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Attorneys for the Chubb Companies

**UNITED STATES BANKRUPTCY COURT
THE CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF
CALIFORNIA, INC., et al.,

Debtors and Debtors In Possession.

Affects:

- ☒ All Debtors
☐ Verity Health System of California, Inc.
☐ Saint Louise Regional Hospital
☐ St. Francis Medical Center
☐ St. Vincent Medical Center
☐ Seton Medical Center
☐ O'Connor Hospital Foundation
☐ Saint Louise Regional Hospital Foundation
☐ St. Francis Medical Center of
Lynwood Foundation
☐ St. Vincent Foundation
☐ St. Vincent Dialysis Center, Inc.
☐ Seton Medical Center Foundation
☐ Verity Business Services
☐ Verity Medical Foundation
☐ Verity Holdings, LLC
☐ De Paul Ventures, LLC
☐ De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Ernest M. Robles

**OBJECTION OF THE CHUBB
COMPANIES TO THE DEBTORS'
DISCLOSURE STATEMENT
DESCRIBING DEBTORS' CHAPTER 11
PLAN OF LIQUIDATION (DATED
SEPTEMBER 3, 2019)**

Hearing:

Date: November 20, 2019
Time: 10:00 a.m. PST
Location: Courtroom 1568



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Federal Insurance Company, ACE American Insurance Company and Illinois Union Insurance Company (and together with each of their affiliates and successors, the “Chubb Companies”), by and through their undersigned counsel, hereby file this objection (the “Objection”) with respect to the Debtors’ *Disclosure Statement Describing Debtors’ Chapter 11 Plan of Reorganization (Dated September 3, 2019)* [Docket No. 2994] (the “Disclosure Statement”),¹ and in support of the Objection, respectfully state as follows:

BACKGROUND

A. The Bankruptcy Case

On August 31, 2018 (the “Petition Date”), Verity Health System of California, Inc. and certain of its affiliates (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of California (the “Court”).

On September 3, 2019, the Debtors filed the Disclosure Statement and corresponding *Debtors’ Chapter 11 Plan of Liquidation (Dated September 3, 2019)* [Docket No. 2993] (the “Plan”). The Disclosure Statement and Plan both contemplate the classification and treatment of Insured Claims, and provide, in relevant part, for the following proposed treatment:

Each Insured Claim shall be deemed objected to and disputed and shall be resolved in accordance with this Section, notwithstanding any other Plan provision. Except to the extent that a Holder of an Insured Claim agrees to different treatment, or unless otherwise provided by an order of the Bankruptcy Court directing such Holder’s participation in any alternative dispute resolution process, on the Effective Date, or as soon thereafter as is reasonably practicable, each Holder of an Insured Claim shall receive, on account of its Insured Claim, relief from the automatic stay under § 362 and the injunctions provided under the Plan for the sole and limited purpose of permitting such Holder to seek its recovery, if any, as determined and Allowed by an order or judgment by a court of competent jurisdiction or under a settlement or compromise of such Holder’s Insured Claim from the applicable and available Insurance Policies maintained by or for the benefit of any of the Debtors. A Holder’s recovery of insurance proceeds under the applicable Insurance Policy(ies) shall be the sole and exclusive recovery on an Insured Claim. Any settlement of an Insured Claim within a self-insured retention or deductible must be approved by the Liquidating Trustee.

¹ Capitalized terms used herein but not defined shall have the meanings ascribed to them in the Disclosure Statement.

Any amount of an Allowed Insurance Claim within a deductible or self-insured retention shall be paid by the applicable insurance to the Claim Holder and such insurer shall have a General Unsecured Claim (or Secured Claim, if it holds collateral) for the amount of the deductible or retention paid, provided that it has timely filed an otherwise not objectionable proof of claim encompassing such amounts. For purposes of retentions and deductibles in any Insurance Policy, the Debtors are insolvent and unable to advance or indemnify any loss, claim, damage, settlement or judgment of Debtors within the applicable retention or deductible amount. Notwithstanding any other provision of this Section, Old Republic Insurance Company shall be entitled to all accommodations that it requested in connection with renewal of Debtors' workers' compensation policy, as approved by order of the Bankruptcy Court [Docket No. 2803].

Disclosure Statement Art. V(C)(13); Plan § 4.13.

Furthermore, with respect to insurance generally, the Disclosure Statement and Plan both note that:

Nothing in the Plan shall diminish, impair or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover (a) Claims by any Debtor, or (b) Claims against any Debtor or covered Persons thereunder.

Disclosure Statement Art. VII(E); Plan § 7.13.

Otherwise, the Disclosure Statement does not provide for any other proposed treatment of insurance policies or related agreements; however, the Plan provides for the following:

For the avoidance of doubt, the Debtors' rights with respect to all Insurance Policies under which Debtors may be an insured beneficiary or assignee (including all Insurance Policies that may have expired prior to the Petition Date, all Insurance Policies in existence on the Petition Date, all Insurance Policies entered into by the Debtors after the Petition Date, and all Insurance Policies under which the Debtors hold rights to make, amend, prosecute, and benefit from claims) shall be transferred to the Liquidating Trust (including, without limitation, for the Liquidating Trustee to pursue and prosecute any Causes of Action) from the Effective Date until its dissolution, unless any such Insurance Policy is otherwise cancelled by the Liquidating Trustee in its discretion. Notwithstanding any provision providing for the rejection of Executory Agreements, any Insurance Policy that is deemed to be an Executory Agreements shall neither be rejected nor assumed by operation of this Plan and shall be the subject of a specific motion by the Liquidating Trust, which shall retain the right to assume or reject any such Executory Agreements pursuant to and subject to the provisions of § 365 following the Effective Date, provided, that, the Liquidating Trustee may not reject (a) any extended reporting period (tail) coverage purchased by the Debtors and (b) any Insurance

1 Policies assumed by the Debtors pursuant to an order of the
2 Bankruptcy Court.

3 The Confirmation Order shall constitute a determination that no
4 default by the Debtors exists with respect to any of the Insurance
5 Policies requiring a cure payment and that nothing in a Sale Order,
6 any underlying agreements or this Plan shall be construed or applied
7 to modify, impair, or otherwise affect the enforceability of the
8 Insurance Policies or any coverage thereunder with regard to any
9 Claims or Causes of Action.

10 Plan § 11.3

11 Finally, the Plan also provides for the destruction and abandonment of books and records
12 as follows:

13 Subject to the terms of the Records Retention Order with respect to
14 the records covered thereby, on or after the Effective Date, pursuant
15 to § 554(a), the Liquidating Trustee and Responsible Officer (a
16 applicable) are each authorized, from time to time, without further
17 application to the Bankruptcy Court or notice to any party, to
18 abandon or otherwise destroy documents and records (whether in
19 electronic or paper format) that he or she determine, in his/her
20 reasonable business judgment, are no longer necessary to the
21 administration of either the Chapter 11 Cases or the Plan,
22 notwithstanding any federal, state, or local law or requirement
23 requiring the retention of the applicable documents or records.

