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 Slip Nos. CU 1001 and K 66034 issued to the
 Roman Catholic Archbishop of San Francisco,
 and Nos. K 78138 and CU 3061 issued to the
 Roman Catholic Bishop of Oakland*

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

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

**CERTAIN UNDERWRITERS AT
 LLOYD'S, LONDON, SUBSCRIBING
 SEVERALLY AND NOT JOINTLY TO
 SLIP NOS. CU 1001 AND K 66034
 ISSUED TO THE ROMAN CATHOLIC
 ARCHBISHOP OF SAN FRANCISCO,
 AND NOS. K 78138 AND CU 3061
 ISSUED TO THE ROMAN CATHOLIC
 BISHOP OF OAKLAND'S MOTION
 FOR PROTECTIVE ORDER;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION FOR PROTECTIVE ORDER**

Date: April 3, 2024

Time: 10:30 a.m.

Place: United States Bankruptcy Court
 1300 Clay Street
 Courtroom 220
 Oakland, CA 94612

1 **MOTION FOR PROTECTIVE ORDER**

2 Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos.
3 CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138
4 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market
5 Insurers" or "LMI"), by and through their undersigned counsel, hereby move for a protective order
6 pursuant to Fed. R. Civ. P. 26(c) of the Official Committee of Unsecured Creditors' ("Committee")
7 subpoena to LMI.

8 The Motion is based on the attached the Memorandum of Points and Authorities, the
9 Declaration of Russell W. Roten, and attached exhibits, the papers and pleadings on file in this case,
10 and such other evidence that may be presented to the Court at the hearing, if any.

11 Dated: March 4, 2024

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26 *London, subscribing severally and not jointly*
27 *to Slip Nos. CU 1001 and K 66034 issued to*
28 *the Roman Catholic Archbishop of San*
Francisco, and Nos. K 78138 and CU 3061
issued to the Roman Catholic Bishop of
Oakland

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 26(c)¹, there is ample “good cause” to issue an order protecting LMI from the production of information protected by the attorney client privilege, work product doctrine, litigation privilege and trade secret confidential communication privilege, in response to a subpoena issued by the Committee and received by LMI on January 22, 2024 (“Subpoena”)². Further, the information sought by the Subpoena is irrelevant; the requests are overbroad and lack particularity. Accordingly, LMI respectfully request that the Court grant the Motion.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. LMI Policies

LMI subscribed, severally and not for the other, as their interests may appear, certain insurance policies. On those policies (a) the Roman Catholic Archbishop of San Francisco is a Named Assured and certain Diocese-related entities were also Assureds, effective for periods from March 12, 1962, to October 25, 1963, and (b) the Roman Catholic Bishop of Oakland is a Named Assured and certain Diocesan-related entities were also Assureds, effective for periods from October 25, 1963, to October 25, 1966 (collectively, “LMI Policies”). The LMI Policies provide excess indemnity coverage above underlying insurance with limits of \$500,000 any one person/ any one occurrence.

B. Bankruptcy Case and Subpoena

On May 8, 2023, the Debtor filed a voluntary chapter 11 petition for relief under Title 11 of

¹ The place where compliance is required on the face of a subpoena dictates which court has jurisdiction to hear a Motion to Quash or Modify a subpoena pursuant to Federal Rule of Civil Procedure 45, and therefore, LMI filed a Motion to Quash and/or Modify the subpoena pursuant to Fed. R. Civ. P. 45 in the District of New Jersey. *Pizana v. Basic Research, LLC*, 2022 WL 1693317 (E.D. Cal. May 26, 2022) (holding that location listed on subpoena controlled for purposes of establishing jurisdiction over Rule 45 motion). LMI believe the issues raised herein are properly before the District of New Jersey, however, in an abundance of caution, they have concurrently filed this Motion for Protective Order in the Northern District of California.

² A true and correct copy of the Subpoena is attached as **Exhibit A** to the Declaration of Russell W. Roten Declaration (“Roten Decl.”).

1 the Bankruptcy Code.³

2 On June 22, 2023, the Debtor commenced an insurance coverage adversary proceeding
3 against LMI, among other insurers (“Coverage Action”).⁴ On June 30, 2023, the Committee moved
4 to intervene in the Coverage Action. The Court approved the Committee’s intervention, on
5 September 7, 2023. However, the Committee did not file a complaint in intervention, hence it is
6 neither a plaintiff nor a defendant in the Coverage Action, and the Court did not allow the Committee
7 to take discovery in the Coverage Action.⁵ The Committee also did not seek derivative standing to
8 pursue the Coverage Action on behalf of the Debtor. Thus, only the Debtor has standing to pursue
9 its claims for insurance.

10 On October 5, 2023, the Committee filed an *Ex Parte Application for Federal Rule of Civil*
11 *Procedure 2004 Examination of Insurers* (“2004 Application”), seeking, among other things, the
12 production of documents related to LMI’s insurance reserves and underwriting information pursuant
13 to Federal Rule of Bankruptcy Procedure (“FRBP”) 2004.⁶ On November 1, 2023, LMI, among
14 others, objected to the 2004 Application, arguing that the discovery sought exceeded the limits of
15 permissible discovery pursuant to FRBP 2004.⁷

16 On November 14, 2023, the Court held a lengthy hearing on the 2004 Application. After oral
17 argument, the Court stated the following: “I am inclined to entertain the request with respect to the
18 current claim files, the reserve working papers, and the underwriting information, if any, with respect
19 to these cases.”⁸ The Court orally granted the 2004 Application and ordered the parties to
20

21
22 ³ Dkt. No. 1.

23 ⁴ See *Roman Catholic Bishop of Oakland v. Pacific Indemnity et al.*, 23-40523, Dkt. No. 1 (Bankr.
N.D. Cal. June 22, 2023).

24 ⁵ See *id.*, Dkt. No. 15.

25 ⁶ Dkt. No. 502.

26 ⁷ Dkt. No. 571.

