No. 23-124

IN THE

Supreme Court of the United States

WILLIAM K. HARRINGTON,
UNITED STATES TRUSTEE, REGION 2,
Petitioner,

v.

PURDUE PHARMA L.P., ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICUS CURIAE* U.S. CONFERENCE OF CATHOLIC BISHOPS IN SUPPORT OF DEBTOR RESPONDENTS

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INTEREST OF *AMICUS CURIAE* [1]

Amicus the U.S. Conference of Catholic Bishops (USCCB) is a nonprofit corporation whose members are the active Catholic Bishops in the United States. The USCCB provides a framework and forum for the Bishops to teach Catholic doctrine, set pastoral directions, and develop policy positions on contemporary social issues. On behalf of the Christian faithful, the USCCB advocates and promotes the Bishops' pastoral teaching concerning such diverse areas of the Nation's life as the free expression of ideas, immigration, fair employment and equal opportunity for the underprivileged, the importance of education, the protection of the rights of parents and children, and the sanctity of human life. Values of particular importance to the USCCB include the protection of the dignity and wellbeing of the vulnerable, as well as the rights of religious organizations and the proper development of this Court's jurisprudence in these areas.

The USCCB submits this brief to shed light on the critical role of third-party releases in the context of diocesan bankruptcies, specifically in securing the equitable compensation of claimants while facilitating the survival of the Catholic mission.

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[1] No counsel for any party authored this brief in whole or in part; neither did any person other than *Amicus*, its members, or its counsel make a monetary contribution intended to fund the preparing or submitting of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In recent years, the Catholic Church and other religious and charitable organizations have faced a flood of litigation related to allegations of sexual abuse, the vast majority of which is claimed to have occurred many decades in the past. The challenge has become more daunting as more and more states have passed laws retroactively reviving claims that became time-barred long ago under previous statutes of limitations. Most of the people accused in these allegations have been long retired or deceased, and reliable evidence on the claims is difficult if not impossible to obtain. In many cases, Catholic dioceses have proven unable to separate the true allegations from the false ones, and equally unable to bear the burden of defending against all of them in court. As a result, dozens of dioceses have been driven into Chapter 11 recently, and many more may soon follow.

As diocesan bankruptcies have unfolded, nonconsensual third-party releases (generally in the form of channeling injunctions) have proven critical to successful reorganizations. In exchange for a release from liability on claims of alleged abuse, Catholic parishes, schools, and other diocesan entities contribute significant sums to a common fund, maximizing the recovery for abuse claimants and relieving them of the struggle to recover in piecemeal litigation. The judicially supervised releases that these entities receive in exchange—almost always with the overwhelming support of abuse claimants—provide the only viable means for the Catholic infrastructure in many communities to survive what has become decades of mission-crippling litigation.

I. As most courts have recognized, the use of nonconsensual third-party releases in appropriate circumstances is authorized by the plain text of the Bankruptcy Code. The Code expressly grants the court the authority to "issue any order, process, or judgment that is necessary or appropriate," 11 U.S.C. § 105(a), and to confirm a reorganization plan containing "any . . . appropriate provision not inconsistent with" applicable portions of the Code, *id.* § 1123(b)(6). This broad language easily encompasses the careful use of third-party releases in narrowly defined circumstances as they have evolved over time in bankruptcy. When limited to appropriate cases, third-party releases do not conflict with any Code provision and serve as an essential tool for courts resolving bankruptcies. If this Court were to categorically disallow them, it would carve out an essential component of the bankruptcy regime that Congress established to enable successful reorganizations in varied and difficult circumstances.

II. The Catholic Church illustrates well the importance of third-party releases. If third-party releases were not allowed, everyone involved in diocesan bankruptcies would be worse off. Claimant recoveries would suffer, and third-party parishes, schools, and charities would be driven into separate individual bankruptcies. While third parties in some other cases may have the option of their own successful individual bankruptcy reorganizations, that is not a practical option for third-party Catholic entities.

Satellite Catholic entities often do not have the assets or resources available to hire their own competent individual bankruptcy counsel. And even

if they did, the enormous waste and expense of separate and duplicative bankruptcy proceedings for each entity would prove extraordinarily destructive—not only to the Catholic entities themselves, but to the overall availability of assets for claimants. This explains why claimants overwhelmingly support the use of nonconsensual third-party releases in diocesan bankruptcies.