24 Plan § 7.12

25 **B. The Insurance Programs**

26 Prior to the Petition Date, the Chubb Companies issued certain insurance policies (as
27 renewed, amended, modified, endorsed or supplemented from time to time, collectively, the
28 “Policies”) to one or more of the Debtors, as named insureds.

29 Pursuant to certain Policies (together with any agreements related thereto, the “ACE
30 Insurance Program”), ACE American Insurance Company and Illinois Union Insurance Company,
31 provide, *inter alia*, professional liability, environmental liability, directors’ and officers’ liability
32 and other insurance for specified policy periods subject to certain limits, deductibles, retentions,
33 exclusions, terms and conditions, as more particularly described therein and the insureds,
34 including one or more of the Debtors, are required to pay to the Chubb Companies certain
35 amounts including, but not limited to, insurance premiums (including audit premiums),
36 deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly

described in the ACE Insurance Program (the “ACE Program Obligations”).

Pursuant to other Policies (together with any agreements related thereto, the “Chubb Insurance Program”, and collectively with the ACE Insurance Program, the “Insurance Programs”),² Federal Insurance Company provides, *inter alia*, fiduciary liability, inland marine and other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein, and the insureds, including one or more of the Debtors, are required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the Chubb Insurance Program (the “Chubb Program Obligations,” and collectively with the ACE Program Obligations, the “Obligations”).

The Obligations are payable over an extended period of time and are subject to future audits and adjustments.

SUMMARY OF OBJECTION

The Chubb Companies assert that the Disclosure Statement lacks adequate information that would enable creditors, including, but not limited to, the Chubb Companies, to ascertain how their respective claims will be classified and treated, or to make an informed decision about the Plan. The Chubb Companies therefore object to the Disclosure Statement on the grounds that (I) the terms of the Insurance Programs cannot be altered through the Plan; and (II) while it appears that the Debtors seek to obtain the benefits of the Insurance Programs (*see* Disclosure Statement Art. VII(E); Plan §§ 7.13; 11.3), the Plan does not address the fact that in order to do so, the Debtors (or their successors) must remain liable for the Debtors’ Obligations under the Insurance Program, regardless of whether such Obligations were incurred before or after the Petition Date.

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² The descriptions of the Insurance Programs set forth herein are not intended to, and shall not be deemed to amend, modify or waive any of the terms or conditions of the Insurance Programs. Reference is made to the Insurance Programs for a complete description of their terms and conditions.

OBJECTION

Section 1125 of the Bankruptcy Code provides that a plan proponent may not solicit acceptance or rejection of a plan unless, before such solicitation, the plan proponent transmits to the parties to be solicited, the plan and a disclosure statement, containing “adequate information,” as defined in section 1125(a) of the Bankruptcy Code, which has been approved by the Bankruptcy Court, after notice and a hearing. *See* 11 U.S.C. § 1125(b). A disclosure statement contains “adequate information” if it provides information concerning the proposed plan of a kind and in sufficient detail that would enable a hypothetical reasonable investor typical of the holders of claims or interests of the relevant class to make an informed judgment about the plan. *See* 11 U.S.C. § 1125(a);³ *In re Arnold*, 471 B.R. 578, 584 (Bankr. C.D. Cal. 2012) (“To approve a disclosure statement, the court must determine that it contains ‘adequate information’ as defined by Section 1125 of the Bankruptcy Code. . .[.]”); *Kelley v. S. Bay Bank (In re Kelley)*, 199 B.R. 698, 703 (B.A.P. 9th Cir. 1996) (adequate information is defined as “as information which is sufficiently detailed enough to ‘enable a hypothetical reasonable investor . . . to make an informed judgment about the plan’”) (citing 11 U.S.C. § 1125(a)). Bankruptcy courts consistently refuse to approve disclosure statements which lack the information that a “hypothetical reasonable investor” would require to make an informed decision about the proposed plan. *See, e.g., In re Main St. AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) (“The lack of meaningful financial information . . . hinders an informed judgment by the hypothetical reasonable investor, rendering the disclosure statement inadequate.”); *In re Sierra-Cal*, 210 B.R. 168, 177 (Bankr. E.D. Cal. 1997) (“The disclosure statement, viewed in retrospect in connection with plan confirmation, did

³ 11 U.S.C. § 1125(a)(1) provides in pertinent part:

(a) In this section –

(1) “adequate information” means 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, but adequate information need not include such information about any other possible or proposed plan

1 not disclose information adequate to enable a hypothetical reasonable investor holding an
2 unsecured claim to make an informed judgment about the plan as required by § 1125.”).

3 **I. The Plan Should Clearly Provide That Nothing Modifies, Alters Or Impairs The**
4 **Insurance Programs.**

5 As noted above, Disclosure Statement Article V(C)(13) and Plan Section 4.13 both
6 contemplate the classification and treatment of Insured Claims, and provide, in relevant part, for
7 the following proposed treatment:

8 Each Insured Claim shall be deemed objected to and
9 disputed and shall be resolved in accordance with this Section,
10 notwithstanding any other Plan provision. Except to the extent that a
11 Holder of an Insured Claim agrees to different treatment, or unless
12 otherwise provided by an order of the Bankruptcy Court directing
13 such Holder’s participation in any alternative dispute resolution
14 process, on the Effective Date, or as soon thereafter as is reasonably
15 practicable, each Holder of an Insured Claim shall receive, on
16 account of its Insured Claim, relief from the automatic stay under §
17 362 and the injunctions provided under the Plan for the sole and
18 limited purpose of permitting such Holder to seek its recovery, if
19 any, as determined and Allowed by an order or judgment by a court
20 of competent jurisdiction or under a settlement or compromise of
21 such Holder’s Insured Claim from the applicable and available
22 Insurance Policies maintained by or for the benefit of any of the
23 Debtors. *A Holder’s recovery of insurance proceeds under the*
24 *applicable Insurance Policy(ies) shall be the sole and exclusive*
25 *recovery on an Insured Claim. Any settlement of an Insured Claim*
26 *within a self-insured retention or deductible must be approved by*
the Liquidating Trustee.

19 *Any amount of an Allowed Insurance Claim within a*
20 *deductible or self-insured retention shall be paid by the applicable*
21 *insurance to the Claim Holder and such insurer shall have a*
22 *General Unsecured Claim (or Secured Claim, if it holds collateral)*
23 *for the amount of the deductible or retention paid, provided that it*
24 *has timely filed an otherwise not objectionable proof of claim*
25 *encompassing such amounts.* For purposes of retentions and
26 deductibles in any Insurance Policy, the Debtors are insolvent and
unable to advance or indemnify any loss, claim, damage, settlement
or judgment of Debtors within the applicable retention or deductible
amount. Notwithstanding any other provision of this Section, Old
Republic Insurance Company shall be entitled to all
accommodations that it requested in connection with renewal of
Debtors’ workers’ compensation policy, as approved by order of the
Bankruptcy Court [Docket No. 2803].