27 ⁸ See Transcript of Dkt. No. 616, at 175:6-8. A true and correct copy of the transcript is attached as
28 Exhibit A to the Motion to Reconsider, Dkt. No. 697.

1 “sit down...and just make sure everybody is agreeing on what the wording is because
2 this is a moving target. ...But I think *we need a little precision on what you mean by*
3 *claims files, the reserve working files, and the underwriting information.* ... give me
4 some language...so that we’re talking about the same thing.”⁹

5 At the hearing’s conclusion, the Court again asked the parties to “put your heads together about
6 appropriate wording for the three categories I suggested with respect to this case, I think could be
7 produced, I think I can – I’ll be happy to see your handiwork. And I’ll approve that, okay, subject to
8 that being worked out.”¹⁰

9 Counsel for the parties met and conferred on December 7, 2023, to settle the form of order and
10 subpoena.¹¹

11 On December 15, 2023, LMI filed a Motion to Clarify or, in the Alternative, Amend, Alter, or
12 Reconsider the Court’s Oral Ruling on the Official Committee of Unsecured Creditors’ Ex Parte
13 Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers (“Motion to
14 Reconsider”).¹² The Motion to Reconsider sought clarification of the Court’s oral bench ruling at the
15 November 14, 2023 hearing, and in the alternative, reconsideration of the Court’s ruling on the 2004
16 Application.¹³ On January 17, 2024, the Committee filed its Objection to LMI’s Motion to Reconsider
17 the Court’s Ruling on the Committee’s Rule 2004 Application.¹⁴ On January 18, 2024, the Court
18 entered an Order Granting the Official Committee of Unsecured Creditors’ Ex Parte Application for
19 Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers (“2004 Order”).¹⁵ The 2004
20 Order ordered the following:

21 2.The Insurers shall furnish all documents requested in subpoenas in a form
22 substantially as those attached hereto as Exhibits 1 through 11 (the “Subpoenas”), and

23 ⁹ *Id.* at 175:14-25 (emphasis added).

24 ¹⁰ *Id.* at 177:10-14.

25 ¹¹ *Id.*, Doc. No. 697 at 10.

26 ¹² Dkt. No. 697.

27 ¹³ *Id.*

28 ¹⁴ Dkt. No. 788.

¹⁵ Dkt. No. 796.

1 shall produce same to the Committee's counsel and the Debtor's counsel within forty-five (45) days of entry of this Order.

2 4. The Insurers' rights to object to the Subpoenas as permitted under Rule 45 of the
3 Federal Rules of Civil Procedure, incorporated into this bankruptcy case by Rule 9016
4 of the Federal Rules of Bankruptcy Procedure, are fully preserved, including, without
limitation (a) any and all applicable evidentiary privileges and (b) proper scope of
discovery.¹⁶

5 The Subpoena requires production at "One Lowenstein Drive Roseland, New Jersey 07068"
6 on "March 4, 2024 at 5:00 PM (ET)", and includes a variety of demands for the production of
7 documents ("Subpoena"). Included in those requests were the following:

8 5. The entire contents of Your Claim Files Relating to any Abuse Claims tendered by
9 or on behalf of RCBO to You. ("Claim Files")

10 6. All Underwriting Files Relating to Your Insurance Policies concerning any Abuse
Claims tendered by or on behalf of RCBO to You. ("Underwriting Files")

11 7. Documents sufficient to show Your current reserves for each of the Abuse Claims
12 tendered by or on behalf of RCBO to You. ("Reserve Information")

13 8. All Documents and Communications that relate to Your setting, calculating, analysis,
14 adjustment, investigation, evaluation of, and decision-making process with respect to,
15 Your reserves identified in response to Request No. 7, above, including the working
papers and actuarial reports, if any, relating to the establishment of those reserves.
(collectively with Claim Files, Underwriting Files, and Reserve Information referred
to as "Overbroad Demands").

16 On February 5, 2024, LMI served their *Responses and Objections to the Subpoena for Rule*
17 *2004 Examination* ("Responses and Objections").¹⁷ In the Responses and Objections, LMI reserved
18 their objections to several requests pending the hearing on the Motion to Reconsider and any
19 subsequent appeal.

20 On February 7, 2024, the Court held a hearing on the Motion to Reconsider.¹⁸ After argument,
21 the Court indicated it would take the matter under submission.¹⁹

22
23
24 ¹⁶ *Id.*, at 2.

25 ¹⁷ A true and correct copy of the Responses and Objections is attached hereto as **Exhibit B** to the
26 Roten Decl.

27 ¹⁸ Dkt. No. 846.

28 ¹⁹ *Id.*

1 On February 12, 2024, at a hearing to discuss pending Motions to Withdraw the Reference, the
2 Court stated that it would be denying the Motion to Reconsider.²⁰ It stated that there is a “difference
3 between a 2004 exam, which is meant to get information about the debtor’s assets, liabilities, financial
4 condition, and the matters necessary to administer the case and do what you need to do in the course
5 of a bankruptcy case, and litigation issues, which are going to be dealt with differently” in the
6 Coverage Action.²¹ The Court further stated that the insurance reserve and underwriting information
7 were relevant

8 discovery because in my view, they were in some ways the mirror image of the claim
9 information. The claim information is one side of the ledger. What the insurance
10 companies are doing about it is the other side of the ledger. So that was my thinking
11 in making that ruling, and I thought it was quite clear.²²...

12 So I think we need to be sensitive to possibly doing things a little bit differently. And
13 it was my theory that having the insurance companies provide this information was
14 going to help that process and was going to get everybody into the mediation with the
15 optimum amount of information. On the debtor to committee side, that's the claim
16 information produced to the insurers. From the insurers, that is a snapshot of where
17 they are with their evaluations. And in my view, those are simply mirror images of each
18 other....