In addition, third-party Catholic entities and dioceses are often co-insureds on the same insurance policy, which is often their greatest asset. If a diocese and its dozens or hundreds of parishes and affiliates filed separately for bankruptcy, then the insurance asset would be the property of competing bankruptcy estates, creating a jumble of logistical difficulties. Rather than attempting to untangle this problem through resource-draining duplicative bankruptcies, the only effective solution is a single diocesan bankruptcy that resolves all related claims and liabilities together in an efficient manner. This allows co-insureds like parishes and schools to jointly cede their shared insurance rights to a single trust for claimants—again, almost always with their overwhelming support—in exchange for third-party releases.

Barring third-party releases would be especially inequitable in the context of diocesan bankruptcies stemming from the tidal wave of decades-old claims of abuse. In these cases, the faithful parishioners and clergy who bear the brunt of financial liability today are entirely different from the accused wrongdoers who have receded into a dark chapter of the Church's history. Although the Church deeply regrets abuse and acknowledges the need to compensate victims, the

Bankruptcy Code has long been understood to give them a fair, orderly, and lawful pathway out of the thicket of mass tort liability that now envelops them so that they can carry on the Church's mission. The Court should not close off that pathway in this case.

ARGUMENT

As the lower courts have overwhelmingly recognized, the third-party releases that Catholic dioceses have relied on fall well within the broad and flexible equitable powers that Congress has provided in the Bankruptcy Code. This Court should accordingly affirm the Second Circuit's holding that third-party releases are permitted under the Bankruptcy Code in appropriate cases. At the very least, the Court should not categorically foreclose the use of third-party releases, given that other cases may present different circumstances and equities that the Court does not have occasion to consider in the commercial context of the Purdue bankruptcy at issue here.

Since the year 2000, over 30 Catholic dioceses have filed for bankruptcy as a result of claims alleging past abuse. In addition, there has been a wave of state legislation reviving many previously time-barred abuse claims, which means that the number of diocesan bankruptcies is almost certain to increase. In the diocesan bankruptcy proceedings that have unfolded so far, third-party releases and channeling injunctions have been essential to successful reorganizations that maximize the recovery of claimants and ensure the continuing viability of Catholic parishes, schools, and affiliated charitable groups. Indeed, there is no meaningful alternative to third-party releases in the diocesan context.

I. The Bankruptcy Code Authorizes Third-Party Releases in Limited Circumstances.

As recognized by courts presiding over many diocesan bankruptcies in recent years, as well as by most other U.S. courts (*see* Debtor Opp. to App. for Stay 23-28), the Bankruptcy Code authorizes nonconsensual third-party releases in properly limited circumstances. Such releases fit easily within the broad text of the Code that Congress enacted; they are consistent with the historical exercise of equitable powers that informed the adoption of the Bankruptcy Code; and they have developed within a doctrinal framework that ensures they are used only when truly "appropriate," as necessary for a successful plan.

In creating the Bankruptcy Code, Congress entrusted the courts with power to "deal efficiently and expeditiously with all matters in connection with the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (cleaned up). The Code expressly grants the courts the authority to "issue any order, process, or judgment that is necessary or appropriate," 11 U.S.C. § 105(a), and to approve a reorganization plan containing "any . . . appropriate provision not inconsistent with" applicable portions of the Code, *id.* § 1123(b)(6).

As this Court has recognized, the "broad authority" conferred by § 1123(b)(6) readily encompasses the familiar tools of equity that have developed over time as "necessary to the success of a reorganization plan." *United States v. Energy Res. Co.*, 495 U.S. 545, 548-49 (1990). And as the Respondents have demonstrated, equitable powers in bankruptcy have long included third-party releases in appropriately narrow circumstances. *See* Debtor Resp. Br. 27-29 (outlining

traditional equity practice). In light of the unambiguously broad terms of the Bankruptcy Code, which Congress deliberately designed to be open-ended and flexible, it would be improper and unfaithful to the text to artificially limit the courts' equitable powers in a way that Congress chose not to. *See id.* at 20-21.