27 Disclosure Statement Art. V(C)(13); Plan § 4.13 (emphasis added).
28

1 This proposed treatment of Insured Claims improperly modifies the terms of the Insurance
2 Programs by altering, and in fact rewriting, the terms of the Policies. For example, insurance
3 policies are priced and written such that the insured may share certain obligations thereunder, such
4 as an insured's responsibility for payments within self-insured retentions and deductibles. By
5 providing that the holder of an insured claim can only recover from insurance, the Debtors are
6 improperly denying claimants a claim for amounts not covered by insurance and likely increasing
7 exposure to the insurers. Relatedly, insurers are not responsible for payments of self-insured
8 retentions, but instead, a self-insured retention is a claim of the claimant under the applicable
9 policies (*see, e.g., In re September 11th Liability Ins. Coverage Cases*, 458 F. Supp. 2d 104, 118
10 n.10 (S.D.N.Y. 2006) ("...a SIR is an amount that an insured retains and covers before insurance
11 coverage begins to apply. Once a SIR is satisfied, the insurer is then liable for amounts exceeding
12 the retention less any agreed deductible."). Thus, the provision providing that insurers have a
13 claim for a self-insured retention is improper. By way of further example, policies often provide
14 that insurers can control the defense and settlement of claims, but the insured has a duty to
15 cooperate in that defense (*see, e.g., Storage Tank Liability policy No. G24761307⁴*, Art. III(A)-
16 (B), "The Insurer shall have the right. . .and duty to defend the 'insured'. . ." and Art. VII(B), "The
17 'insured' must. . .cooperate with the Insurer in the investigation, settlement or defense of the
18 'claim.'"). Therefore, any provision requiring Liquidation Trust approval of a settlement or
19 permitting the Liquidation Trust to destroy records violates such provisions. Finally, insurance
20 policies may not be transferred without the express written consent of the insurers (*see, e.g., Allied*
21 *Corp. v. Frola*, No. 87-462, 1992 U.S. Dist. LEXIS 15778 (D.N.J. Oct. 6, 1992) (holding that
22 insurance policies are not assignable without the consent of the insurers)).

23 Indeed, neither Debtors nor this Court can rewrite the Insurance Programs, but rather the
24 Insurance Programs must be enforced as written. *See, e.g., Dadon v. Levinson*, No. 92-55710, No.
25 92-55810, 1994 U.S. App. LEXIS 11904, at *10 (9th Cir. May 5, 1994) ("[C]ontracts should be
26 enforced as written and that contracting parties are bound by the contractual provisions to which
27 they have given their assent.") (citation omitted); *Tuma v. Eaton Corp.*, No. 08CV792-BTM

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⁴ Relevant pages of Storage Tank Liability policy No. G24761307 are attached as Exhibit A to the Declaration of Drew S. McGehrin in Support of this Objection, filed concurrently herewith.

(CAB), 2011 U.S. Dist. LEXIS 81085, at *12 (S.D. Cal. July 25, 2011) (“In the absence of illegality or unconscionability, it is not the Court’s role to rewrite the contract retroactively to create a different bargain.”); *In re Air Passenger Comput. Reservations Sys. Antitrust Litig.*, 724 F. Supp. 744, 749 (C.D. Cal. 1989) (“[C]ourts cannot rewrite a contract to avoid difficulty or hardship.”) (citing *Hinckley v. Bechtel Corp.*, 41 Cal. App. 3d 206, 212, 116 Cal. Rptr. 33 (1974) (“Courts cannot make for the parties better agreements than they themselves made or rewrite contracts because they operate harshly or inequitably as to one of the parties.”)).

Furthermore, the Disclosure Statement and Plan both contain provisions which provide for the release of claims and other causes of action, the releases of certain third-parties, and exculpation and injunctions against certain actions which similarly may modify, alter or impair the Insurance Program. *See, e.g.*, Disclosure Statement Art. VIII(C); Plan §§ 13.5-13.6.

Accordingly, the Disclosure Statement and Plan must therefore clarify that nothing in the Disclosure Statement, Plan, Plan Supplement or Confirmation Order, including, but not limited to, those provisions identified above, shall modify, alter or impair the Insurance Programs.

II. The Successor to the Debtors Cannot Continue To Receive The Benefits Of The Insurance Programs Without Remaining Liable For The Debtors’ Obligations Thereunder.

Pursuant to Disclosure Statement Article VII(E) and Plan Sections 7.13 and 11.3, the Debtors seem to seek to retain the benefits of the Insurance Programs and its other insurance policies; however, the Disclosure Statement and Plan otherwise do not specify how these and other continuing obligations under the Insurance Programs will be satisfied.

Each Insurance Program is an integrated insurance program and therefore, must be read, interpreted and enforced in its entirety. *See Huron Consulting Servs., LLC v. Physiotherapy Holdings, Inc. (In re Physiotherapy Holdings, Inc.)*, 538 B.R. 225 (D. Del. 2015) (reversing bankruptcy court decision which permitted debtor to assume one agreement between itself and another party, and not the related agreements; holding that all agreements must be assumed or rejected together); *In re Aneco Elec. Constr.*, 326 B.R. 197, 202 (Bankr. M.D. Fla. 2005) (finding “single, non-severable agreement” where contracts were between same parties and obligations of each party are mutually dependent upon the other); *In re Karfakis*, 162 B.R. 719 (Bankr. E.D. Pa.

1 1993) (stating “two contracts which are essentially inseparable can be, and should be, viewed as a
2 single, indivisible agreement between the parties”); *Dunkin’ Donuts Franchising LLC v. CDDC*
3 *Acquisition Co. LLC (In re FPSDA I, LLC)*, 470 B.R. 257, 269 (E.D.N.Y. 2012) (holding that
4 “two agreements [were] so interrelated, [that] they form[ed] a single overarching executory
5 contract”). Therefore, to the extent that the successor to the Debtors seeks to retain the benefits of
6 any portion of the Insurance Programs, each Insurance Program must continue in its entirety.

7 Moreover, it is well-established that a party cannot receive the benefits of a contract
8 without being liable for the obligations thereunder. *See Richmond Leasing Co. v. Capital Bank,*
9 *N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985) (“Thus, the often-repeated statement that the debtor
10 must accept the contract as a whole means only that the debtor cannot choose to accept the
11 benefits of the contract and reject its burdens to the detriment of the other party to the
12 agreement.”); *see also Tompkins ex. rel. A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir.
13 2006) (holding that it is a basic principle of contract law that a party to an agreement is
14 constrained to accept the burdens as well as the benefits of the agreement); *In re Univ. Med. Ctr.*,
15 973 F.2d at 1075, *superseded by statute on other grounds*; *In re Texas Rangers Baseball Partners*,
16 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) (“A debtor may not merely accept the benefits of a
17 contract and reject the burdens to the detriment of the other party.”); *Lightfoot v. Borkon (In re*
18 *Lightfoot)*, 399 B.R. 141, 149 (Bankr. E.D. Pa. 2008) (stating “[a]ssumption of the executory
19 contract requires the debtor to accept its burdens as well as permitting the debtor to profit from its
20 benefits”); *In re Morande Enters.*, 335 B.R. at 192 (stating that the “law is clear that an executory
21 contract may not be assumed in part and rejected in part”) (citation omitted); *In re TSW Stores of*
22 *Nanuet*, 34 B.R. at 304 (stating “[i]t is settled law that a trustee or a debtor in possession ‘takes the
23 contracts of the debtor subject to their terms and conditions. Contracts adopted by him are
24 assumed cum onere’”) (citation omitted); *In re Metro Transp.*, 87 B.R. at 342 (stating “assumption
25 or rejection of an executory contrary requires an all-or-nothing commitment going forward, and
26 that hence a debtor cannot assume part of an executory contract in the future while rejecting
27 another part”).

