UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re: DIOCESE OF ROCHESTER, Debtor.	Chapter 11 Case No. 19-20905

CONTINENTAL'S OPPOSITION TO THE COMMITTEE'S MOTION TO DENY AS MOOT THE DIOCESE'S MOTION TO APPROVE PROPOSED INSURANCE SETTLEMENTS TO FUND SURVIVOR COMPENSATION TRUST

The Continental Insurance Company ("Continental") hereby opposes the Committee's motion (the "Motion," Dkt. No. 2296) for entry of an order denying as moot Debtor's Motion to Approve Proposed Insurance Settlements To Fund Survivor Compensation Trust (the "9019 Motion," Dkt. No. 1538).[1]

I. Introduction

The Committee's Motion seeks entry of an order denying Debtor's 9019 Motion on the ground that both the settlement agreement between Debtor and Continental (the "Continental Settlement") and the 9019 Motion itself are moot. For the reasons set forth below, the Motion is wrong on both counts.

An issue is moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party."[2] Here, nothing that has transpired since the parties entered into the Continental Settlement and Debtor filed the 9019 Motion has deprived the Court of the ability

[1] All referenced filings are in the base bankruptcy case unless otherwise noted.

[2] *Campbell-Ewald Co. v. Gomez,* 577 U.S. 153, 161 (2016), quoting *Knox v. Service Employees,* 567 U.S. 298, 307 (2012).

to grant Continental effectual relief. Accordingly, the 9019 Motion and Continental Settlement are not moot and remain "live."

II. Background

A. The Continental Settlement

In early 2022, following extensive negotiations in mediation, Debtor, together with its parishes and other non-debtor Catholic entities that share insurance coverage with Debtor (collectively, the "DOR Entities") reached settlement agreements with Continental and three other insurers (collectively, the "Insurers"), subject to the approval of this Court, to resolve all disputes regarding whether liability policies issued by the Insurers provide coverage for sexual abuse claims asserted against the DOR Entities. The terms of the parties' settlements were set forth in four separate and distinct settlement agreements (collectively, the "Insurer Settlements").[3] Each of the Insurer Settlements included comparable terms and conditions, but they were in no way dependent upon one another.

The Continental Settlement provides, among other things:

- Continental shall pay $63.5 million into a claimant trust to be established under a plan of reorganization to be filed by Debtor, which Debtor "agree[d] and represent[ed] . . . constitutes a fair and reasonable compromise [amount];"[4]
- In exchange for its settlement payment, Continental would (a) be released from paying additional amounts for any underlying sexual abuse claims under the Continental

[3] In addition to Continental, the DOR Entities entered into settlements with (a) certain London Market Companies ("LMI") (Dkt. No. 1538-1), (b) certain Underwriters at Lloyd's, London ("Underwriters") (Dkt. No. 1538-2), and (c) Interstate Fire & Casualty Company and National Surety Company (collectively, "Interstate") (Dkt. No. 1538-3).

[4] Continental Settlement (Dkt. No. 1538-4), §§ 1.1.40, 3.1 & 3.4.

policies,[5] (b) receive a buy-back of such policies,[6] and (c) "have no obligation to pay, handle, object, or otherwise respond to any claim against" the DOR Entities;"[7]

- Debtor would file a motion, pursuant to Bankruptcy Rule 9019, asking this Court to enter an order finding that Continental's settlement payment "constitutes a fair and reasonable settlement of the disputes and of their respective rights and obligations relating to the Diocese Policies" and that "approval of the Continental Settlement . . . is in the best interest of the bankruptcy estate, the Debtor's creditors, and other Entities;"[8]
- Debtor would file a bankruptcy plan "consistent with" and incorporating the Continental Settlement which "shall not deprive Continental of any right or benefit under this Settlement Agreement or otherwise adversely affect the [i]nterests of Continental under this Settlement Agreement;"[9] and
- The bankruptcy plan filed by Debtor would create a trust responsible for making any and all payments to the underlying tort claimants, provide Continental with the protections of injunctions and releases as described in the Continental Settlement, and provide Continental with indemnification protection against channeled claims.[10]

The Continental Settlement expressly noted the parties' "knowledge and understanding that the Committee has not indicated its support or consent to this Settlement

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5 *Id.*, § 4.1.

6 *Id.*, § 4.4.

7 *Id.*, § 2.11.

8 *Id.*, § 2.1 & Exhibit 1, ¶¶ D & G.

9 *Id.*, § 2.2.