19 So that was my ruling. I stand by it. I continue to think for those reasons that there was
20 relevancy established, at least for the limited purposes of a 2004 exam, which again,
21 I'm contrasting with litigation theories. Okay. Litigation is a whole other story, and
22 you're going to get into that in the AP. That is different. So for all those reasons, I'm
23 going to deny the motion for clarification and/or for reconsideration.²³

24 On February 14, 2024, the Court issued its “Reconsideration Order.”²⁴ That same date, the
25 Committee demanded LMI revise their Responses and Objections as a result of the Reconsideration
26

27 ²⁰ Dkt. No. 855.

28 ²¹ Transcript of Dkt. No. 855 at 12:4-11. A true and correct copy of the transcript is attached as
Exhibit A to the Declaration of Betty Luu filed in support of the Motion to Stay, Dkt. No. 907.

²² *Id.* at 13:1-7, 14:10-18, 14:23-15:4.

²³ *Id.* at 13:1-7.

²⁴ See *Order Denying Motion to Clarify or, in the Alternative, Amend, Alter, or Reconsider the
Court’s Oral Ruling on the Official Committee of Unsecured Creditors’ Ex Parte Application for
Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*, issued February 14, 2024, at
Dkt. No. 875.

1 Order.²⁵ In response, on February 20, 2024, LMI advised the Committee that they would move to
2 quash, or, in the alternative, for a protective order as to the Overbroad Demands, and would be seeking
3 leave to appeal the Reconsideration Order, and a stay pending the appeal.²⁶ LMI requested an
4 opportunity to meet and confer.²⁷

5 On February 21, 2024, the Committee indicated that it was unavailable to meet and confer and
6 believed a meet and confer to be unnecessary, but nevertheless would provide dates the following
7 week.²⁸

8 On February 28, 2024, LMI filed a Notice of Appeal and Motion for Leave to Appeal
9 (collectively, “Appeal”) with the United States District Court, Northern District of California.²⁹ On
10 the same day, LMI moved for a stay pending the Appeal in this Court.³⁰ As of the filing of this Motion,
11 the Committee has not responded with any proposed dates to meet and confer.

12 **III. LEGAL ARGUMENT**

13 **A. LMI Properly Moved the Court for a Protective Order**

14 The Court is the proper Court to decide this Motion.

15 Federal Rule of Civil Procedure 26(c)(1)(A) requires the party moving for a protective order
16 to move “in the court where the action is pending—or as an alternation on matters relating to a
17 deposition, in the court for the district where the deposition will be taken...”

18 Because this Court is where the action is pending, this Court is the proper Court to decide this
19 Motion.

21 ²⁵ A true and correct copy of the Committee’s February 14, 2024 letter is attached hereto as **Exhibit**
22 **C** to the Roten Decl.

23 ²⁶ A true and correct copy of LMI’s February 20, 2024 letter is attached hereto as **Exhibit D** to the
24 Roten Decl.

24 ²⁷ *Id.*

25 ²⁸ A true and correct copy of the Committee’s February 22, 2024 e-mail is attached hereto as **Exhibit**
26 **E** to the Roten Decl.

27 ²⁹ Dkt. Nos. 905, 906.

28 ³⁰ Dkt. No. 907.

1 **B. The Subpoena Demands Information Beyond the Permissible Bounds of the**
2 **Federal Rules**

3 This Court has the power to enter a protective order to such a subpoena using the same
4 standards applicable under Rule 26(c) of the Federal Rules of Civil Procedure and its powers under
5 Section 105 of the Bankruptcy Code.³¹ A federal court, upon a showing of good cause, may issue any
6 protective order under Rule 26(c) “which justice requires to protect a party or person from annoyance,
7 embarrassment, oppression, or undue burden or expense.”³² A protective order may be granted where
8 discovery subjects counsel to harassment, is unduly burdensome, and seeks irrelevant and privileged
9 information without showing [] extraordinary circumstances.³³ Such relief may include “prohibiting
10 the requested discovery altogether.”³⁴ A movant may carry its burden of showing good cause “by
11 demonstrating harm or prejudice that will result from the discovery.”³⁵

12 There is ample evidence of “good cause” for the relief sought here. The Subpoena (a) seeks
13 information protected by the attorney-client privilege, work-product doctrine, and trade secret and
14 confidential communications privilege; (b) seeks irrelevant information; and (c) is overbroad.

15 **1. The Subpoena improperly requires disclosure of privileged or other**
16 **protected matter**

17 Those seeking to examine witnesses or records pursuant to FRBP 2004 are subject to
18 applicable evidentiary privileges, including the attorney client privilege and work product doctrine.³⁶

19
20 ³¹ See *In re Dastejerdi*, 2001 WL 1168178 at * 6 (E.D. Va. Sept. 21, 2001); *In re Symington*, 209
21 B.R. 678, 689 (D. Md. 1997) (“The combination of history and logic justifies the exercise of
discretion within the framework of Federal Rule 26(c) to limit Rule 2004 examinations whenever
“good cause” is shown.”).

22 ³² *Rivera v. Nibco, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004).

23 ³³ *Sussex Fin. Enterprises, Inc. v. Bayerische Hypo-UND Vereinsbank*, No. C 08-4791 SC (JL), 2010
24 WL 11610269, at *2 (N.D. Cal. Jan. 28, 2010) (internal quotes and citations omitted).

25 ³⁴ *Id.*

26 ³⁵ *Id.* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir.
2002)).

27 ³⁶ *In re Gi Yeong Nam*, 245 B.R. 216, 230 (Bankr. E.D. Pa. 2000); *In re Fin. Corp. of America*, 119
28 B.R. 728, 733 (Bankr. C.D. Cal. 1990) (citing FRBP 9017, which incorporates Fed. R. Evid. 501).

1 As explained below, the requests in the Subpoena seeks confidential information that LMI cannot be
2 compelled to produce.