1 Accordingly, the successor to the Debtors cannot retain the benefits of the Insurance
2 Programs without remaining liable for the obligations thereunder, regardless of when they arise.

3 **III. Reservation of Rights.**

4 The Chubb Companies specifically reserve all of their rights with respect to the Insurance
5 Programs and their right to assert additional objections to the Disclosure Statement and Plan.

6 WHEREFORE, the Chubb Companies respectfully request that this Court (a) either (i)
7 condition any approval of the Disclosure Statement to inclusion of the modifications requested
8 herein, or (ii) deny the request for approval of the Disclosure Statement as it does not contain the
9 adequate information required by 11 U.S.C. § 1125; and (b) grant such other relief as the Court
10 deems appropriate.

11 Dated: November 14, 2019

DUANE MORRIS LLP

13 By: /s/ Marcus O Colabianchi
14 Marcus O. Colabianchi
15 Drew S. McGehrin (admitted *pro hac vice*)
16 Attorneys for the Chubb Companies
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

30 South 17th Street, Philadelphia, PA 19103

A true and correct copy of the foregoing document entitle): **OBJECTION OF THE CHUBB COMPANIES TO THE DEBTORS' DISCLOSURE STATEMENT DESCRIBING DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION (DATED SEPTEMBER 3, 2019)** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 14, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On November 14, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 14, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 14, 2019

Drew S. McGehrin

/s/ Drew S. McGehrin

Date

Printed Name

Signature

SERVICE LIST
(Via NEF)

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Attorneys for the Chubb Companies

**UNITED STATES BANKRUPTCY COURT
THE CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re

VERITY HEALTH SYSTEM OF CALIFORNIA,
INC., et al.,

Debtors and Debtors In Possession.

Affects:

- ☒ All Debtors
☐ Verity Health System of California, Inc.
☐ Saint Louise Regional Hospital
☐ St. Francis Medical Center
☐ St. Vincent Medical Center
☐ Seton Medical Center
☐ O'Connor Hospital Foundation
☐ Saint Louise Regional Hospital Foundation
☐ St. Francis Medical Center of
Lynwood Foundation
☐ St. Vincent Foundation
☐ St. Vincent Dialysis Center, Inc.
☐ Seton Medical Center Foundation
☐ Verity Business Services
☐ Verity Medical Foundation
☐ Verity Holdings, LLC
☐ De Paul Ventures, LLC
☐ De Paul Ventures - San Jose Dialysis, LLC

Debtors and Debtors In Possession.

Lead Case No. 18-20151
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER
Chapter 11 Cases
Hon. Ernest M. Robles

**DECLARATION OF DREW S. MCGEHRIN IN
SUPPORT OF THE OBJECTION OF THE
CHUBB COMPANIES TO THE DEBTORS'
DISCLOSURE STATEMENT DESCRIBING
DEBTORS' CHAPTER 11 PLAN OF
LIQUIDATION (DATED SEPTEMBER 3, 2019)**

Hearing:

Date: November 20, 2019
Time: 10:00 a.m. PST
Location: Courtroom 1568
255 E. Temple St., Los Angeles, CA

1 I, Drew S. McGehrin, declare:

2 1. I am an attorney in the law firm of Duane Morris LLP, counsel to ACE American
3 Insurance Company, Illinois Union Insurance Company and Federal Insurance Company (and
4 together with each of their affiliates and successors, the "Chubb Companies"). The facts set forth
5 in this declaration are true of my own personal knowledge. I make this declaration in support of
6 the Chubb Companies' Objection Of The Chubb Companies To The Debtors' Disclosure
7 Statement Describing Debtors' Chapter 11 Plan Of Liquidation (Dated September 3, 2019) (the
8 "Objection")¹.

9 2. On August 31, 2018 (the "Petition Date"), Verity Health System of California, Inc.
10 and certain of its affiliates (collectively, the "Debtors") each filed a voluntary petition for relief
11 under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United
12 States Bankruptcy Court for the Central District of California (the "Court").

13 3. On September 3, 2019, the Debtors filed the *Disclosure Statement Describing*
14 *Debtors' Chapter 11 Plan of Reorganization (Dated September 3, 2019)* [Docket No. 2994] (the
15 "Disclosure Statement") and corresponding *Debtors' Chapter 11 Plan of Liquidation (Dated*
16 *September 3, 2019)* [Docket No. 2993] (the "Plan").

17 4. Concurrently herewith, I caused to be filed the Objection wherein the Chubb
18 Companies assert that the Disclosure Statement lacks adequate information that would enable
19 creditors, including, but not limited to, the Chubb Companies, to ascertain how their respective
20 claims will be classified and treated, or to make an informed decision about the Plan. The Chubb
21 Companies therefore object to the Disclosure Statement on the grounds that (I) the terms of the
22 Insurance Programs cannot be altered through the Plan; and (II) while it appears that the Debtors
23 seek to obtain the benefits of the Insurance Programs, the Plan does not address the fact that in
24 order to do so, the Debtors (or their successors) must remain liable for the Debtors' Obligations
25 under the Insurance Program, regardless of whether such Obligations were incurred before or after
26 the Petition Date.

27
28

¹ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Objection.

1 5. In support of the arguments averred in the Objection, the Chubb Companies refer to
2 various provisions of Storage Tank Liability policy No. G24761307 (the "Policy").

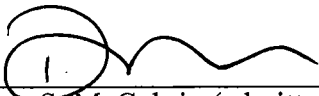
3 6. A true and correct copy of the relevant pages of the Policy are attached hereto as
4 **Exhibit A.**

5 I declare under penalty of perjury under the laws of the United States of America that the
6 foregoing is true and correct

7 Dated: November 14, 2019

DUANE MORRIS LLP

8
9 By:

/s/ 
Drew S. McGehrin (admitted *pro hac vice*)
30 South 17th Street
Philadelphia, PA 19103-4196

Counsel for the Chubb Companies

EXHIBIT A



ACE TANKSAFE®

Storage Tank Liability Insurance Policy

This Policy is issued by the stock insurance company identified in the Declarations (hereinafter *the Insurer*).