10 *Id.*, §§ 2.2.1 to 2.2.7.[11] *Id.*, § 6.1.3.

Agreement and that the Committee and Tort Claimants may object to the approval of this Settlement Agreement or confirmation of the Plan."[11] In the event that the Committee objected to the Continental Settlement, Continental and the DOR Entities "mutually agree[d] to cooperate fully in opposing such action or proceeding."[12]

B. The 9019 Motion

In accordance with its obligations under the Continental Settlement and other Insurer Settlements, Debtor filed the 9019 Motion seeking the Court's approval of the Continental Settlement and other Insurer Settlements under Bankruptcy Rule 9019 and § 363 of the Bankruptcy Code. Although Debtor filed just a single motion, that motion—the 9019 Motion—by its terms sought approval of four separate settlements with different insurers, explaining the distinct coverage issues raised by each settling insurer.[13]

The 9019 Motion summarized the steps Debtor and its advisors had taken to assess the reasonableness of each of the Insurer Settlements and whether those settlements were in the best interest of the estate.

First, Debtor explained that, "[b]efore making the decision to settle with the Settling Insurers, [it] considered several alternative strategies for monetizing its insurance assets, including moving forward with litigation in the above-captioned adversary proceeding . . . or assigning its insurance policies to the Trust for post-confirmation coverage litigation."[14] Debtor ultimately determined, however, "that the interests of survivors in this case would be best served

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[11] *Id.*, § 6.1.3.

[12] *Id.*, § 8.1.

[13] 9019 Motion, ¶¶ 6 and 30-36. The 9019 Motion summarizes the specific coverage defenses asserted by Continental in ¶ 35 of the 9019 Motion.

[14] *Id.*, ¶ 4.

by achieving certainty with respect to a very substantial insurance contribution rather than risking the cost, extensive delay, and uncertain outcome of litigation in pursuit of the theoretical possibility of a larger recovery at some point in the distant future."[15]

Second, in order to determine the reasonableness of the proposed settlements, Debtor and its professionals reviewed and analyzed all of the factual, legal, and coverage issues underlying the 513 proofs of claims ("POCs") asserting sexual abuse claims against Debtor, including those filed after the bar date.[16] Debtor noted that each of the POCs alleged "various degrees of abuse by perpetrators alleged to be priests of the Diocese, employees of DOR Entities, clerics and sisters of religious orders, and other third parties."[17] Based upon that review, Debtor determined that "approximately one-quarter to one-third" of the POCs were, "from either an insurance recovery and/or legal liability perspective, low- or no-value claims."[18]

Third, Debtor and its advisors engaged a top-shelf claims valuation expert (Gnarus) to review the POCs and provide its own independent assessment of the value of the underlying claims. As Debtor explained, Gnarus' analysis "support[ed] a valuation range for abuse claims consistent with the level of funding the Diocese intends to propose for the Trust in its Plan."[19]

Finally, Debtor and its professionals separately considered "[l]itigation risks, insurance defense strengths and weaknesses, the Committee's position in mediation, and the strengths, weaknesses, and potential settlement value of various claims asserted against the

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15 *Id.*

16 *Id.*, ¶¶ 24-26.

17 *Id.*, ¶ 24.

18 *Id.*, ¶ 26

19 *Id.*, ¶ 38.

Diocese."[20]

In support of the 9019 Motion, Debtor's insurance coverage counsel submitted a detailed declaration discussing the disputed coverage issues and the risks and costs attendant to resolving those disputes through litigation.[21]

Relying upon the analyses described above, Debtor determined that, "while protracted litigation would without question result in increased costs, reducing the funds available for distribution to survivors, there is no guarantee that the result of litigation would be more favorable than the proposed settlement terms."[22] As a result, "exercising its sound business judgment," Debtor concluded that the Insurer Settlements represented "a fair and reasonable compromise" that were "in the best interest of the Diocese's estate and all of its creditors, but specifically the survivors."[23]

The Committee objected to the 9019 Motion, arguing, *inter alia*, that each of the Insurer Settlements was "unreasonable" given the putative "high-likelihood of the Diocese's success" in insurance coverage litigation.[24] Consistent with its obligations under the Continental Settlement, Debtor submitted a reply brief in further support of the 9019 Motion arguing, among other things, that the Committee's "likelihood of success" analysis was "unrealistic" and "ignores the complexity, cost, and delay associated with litigation that would be necessary to resolve such

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[20] Declaration of Lisa M. Passero in Support of 9019 Motion (Dkt. No. 1540, the "Passero Decl."), ¶ 10.

[21] Declaration of James R. Murray in Support of 9019 Motion (Dkt. No. 1539, the ("Murray Decl."), ¶¶ 7-15.

[22] 9019 Motion, ¶¶ 5.

[23] Passero Decl., ¶ 13. *See also* Murray Decl., ¶ 15; 9019 Motion, ¶¶ 5 & 38.

[24] Dkt. No. 1555, ¶¶ 33-59.

defenses."[25]

The parties (including the Committee) also stipulated to a discovery schedule for the 9019 Motion that included document discovery, depositions, and expert discovery and would have culminated in an evidentiary hearing beginning on January 24, 2023.[26] The parties were in the midst of that discovery when Debtor brought those efforts to a screeching halt by filing the RSA Motion.

C. The RSA Motion and Plan, Debtor's breach of the Continental Settlement, and Continental's attempt to mitigate its resulting damages

On November 3, 2022, Debtor abandoned its obligations under the Continental Settlement and other Insurer Settlements by filing the RSA Motion seeking approval of a Restructuring Support Agreement with the Committee and certain Committee members (the "RSA") and a plan term sheet (the "RSA Plan").[27] Debtor explained in the RSA Motion that it was repudiating the Insurer Settlements because the Committee had "strenuously opposed" the settlements,[28] ***not*** because Debtor had subsequently concluded that those settlements were unreasonable and/or not in the best interests of the estate.

It is beyond legitimate dispute that Debtor's decision to enter into the RSA and seek approval of the RSA Plan was a material breach of its obligations under the Continental Settlement. The RSA Plan is fundamentally incompatible with the Continental Settlement and, if approved, would significantly increase Continental's potential liability and essentially guarantee years of expensive litigation. The plan that Debtor eventually filed (the "Debtor Plan"), which

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[25] Dkt. No. 1649, ¶ 9.

[26] Dkt. No. 1552.

[27] Dkt. No. 1790.

[28] *Id.*, ¶ 4.

essentially implements the RSA Plan, contains many provisions targeting Continental and effectively repudiating the Continental Settlement. Continental therefore reserved all of its rights in connection with the Continental Settlement, including its right to seek recovery of all damages it sustains as a result of Debtor's breach.[29]

Continental also attempted to mitigate its damages. First, Continental entered negotiations with Debtor and the Committee on possible modified settlement terms. But those efforts were unsuccessful.[30] Next, after coming to the conclusion that further negotiations with the Committee would be fruitless, Continental filed its own plan of reorganization for Debtor (the "Continental Plan").[31] The Continental Plan incorporates all of the funding previously committed by Debtor and other Insurers, but also provides a total of $75 million in funding from Continental—an increase of $11.5 million from the amount set forth in the Continental Settlement.[32] The Continental Plan will give the Survivors the ability to choose between (i) the guaranteed $75 million sum that Continental would pay to the Trust without the need for any post-bankruptcy litigation (in other words, the money would be available to survivors immediately, without years of waiting), and (ii) the possibility of recovering a different amount from Continental (which could be higher than $75 million, but also could be lower) at some point in the distant future, but only after prevailing in two different litigations, with any recovery from Continental being reduced by years of litigation costs (such that any gross recovery from Continental exceeding

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[29] Dkt. No. 2191.

[30] The other Insurers were able to reach agreements with Debtor on modified settlement terms that were acceptable to the Committee. LMI, Underwriters, and Interstate all agreed to pay additional amounts to settle all coverage disputes for the sexual abuse claims and a buy-back of their policies. *See* Motion, ¶ 4.

[31] Dkt. No. 2214.

[32] Continental Plan, §§ 1.1.39, 5.1.

$75 million could actually net an amount less than $75 million). The Continental Plan further provides that if it is confirmed and goes into effect, Continental will withdraw its claims against Debtor arising out of Debtor's breach of the Continental Settlement. [33]

III. Argument

A. The Continental Settlement is not moot.

It is clear that the Committee seeks a ruling that Continental's filing of the Continental Plan somehow moots both the Continental Settlement and the 9019 Motion. What is less clear is the basis for the Committee's position, which is nowhere articulated in the Motion. Significantly, the Committee does not cite a single case, statute, treatise, or other authority to support its argument that Continental must make an election to pursue either the Continental Settlement or the Continental Plan, but not both. In any event, such a putative election has nothing to do with mootness, because the Court can still afford meaningful relief under either path. The Committee's argument is therefore baseless.