The history on this point is instructive. Although they had been used before, third-party releases rose to major prominence as a tool of equity in large asbestos bankruptcies. Although the Bankruptcy Code did not expressly mention such releases, courts recognized that they fell within the flexible equitable powers conferred by the Bankruptcy Code. *See, e.g., In re Johns-Manville Corp.*, 837 F.2d 89, 92-94 (2d Cir. 1988). When Congress eventually weighed in on this specific topic, it did not repudiate the use of third-party releases but rather embraced them: In 1994, it passed legislation affirming that they were a proper exercise of courts' equitable bankruptcy authority. *See* 11 U.S.C. § 524(g). Although this express authorization was specific to the asbestos context, Congress went out of its way to preclude any negative inference about releases in other contexts. The Act provides that the authorization of third-party releases for asbestos cases should not be "construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." Pub. L. No. 103-394, § 111(b) (1994).

When Congress enacted that provision in 1994, it did so against the recent backdrop of this Court's *Energy Resources* decision in 1990, which had approved what was effectively a third-party release in

the tax context. *See* Debtor Resp. Br. 21-22. Other courts had also approved of such releases in other prominent, non-asbestos contexts. *See, e.g., In re A.H. Robins Co.*, 880 F.2d 694, 700-02 (4th Cir. 1989) (Dalkon Shield). Congress was thus on notice that courts were exercising their equitable powers to implement nonconsensual third-party releases in this manner, and it easily could have disapproved of them when it amended the statute. But instead, it did the opposite—it signaled that it did not intend to curtail them.

Finally, when courts limit third-party releases to "appropriate" circumstances, *see, e.g.*, *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002), they do not conflict with any other provision of the Bankruptcy Code, *see* Debtor Resp. Br. 33-38. To the contrary, they are a necessary incident of the bankruptcy power to ensure the successful reorganization of the debtor as a continuing enterprise. *Id.* at 23-24. Further, third-party releases are consistent with Congress's goal of providing for a single forum to resolve all related claims in a single bankruptcy as reflected in 28 U.S.C. § 157(b)(5), which permits personal injury cases related to a pending bankruptcy to be consolidated in the same district court. But without third-party releases, courts would in many cases be left without the tools needed to satisfy the Code's command that Chapter 11 plans "provide adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5). There is no reason to think Congress intended the resolution of bankruptcy cases to be hobbled in that way.

II. Third-Party Releases Are Crucial To Successful Diocesan Bankruptcy Plans.

Amicus knows well the importance of third-party releases to the bankruptcy process. In recent years, many Catholic dioceses and related organizations have faced the prospect of staggering liability across thousands of tort actions alleging sexual abuse occurring decades ago. Chapter 11 plans of reorganization that have included non-consensual third-party releases and channeling injunctions have been an essential means by which dioceses and claimants have achieved a global resolution that ensures a continuity of the Church's mission and an equitable compensation of victims, who generally have overwhelmingly supported the plans. As explained below, without the possibility of such third-party releases, the ability of dioceses to reorganize would be severely curtailed, if not eliminated.

A. Many Dioceses Face Bankruptcy Due to a Flood of Decades-Old Abuse Claims.

There are nearly 200 archdioceses and dioceses in the United States. As a rule, a diocese is a territory under a Bishop's jurisdiction, subdivided into legally distinct parishes led by pastors, with independent boards or councils. The diocese provides spiritual oversight and operational support to what are often hundreds of parishes in its territory, as well as Catholic schools, charities, and other affiliates. The diocese also provides services to its parishes and other Catholic affiliates to benefit from cost savings, usually including administering shared insurance policies, pension plans, healthcare plans, and other temporal activities. Parishes, legally separate entities as a matter of canon and sometimes state law, otherwise

operate separately, serving as the centers of pastoral work in the diocese and compensating the diocese for its services by providing significant revenues, principally through funds gathered through collections from parishioners.