THIS POLICY PROVIDES COVERAGE FOR THIRD-PARTY LIABILITY ON A CLAIMS-MADE AND REPORTED BASIS, WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THIS POLICY ALSO PROVIDES COVERAGE FOR FIRST-PARTY REMEDIATION COSTS ON A DISCOVERED AND REPORTED BASIS, WHICH COVERS ONLY STORAGE TANK INCIDENTS FIRST DISCOVERED AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD. PLEASE READ THIS POLICY CAREFULLY. SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE YOUR RIGHTS AND DUTIES. LEGAL DEFENSE EXPENSES ARE SUBJECT TO AND WILL ERODE A SEPARATE AGGREGATE LIMIT OF LIABILITY. LEGAL DEFENSE EXPENSES ARE ALSO SUBJECT TO THE DEDUCTIBLE. THE DECLARATIONS, TOGETHER WITH THE COMPLETED AND SIGNED APPLICATION, THIS POLICY FORM, AND ANY ENDORSEMENTS OR SCHEDULES ATTACHED TO THIS POLICY FORM, CONSTITUTE THE INSURANCE POLICY.

Throughout this Policy the words *the Insurer* shall refer to the stock insurance company providing this insurance. Other words and phrases that appear in quotation marks have special meanings and are defined in Section IV., **DEFINITIONS**, of this Policy.

In consideration of the payment of the Premium and in reliance upon all statements made in the Application including the information furnished in connection therewith, and subject to all terms, definitions, conditions, exclusions, and limitations of this Policy, the Insurer agrees to provide insurance coverage to the "insured" as described herein.

I. INSURING AGREEMENTS

The Insurer agrees to pay on behalf of the "insured" for:

A. THIRD-PARTY CLAIMS AND FIRST PARTY REMEDIATION COSTS (Coverage A.)

"Claims" and "remediation costs", in excess of the deductible amount identified in Item 5. of the Declarations to this Policy, arising out of a "storage tank incident", provided that the "claim" is first made, or the "insured" first discovers the "storage tank incident", during the "policy period". Any such "claim" must be reported to the Insurer, in writing, during the "policy period" or any applicable "extended reporting period". Any such discovery of a "storage tank incident" must be reported to the Insurer, in writing, during the "policy period".

The coverage afforded pursuant to this Coverage A. only applies to "storage tank incidents" that first commence on or after the Retroactive Date, if any, identified in Item 3. of the Declarations and before the end of the "policy period". If no Retroactive Date is identified in the Declarations, or any endorsement attached to this Policy, the "storage tank incident" must first commence during the "policy period".

B. LEGAL DEFENSE EXPENSES (Coverage B.)

"Legal defense expense", in excess of the deductible amount identified in Item 5. of the Declarations to this Policy, necessarily incurred to respond to a "claim" pursuant to Coverage A., above, to which this insurance applies.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

- A. The Insurer's obligation to pay for "claims", "remediation costs" and "legal defense expenses" shall be reduced by the deductible amount identified in Item 5. of the Declarations to this Policy. If the sum of the "claim" or "remediation costs" is less than the Per Storage Tank Incident Limit of Liability identified in Item 4.a. of the Declarations, the Insurer may pay all or part of the deductible amount to effect settlement of any "claim". Upon notification of the Insurer's payment of such deductible amount, the "first named insured" shall promptly reimburse the Insurer for the deductible amount that the Insurer has paid on its behalf.
- B. One deductible shall apply to all "claims", "remediation costs" and "legal defense expenses" arising from the same, continuous, repeated, or related "storage tank incident".
- C. With respect to Coverage A., and subject to Subsections D. and F., below, the most the Insurer shall pay for all "claims" and "remediation costs" arising out of the same, continuous, repeated, or related "storage tank incident" is the Per Storage Tank Incident Limit of Liability identified in Item 4.a. of the Declarations to this Policy.
- D. With respect to Coverage A., and subject to Subsection F., below, the Aggregate Limit of Liability identified in Item 4.b of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy for all "claims" and "remediation costs" arising out of all "storage tank incidents" to which this insurance applies.
- E. With respect to Coverage B., and Subject to Subsection F., below, the Aggregate Limit of Liability identified in Item 4.c. of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy for "legal defense expense" necessarily incurred to respond to all "claims" arising out of all "storage tank incidents" to which this insurance applies.
- F. The Total Policy Aggregate Limit of Liability identified in Item 4.d. of the Declarations to this Policy shall be the maximum liability of the Insurer pursuant to this Policy with respect to all "claims", "remediation costs" and "legal defense expense" arising out of all "storage tank incidents" to which Coverages A. and B. of this insurance apply.
- G. If the Insurer or an affiliate has issued claims-made liability coverage for a "covered underground storage tank" or a covered aboveground storage tank" in one or more policy periods, and a "storage tank incident" is first discovered and reported to the Insurer in accordance with the terms and conditions of this Policy, then:
1. All such continuous, repeated, or related "storage tank incidents" that are subsequently reported to the Insurer during later policy periods shall be deemed to be one "storage tank incident" discovered during this "policy period"; and
 2. All "claims" arising out of a "storage tank incident" that was discovered during this "policy period", including any continuous, repeated, or related "storage tank incident", shall be deemed to have been first made and reported during this "policy period",
- and no other policy shall respond.

III. DEFENSE AND SETTLEMENT

- A. The Insurer shall have the right and, subject to the deductible obligation identified in Item 5. of the Declarations to this Policy, the duty to defend the "insured" against any "claim" to which this insurance applies. The Insurer shall have no duty to defend the "insured" against any "claim" to which this insurance does not apply. The Insurer's duty to defend ends when:
1. The Limits of Liability identified in Items 4.a., 4.b. or 4.d. are exhausted or are tendered into a court of applicable jurisdiction;
 2. The "insured" refuses a settlement offer as provided in Subsection D., below; or
 3. The Limits of Liability identified in Items 4.c. are exhausted,
- whichever occurs first.
- B. The Insurer shall have the right to select legal counsel to represent the "insured" for the investigation, adjustment, and defense of any "claims" covered pursuant to this Policy. Selection of legal counsel by the Insurer shall not be done without the consent of the "insured"; such consent shall not be unreasonably

withheld. "Legal defense expenses" incurred prior to the selection of legal counsel by the Insurer shall not be covered pursuant to this Policy, or credited against the deductible.

In the event the "insured" is entitled by law to select independent counsel to defend itself at the Insurer's expense, the attorney fees and all other litigation expenses the Insurer must pay to that counsel are limited to the rates the Insurer actually pays to counsel that the Insurer normally retains in the ordinary course of business when defending claims or lawsuits of similar complexity in the jurisdiction where the "claim" arose or is being defended. In addition, the "insured" and the Insurer agree that the Insurer may exercise the right to require that such counsel: 1) have certain minimum qualifications with respect to their competency, including experience in defending "claims" similar to those being asserted against the "insured"; 2) maintain suitable errors and omissions insurance coverage; 3) be located within a reasonable proximity to the jurisdiction of the "claim"; and 4) agree in writing to respond in a timely manner to the Insurer's requests for information regarding the "claim". The "insured" may at anytime, by its signed consent, freely and fully waive its right to select independent counsel.

- C. "Legal defense expenses" reduce the Limits of Liability identified in Items 4.c. and 4.d. of the Declarations to this Policy and shall be subject to the deductible obligation.
- D. The Insurer shall present all settlement offers to the "insured". If the Insurer recommends a settlement which is acceptable to the claimants, within the Limits of Liability, and does not impose any additional unreasonable burdens on the "insured", and the "insured" refuses to consent to such settlement offer, then the Insurer's duty to defend shall end. The "insured" shall defend such "claim" independently. The Insurer's liability pursuant to this Policy shall not exceed the amount for which the "claim" could have been settled if the Insurer's recommendation had been accepted by the "insured", exclusive of the deductible obligation.

