

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: :
THE CHRISTIAN BROTHERS' INSTITUTE, <i>et al.</i>	: Case No.: 11-22820 (RDD)
	: :
Debtors.	: (Jointly Administered)
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**ORDER (I) APPROVING SETTLEMENT AGREEMENT WITH
ARROWOOD INDEMNITY COMPANY INCLUDING THE SALE OF
INSURANCE POLICIES AND (II) DEEMING ARROWOOD INDEMNITY
COMPANY A SETTLING INSURER PURSUANT TO SECTION 10.11 OF THE
DEBTORS' CONFIRMED CHAPTER 11 PLAN OF REORGANIZATION**

A hearing having been held (the "Hearing"), to consider the joint motion, dated January 29, 2014 (the "Motion") (ECF Doc. No. 657), of The Christian Brothers' Institute ("CBI") and the Christian Brothers of Ireland Inc. ("CBOI"), the reorganized debtors (together, the "Debtors") in the above-captioned chapter 11 case (the "Reorganization Case"), and the trust created pursuant to the Debtors' confirmed modified first amended joint chapter 11 plan of reorganization (the "Plan"), for an order pursuant to 11 U.S.C. §§ 105 and 363(b) and (f) and Fed. R. Bankr. P. 2002, 6004, and 9019: (i) authorizing CBI to enter into a compromise and settlement with Arrowood¹ and Arrowood Released Parties pursuant to which CBI and the Other Releasing Parties will release any and all Claims arising out of, relating to, or in any way connected with the Policies, including, without limitation, Tort Claims, Insurance Coverage Claims, Extra-Contractual Claims, and all Claims relating to or arising out of the Reorganization Case that they may have now or in the future against Arrowood and/or the Arrowood Released Parties, (ii) authorizing the sale of the Policies, free and clear of all Interests of any Person,

¹ Capitalized terms used herein that are not otherwise defined herein will have the same meaning as in the Agreement or the Motion.

pursuant to the terms and conditions of that Settlement Agreement, Release, and Buyback, dated as of October 8, 2013, between CBI and Other Releasing Parties, on the one hand, and Arrowood and Arrowood Released Parties, on the other, a copy of which is annexed to the Motion and incorporated by reference (the “Agreement”), (iii) approving the Agreement and each of its terms, (iv) requesting the findings and admissions set forth herein, and (v) deeming Arrowood to be a Settling Insurer pursuant to section 10.11 of the Plan; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(a)-(b) and 1334(b) and the Plan; and the Motion being a core proceeding under 28 U.S.C. § 157(b)(2); and, after due and sufficient notice, there being no objections to the requested relief; and the appearances of all interested parties having been duly noted on the record of the Hearing; and upon the record established at the Hearing; and after due deliberation and sufficient cause appearing therefor, the Court hereby makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW
JURISDICTION, FINAL ORDER, AND STATUTORY PREDICATES

1. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014.

2. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

3. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b), and this matter is a core proceeding pursuant to 28 U.S.C. §§

157(b)(2)(A), (N), and (O). Venue of the Reorganization Case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. This Order constitutes a final and immediately appealable order within the meaning of 28 U.S.C. § 158(a).

5. The statutory predicates for the relief sought in the Motion are 11 U.S.C. §§ 105(a) and 363 and Fed. R. Bankr. P. 2002, 6004, and 9019.

RETENTION OF JURISDICTION

6. It is necessary and appropriate for the Court to retain jurisdiction to, among other things, interpret and enforce the terms and provisions of this Order and the Agreement, and to adjudicate, if necessary, any and all disputes arising under or relating in any way to, or affecting, any of the transactions contemplated under the Agreement. Such jurisdiction shall be retained even if the Reorganization Case is closed and the Reorganization Case may be reopened for such purpose.

NOTICE OF THE MOTION

7. CBI has provided due and adequate notice of the Motion, the Hearing, the Agreement, and the subject matter thereof, including the injunctions to protect Arrowood and the Arrowood Released Parties to be included in the Confirmation Order, to all known claimants (including all Tort Claimants and other claimants who have filed proofs of claim and all Tort Claimants scheduled by CBI), the United States Trustee for the Southern District of New York, counsel for the Official Committee of Unsecured Creditors, all Persons who have filed notices of appearance in the Reorganization Case, all entities known to have provided general liability