3 **a. The attorney client privilege**

4 Rule 26(b), incorporated by FRBP 7026, protects confidential communications between
5 attorneys and their clients. “[C]ommunications made in confidence by clients to their lawyers for the
6 purpose of obtaining legal advice” is protected by the attorney-client privilege.³⁷ The purpose of the
7 privilege is to encourage “full and frank communication between attorneys and their clients and
8 thereby promote broader public interests in the observance of law and administration of justice.”³⁸ As
9 a general matter, “[a] party is not entitled to discovery of information protected by the attorney-client
10 privilege.”³⁹ The party opposing the privilege must show that “the information was not confidential
11 or that it falls within an exception.”⁴⁰

12 **b. The work product privilege**

13 Federal Rule of Civil Procedure 26(b)(3) protects attorney work product by prohibiting a party
14 from “discover[ing] documents and tangible things that are prepared in anticipation of litigation or for
15 trial by or for another party or its representative (including the other party's attorney, consultant, surety,
16 indemnitor, insurer, or agent).”

17 While the work product doctrine originated in the context of an adversary proceeding, it does
18 not necessarily require the existence of an adversarial action.⁴¹ The attorney work product privilege
19 is “distinct from and broader than the attorney-client privilege.”⁴² Unlike the attorney-client privilege,
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21 ³⁷ *Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 745 (Fed.Cir.1987).

22 ³⁸ *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981).

23 ³⁹ *Navajo Nation v. Confederated Tribes & Bands of the Yakama Indian Nation*, 331 F.3d 1041, 1046
24 (9th Cir. 2003) (citation omitted).

25 ⁴⁰ *In re 3dfx Interactive, Inc.*, 347 B.R. 394, 402 (Bankr. N.D. Cal. 2006); *see also Siddall v. Allstate*
26 *Ins. Co.*, 15 F. App'x 522, 523 (9th Cir. 2001) (“a substantial need does not, as a matter of law, provide
a legal basis for piercing the attorney-client privilege...”).

27 ⁴¹ *Fin. Corp. of America*, 119 B.R. at 738.

28 ⁴² *U.S. v. Nobles*, 422 U.S. 225, 238 (1975).

1 the work product privilege protects documentation prepared by the attorney in anticipation of
2 litigation.⁴³

3 The following elements must be met in order for the work product privilege to apply: (1) the
4 materials must be documents or tangible things; (2) the materials must be prepared in anticipation of
5 litigation or for trial; (3) materials must be prepared by or for a party's representative; and (4) if the
6 material is opinion work product, the material must contain the mental impressions, conclusions,
7 opinions, or legal theories of an attorney or other representative of a party.⁴⁴ Work product may also
8 consist of intangible things such as the thoughts and recollections of counsel.⁴⁵

9 A party may not obtain information subject to the work product doctrine unless it can show “it
10 has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain
11 their substantial equivalent by other means.”⁴⁶ Even if the party seeking disclosure of information
12 protected by the work product doctrine makes such a showing, the court “must protect against
13 disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or
14 other representative concerning the litigation.”⁴⁷ Opinion work product that reflects opinions, mental
15 impressions, or legal theories of an attorney are nondiscoverable absent extraordinary circumstances.⁴⁸

16 In *Barge v. State Farm Mut. Ins. Co.*, 2016 WL 6601643 (W.D. Wash. Nov. 8, 2016), an
17 insured sought discovery of its insurer’s unredacted claim files, including reserves and evaluation
18 amounts.⁴⁹ The court found that the claim files and related reserve information was “based on opinions
19

20 ⁴³ *Am. C.L. Union of N. California v. United States Dep't of Just.*, 880 F.3d 473, 485–486 (9th Cir.
2018); *In re Residential Capital, LLC*, 575 B.R. 29, 42 (Bankr. S.D.N.Y. 2017).

21 ⁴⁴ *In re McDowell*, 483 B.R. 471, 493 (Bankr. S.D. Tex. 2012).

22 ⁴⁵ *Hickman v. Taylor*, 329 U.S. 495, 511(1947).

23 ⁴⁶ Fed. R. Civ. P. 26(b)(3)(A).

24 ⁴⁷ Fed. R. Civ. P. 26(b)(3)(B).

25 ⁴⁸ *In re Murphy*, 560 F.2d 326, 336 (8th Cir. 1977); *In re Lake Lotawana Community Improvement*
26 *District*, 563 B.R. 909, 917 (Bankr. W.D. Mo. 2016) (“discovered only in rare and extraordinary
27 circumstances”); *Barge v. State Farm Mut. Auto. Ins. Co.*, 2016 WL 6601643, at *5 (W.D. Wash.
28 Nov. 8, 2016).

⁴⁹ *Barge*, 2016 WL 6601643, at *4.

1 and evaluation of [the insurer] personnel after [the insurer] reasonably contemplated litigation in this
2 case” and the insured failed to demonstrate a compelling need for the information.⁵⁰

3 c. Litigation privilege

4 The litigation privilege bars discovery of all attorney client communications and attorney work
5 product developed once litigation has commenced.⁵¹

6 2. The Reserve Information Is Privileged

7 The above privileges prohibit any disclosure of non-public documents related to the LMI
8 Reserve Information.

9 Courts have rejected the production of Reserve Information because of its invasion of
10 traditional privileges.⁵² The insured in *Shreib* sought discovery of reserve information to gain insight
11 into how the insurer valued her claim.⁵³ In denying the insured’s request, the court found that that the

12 ⁵⁰ *Id.* at 6; *see also Rhone-Poulenc Rorrer Inc. v. Home Indem. Co.*, 139 F.R.D. 606, 614 (“Where
13 the reserves have been established based on legal input, the results and supporting papers most likely
14 will be work-product and may also reflect attorney-client privilege communications” magistrate
15 judge refused *all* discovery into the reserves because “the aggregate and average figures are derived
16 from and necessarily embody the protected material. They could not be formulated without the
17 attorney’s initial evaluations of specific legal claims. Thus it is impossible to protect the mental
18 impressions underlying the specific case reserves without also protecting the aggregate figures.”);
Certain Underwriters at Lloyd’s London v. Fidelity and Casualty Ins. Co. of New York, 1998 WL
142409 (N.D. Ill. 1998) (refusing to order production of reserve recommendations based on attorney
work product and attorney-client privileges finding that “[w]e conclude that reserve
recommendations, in this case, do reveal attorney mental impressions, thoughts, and conclusions
since the reserve figures were calculated only after an attorney acting in his legal capacity carefully
determined the merits and value of the underlying case.”).