IV. COVERAGE TERRITORY

The coverage afforded pursuant to this Policy shall only apply to "storage tank incidents" located, and "claims" made, within the United States of America.

V. DEFINITIONS

- A. **"Additional insured"** means any person or entity specifically endorsed onto this Policy as an "additional insured", if any. Such "additional insured" shall maintain only those rights pursuant to this Policy as are specified by endorsement.
- B. **"Bodily injury"** means physical injury or illness, disease, mental anguish, or emotional distress sustained by any person, including death resulting therefrom.
- C. **"Claim"** means the written assertion of a legal right received by the "insured" from a third-party, including, but not limited to, suits or other actions alleging responsibility or liability on the part of the "insured" for "bodily injury" or "property damage" arising out of a "storage tank incident".
- D. **"Corrective action costs"** means expenses necessarily incurred by an "insured" to investigate, quantify, assess, monitor, abate, remove, dispose, treat, neutralize or immobilize "storage tank incidents" to the extent required by 40 CFR Sections 280.60-280.67 and 40 CFR Section 280.72 promulgated by the Federal Environmental Protection Agency, or other "environmental law".
- E. **"Covered aboveground storage tank"** means a stationary petroleum product-containing tank, and associated piping and appurtenances connected thereto, with less than ten percent (10%) of its volume below ground, but solely to the extent that such tank is identified in the Schedule of Covered Aboveground Storage Tanks identified in Item 9. of the Declarations to this Policy, or any Schedule of Covered Storage Tanks added to this Policy by endorsement.
- F. **"Covered underground storage tank"** means a petroleum product-containing tank, and associated piping and appurtenances connected thereto, with more than ten percent (10%) of its volume below ground, but solely to the extent that such tank is identified in the Schedule of Covered Underground Storage Tanks identified in Item 8. of the Declarations to this Policy, or any Schedule of Covered Storage Tanks added to this Policy by endorsement.
- G. **"Emergency response"** means actions taken by the "insured" to abate and/or respond to an imminent and substantial threat to human health or the environment arising from a "storage tank incident".
- H. **"Environmental laws"** means any federal, state, municipal or other local laws, statutes, ordinances, regulations, and all amendments thereto, including state voluntary cleanup programs or risk-based

corrective action guidance, governing the liabilities and legal obligations of the "insured" with respect to "covered aboveground storage tanks" or "covered underground storage tanks".

- I. **"Extended reporting period"** means the additional period of time in which to report a "claim" first made against the "insured" during or subsequent to the end of the "policy period" arising from a "storage tank incident" to which this insurance applies. Such "storage tank incident" must commence on or after any applicable Retroactive Date identified in Item 3. of the Declarations to this Policy, but before the end of the "policy period". If no Retroactive Date is identified in the Declarations or any endorsement attached to this Policy, the "storage tank incident" must first commence during the "policy period".
- J. **"First named insured"** means the person or entity as identified in Item 1. of the Declarations to this Policy. The "first named insured" is the party responsible for the payment of any premiums and the payment of any applicable deductible amounts. The "first named insured" shall also serve as the sole agent on behalf of all "insureds" with respect to the provision and receipt of notices, including notice of cancellation or non-renewal, receipt and acceptance of any endorsements or any other changes to this Policy, return of any premium, assignment of any interest pursuant to this Policy, as well as the exercise of any applicable "extended reporting period", unless any such responsibilities are otherwise designated by endorsement.
- K. **"Government action"** means action taken or liability imposed by any federal, state, municipal or other local government agency or body acting pursuant to the authority of "environmental laws".
- L. **"Insured"** means the "first named insured", any "named insured", any "additional insured", and any past or present director or officer of, partner in, or employee of, any "insured" while acting within the scope of his or her duties as such.
- M. **"Legal defense expense"** means reasonable legal costs, charges, and expenses, including expert charges, incurred by the "insured" in the investigation, adjustment, or defense of a "claim".
- N. **"Named insured"** means any person or entity specifically endorsed onto this Policy as a "named insured", if any. Such "named insured" shall maintain the same scope of coverage pursuant to this Policy as the "first named insured".
- O. **"Natural resource damages"** means damages for, injury to, destruction of, or loss of fish, wildlife, biota, land, air, water, groundwater, drinking water supplies, and other similar resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state or local government, or any Native American Tribe, including the reasonable costs of assessing such injury, destruction or loss resulting therefrom.
- P. **"Policy period"** means that period of time identified in Item 2. of the Declarations to this Policy, or any shorter period resulting from the cancellation of this Policy.
- Q. **"Pollution condition"** means any spilling, leaking, emitting, discharging, dispersing, seeping, escaping or releasing of the contents of any "covered underground storage tank" or "covered aboveground storage tank" into surface soils, subsurface soils, surface water, sediments or groundwater.
- R. **"Property damage"** means:
1. Physical injury to, or destruction of, tangible property of a third-party, including all resulting loss of use of that property;
 2. Loss of use of tangible property of a third-party, that is not physically injured or destroyed;
 3. Diminished value of tangible property owned by a third-party; or
 4. "Natural resource damages".
- S. **"Remediation costs"** means :
1. With respect to "covered aboveground storage tanks", only, reasonable expenses incurred to investigate, quantify, monitor, mitigate, abate, remove, dispose, treat, neutralize, or immobilize a "storage tank incident" to the extent required by "environmental law"; and
 2. With respect to "covered underground ground storage tanks", only, "corrective action costs".
- "Remediation costs"** shall also include:

1. Reasonable legal cost, where such cost has been incurred by an "insured" with the written consent of the Insurer; and
 2. "Replacement costs".
- S. **"Replacement costs"** means reasonable expenses required to restore, repair or replace real property, or physical improvements thereto, damaged during the course of responding to a "storage tank incident". "Replacement costs" do not include costs associated with improvements or betterments, or any costs associated with the repair, replacement, or upgrading of any "covered underground storage tank" or "covered aboveground storage tank".
- T. **"Responsible insured"** means any employee of a "named insured" responsible for environmental affairs, control, or compliance, and any officer of, director of, or partner in, a "named insured".
- U. **"Storage tank incident"** means a "pollution condition" resulting from a "covered underground storage tank" or a "covered aboveground storage tank". The entirety of continuous or repeated "pollution conditions" resulting from the same "covered underground storage tank" or "covered aboveground storage tank" shall be deemed to be one "storage tank incident".
- V. **"Terrorism"** means activities against persons, organizations or property of any nature:
1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
 2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
- X. **"War"** means war, whether or not declared, civil war, martial law, insurrection, revolution, invasion, bombardment or any use of military force, usurped power or confiscation, nationalization or damage of property by any government, military or other authority.

VI. EXCLUSIONS

This insurance does not apply to:

A. Contractual Liability

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to any liability of others assumed by an "insured" through contract or agreement, except if the liability would have attached to such "insured" in the absence of such contract or agreement.