As a threshold matter, it is well-settled that an issue becomes moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party."[34] Stated differently, an issue is "live" so long as "'a court can fashion ***some*** form of meaningful relief' to award the complaining party, and even 'the availability of a ***possible*** remedy is sufficient to prevent a case from being moot.'"[35] As the moving party, the Committee bears the burden of

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[33] *Id.*, § 2.3.6. The Continental Plan also expressly provides that "if [it] is not confirmed or is confirmed but does not go into effect, then CNA does not withdraw its Class 6 Insurance Claims" (*i.e.*, its claim against Debtor arising out of Debtor's breach of the Continental Settlement). *Id.* Under the circumstances, any argument by Debtor or the Committee that Continental waived its breach of contract claim would be frivolous.

[34] *Campbell-Ewald*, 577 U.S. at 161, quoting *Knox v. Service Employees,* 567 U.S. 298, 307 (2012).

[35] *Exxon Mobil Corp. v. Healey,* 28 F.4th 383, 392 (2d Cir. 2022), quoting *Church of Scientology v. United States,* 506 U.S. 9, 12-13 (1992) (emphasis in original; internal brackets omitted).

demonstrating mootness, and its burden "is a heavy one."[36] A court cannot find that an issue has been mooted unless the moving party satisfies its burden and demonstrates that no relief can be granted.[37]

Here, the Committee has clearly not satisfied its burden. To the contrary, it is crystal clear that that the Court can grant effective relief—it can find that Debtor's 9019 Motion should be granted because it provides a better deal for the estate than the subsequent deal embodied in the RSA and the Debtor Plan. While the Committee may argue that the Court should not so find, such an argument "confuses mootness with the merits" and must be disregarded.[38] Fundamentally, the Committee's arguments address the merits of the 9019 Motion, which is not an issue of mootness because the legal relief sought remains available notwithstanding the filing of the Continental Plan. Accordingly, as a matter of law there is no mootness here.

The U.S. Supreme Court's decision in *Campbell-Ewald* is instructive. There, the issue was whether plaintiff's claims had been rendered moot by defendant's offer of judgment that, if accepted, would have provided plaintiff complete relief. The Supreme Court ruled that plaintiff's claims were not mooted by the offer of judgment because, "[a]bsent [plaintiff's] acceptance, [defendant's] settlement offer remained only a proposal, binding neither [defendant] nor [plaintiff]."[39] As the Court explained, "[a]n unaccepted settlement offer—***like any***

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[36] *Los Angeles County v. Davis*, 440 U.S. 625 (1979) (citation and internal quotations omitted). *See also Mhany Management, Inc. v. County of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016) (burden is both "stringent" and "formidable").

[37] *Id.* at 603-04 ("by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To abandon the case at an advanced stage may prove more wasteful than frugal") (citation and internal quotations omitted).

[38] *MOAC Mall Holdings, LLC v. Transform Holdco LLC (In re Sears Holdings Corp.)*, 2023 WL 7294833, *2 (2d Cir. Nov. 6, 2023), quoting *Chevron Corp. v. Donziger*, 833 F.3d 74, 127 (2d Cir. 2016).

[39] *Campbell-Ewald*, 577 U.S. at 162.

unaccepted contract offer—is a legal nullity, with no operative effect" and, thus, has no impact on "the court's ability to grant [plaintiff] relief."[40] In *Campbell-Ewald*, the plaintiff let the offer of judgment expire without accepting it; as a result, the parties were left "as if no offer had ever been made."[41]

Here, the Continental Plan remains on the table for Survivors to accept. For purposes of mootness analysis under *Campbell-Ewald*, it is merely an "unaccepted contract offer" and, therefore, "a legal nullity, with no operative effect" that—like the unaccepted offer of judgment in *Campbell-Ewald*—has no impact on this Court's "ability to grant relief." The Supreme Court's analysis in *Campbell-Ewald* therefore precludes any ruling here that the filing of the Continental Plan somehow renders the Continental Settlement or the 9019 Motion moot.

The Committee's contention that the Continental Plan "supersedes" the Continental Settlement is similarly baseless. While the Continental Settlement is binding on the Diocese,[42] it is reasonable and appropriate, in view of Debtor's breach of the Continental Settlement, for Continental to mitigate its damages by taking additional steps to try to resolve the parties' disputes, and its efforts to do so—including by proposing the Continental Plan—do not in any way supersede or otherwise moot the Continental Settlement.