As has been widely reported, heart-breaking allegations of sexual abuse within the Catholic Church have come to light in recent years. The Pope has acknowledged that this abuse, the vast majority of which occurred decades ago, "offend[ed] Our Lord, cause[d] physical, psychological and spiritual damage to the victims and harm[ed] the community of the faithful." Pope Francis, Apostolic Letter Motu Proprio, "Vos Estis Lux Mundi" (Mar. 25, 2023), https://tinyurl.com/4x8xdczp. In response, Catholic dioceses and related entities within their territory have sought to "learn from the bitter lessons of the past," *id.*, to ensure abuse never happens again and, where possible, to seek reconciliation with all victims of abuse. In 2002, the USCCB promulgated the Charter for the Protection of Children and Young People, which expresses the commitment of every Catholic diocese in the U.S. to implement effective procedures for protecting children and investigating claims of abuse, as well as to continue pastoral outreach to victims for their healing and reconciliation. *See* https://tinyurl.com/54w8d7hp.

Since 2002, however, an increasing number of state legislatures have begun to enact laws allowing claims of sexual abuse "that previously would have been barred by statutes of limitation. More than a dozen of those states did so in 2019." *In re Boy Scouts of Am. & Delaware BSA, LLC*, 650 B.R. 87, 108 (D. Del. 2023). As a result, many victims have brought claims

of past abuse occurring in or around Catholic organizations. These claims typically involve conduct occurring decades ago by individuals formerly affiliated with Catholic parishes, schools, hospitals, youth groups, and other diocese-affiliated entities. The claims almost invariably name a series of Catholic entities within the diocese as defendants—the diocese itself, along with the parish, school, hospital, camp, or other Catholic entity where the abuse occurred. The claims against these entities can pose complex questions of Church organizational structure and supervisory liability, and allege numerous state-based causes of action ranging from premises liability to assault and battery to negligent hiring, negligent supervision and training, and negligent retention of the individual perpetrator.

The Church has sought, whenever possible, to determine the veracity of claims, to reconcile with victims of abuse, to equitably compensate victims for the immense harms they have suffered, and to ensure that such abuse never again occurs. However, even meritless claims can impose a crushing litigation burden, and the sheer volume of revived claims alleging misconduct far in the past threatens to consume all of the assets of many dioceses as they seek to carry on their missions with new clergy and parishioners today. This creates a worst-case scenario in which dioceses and parishes are at risk of losing the funds necessary to operate *and* claimants face a race to the courthouse that may leave some victims without any means of compensation.

To address this worst-case scenario, many dioceses have turned to Chapter 11 bankruptcy. As the Diocese of Harrisburg put it when commencing its own

bankruptcy in 2020, even after settling many abuse claims, there was still "potentially significant exposure from remaining claimants, including as a result of certain changes in law," and "failure" to file for Chapter 11 relief would only "result[] in: (a) some survivors who have not yet brought claims failing to receive compensation … and (b) cessation of the [Diocese's] ministry, education, and charitable outreach, upon which so many within the Diocese rely." Informational Br. of the Roman Catholic Diocese of Harrisburg, *In re Roman Catholic Diocese of Harrisburg*, No. 20-bk-00599, Doc. 2, at 2 (Bankr. M.D. Pa. Feb. 19, 2020).

A diocesan bankruptcy filing triggers the automatic stay provided for in 11 U.S.C. § 362(a), preserving the diocese's limited estate for equitable distribution to victims. To the extent the diocese is a named defendant with a parish, school, or other charitable affiliate, the automatic stay should extend to the entire action, absent court-ordered relief from the stay. The stay provides the diocese and its affiliated co-defendants breathing room to determine how to ensure the continuation of their important mission while maximizing the assets available to compensate abuse claimants. A diocesan bankruptcy filing also, critically, creates a forum for negotiations about a global resolution of claims, in which victims are represented by a statutorily created official committee. And, if negotiations result in a plan of reorganization supported by the debtor, the committee, and other constituents, it provides a mechanism by which a global resolution can be achieved through confirmation of a plan.

In light of these realities, since 2000 more than 30 dioceses have filed Chapter 11 bankruptcy cases to address claims of past sexual abuse. And as more states enact window legislation allowing additional claims to be brought, that number will likely increase.