19 ⁵¹ *Mon Cheri Bridals, LLC v. Cloudfare, Inc.*, 2021 WL 1222492 (N.D. Cal. Apr. 1, 2021)
20 (“[C]ounsel’s communications with the client and work product developed once the litigation
21 commences are presumptively privileged and need not be included on any privilege log.”) (quoting
Ryan Inv. Corp. V. Pedregal de Cabo San Lucas, 2009 WL 5114077 (N.D. Cal. Dec. 18, 2009);
Kumar v. Nationwide Mutual Ins. Co., 2023 WL 3598478 (N.D. Cal. May 23, 2023) (“Nationwide
22 need not include any communications with counsel, Dentons, or otherwise related to the present
23 litigation, although the Court notes the privilege logs do contain entries dated after the filing of the
Complaint that Nationwide claims are privileged in communications ‘regarding this matter.’”).

24 ⁵² *Shreib v. Am. Fam. Mut. Ins. Co.*, 304 F.R.D. 282 (W.D. Wash. 2014); *Barge*, 2016 WL 6601643
25 (precluding discovery of reserve documents where documents at issue “can be fairly said to have
26 been prepared or obtained because of the prospect of litigation.”); *Zurich Am. Ins. Co. v. Keating
Bldg. Corp.*, No. CV 04-1490 (JBS), 2006 WL 8457156, at *6 (D.N.J. Dec. 29, 2006) (“[w]here the
27 reserves have been established based on legal input, the results and supporting papers most likely will
28 be work-product and may also reflect attorney-client privilege communications.”) (quoting *Rhone-
Poulenc Rorer, Inc. v. Home Indemnity Co.*, 139 F.R.D. 609, 614 (E.D. Pa. 1991).

⁵³ *Shreib*, 304 F.R.D. at 283.

1 “loss reserve information exchanged between American Family and its attorney regarding impending
2 litigation is protected by the attorney-client privilege.”⁵⁴

3 The Committee has not established a compelling need to force LMI to disclose any privileged
4 information. The Committee’s special insurance counsel wrongly asserted that reserve information
5 looks “back at the history of their settlement” and “goes to the reasonable value of these claims.”⁵⁵
6 Particularly here, where there were no claim tenders to LMI at the time the 2004 Application was filed;
7 in fact, the Proofs of Claim have yet to be provided to LMI and there have been no settlement
8 negotiations. Any Reserve Information would be based on advice from the LMI attorneys and in
9 anticipation⁵⁶ of litigation as the Debtor’s Coverage Action predated any claim tenders by it to LMI.⁵⁷

10 Moreover, LMI Reserve Information would only be a preliminary estimate of adjustment
11 expenses and possibly for potential settlement or loss exposure for claims. Particularly here, where
12 (i) the LMI Policies are excess of \$500,000 per occurrence per triggered policy period, (ii) LMI do not
13 have a duty to defend, and (iii) LMI lack information about the claims and any underlying insurance.

14 Thus, the Court must modify the subpoena barring discovery of Reserve Information.

15 **3. Claims Files Are Privileged**

16 The Committee seeks Claims Files related to Abuse Claims tendered by the Debtor.⁵⁸ As
17 discussed above, the Debtor has not tendered any claims to LMI.⁵⁹ Thus, there are no Claims Files

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20 ⁵⁴ *Id.* at 287.

21 ⁵⁵ Transcript of Dkt. No. 616, at 135:11-14. A true and correct copy of the transcript is attached as
Exhibit A to the Motion to Reconsider, Dkt. No. 697.

22 ⁵⁶ LMI must also keep information by an insured confidential under a “tripartite” relationship that
23 defense counsel has with LMI and an insured. *See Bank of Am. V. Superior Court*, 212 Cal. App. 4th
24 1076, 1084 (2023). Under that tripartite relationship, “confidential communications between either
25 the insurer or the insured and counsel are protected by the attorney-client privilege, and both the
insurer and insured are holders of the privilege.” *Id.* at 1083. Similarly, work product “does not lose
its protection when it is transmitted to the insurer.” *Id.*

26 ⁵⁷ Coverage Action at Dkt. No. 163.

27 ⁵⁸ *See Exhibit A* to Roten Decl.

28 ⁵⁹ The Debtor circulated an email on October 20, 2023 to LMI and other insurers with a link to over
300 Complaints filed against the Diocese and other entities. Although LMI expressly advised that

1 responsive to any tenders by the Debtor now. In the future, Claims Files may include confidential
2 communications between LMI and their counsel and thus would be protected by the attorney-client
3 privilege. Further, the contents may include drafted documents or information necessarily developed
4 in anticipation of litigation and would thereby be protected under the work-product doctrine.

5 The Committee’s vague statement that “...insurers are required to keep claims file. ...[a]nd in
6 the claims file, there will be information on how they value the case and what their coverage defenses
7 are and things like that” is a rather honest recognition by the Committee that such files are privileged
8 and non-discoverable.⁶⁰

9 Thus, to the extent the Claims Files may in the future contain information protected by the
10 above-referenced privilege, the Court should protect LMI from the disclosure of privileged
11 information.

12 **C. The Subpoena Improperly Seeks Discovery of Information Protected by the**
13 **Trade Secret Privilege**

14 Federal Rule of Civil Procedure 26(c)(1)(G) permits the Court to “issue an order to protect a
15 party or person from annoyance, embarrassment, oppression, or undue burden or expense, including
16 one or more of the following:...requiring that a trade secret or other confidential research,
17 development, or commercial information not be revealed...” Further, FRBP 9018 “the court may make
18 any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or
19 other confidential research, development, or commercial information...”