insurance to CBI, the Other Releasing Parties, the Provincial Leadership Team, the Dioceses, The Congregation of Christian Brothers, all North American Christian Brothers, all Christian Brother Ministry Sites, and all Other North American Christian Brothers Entities. The notice was served on all claimants, including Tort Claimants, at the address shown on their proofs of claim or to their counsel of record (with a single notice to any counsel of record who represents multiple Tort Claimants constituting notice to all that counsel's clients who are Tort Claimants) or, if no proof of claim was filed, then at the address on CBI's schedules. Counsel for each Tort Claimant has also been served. Known Tort Claimants, to the extent of record, have been served even if not scheduled or the subject of a proof of claim, to the extent known to CBI. Any and all co-defendants and their counsel (to the extent of record) in any pre-petition litigation brought by Tort Claimants have also been given written notice at the last address shown on any filed appearance or, if such co-defendant is proceeding *pro se*, then to the last address of record for such *pro se* co-defendant.

8. No other or further notice is necessary. Notice of the Agreement and Motion is sufficient to bind, with respect to the relief ordered herein, all known and unknown creditors and claimants, all interested parties, and all Persons who receive notice of this Order. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known creditors, claimants, and interested parties. Notice to an attorney for a Tort Claimant or co-defendant of CBI sued by a Tort Claimant constitutes notice to the claimant represented by the attorney.

SOUND BUSINESS JUDGMENT AND REASONABLENESS

9. The relief requested in the Motion is in the best interests of CBI, its creditors, the holders of all Claims, including the holders of Tort Claims, and other interested parties. CBI has demonstrated good, sufficient, and sound business purposes, cause, and justifications for the relief requested in the Motion and the approval of the transaction contemplated thereby. The settlement and compromise with Arrowood and Arrowood Released Parties embodied in the Agreement, including, without limitation, the sale of the Policies and the release of claims as set forth therein are within the reasonable range of litigation outcomes if CBI and the Other Releasing Parties were to litigate the matters resolved pursuant to this Order and represent fair and reasonable consideration for the sale of the Policies and release of claims as set forth therein. The transactions contemplated by the Motion and Agreement are in compliance with, and satisfy the requirements for, approval of a settlement or compromise pursuant to Bankruptcy Rule 9019 and all applicable provisions of the Bankruptcy Code, including without limitation Sections 105(a) and 363 of the Bankruptcy Code, and applicable non-bankruptcy laws.

GOOD FAITH OF INSURANCE POLICY PURCHASER

10. The Agreement was negotiated and proposed, and has been entered into by the Parties, in good faith, from arm's length bargaining positions, and without fraud or collusion. The Parties were represented by counsel. The sale consideration and other consideration to be realized by CBI pursuant to the Agreement is fair and reasonable. Arrowood is a good faith purchaser for value within the meaning of 11 U.S.C. § 363(m) and is entitled to the protection thereof, and neither the Agreement nor the transaction contemplated thereby are subject to avoidance under 11 U.S.C. § 363(n). None of CBI, the Other Releasing Parties, Arrowood, or

Arrowood Released Parties has engaged in any conduct that would cause or permit the Agreement, or the sale of the Policies, to be avoided under 11 U.S.C. § 363(n) or that would prevent the application of 11 U.S.C. § 363(m) or cause the application of 11 U.S.C. § 363(n). Furthermore, in the absence of a stay pending appeal, if any, Arrowood will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in consummating the contemplated transactions at any time after entry of this Order.

**SATISFACTION OF SECTION 363 AND OTHER
BANKRUPTCY CODE REQUIREMENTS**

11. The transactions contemplated by the Motion and the Agreement are in compliance with and satisfy all applicable provisions of the Bankruptcy Code, including, without limitation, 11 U.S.C. § 363.

12. CBI may sell the Policies free and clear of Interests under 11 U.S.C. § 363(f) because, in each case, one or more of the criteria set forth in sections 11 U.S.C. § 363(f)(1)-(5) have been satisfied. Those holders of Interests against any of the Policies and/or Claims thereunder who did not object, or who withdrew their objections, to the Motion or the relief requested therein are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2). Each holder of an Interest in the Policies, including any claim thereunder, can be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such Interest as contemplated by 11 U.S.C. § 363(f)(5).