B. Third-Party Releases Are Critical in Diocesan Bankruptcies.

Nearly all of the diocesan bankruptcies that have concluded so far have resulted in confirmed plans that have been successfully negotiated with claimants' committees and garnered overwhelming support from abuse claimants. The majority of these court-approved plans have included third-party releases (generally in the form of channeling injunctions) that redirect abuse claims against certain non-debtors to a trust for the satisfaction of abuse claims. In return, the released entities, which have included parishes, schools, charities, cemeteries, and other Catholic organizations affiliated with the diocese, have committed to give millions of dollars to the trust.

Applying established precedent governing the use of such third-party releases, bankruptcy courts have concluded that these releases are "necessary and essential components" of the confirmed Chapter 11 plans in diocesan bankruptcies. *E.g.*, Order Confirming the Debtors' 2d Am. & Restated Plan of Reorganization Dated Mar. 21, 2016, *In re Roman Catholic Church of the Diocese of Gallup*, No. 13-bk-13676-t11, Doc. 591, at 13 (Bankr. D.N.M. June 23, 2016).

Of paramount importance, third-party releases and channeling injunctions "enable the holders of [abuse claims] to realize certainty of distributions" on those

claims. *Id.* Rather than the inefficiency and inequity of racing other victims into court, hoping defendants still have some funds left to pay any judgment, and navigating the complex supervisory questions that can riddle dioceses' relationships with affiliated Catholic entities and affect liability, claimants subject to third-party releases have certain access to the funds of all the released entities through one proceeding. This also provides access to dramatically more resources than any one defendant could offer. The largest contribution to the funds resulting from diocesan bankruptcies is the payout from the liability policy covering the diocese and its parishes. The availability of those insurance proceeds typically turns on the assurance provided by a confirmed plan of reorganization that there will be no future litigation against the parishes on the basis of the victims' claims.

At least two aspects of diocesan bankruptcy cases create a special need for third-party releases that may not exist in the typical commercial case.

First, a diocese, unlike a commercial organization, is largely if not entirely dependent on revenues raised through voluntary contributions to its affiliated entities. A diocese obtains much of its funding as a portion of the collections or donations received by parishes, schools, and other affiliates. Those revenues, moreover, are almost entirely dependent on whether individual donors are willing to voluntarily contribute money to the mission of the Church, making all such revenues tenuous. In particular, while legally distinct entities, dioceses receive most of their funding from parish collections. As a result, if parishes are not released from the threat of mass tort

liability (and especially if they go bankrupt themselves), then in most cases the main source of diocesan funding will dry up and the diocese will not be able to successfully reorganize under a confirmed plan because it will not be able to have any assurance of future financial solvency. Third-party releases for parishes are thus critical to ensure the continuation of parish-level collections.

Second, because of their close relationship, dioceses, their parishes, schools, and other distinct affiliated organizations typically share coverage as co-insureds under a single general liability policy. *See, e.g.*, *In re Roman Catholic Diocese of Rockville Ctr.*, 651 B.R. 622, 632-34 (Bankr. S.D.N.Y. 2023) (describing "insurance policies that are shared between the Debtor [diocese] and [its parishes and affiliates]" on Long Island). As co-insureds, the diocese and the parishes each have contractual rights to the proceeds of the insurance policies. These proceeds, moreover, are typically limited, either by an *aggregate* limit—which limits the amounts that can be paid for *all* claims—or by a *per-occurrence* limit—which limits the amounts that can be paid for any *particular* claim. These limits mean that if insurance proceeds are paid to one insured (e.g., a diocese), they won't be available for any other insured (e.g., a parish).

These two aspects of diocesan cases present major challenges in many (if not all) diocesan bankruptcies. Because the diocesan debtor's revenues are heavily dependent on third-party non-debtors, those non-debtors will necessarily have a large say in how the diocese's future revenues can be used to compensate victims. And because the non-debtor parishes have an

equal claim to what is often the diocesan debtor's largest existing asset for compensating victims—proceeds from its insurance policies—insurers will not agree to achieve a resolution as to insurance proceeds with a diocesan debtor without also achieving a resolution on the same claims asserted against the diocese's co-insureds. Both the insurers and the non-debtor co-insureds will not consent to a resolution as to the allocation of insurance proceeds under these shared policies unless they are assured that they will not face future claims.

