. § 1125; *see also In re Quiqley Co.*, 377 B.R. 110, 115 (Bankr. S.D.N.Y. 2007).

[41] 11 U.S.C. § 1125(a)(1) (original emphasis)

[42] *In re Michelson*, 141 B.R. 715, 718–19 (Bankr. E.D. Cal. 1992).

[43] *Id.*

[44] *Id.*

contingencies might intervene.[45]

1. The Disclosure Statement Lacks Adequate Information About the Insurer Reimbursement Obligation under the Debtor Plan

The Disclosure Statement fails to provide adequate information about the Insurer Reimbursement Obligation under the Debtor Plan. The Debtor Plan states, "The Non-Settling Insurers shall not be liable for or obligated to reimburse any contribution to the Plan made by the Debtor and its Estate, nor shall the Survivors' Trust be authorized to seek such recovery."[46] As stated, the Survivors' Trust is only limited to seek recovery for any contributions made to the Plan by the Debtor. It is unclear from the provision whether the Survivors' Trust can seek recovery from the Debtor for any *distributions* made from the Survivors' Trust. The Disclosure Statement offers no explanation regarding this provision. Accordingly, the Disclosure Statement should not be approved.

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[45] *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

[46] Debtor Plan, § 9.3.8.

IV. CONCLUSION

Based on the foregoing, LMI respectfully request the Court not enter an order approving the Disclosure Statement.

Dated: April 7, 2026

By: /s/ *Jeff D. Kahane*

Russell W. Roten
Jeff D. Kahane
Timothy W. Evanston
Isabelle Cho
SKARZYNSKI MARICK & BLACK, LLP
333 South Grand Avenue, Suite 3550
Los Angeles, California 90017
Telephone: (213) 721-0650
rroten@skarzynski.com
jkahane@skarzynski.com
tevanston@skarzynski.com
icho@skarzynski.com

-and-

Catalina J. Sugayan
Yongli Yang (*pro hac vice*)
CLYDE & CO US LLP
30 S Wacker Drive, Suite 2600
Chicago, IL 60606
Telephone: (312) 635-7000
Catalina.Sugayan@clydeco.us
Yongli.Yang@clydeco.us

Attorneys for Certain Underwriters at Lloyd's, London, and Certain London Market Insurers