20 Federal courts have long recognized a qualified evidentiary privilege for trade secrets and other
21 confidential commercial information.⁶¹ Rule 26(c) provides a qualified protection for trade secrets
22 and confidential commercial information in the civil discovery context.⁶² Moreover, the trade secret

23
24 the provision of Complaints sent by link were not tenders, out of an abundance of caution, LMI sent
preliminary coverage positions for the Complaints.

25 ⁶⁰ *Id.* at 135:5-8.

26 ⁶¹ *See, e.g., E. I. du Pont de Nemours Powder Co. v. Masland*, 244 U.S. 100, 103 (1917); 8 J.
27 Wigmore, Evidence § 2212, pp. 156–157 (McNaughton rev. 1961).

28 ⁶² *Fed. Open Mkt. Comm. of Fed. Rsrv. Sys. v. Merrill*, 443 U.S. 340, 356–57 (1979).

1 privilege, which protects confidential commercial information, also applies to FRBP 2004
2 examinations.⁶³ In determining whether such information may be protected, federal courts apply a
3 burden shifting approach –

4 In light of the protection afforded to trade secrets by Rule 26(c) [], courts have
5 attempted to reconcile the competing interests in trade secret discovery disputes. First,
6 the party opposing discovery must show that the information is a “trade secret or other
7 confidential research, development, or commercial information” under Rule 26(c) []
8 and that its disclosure would be harmful to the party's interest in the property. The
9 burden then shifts to the party seeking discovery to show that the information is
10 relevant to the subject matter of the lawsuit and is necessary to prepare the case for
11 trial. [] If the party seeking discovery shows both relevance and need, the court must
12 weigh the injury that disclosure might cause to the property against the moving party's
13 need for the information. If the party seeking discovery fails to show both the relevance
14 of the requested information and the need for the material in developing its case, there
15 is no reason for the discovery request to be granted, and the trade secrets are not to be
16 revealed.⁶⁴

11 Should the Underwriting Information and Reserve Information reveal confidential and
12 proprietary pricing information; information about how LMI classify risk, calculate premiums, or
13 compensate brokers/agents; or how they arrive at underwriting, settlement, or litigation decisions –
14 that information is protected as a confidential trade secret. Any disclosure of such information would
15 cause LMI irreparable harm.

16 **D. The Subpoena demands irrelevant information**

17 **1. Reserve Information Is Irrelevant**

18 LMI acknowledge that the Court has ruled that the objection as to the relevancy of the
19 subpoenaed documents is denied. However, LMI include the following objection in the event that the
20 Appeal is successful.

21 Courts routinely rule that reserve information is irrelevant. “A common misconception is that
22 an insurer’s loss reserves are the same as settlement authority. They are not. The main purpose of a
23 loss reserve is to comply with statutory requirements and to reflect, as accurately as possible, the
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26 ⁶³ *In re Jewelers Shipping Ass’n*, 97 B.R. 149, 150 (Bankr. D.R.I. 1989) (denying examination that
sought confidential commercial information).

27 ⁶⁴ *Dobson v. Twin City Fire Ins. Co.*, 2011 WL 6288103, at *4 (C.D. Cal. Dec. 14, 2011) (citing *In*
28 *re Remington Arms Co., Inc.*, 952 F.2d 1029, 1032 (8th Cir. 1991) (citations omitted)).

1 insured's *potential* liability. It does not automatically authorize a settlement figure.”⁶⁵ Hence, federal
2 courts find reserve information “of very tenuous relevance, if any relevance at all...essentially
3 reflect[ing] an assessment of the value of a claim taking into consideration the likelihood of an adverse
4 judgment and that such estimates of potential liability do not normally entail an evaluation of coverage
5 based upon a thorough factual and legal consideration when routinely made as a claim analysis.”⁶⁶

6 In the context of a pending motion under Federal Rule of Bankruptcy Procedure 9019, in *In re*
7 *Diocese of Camden, New Jersey*, Case No. 20-21257-JNP (Bankr. D.N.J.), the Bankruptcy Court for
8 this District rejected the committee's assertion that requests for information about insurers' reserves
9 and reinsurance related to abuse claims against the diocese. The bankruptcy court found that loss

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13 ⁶⁵ *Lipton v. Superior Ct.*, 48 Cal. App. 4th 1599, 1613 (1996) (original emphasis).

