



other third parties (the Consenting Farmers and Disclaiming Farmers). Fifth Circuit precedent precludes non-consensual third-party releases and permanent injunctions because bankruptcy courts lack the authority to grant such relief. *Bank of N.Y. Trust Co. v. Official Unsecured Creditors Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009) (citing, *inter alia*, *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995)). As a result, the Settlement Agreement and any order resolving the 9019 Motion should only impact the rights, claims, and defenses among the Parties and any Disclaiming Farmers, not non-parties like Travelers.

### **SUR-REPLY**

2. Travelers's rights, claims, and defenses vis-à-vis claimants against the Bonds it issued to assure the Debtors' obligations under the Grain Dealer Law and the Grain Warehouse Law are not before this Court under the Settlement Agreement or the 9019 Motion. Indeed, Travelers is a party to neither the Settlement nor the 9019 Motion. Nonetheless, certain Disclaiming Farmers and the Farm Group, as well as other farmers and Agriculture Commissioner who joined in their requests (collectively, the "Objecting Parties"), seek to prejudice Travelers's rights, claims, and defenses by requesting certain language be added to the order resolving the 9019 Motion. Their proposals, if included in the order resolving the 9019 Motion, would grant a non-consensual third-party release, which Fifth Circuit precedent prohibits.

3. Travelers believes the Consenting Farmers' and Disclaiming Farmers' elections in regard to the Settlement Agreement create a new defense to claims against the Bonds. Namely, the release or compromise of the Consenting Farmers' and Disclaiming Farmers' claims to the Disputed Grain Asset Pool prejudice Travelers's equitable subrogation rights through the Consenting Farmers and Disclaiming Farmers as the real beneficiaries of the Bonds. Although Travelers disagrees with counsel for the Agriculture Commissioner's characterization of its

equitable subrogation rights as only existing through the debtor-principal,<sup>3</sup> whatever the scope and value of those rights, they are not before this Court and should not be altered by the Settlement Agreement or any order resolving the 9019 Motion. Travelers is not a Party to the Settlement Agreement, the 9019 Motion, and has no election rights regarding the Settlement Agreement. Indeed, the claims resolution process concerning the Bonds is not pending before this Court.

4. A party's actions in one venue can and often do have legal implications in another venue. The other venue, which has jurisdiction over the parties and the dispute, will determine the legal implications. The Consenting Farmers and Disclaiming Farmers elected to agree to certain compromises and releases related to their claims to the Disputed Grain Asset Pool. The legal implications of their elections, if any, to their claims against the Bonds will be decided elsewhere. However, the Objecting Parties seek to have this Court make that determination, which would be a non-consensual third-party release or permanent injunction.

5. A permanent injunction or release in favor of the Consenting Farmers and Disclaiming Farmers is beyond the scope of this Court's authority. As the Fifth Circuit has made clear, bankruptcy courts lack the authority to grant non-consensual third-party releases and permanent injunctions. *E.g., Bank of N.Y. Trust Co. v. Official Unsecured Creditors Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229, 252 (5th Cir. 2009) (explaining that prior Fifth Circuit precedent "foreclose[s] non-consensual non-debtor releases and permanent injunctions"). *Pacific Lumber* relied specifically on *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995), which has many parallels (albeit with the types of parties in the reverse positions) to this case. In *Zale*, it was the insurer that sought to release claims of third parties against the insurer pursuant to a settlement agreement approved by a bankruptcy court, between, *inter alia*, the insurer and the

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<sup>3</sup> *E.g., Travelers Indem. Co. v. Clark*, 254 So. 2d 741, 745 (Miss. 1971) (recognizing surety's right of equitable subrogation to obligees' rights).

debtors. *Id.* at 749. The settlement agreement sought to permanently enjoin and release the claims of certain third parties, who were potential claimants against the insurer, but were not parties to the settlement agreement. *Id.* at 749-50. In reversing the bankruptcy court's approval of the settlement due to the third-party permanent injunction provision, the Fifth Circuit explained that 11 U.S.C. § 524 only grants a discharge to the debtor and prohibits the discharge of non-debtors. *Id.* at 760. Accordingly, the equitable power of the bankruptcy court under 11 U.S.C. § 105 could not be used to overturn the plain language of 11 U.S.C. § 524. Thus, the bankruptcy court lacked authority to approve the permanent injunction in the settlement agreement against the third parties. *Id.* at 761.

6. The language requested by the Objecting Parties to be added to the proposed order granting the 9019 Motion would release or permanently enjoin Travelers's rights, claims, and defenses against third parties, namely the Consenting Farmers and Disclaiming Farmers. Consider the language proposed in Dkt Entry No. 2768:

Consistent with this Court's prior 557 Procedure Order, the approval of the Settlement Agreement is for the purposes of resolving the 557 Proceedings in this Court only and shall not and cannot be construed to create any new or additional claims, defenses or rights of any kind for any **parties** in any other proceedings including but not limited to the District Court Action.

Para. o (emphasis added). The proposed language in the *Limited Objection to Joint Motion for Approval of Settlement and Compromise* [Dkt. Entry No. 2760] and the *Response to Joint Motion for Approval of Settlement and Compromise* [Dkt Entry No. 2761] use the operative language: "**third parties,**" which makes it even more obvious they are seeking a release of the rights, claims, and defenses of third parties, like Travelers. Regardless, all of the proposed language uses the

terms “parties” or “third parties,” not the defined terms “Parties”<sup>4</sup> and “Disclaiming Farmers.” The Parties are the signatories to the Settlement Agreement and the Disclaiming Farmers have elected to compromise their claims pursuant to the Settlement Agreement. Put another way, these are the parties who have consented to this Court entering an order approving an agreement altering their rights, claims, and defenses among and between them. Consistent with *Pacific Lumber, Zale*, and other binding Fifth Circuit precedent, the Settlement Agreement and any order resolving the 9019 Motion can only bind the Parties and Disclaiming Farmers, not Travelers.

7. In sum, Travelers is seeking to preserve its rights, claims, and defenses against claimants seeking recovery against the Bonds it issued. The Objecting Parties cannot use language in the order resolving the 9019 Motion or the Settlement Agreement to release or alter the legal implication of the Settlement Agreement in another proceeding involving a non-Party who has not elected to participate in the Settlement Agreement, like Travelers. To allow the Objecting Parties to accomplish this goal would constitute a nonconsensual third-party release of Travelers’s rights, claims, and defenses in contravention of Fifth Circuit precedent.

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<sup>4</sup> The term “Parties” is defined in the Settlement Agreement as: Debtors, UMB, StoneX, Macquarie, the Production Lenders, and the Consenting Farmers. *Settlement Agreement*, § 2.26.

Respectfully Submitted,

MANIER & HEROD, P.C.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on April 27, 2022, a true and correct copy of the foregoing pleading was served by the Court's CM/ECF System on the parties who are registered to receive electronic filings in this case.

/s/ Adrienne B. Fazio

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