B. The 9019 Motion has neither been superseded nor mooted.

The Committee also argues that the 9019 Motion (i) is moot because it was "not a

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[40] *Id.* (emphasis added), quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 81 (2013) (Kagan, J. dissenting). The *Campbell-Ewald* Court explained that "[w]e now adopt Justice KAGAN's analysis," and accordingly held "that [plaintiff's] complaint was not effaced by [defendant's] unaccepted offer." *Campbell-Ewald*, 577 U.S. at 162. *See also Radha Geismann M.D., P.C. v. ZooDoc, Inc.*, 850 F.3d 507, 512 (2d Cir. 2017) (relying on *Campbell-Ewald* to reverse trial court decision entering judgment based upon defendant's "unaccepted" offer of judgment).

[41] *Id.*

[42] *See Liberty Towers Realty, LLC v. Richmond Liberty LLC*, 734 Fed. Appx. 68, 70 (2d Cir. 2018).

motion for approval of a single agreement with Continental," but rather sought "approval of a global settlement of the case, including the Diocese, its affiliates, and four insurance companies," and (ii) "has been superseded by the new settlement terms negotiated by the Committee" with the other Insurers.[43] The Committee's arguments distort the substance of the 9019 Motion.

The 9019 Motion in fact sought approval of four separate and distinct settlements between (i) Debtor and its affiliates (defined collectively as the "Diocese Parties" in the settlement agreements) and (ii) Debtor's insurers, including Continental. Each of the Insurer Settlements was self-contained and in no way dependent upon the other settlements. Each was separately appended to the 9019 Motion and, while the 9019 Motion included a general summary of the terms of the four settlements, it also emphasized that such summary was "provided for convenience only and is qualified in its entirety by the provisions of the actual settlements."[44] For that reason, the 9019 Motion advised that "[i]nterested parties should review the attached settlements agreements in their entirety."[45] Accordingly, the fact that the Diocese filed a single 9019 Motion to approve the four distinct Insurer Settlements was a matter of form and efficiency, not substance, and in no way impairs the Court's ability to grant the 9019 Motion solely with respect to Continental and the Continental Settlement.[46]

Because the 9019 Motion addresses four separate settlements, the fact that the insurers in the other three settlements have reached agreements with the Committee does not

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[43] Motion, ¶¶ 8 (emphasis deleted), 10.

[44] 9019 Motion, ¶ 38; Dkt. Nos 1538-1, 1538-2, 1538-3, & 1538-4.

[45] 9019 Motion, ¶ 38.

[46] We suspect that the Court would have been less than pleased if Debtor had filed separate, lengthy, repetitive Rule 9019 motions for each of the Insurer Settlements. Under the circumstances, the Committee's suggestion that Continental should "have insisted on an individual motion for approval" (Motion, ¶ 9) is disingenuous.

impair the Court's ability to approve the Continental Settlement. Ruling to the contrary would give the Committee and insurers other than Continental the ability, over Continental's objection and to its detriment, to release Debtor from a settlement that by its terms, and as a matter of law, remains binding on Debtor. The Committee unsurprisingly cites no legal authority supporting such an astounding proposition.

The Committee's argument that bankruptcy courts "do not have authority to approve piecemeal proposed settlements" is a red herring.[47] The Committee does not cite to any case that addressed any such issue of "piecemeal approval" of settlements. Rather, the authorities cited by the Committee involve instances where the court addressed whether it could, at the same time, both approve the settlement and sustain an objection to that very same settlement.[48] The answer is clearly "no" since "a court cannot sustain an objection to the settlement while granting the motion to approve the settlement. . . . Instead, the court's limited role is to determine whether the settlement should be approved or disapproved as proposed."[49] Here, no party is asking the Court to approve a settlement while, at the same time, sustaining an objection to it. Rather, Continental is asking the Court to approve the Continental Settlement in its entirety and the Committee is asking the Court to do the exact opposite.

Finally, the law is clear that Debtor cannot simply walk away from a settlement that it previously submitted to the Court for approval pursuant to Rule 9019. As the Second Circuit explained in *Liberty Towers*, "the parties to a settlement agreement may not unilaterally repudiate it

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[47] Motion, ¶ 9.

[48] *See In re Roper and Twardowsky*, 559 B.R. 375, 393 (Bankr. D.N.J. 2016); *In re DiStefano*, 2022 WL 4086979, *7 (S.D.N.Y. Sept. 6, 2022); *In re Breland*, 2018 WL 1318954, *6 (S.D. Ala. Feb. 14, 2018).

[49] *Roper and Twardowsky*, 559 B.R. at 393 (citation and internal quotations omitted). *Accord In re Truism*, 282 B.R. 662, 667-68 (8th Cir. BAP 2002).

after approval of it has been sought pursuant to Rule 9019."[50] Permitting that "would deter parties from entering into settlements in the first place, would permit parties to abuse the bankruptcy process, and would run contrary to generally applicable contract and settlement principles in this Circuit." Accordingly, where a debtor subsequently "comes across a better offer or otherwise thinks the settlement is no longer in compliance with its fiduciary duties to creditors," the debtor "may argue against court approval of the settlement, but it may not withdraw unilaterally."[51]

The Committee's attempts to distinguish *Liberty Towers* are unavailing. The Committee contends that "*Liberty Towers* is distinguishable from this case" because, "[i]n Liberty Towers, the debtor unilaterally withdrew support for a settlement" but here, Debtor purportedly "has not withdrawn the 9019 Motion or affirmatively repudiated the settlement."[52] Contrary to the Committee's contention, however, Debtor did, in fact, unilaterally withdraw its support for the Continental Settlement when it filed the RSA Motion and RSA Plan in November, 2022 and the Debtor Plan in March, 2023, well before any of the events that the Committee now contends caused the 9019 Motion to become moot. Both the RSA Plan and the Debtor Plan deprived Continental of its status as a settled insurer under the Continental Settlement, in direct repudiation of Debtor's agreement not to "deprive Continental of any right or benefit under this Settlement Agreement or otherwise adversely affect the [i]nterests of Continental under this Settlement Agreement." And that is before any consideration of the various provisions under the RSA Plan and Debtor Plan prejudicing CNA's contractual rights and targeting it for inflated judgments, including inappropriate Stipulated Judgments.

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50 *Liberty Towers*, 734 Fed. Appx. at 70.

51 *Id.*

52 Motion, ¶ 10.

The Committee's motion is an attempted evasion of the procedure required by the Second Circuit in *Liberty Towers*. However, just as *Liberty Towers* precludes Debtor from short-circuiting the Rule 9019 process by unilaterally repudiating the Continental Settlement, so too the Committee may not avoid the procedure mandated in *Liberty Towers* by arguing that the pending 9019 Motion has been mooted by other settlements. Instead, the process required under *Liberty Towers* must be followed—with the Court deciding whether the Continental Settlement is in the best interests of the estate based upon Debtors' original submissions in support of its 9019 Motion, the Committee's objections thereto, Continental's submissions in support of the Continental Settlement, as well as any additional merits arguments Debtor or the Committee wish to make concerning why the settlement is no longer in the best interests of the estate.

In sum, the 9019 Motion as respects Continental and the Continental Settlement remains "live" and before the Court. The Court can, if the Continental Plan does not eventually go into effect, provide Continental "meaningful relief" by granting the 9019 Motion as respects Continental and approving the Continental Settlement.[53] The fact that the other Insurers have agreed to modify their settlement terms does not somehow mean that the Continental Settlement or the 9019 Motion have become moot.

IV. Conclusion.

For the reasons set forth above, the Court should deny the Committee's Motion in its entirety.

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[53] *Exxon Mobil,* 28 F.4th at 392 (citation and internal quotations omitted).

DATED: November 22, 2023

Respectfully submitted,

By: */s/ Jeffrey A. Dove*

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UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NEW YORK

In re:

THE DIOCESE OF ROCHESTER,

Debtor.

Case No. 2-19-20905-PRW

Chapter 11 Case

CERTIFICATE OF SERVICE

I, Audrey A. Vrooman, hereby certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that:

1. I am in the employ of Barclay Damon LLP, counsel for The Continental Insurance Company in the above-captioned case.

2. On the 22nd day of November, 2023, I electronically filed *Continental's Opposition to the Committee's Motion to Deny as Moot the Diocese's Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust* with the Clerk of the United States Bankruptcy Court for the Western District of New York using the CM/ECF system which system sent electronic notification to the parties set forth on the attached **Service List A**.

3. That on the 22nd day of November, 2023, I caused to be served copies *Continental's Opposition to the Committee's Motion to Deny as Moot the Diocese's Motion to Approve Proposed Insurance Settlements to Fund Survivor Compensation Trust* upon the parties set forth on the attached **Service List B** via first class mail by depositing copies of same in properly addressed postage paid envelopes and placing same in an official depository under the exclusive care and custody of the United States Postal Service in the City of Syracuse, New York, prior to the last pick up time for that day.

Dated: November 22, 2023
Syracuse, New York

/s/Audrey A. Vrooman
Audrey A. Vrooman

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