13. The sale of the Policies provides claimants, including holders of Tort Claims, with adequate protection. In particular, and among other things, the Tort Claimants will be able to pursue their Claims against the Trust established under the Plan, and confirmed by

order of the Court, dated January 13, 2014, as contemplated by the Agreement, which was on due and sufficient notice to such parties and which was overwhelmingly accepted by the class consisting of such parties. Accordingly, the sale of the Policies free and clear of Interests satisfies the statutory prerequisites of 11 U.S.C. § 363(f). Moreover, if a non-settling insurer asserts that it has a Claim for contribution, indemnity, subrogation, or similar relief against Arrowood or a Arrowood Released Party, such Claim may be asserted as a defense against the Trust (under the Plan contemplated by the Agreement) in any coverage litigation (and the Trust may assert the legal and equitable rights of Arrowood or the Arrowood Released Party in response thereto); and to the extent such a Claim is determined to be valid by the court presiding over such action, the liability of such non-settling insurer to the Trust (or CBI) shall be reduced dollar for dollar by the amount so determined.

RELEASES

14. In light of the terms of the Agreement, it is reasonable and appropriate for CBI, the Other Releasing Parties, and The Congregation of Christian Brothers to provide the releases set forth in the Agreement. These releases comply with the Bankruptcy Code and other applicable laws. The consideration given by Arrowood hereunder constitutes valid and valuable consideration for the releases by CBI, the Other Releasing Parties, and The Congregation of Christian Brothers.

NO SUCCESSOR LIABILITY

15. The transfer of the Policies pursuant to the Agreement does not and will not subject or expose Arrowood or any Arrowood Released Party to any liability, claim, cause of action, or remedy by reason of such transfer under the laws of the United States, any state,

territory, or possession thereof, or the District of Columbia, based on, in whole or in part, directly or indirectly, including, without limitation, any theory of tort, creditors' rights, equity, antitrust, environmental, successor or transferee liability, labor law, *de facto* merger, or substantial continuity.

16. No common identity of officers or directors exists between Arrowood or the Arrowood Released Parties, on the one hand, and CBI or the Other Releasing Parties, on the other hand.

17. Arrowood is purchasing the Policies pursuant to the Agreement and this Order. Arrowood is not purchasing any other assets of CBI or the Other Releasing Parties. Arrowood shall not have any responsibility or liability with respect to any of the other assets of CBI or the Other Releasing Parties.

18. A sale of the Policies other than one free and clear of Interests would impact adversely on CBI, creditors, and claimants and would be of substantially less benefit to the estate of CBI in that, among other things, Arrowood would not agree to fund the Settlement Amount.

SETTLING INSURER INJUNCTION

19. CBI and Arrowood have agreed that the Settling Insurer Injunction contained in the Plan is a necessary prerequisite for their implementing the terms and conditions of the Agreement, and Arrowood will not consummate the purchase of the Policies in the absence of the Settling Insurer Injunction from this Court. Due and adequate notice of the Settling Insurer Injunction has been provided by the notice of the Motion and by the service of

the solicitation materials in connection with the approved First Amended Disclosure Statement and confirmation of the Plan.

20. Arrowood and the Arrowood Released Parties shall be entitled to the benefit of the Settling Insurer Injunction contained in the Plan and the Confirmation Order, pursuant to 11 U.S.C. §§ 105(a) and 363, barring and permanently enjoining any and all Persons or entities (including, without limitation, all debt holders, all equity holders, governmental, tax, and regulatory authorities, lenders, trade and other creditors, Tort Claim holders, other insurers, and all others holding Claims or Interests) from asserting against Arrowood, or any of the Arrowood Released Parties, any Claim (including, without limitation, any Insurance Coverage Claim or Extra-Contractual Claim) or Interest of any kind or nature whatsoever arising from or relating in any way to any Tort Claim or any of the Policies.

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For all of the foregoing and after due deliberation, **IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

- A. The Motion is granted as set forth in this Order.
- B. The Agreement and each of its terms and conditions are hereby approved.
- C. All objections to the Motion that have not been withdrawn or waived are hereby overruled on the merits.
- D. CBI is authorized, empowered, and directed to enter into the Agreement, pursuant to 11 U.S.C. § 363(b) and other applicable provisions of the Bankruptcy Code, to sell, transfer, and convey its Interest in the Policies to Arrowood in accordance with the terms and subject only to the conditions specified herein and in the Agreement. The transfer by CBI and

the Other Releasing Parties of their respective Interests in the Policies shall vest Arrowood with all right, title, and Interest in and to the Policies, free and clear of all rights, Claims, and Interests, including but not limited to all Tort Claims, Insurance Coverage Claims, Extra-Contractual Claims, and Claims by other insurers for contribution, indemnity, subrogation, or similar relief whether arising before or after commencement of this Reorganization Case and whether arising by agreement, understanding, law, equity, or otherwise.