14 ⁶⁶ *Petrochemical*, 117 F.R.D. 283 at 288; see also *Mirarchi v. Seneca Specialty Ins. Co.*, 564 F. App'x
15 652, 655 (3d Cir. 2014) (citing *Petrochemical*, 117 F.R.D. at 288, and concluding that loss reserve
16 figures “were irrelevant and not discoverable”); *TIG Ins. Co. v. Tyco Int'l Ltd.*, 2010 WL 4683594, at
17 *1 (M.D. Pa. Nov. 12, 2010) (denying motion to compel production of reserve information);
18 *Signature Dev. Co., Inc. v. Royal Ins. Co. of America*, 230 F.3d 1215, 1223-24 (10th Cir. 2000)
19 (holding that liability insurer's reserves are “merely an amount it set aside to cover potential future
20 liabilities,” and refusing to infer they “constitute a final objective assessment of a claim's worth” for
21 purposes of bad faith litigation); *American Protection Ins. Co. v. Helm Concentrates, Inc.*, 140 F.R.D.
22 448, 449-50 (E.D. Cal. 1991) (“the amount of a reserve is, at least in part, determined by statute...a
23 prudent insurer would establish reserves sufficient to pay claims based upon many factors, only one
24 of which might be the estimate of the chances of the claimant's success.”); *Leski, Inc. v. Fed. Ins.*
25 *Co.*, 129 F.R.D. 99, 106, 114 (D.N.J. 1989) (“claims personnel set reserves on a basis that does not
26 entail a thorough factual and legal analysis of a policy. The amount set as a reserve is not
27 determinative of the insurers' interpretation of policy language.”); *Union Carbide Corp. v. Travelers*
28 *Indemnity Co.*, 61 F.R.D. 411, 413 (W.D. Pa. 1973) (district court refused to allow discovery into
reserves in insurance coverage action involving product liability claim); *Hoechst Celanese Corp.*,
623 A.2d 1099 at 1109-1110; *Nat'l Union Fire Ins. Co.*, 558 A.2d 1091 at 1097-98 (“reserves are
funds set aside for the payment of future claims... [R]eserves are general estimates of potential
liability which may not involve a detailed factual and legal basis...The fact that reserves were
established does not necessarily mean that the insurers believed that such claims would be covered
by the policies.”); *Am. Bankers Ins. Co. of Fla. v. Nat'l Fire Ins. Co. of Hartford*, 488 F. Supp. 3d
892, 903, n. 5 (N.D. Cal. 2020) (“...insurers loss reserve cannot be accurately equated with an
admission of liability of the value of a particular claim.”) (internal quotes and citations omitted);
Sekera v. Allstate Ins. Co., 2017 WL 6550425, at *10, n. 4 (C.D. Cal. Sept. 19, 2017), *aff'd*, 763 F.
App'x 629 (9th Cir. 2019) (“the main purpose of the loss reserve is to comply with statutory
requirements and to reflect, as accurately as possible, the insured's *potential* liability. It does not
automatically authorize a settlement at that figure. Therefore, an insurer's loss reserve cannot be
accurately equated with an admission of liability or the value of any particular claim.”) (internal
quotes and citations omitted).

1 reserves were irrelevant to an insured's claim, even in bad faith litigation.⁶⁷ Similarly, in other mass
2 tort cases, bankruptcy courts have considered and denied requests for reserve information.⁶⁸

3 In *In re Couch*, 80 B.R. 512 (S.D. Cal. 1987), a bankruptcy trustee appealed a bankruptcy
4 court's discovery order in an action brought against an insurance agent's professional liability insurer
5 for failure to pay benefits. The bankruptcy trustee sought discovery relating to an insurer's policies
6 and procedures for setting loss reserves.⁶⁹ On appeal, the insurer argued that a

7 "discovery order compelling disclosure of information regarding their policies and
8 procedures for setting loss reserves, including specific information regarding any loss
9 reserves in the underlying litigation leading to a third party, is an abuse of discretion.
10 They aver that the discovery order is unfair, contrary to all existing authority and
undermines the important public policies underlying California reserve requirements.
Further, they state that the trustee has mistakenly characterized a loss reserve as an
insurer's estimation of probable or potential liability."⁷⁰

11 In reversing the bankruptcy court's order, the district court agreed with the insurer and held that "a
12 reserve cannot accurately or fairly be equated with an admission of liability or the value of any
13 particular claim."⁷¹

14 The Committee's contention that "Insurers have a statutory duty to create reasonable reserves
15 for these claims. They look back at the history of their settlement of the claims and resolution of the
16 claims to create these reserve working papers. And that goes to the reasonable value of these claims"
17 is wholly without merit.⁷² LMI's Reserve Information is the product of proprietary internal processes,

18 ⁶⁷ See Exhibit B to Motion to Reconsider, Transcript at 11:10-12:13.

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20 ⁶⁸ *In re Boy Scouts of America and Delaware BSA, LLC*, Case No. 20-10343 (LSS), Nov. 19, 2021
Hr'g Tr. at 134:4-7 (The Court: "[T]o say that there's some relevance here to [reserves information],
21 I don't see it, I just don't see it."); *In re Imerys Talc America, Inc., et al.*, Case No. 19-10289, June
22 22, 2021 Hr'g Tr. at 239:1 (The Court: [discussing both reserves and reinsurance] "[E]ven in the
coverage cases, they say this is usually irrelevant and not discoverable ... So how does that have
23 anything to do with confirmation?"); *id.* at 239:21 (The Court: "Internal to the insurance companies,
their setting reserves, like a prudent businessperson might or they're regulatorily required, I don't
understand how that's relevant to confirmation.").

24 ⁶⁹ *Id.* at 514.

25 ⁷⁰ *Id.* at 516.

26 ⁷¹ *Id.* at 517.

27 ⁷² Transcript of Dkt. No. 616 at 103:10-14. A true and correct copy of the transcript is attached as
28 Exhibit A to the Motion to Reconsider, Dkt. No. 697.

1 is similarly irrelevant. LMI's reserves are not determinative of LMI's interpretation of the language
2 of the policies LMI subscribed. LMI's reserves also are not admissions or evaluations of liability, are
3 irrelevant to the coverage issues raised by the Debtor, and plainly are irrelevant to any bankruptcy
4 issues in this case.

5 2. Underwriting Files Are Irrelevant

6 Underwriting Files are irrelevant because any discussions concerning the *policy negotiations*
7 *sixty (60) years ago* are now subsumed in the written insurance policies themselves.

8 *Edinburgh* provides an "examination of the custom and practice of the unique insurance market
9 at Lloyd's of London and the London insurance market generally."⁷³ Lloyd's is an association of
10 members, including underwriters, who represent syndicates of underwriters located and based in
11 England.⁷⁴ The underwriter members subscribe to cover all or part of a proposed placement of
12 insurance at their own election.⁷⁵

13 The recognized custom and usage of the London insurance market is that a potential insured
14 must approach the market through an authorized London broker.⁷⁶ The London broker is the agent of
15 the potential insured (in this case, the Debtor).⁷⁷ The London broker also serves as coordinator for all
16 parts of the insurance, negotiation, placement, claims presentation, and sometimes payment.⁷⁸ The
17 London broker is not employed by the London insurance market.