Non-consensual third-party releases have been the means for overcoming these obstacles and achieving a global resolution that is in the best interest of the diocese, parishes, and victims. Pursuant to Chapter 11 plans negotiated as between the diocese, a claimants' committee, parishes, and insurance companies, co-insured parishes, schools, etc. have agreed to contribute their rights under the insurance policies, and sometimes additional funds, in exchange for a broad release of all claims related to past sexual abuse. The released claims against the non-debtors and all claims against the debtor are then channeled to a litigation trust for processing and payment from the insurance and other assets that were made available as part of the Chapter 11 plan. Through this mechanism, the parties can maximize the value of the estate for the benefit and equitable compensation of victims.

The global resolution achieved through a Chapter 11 plan also allows the diocese and the released entities, which often include Catholic parishes, schools, hospitals, charities, and related entities, to do justice for abuse claimants while resolving hundreds

of lawsuits over what can be decades-old allegations and would themselves take years and years to resolve. Protracted litigation is not only a financial drain on nonprofits' finite resources, but a heavy burden on their limited personnel and a threat to the important religious, educational, and charitable work to which they are dedicated.

In short, a bankruptcy court's approval of a diocesan Chapter 11 plan featuring third-party releases in appropriate circumstances supplies these organizations with the chance to salvage their mission and move forward intact after years of destructive litigation.

C. Separate Chapter 11 Filings Are Not a Viable Alternative For Diocesan Entities.

Without third-party releases, each individual Catholic entity in the diocese would have to file its own Chapter 11 case to obtain global resolution of the tort claims facing them. This would require a separate bankruptcy filing for every Catholic parish, school, and affiliated charitable organization in the diocese. Indeed, in arguing that the Sacklers' release is improper, Petitioner repeatedly frames the discharge the Bankruptcy Code affords debtors as a tradeoff, a reward for seeking Chapter 11 relief. *See* Pet. Br. 25-28. But at least for the Catholic organizations commonly implicated in abuse litigation and released in diocesan bankruptcies, the prospect of filing their own independent bankruptcies is simply not a viable option for a host of reasons.

At the outset, forcing *dozens or hundreds of* parishes, schools, and other diocesan-affiliated entities to file their own individual Chapter 11 cases

would exponentially increase the cost of bankruptcy and fundamentally change the nature of those proceedings as they exist today. These nonprofit entities simply do not have the assets or resources to afford and manage the filing of their own independent bankruptcy. They have limited resources, are dependent on charitable donations, and often do not have their own legal counsel.

Beyond cost-prohibitive legal fees, requiring such entities to file their own Chapter 11 cases would have devasting impacts on those organizations, ultimately harming creditors and abuse claimants. A parish's filing for bankruptcy would undoubtedly impact weekly collections, as parishioners understandably would question whether their donations will be used for their intended purposes. Parents will be hesitant to send their children to Catholic schools declared "bankrupt." Employees will fear for their jobs and may seek alternative opportunities. Payments to countless numbers of suppliers and vendors to parishes and schools would be suspended. None of these—and many other—deleterious impacts is necessary to reach a fair and efficient resolution of the claims asserted against the diocese and its affiliated charitable organizations.

And having separate bankruptcy proceedings for each diocesan-affiliated entity would be unworkable, extraordinarily complex, and riddled with endless collateral litigation. As noted, the parishes, schools, and other affiliated entities typically share a single general liability insurance policy. When policy proceeds are limited, each co-insured's request for indemnification on an abuse claim would deplete the funds available to the other insureds. If multiple co-

insureds filed for Chapter 11, the shared policy would be the property of multiple bankruptcy estates and thus the automatic stay applicable to multiple bankruptcy cases could prevent any one bankruptcy estate from exercising control over the policies or their proceeds. *See* 11 U.S.C. § 362(a)(3); *In re Roman Catholic Diocese of Rockville Ctr.*, 651 B.R. at 645 (holding that debtor-diocese's and parishes' shared general liability policy was property of debtor's estate). As such, the necessary funds available under that policy—a significant asset for any religious nonprofit—would be beyond reach absent the co-insureds' agreement to transfer their own interest in the policy, in return for a release.

By contrast, when all the co-insureds cede their interest in the policy to a single Chapter 11 settlement fund in return for a release, they are able to maximize their right to insurance proceeds to the benefit of abuse claimants—who, again, have generally overwhelmingly supported the plan.

Shared insurance is just one of many "property of the estate" disputes that would be magnified by separate Chapter 11 cases for each affiliated entity. Given varying organizational structures, differences in canon and civil law, and the interdependency of affiliates, litigation over who "owns" various assets—e.g., church buildings and land, funds in "deposit and loan" accounts, pooled investment accounts, cemetery trusts—has dominated many diocesan bankruptcies. *See, e.g.,* Marie T. Reilly, *Catholic Dioceses in Bankruptcy*, 49 SETON HALL L. REV. 871, 882−897 (2019); *Listecki v. Official Comm. of Unsecured Creditors*, 780 F.3d 731 (7th Cir. 2015) (cemetery trust funds); *In re Archdiocese of Milwaukee*, 483 B.R. 855

(Bankr. E.D. Wis. 2012) (Parish Deposit Fund); *In re Catholic Diocese of Wilmington, Inc.*, 432 B.R. 135 (Bankr. D. Del. 2010) (pooled investment account); *In re Roman Cath. Archbishop of Portland in Oregon*, 335 B.R. 842 (Bankr. D. Or. 2005) (deposits and investment accounts); *Comm. of Tort Litigants v. Cath. Diocese of Spokane*, 364 B.R. 81 (E.D. Wash. 2006) (real property).

Given the complicated "relationship[s] between associated entities" and related First Amendment issues, there are "difficult and important" issues associated with determining what "assets . . . may be reached by civil plaintiffs based on claims regarding conduct by entities and individuals affiliated in some way with the Catholic Church." *Roman Cath. Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 140 S. Ct. 696, 702 (2020) (Alito, J. concurring).

If every Catholic entity in a diocese filed its own Chapter 11 case—and a bankruptcy court had to confirm separate plans of reorganization in each—such litigation would expand beyond control and would be very difficult (if not impossible) to settle, as, for example, claimants with suits against perceived "asset-rich" estates will be incentivized to maximize the property of those estates. Third-party releases are essential to efficiently pooling assets across diocesan entities, promoting settlement of "property of the estate" and associated fraudulent-transfer litigation, and paving the way for confirmation plans of reorganization that treat claimants fairly and equally.

The filing of separate Chapter 11 cases for each diocesan-affiliated entity would likewise raise difficult questions on how to apportion legal liability

across the many abuse cases. As noted, these claims typically name numerous relevant Catholic entities—parishes, schools, camps, the diocese—as defendants. To develop and confirm separate Chapter 11 plans of reorganization, the parties and the court would have to allocate fault across the Catholic entities for potentially hundreds to thousands of claims, most involving conduct occurring decades ago.

Nor is leaving the parishes, schools, and other diocesan-affiliated entities outside bankruptcy—but without the benefit of a third-party release—a viable approach, either for dioceses or claimants. Because the claims against the affiliated entities involve the same claimants, the same alleged perpetrators, the same facts, and the same allegations as claims against the diocese, such an approach would result in duplicative claims, with one set of claims in bankruptcy and one set in the tort system. The affiliated entities would likely assert contribution and indemnity claims against the diocese arising out of abuse claims involving clergy assigned to the parish by the diocese, rendering it impossible to achieve a global resolution of the litigation in bankruptcy without third-party releases. *See, e.g.*, *In re The Archdiocese of Saint Paul and Minneapolis*, Omnibus Resp. to Legal Objs. to the Debtor's 2d Am. Chapter 11 Plan of Reorganization, No. 15-bk-30125, Doc. 1131, at 4-6 (Bankr. D. Minn. Aug. 4, 2017). Nor does litigating their claims in both the bankruptcy and tort systems serve claimants, who are considerably better off obtaining all available recoveries in one bankruptcy than having to also recount and relive painful memories piecemeal in the tort system.

Endeavoring to unscramble a diocese and its parishes and affiliates through competing bankruptcies would be futile, while the well-tried mechanism of a court-approved diocesan reorganization with an ample fund for abuse claimants and the corresponding release of non-debtor Catholic affiliates serves the interests of all stakeholders.

CONCLUSION

This Court should affirm the Second Circuit's decision recognizing the availability of third-party releases in the appropriate circumstances.

Respectfully submitted,

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