E. The terms of the Agreement are approved in their entirety, and this Order shall be binding upon CBI, all creditors of and claimants against CBI, the Other Releasing Parties, all Tort Claimants, all insurers who received notice of the motion, all co-defendants in pre-petition actions by Tort Claimants against CBI, and all other Persons and entities as set forth in paragraph 7 *supra*, and each of their successors and assigns. The sale of the Policies to Arrowood shall constitute a legal, valid, and effective transfer of the Policies and shall vest Arrowood with all right, title, and Interest in and to the Policies free and clear of all rights, claims, and Interests, effective as of the Settlement Effective Date. The sale of the Policies to Arrowood is subject to the Conditions to Agreement set forth in the Agreement.

F. The \$350,000 cash purchase price under the Agreement shall be paid by Arrowood as provided in the Agreement.

G. The releases in the Agreement comply with the Bankruptcy Code and all applicable state laws. The Agreement terminates the Policies pursuant to its terms, and the Policies are of no further force and effect.

H. The sale of the Policies to Arrowood under the Agreement will constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of New York.

I. CBI and the Other Releasing Parties and Arrowood are each hereby authorized to take all actions and execute all documents and instruments that CBI, the Other Releasing Parties, and Arrowood deem necessary or appropriate to implement and effectuate the transactions contemplated by the Agreement.

J. Pursuant to 11 U.S.C. §§ 105(a) and 363(f), as provided by the Agreement, the Policies shall be and hereby are transferred to Arrowood, free and clear of all liens, Claims, encumbrances and Interests, if any, of any Person or entity, including all rights and Interests of CBI; all Other Releasing Parties; any other Person claiming by, through, or on behalf of CBI; any other insurer; any Tort Claimant; all co-defendants in any pre-petition litigation brought by Tort Claimants; and all other Persons and entities as set forth in paragraph 7 *supra*, and each of their successors and assigns, whether arising prior to or subsequent to the commencement of the Reorganization Case, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, Interests in the Policies that purport to give to any party a right or option to effect any forfeiture, modification, or termination of the Interest of the bankruptcy estate or Arrowood, as the case may be, in the Policies).

K. Arrowood shall be deemed a Settling Insurer and afforded all of the rights, interests, and benefits of a Settling Insurer that are designated under the Plan and Confirmation Order including, but not limited to, all injunctions in favor of Settling Insurers provided for therein, and other rights, benefits and interests set forth in the Plan.

L. Arrowood is a good faith purchaser of the Policies and is entitled to (and is hereby granted) all of the protections provided to good faith purchasers under 11 U.S.C. § 363(m). The transactions contemplated by the Agreement shall not be subject to avoidance under 11 U.S.C. § 363(n). All Persons are hereby enjoined from commencing or continuing an

action seeking relief under 11 U.S.C. § 363(n) with respect to the Agreement and the transactions contemplated thereby.

M. Arrowood and the Arrowood Released Parties are not, and none of them shall be deemed to be, a successor to CBI or the Other Releasing Parties by reason of any theory of law or equity or as a result of the consummation of the transactions contemplated in the Agreement or otherwise. Arrowood and the Arrowood Released Parties do not assume, and shall not be deemed to assume, any liabilities of CBI or the Other Releasing Parties.

N. Pursuant to Fed. R. Bankr. P. 9019, the releases and provisions set forth in Sections 5.1 - 5.6 of the Agreement are expressly approved. All of the Claims released therein are hereby dismissed and forever released effective as set forth under the Agreement.

O. This Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing and shall not be stayed under Fed. R. Bankr. P. 6004(h) or any other applicable provision.

P. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the Agreement and this Order in all respects and further to hear and determine any and all disputes between CBI and/or the Other Releasing Parties and/or Arrowood and/or the Arrowood Released Parties, as the case may be, and any other Person; provided, however that in the event the Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the Agreement or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. In the event this case has been closed, there shall be a right to have this case reopened upon *ex parte* motion or application for such purposes.

Q. The failure to specifically include any particular provision of the Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreement be authorized and approved in its entirety.

R. The provisions of this Order are non-severable and mutually dependent.

S. This Order shall inure to the benefit of Arrowood, the Arrowood Released Parties, CBI, the Other Releasing Parties and their respective successors and assigns.

T. Each and every federal, state, and local governmental agency or department is hereby directed to accept for filing, recording or otherwise any and all documents and instruments necessary and appropriate to consummate and/or evidence the transactions contemplated by the Agreement and this Order.

Dated: White Plains, New York
March 6, 2014

/s/Robert D. Drain
HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE