

LOWENSTEIN SANDLER LLP
 JEFFREY D. PROL (Pro Hac Vice)
jprol@lowenstein.com
 MICHAEL A. KAPLAN (Pro Hac Vice)
mkaplan@lowenstein.com
 BRENT WEISENBERG (Pro Hac Vice)
bweisenberg@lowenstein.com
 COLLEEN M. RESTEL (Pro Hac Vice)
crestel@lowenstein.com
 One Lowenstein Drive
 Roseland, New Jersey 07068
 Telephone: (973) 597-2500

*Counsel for the Official Committee of
 Unsecured Creditors*

BURNS BAIR LLP
 TIMOTHY W. BURNS (Pro Hac Vice)
tburns@burnsbair.com
 JESSE J. BAIR (Pro Hac Vice)
jbair@burnsbair.com
 10 East Doty Street, Suite 600
 Madison, Wisconsin 53703-3392
 Telephone: (608) 286-2808

*Special Insurance Counsel for the Official
 Committee of Unsecured Creditors*

KELLER BENVENUTTI KIM LLP
 TOBIAS S. KELLER (Cal. Bar No. 151445)
tkeller@kbkllp.com
 JANE KIM (Cal. Bar No. 298192)
jkim@kbkllp.com
 GABRIELLE L. ALBERT (Cal. Bar No.
 190895)
galbert@kbkllp.com
 425 Market St., 26th Floor
 San Francisco, California 94105
 Telephone: (415) 496-6723

**UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION**

In re:

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

Debtor.

Chapter 11

Case No: 23-40523 WJL

Hon. William J. Lafferty III

THE ROMAN CATHOLIC BISHOP OF
 OAKLAND,

Plaintiff,

PACIFIC INDEMNITY, a Delaware
 corporation; *et al.*

Defendants.

Adversary Case No. 23-04028 WJL

**OFFICIAL COMMITTEE OF
 UNSECURED CREDITORS' JOINDER
 TO DEBTOR'S OPPOSITIONS TO THE
 INSURERS' MOTIONS TO DISMISS
 THE THIRD AMENDED COMPLAINT**



1 The Official Committee of Unsecured Creditors (the “Committee”) files this joinder (the
2 “Joinder”) to *RCBO’s Response and Opposition to Pacific Indemnity Company, Century Indemnity*
3 *Company, Insurance Company of North America, Pacific Employers Insurance Company, and*
4 *Westchester Fire Insurance Company’s Motion to Dismiss for Failure to State a Claim* [Dkt.
5 No. 208] and *Debtor’s Opposition to Excess Insurers’ Motion to Dismiss Third Amended*
6 *Complaint* [Dkt. No. 207] (collectively, the “Oppositions”). In support of this Joinder, the
7 Committee states as follows:

8 1. The Committee requests that the Court deny *Excess Insurers’ Motion to Dismiss*
9 *the Third Amended Complaint* [Dkt. No. 173] and *Moving Insurers’ Motion to Dismiss Third*
10 *Amended Complaint* [Dkt. No. 175] (collectively, the “Motions”).

11 2. The Committee incorporates by reference and hereby joins in the arguments set
12 forth in the Oppositions.

13 3. Although the Oppositions explain in detail why the Third Amended Complaint
14 (“TAC”) satisfies the applicable pleading standard at the motion to dismiss stage, the Committee
15 wishes to reiterate here the practical importance of this insurance case moving forward in a timely
16 manner.

17 4. Survivors of sexual abuse have filed over 400 proofs of claim and related lawsuits
18 against the Debtor (collectively, “the Underlying Cases”). TAC ¶ 25. The Debtor, in turn, has
19 tendered the Underlying Cases to its insurers for coverage. *Id.* ¶ 28. To date, however, none of the
20 insurers have accepted coverage without reservation for the Underlying Cases. *Id.* ¶¶ 29-31.

21 5. The insurance adversary proceeding seeks to answer questions related to one of the
22 Debtor’s primary assets, its insurance policies, the proceeds of which will ultimately be used to
23 fund the recoveries for the constituents of the Committee—the survivors of childhood sexual
24 abuse.

25 6. Given the insurers’ refusal to accept coverage without reservation, there now exists
26 an actual controversy regarding coverage for the Underlying Cases, which, at a minimum, is
27 amenable to immediate declaratory relief. *See, e.g., Truck Ins. Exch. v. Superior Ct.*, 51 Cal. App.
28

1 4th 985, 994, 59 Cal. Rptr. 2d 529, 534 (1996) (“While the underlying action is pending, [a] carrier
2 can file an action for declaratory relief and attempt to obtain a declaration that no duty to defend
3 or indemnify exists.”).

4 7. Resolution of the coverage issues (one way or the other) will help facilitate
5 negotiations in the main bankruptcy case and assist the parties in determining whether a global
6 Plan of Reorganization is achievable. Every party should want answers to those questions—and in
7 an expeditious manner.

8 8. The insurers, for their part, have received and responded to hundreds of tender
9 letters concerning the Underlying Cases. *See* TAC, Ex. A. The insurers know exactly (1) what
10 specific claims have been tendered to them; and (2) why the carriers are either reserving their rights
11 or denying coverage on each particular claim. There is no mystery here.

12 9. The Committee, therefore, respectfully urges the Court to deny the Motions and
13 allow the insurance adversary proceeding to move forward.

14 10. The Committee reserves its right to supplement this Joinder, to file a more fulsome
15 pleading in opposition to the Motions, and to participate in any hearing to consider the Motions.

16 Dated: March 13, 2024

LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP

By: /s/ Gabrielle L. Albert
Jeffrey D. Prol
Michael A. Kaplan
Brent Weisenberg
Colleen M. Restel

- and –

Tobias S. Keller
Jane Kim
Gabrielle L. Albert

*Counsel for the Official Committee of
Unsecured Creditors*

BURNS BAIR LLP
Timothy W. Burns
Jesse J. Bair

*Special Insurance Counsel for the Official
Committee of Unsecured Creditors*