This exclusion does not apply to those contracts identified in the Schedule of Insured Contracts endorsed to this Policy, if any.

B. Employers Liability

"Claims" for "bodily injury" to:

1. An "insured" or an employee of its parent, subsidiary or affiliate
 - a. Arising out of and in the course of employment by the "insured" or its parent, subsidiary or affiliate; or
 - b. Performing duties related to the conduct of the "named insured's" business.
2. The spouse, child, parent, brother or sister of such "insured" or employee of its parent, subsidiary or affiliate as a consequence of Paragraph 1., above.

This exclusion shall apply:

1. Whether the "insured" may be liable as an employer or in any other capacity;
2. To any obligation to share damages with or repay someone else who must pay damages because of such "bodily injury"; and
3. To all "legal defense expense" associated with such "claims".

C. Fines and Penalties

Payment of fines, penalties, punitive, exemplary or multiplied damages, or any associated "claims" seeking exclusively injunctive relief in addition to such fines, penalties or damages.

This exclusion shall apply to any legal defense expense" associated with such fines, penalties or damages.

D. First-Party Property Damage

"Claims" or "legal defense expenses" arising out of or related to damage to real or personal property owned by, leased to, loaned to, or rented by, an "insured", or otherwise in the care, custody, or control of an "insured".

This exclusion does not apply to remediation costs".

E. Fraud or Misrepresentation

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to fraudulent acts or material misrepresentations on the part of any "insured", which would have affected the Insurer's decision to issue this Policy pursuant to the financial terms identified in the Declarations of this Policy.

F. Known Conditions

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to "storage tank incidents" in existence prior to the "policy period" and reported to a "responsible insured", but not disclosed to the Insurer in writing.

G. Insured's Internal Expenses

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to expenses incurred by an "insured" for services performed by salaried staff or employees of an "insured".

H. Intentional Non-Compliance

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to the intentional disregard of, or knowing, willful or deliberate non-compliance with, any statute, regulation, administrative complaint, notice of violation, notice letter, instruction of any governmental agency or body, or executive, judicial or administrative order by a "responsible insured".

I. Lead-Based Paint and Asbestos

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to the presence of lead-based paint, asbestos, or asbestos-containing materials, in, on, or applied to any structure, including, but not limited to, a "covered underground storage tank" or "covered aboveground storage tank".

J. Nuclear Hazard

1. "Claims", "remediation costs" or "legal defense expenses":
 - a. With respect to which the "insured" pursuant to this Policy is also an "insured" pursuant to a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an "insured" pursuant to any such policy but for its termination upon exhaustion of its limits of liability; or
 - b. Resulting from the hazardous properties of nuclear material and with respect to which:
 - (1) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - (2) The "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, pursuant to any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

2. "Claims", "remediation costs" or "legal defense expenses" arising out of or related to the hazardous properties of nuclear material, if:
 - a. The nuclear material
 - (1) Is at any nuclear facility owned by, or operated by or on behalf of the "insured"; or
 - (2) Has been discharged or dispersed therefrom;
 - b. The nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the "insured"; or
 - c. The "bodily injury" or "property damage" arises out of the furnishing by the "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, located within the United States of America, its territories or possessions or Canada.
3. As used in this exclusion:
 - a. Hazardous properties include radioactive, toxic, or explosive properties.
 - b. Nuclear material means source material, special nuclear material, or byproduct material.
 - c. Source material, special nuclear material, and byproduct material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
 - d. Spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor.
 - e. Waste means any waste material:
 - (1) Containing byproduct material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content; and
 - (2) Resulting from the operation by any person or organization of any nuclear facility included pursuant to the first two paragraphs of the definition of nuclear facility;
 - f. Nuclear facility means:
 - (1) Any nuclear reactor;
 - (2) Any equipment or device designed or used for
 - (a) Separating the isotopes of uranium or plutonium;
 - (b) Processing or utilizing spent fuel; or
 - (c) Handling, processing or packaging waste;
 - (3) Any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (4) Any structure, basin, excavation, premises, or place prepared or used for the storage or disposal of waste;
 - (5) The site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
 - g. Nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
 - h. "Property damage" includes all forms of radioactive contamination of property.

K. Regulatory Compliance

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to any "storage tank incident" involving a "covered aboveground storage tank" or "covered underground storage tank" that was not in compliance with all applicable "environmental laws" prior to such "storage tank incident".

L. Storage Tank Contents

"Claims", "remediation costs" or legal defense expenses" arising out of or related to costs associated with the loss, removal, replacement, re-use, or recycling of the contents of any "covered underground storage tank" or "covered aboveground storage tank".

M. War or Terrorism

"Claims", "remediation costs" or "legal defense expenses" arising out of or related to "storage tank incidents" attributable, whether directly or indirectly, to any acts that involve, or that involve preparation for, "war" or "terrorism" regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

VII. REPORTING AND COOPERATION

- A. The "insured" must see to it that the Insurer receives written notice of any "claim" or "storage tank incident", as soon as possible, but in no event more than seven (7) days after a "responsible insured" first became aware of, or should have become aware of, such "claim" or "storage tank incident". Such notice shall be provided to the Insurer at the address identified in Item 7.a. of the Declarations to this Policy and should include reasonably detailed information as to:
1. The identity of the "insured", including contact information for an appropriate person to contact regarding the handling of the "claim" or "storage tank incident";
 2. The identity of "covered aboveground storage tank" or "covered underground storage tank";
 3. The nature of the "claim" or "storage tank incident"; and
 4. Any steps undertaken by the "insured" to respond to the "claim or storage tank incident".
- B. The "insured" must:
1. Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with any "claim";
 2. Authorize the Insurer to obtain records and other information;
 3. Cooperate with the Insurer in the investigation, settlement or defense of the "claim";
 4. Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of "bodily injury", "property damage", "remediation costs" or "legal defense expense" to which this Policy may apply; and
 5. Provide the Insurer with such information and cooperation as it may reasonably require.
- C. No "insured" shall make or authorize an admission of liability or attempt to settle or otherwise dispose of any "claim" without the written consent of the Insurer. Nor shall any "insured" incur any "remediation costs" without the prior express written consent of the Insurer, except in the event of an "emergency response".
- D. Upon the discovery of a "storage tank incident", the "insured" shall make every attempt to mitigate any loss and comply with applicable "environmental laws". The "insured" must cooperate with the Insurer in the selection and retention of qualified contractors or consultants. The Insurer shall have the primary responsibility, but not the duty, to select, retain, and oversee such contractors or consultants, on behalf of the "insured". Any "remediation costs" incurred by the Insurer shall be deemed incurred by the "insured", and shall be subject to the deductible obligation and Limits of Liability of this Policy.

VIII. EXTENDED REPORTING PERIOD

- A. The "first named insured" shall be entitled to a basic "extended reporting period", and may purchase an optional supplemental "extended reporting period", following cancellation, as described Section IX., **GENERAL CONDITIONS**, Subsection A., or nonrenewal.
- B. "Extended reporting periods" shall not reinstate or increase the Limits of Liability. "Extended reporting periods" shall not extend the "policy period" or change the scope of coverage provided. A "claim" first made against an "insured" and reported to the Insurer within the basic "extended reporting period" or supplemental "extended reporting period", whichever is applicable, shall be deemed to have been made on the last day of the "policy period".
- C. Provided the "first named insured" has not purchased any other insurance to replace this Policy, the "named insured" shall have a one hundred and eighty (180) day basic "extended reporting period" without additional charge.
- D. Provided the "first named insured" has not purchased any other insurance to replace this Policy, the "named insured" shall also be entitled to purchase a supplemental "extended reporting period" of up to thirty (30) months for not more than two hundred percent (200%) of the full Premium identified in Item 6. of the Declarations to this Policy. Such supplemental "extended reporting period" starts when the basic "extended reporting period" ends. The Insurer shall issue an endorsement providing a supplemental "extended reporting period" provided that the "first named insured":
 1. Makes a written request, to the address identified in Item 7.b. of the Declarations to this Policy, for such endorsement which the Insurer receives prior to the expiration of the "policy period"; and
 2. Pays the additional Premium when due. If that additional Premium is paid when due, the supplemental "extended reporting period" may not be cancelled by the Insurer, provided that all other terms and conditions of the Policy are met.

IX. GENERAL CONDITIONS

A. Cancellation

1. This Policy may be cancelled only by the "first named insured", or through the "first named insured's" agent, by mailing to the Insurer at the address identified in Item 7.b. of the Declarations to this Policy, written notice stating when such cancellation shall be effective.
2. This Policy may be cancelled by the Insurer for the following reasons:
 - a. Non-payment of premium;
 - b. Fraud or material misrepresentation on the part of any "insured; or
 - c. Change in use or operation of a "covered underground storage tank" or "covered aboveground storage tank" from the use contemplated in the Application and supporting materials that materially increases the likelihood of "claims" or "storage tank incidents",

by mailing to the "first named insured" at the "first named insured's" last known address, written notice stating when, not less than sixty (60) days thereafter, fifteen (15) days if cancellation is for non-payment of any unpaid portion of the premium, such cancellation shall be effective. The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the "policy period".

Subparagraph 2.b., herein, shall apply only to that "insured" that engages in the fraud or misrepresentation, or any other "insured" who is a parent corporation, subsidiary, employer of, or otherwise affiliated by ownership with, such "insured".

3. In the event of cancellation, the premium percentage identified in Item 6. of the Declarations to this Policy shall be the minimum-earned premium upon the inception date of this Policy. Thereafter, the remaining unearned premium, if any, shall be deemed earned by the Insurer on a *pro rata* basis over the remainder of the "policy period". Any unearned premium amounts due the "first named insured" upon cancellation of this Policy shall be calculated on a *pro rata* basis and refunded within thirty (30) days of the effective date of cancellation.

B. Inspection and Audit

To the extent of the "insured's" ability to provide such access, and with reasonable notice to the "insured", the Insurer shall be permitted, but not obligated, to inspect any "covered aboveground storage tank" or

"covered underground storage tank". The "insured" shall have the concurrent right to collect split samples. Neither the Insurer's right to make inspections, the making of said inspections, nor any report thereon, shall constitute an undertaking, on behalf of or for the benefit of the "insured" or others, to determine or warrant that such property or operations are safe or in compliance with "environmental laws", or any other laws.

The Insurer may examine and audit the "insured's" books and records during this "policy period" and extensions thereof and within three (3) years after the final termination of this Policy.

C. Legal Action Against the Insurer

No person or organization other than an "insured" has a right pursuant to this Policy:

1. To join the Insurer as a party or otherwise bring the Insurer into a suit against any "insured"; or
2. To sue the Insurer in connection with this insurance unless all of the Policy terms have been fully complied with.

D. Bankruptcy

The insolvency or bankruptcy of any "insured" or any "insured's" estate shall not relieve the Insurer of its obligations pursuant to this Policy. However, any such insolvency or bankruptcy of the "insured" or any "insured's" estate shall not relieve the "first named insured" of its deductible obligation pursuant to this Policy. This insurance shall not replace any other insurance to which this Policy is excess, nor shall this Policy drop down to be primary, in the event of the insolvency or bankruptcy of any underlying insurer.

E. Subrogation

In the event of any payment pursuant to this Policy by the Insurer, the Insurer shall be subrogated to all of the rights of recovery against any person or organization, and the "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The "insureds" shall do nothing to prejudice such rights. Any recovery as a result of subrogation proceedings arising pursuant to this Policy shall accrue first to the "insureds" to the extent of any payments in excess of the limit of coverage; then to the Insurer to the extent of its payment pursuant to the Policy; and then to the "insured" to the extent of the deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

F. Representations

By accepting this Policy, the "first named insured" agrees that:

1. The statements in the Declarations, schedules, and application for this Policy are accurate and complete;
2. Those statements are based upon representations the "first named insured" made to the Insurer; and
3. This Policy has been issued in reliance upon the "first named insured's" representations.

G. Separation of Insureds

Except with respect to the Limits of Liability, Cancellation Conditions 2.a. and 2.c., the Fraud or Misrepresentation Exclusion, the Intentional Non-Compliance Exclusion, the Known Conditions Exclusion, the Regulatory Compliance Exclusion and any obligations specifically assigned to the "first named insured", this Policy applies:

1. As if each "named insured" were the only "insured"; and
2. Separately to each "named insured" against whom a "claim" is made.

H. Other Insurance

If other valid and collectible insurance is available to any "insured" covering a loss also covered by this Policy, other than a policy that is specifically written to apply in excess of this Policy, the insurance afforded by this Policy shall apply in excess of and shall not contribute with such other insurance.

I. Jurisdiction and Venue

It is agreed that in the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the "insured" shall submit to the exclusive jurisdiction of the State of New York and shall comply

with all requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Insurer's right to remove an action to a United States District Court.

J. Choice of Law

All matters arising hereunder including questions relating to the validity, interpretation, performance, and enforcement of this Policy, including the rights, duties and obligations thereunder, shall be determined in accordance with the law and practices of the State of New York.

K. Changes and Assignment

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Insurer from asserting any right pursuant to the terms of this Policy. The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest in this Policy shall bind the Insurer, except as provided by endorsement and attached to this Policy.

L. Headings

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

M. Consent

Where the consent of the Insurer, or an "insured", is required pursuant to this Policy, such consent shall not be unreasonably withheld, delayed, conditioned, or denied.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

30 South 17th Street, Philadelphia, PA 19103

A true and correct copy of the foregoing document entitle): **DECLARATION OF DREW S. MCGEHRIN IN SUPPORT OF THE OBJECTION OF THE CHUBB COMPANIES TO THE DEBTORS' DISCLOSURE STATEMENT DESCRIBING DEBTORS' CHAPTER 11 PLAN OF LIQUIDATION (DATED SEPTEMBER 3, 2019)** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On November 14, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On November 14, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 14, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

November 14, 2019

Drew S. McGehrin

/s/ Drew S. McGehrin

Date

Printed Name

Signature

SERVICE LIST
(Via NEF)

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