18 The London broker approaches the underwriters with possible insurance risks.⁷⁹ After
19 negotiating with various underwriters and London market companies, the London broker obtains
20 100% subscription for the risk being placed, specifying terms and premium rates. Once confirmed,
21

22 ⁷³ *Edinburgh Assur. Co. v. R.L. Burns Corp.*, 479 F. Supp. 138, 144-46 (C.D. Cal. 1979).

23 ⁷⁴ *Id.* at 144.

24 ⁷⁵ *Id.*

25 ⁷⁶ *Id.*

26 ⁷⁷ *Id.*

27 ⁷⁸ *Id.*

28 ⁷⁹ *Id.* at 145.

1 the London broker retains the placement slips, and prepares the policy, using the terms and conditions
2 from the slip.⁸⁰

3 This information fundamentally concerns the details of the inception of the insurance policies,
4 which occurred decades ago and is irrelevant to the bankruptcy case.

5 **E. There is no legitimate need for the information**

6 The Committee cannot demonstrate a legitimate need for the information demanded.

7 In measuring a party's need for evidence, courts look to a variety of factors, including the need
8 to prepare an adequate defense or establish a claim, the availability of alternative evidence, the need
9 to cross-examine expert witnesses, and the need for the underlying data.⁸¹

10 Balancing these factors, the Committee cannot demonstrate a need for the information. The
11 Committee has not sought, and does not have standing to pursue the Coverage Action. Indeed, the
12 Committee admitted they were seeking Reserve Information to determine how the claims "may impact
13 the Insurers' solvency or prompt a need for reinsurance or other financial protection"⁸²— which has
14 nothing to do with the Debtor's assets or liabilities, or the Coverage Action. The Reserve Information
15 does not relate to the valuation of claims.

16 In addition, the Committee's contention that the Underwriting Files "show the reinsurance
17 backing of the policy. So whether these claims present any type of collectability, how quickly they
18 can be paid type issue, all insurance company keep these files"⁸³ is similarly unavailing because
19 reinsurance information would not be included in Underwriting Files and only involves the
20 relationship between the reinsurer and the insurer, not the insured. Thus, whether or not there is
21 reinsurance is unrelated to the valuation of the Abuse Claims, and is similarly unrelated to the Debtor's
22 assets and liabilities.

23 _____
24 ⁸⁰ *Id.*

25 ⁸¹ *See Deitchman v. E.R. Squibb & Sons, Inc.*, 740 F.2d 556, 561-63 (7th Cir. 1984).

26 ⁸² Transcript of Dkt. No. 616, at 136:10-13. A true and correct copy of the transcript is attached as
Exhibit A to the Motion to Reconsider, Dkt. No. 697.

27 ⁸³ Transcript of Dkt. No. 616 at 135:10-13. A true and correct copy of the transcript is attached as
28 Exhibit A to the Motion to Reconsider, Dkt. No. 697.

1 The Committee's contentions do not show a need for Underwriting Files to support their
2 alleged abuse claims or the Coverage Action.

3 **F. The Subpoena is overly broad**

4 The Subpoena is overbroad because it does not impose any time limitations and lacks
5 particularity.

6 Courts "may find that a subpoena presents an undue burden when the subpoena is facially
7 overbroad."⁸⁴ Subpoenas are facially overbroad when the "[t]he requests are not particularized"; and
8 "[t]he period covered by the requests is unlimited."⁸⁵ "Document requests are facially over[ly]broad [if]
9 they are not limited to a specific time period."⁸⁶

10 The Subpoena impermissibly instructs that "[t]hese Requests shall be deemed continuing in
11 nature. In the event You become aware of or acquire additional information Relating or referring to
12 any of the following Requests, such additional information is to be promptly produced."⁸⁷ This
13 instruction fails to impose any temporal limitation, seeks information over an unlimited time range,
14 and is continuing in nature. FRBP 2004 imposes no such obligations.

15 The Subpoena also fails to state with particularity the information requested.

16 Request Number 5 requests "[t]he entire contents of Your Claim Files Relating to any Abuse
17 Claims tendered by or on behalf of RCBO to You". Claims Files are broadly defined as
18 all files denominated as such and/or created and maintained for the purpose of
19 collecting Documents, Communications, and other information that relate to a claim
20 for insurance coverage by a policyholder. This definition includes, without limitation:
21 (a) all Documents and Communications that relate to Your handling, analysis,
adjustment, investigation, evaluation of, and decision-making process with respect to,
any claim for insurance coverage; (b) all Documents and Communications that relate
to Your possession, collection, receipt, and gathering of Documents and other

22 ⁸⁴ *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 450 (N.D. Tex. 2015) (citation
23 omitted).

24 ⁸⁵ *Id.* (internal quotes and citations omitted).

25 ⁸⁶ *Speed Trac Techs., Inc. v. Estes Express Lines, Inc.*, No. 08-212, 2008 U.S. Dist. LEXIS 43572, at
26 *6 (D. Kan. June 3, 2008); *see also Williams v. City of Dallas*, 178 F.R.D. 103, 109-110 (N.D. Tex.
27 1998) (subpoena requiring production of "any and all documents related to" three individuals was
overbroad on its face because it did not provide particular documentary descriptions or reasonable
restrictions on time).

28 ⁸⁷ *See Exhibit A* to Roten Decl.

1 information in connection with any claim for insurance coverage by a policyholder;
2 and (c) all of Your internal and external Communications that relate to any claim for
insurance coverage by a policyholder.⁸⁸

3 The demand for the “entire contents” of Claims Files is overly broad because it requires the
4 production of documents beyond the scope of the alleged Abuse Claims, Bankruptcy Case, or the
5 Coverage Action.

6 Request Number 6 requests “[a]ll Underwriting Files Relating to Your Insurance Policies
7 concerning any Abuse Claims tendered by or on behalf of RCBO to You” and Underwriting Files are
8 broadly defined as

9 all files denominated as such and/or created and maintained for the purpose of
10 collecting Documents and Communications that relate to Your possession, collection,
11 receipt, or gathering of Documents and other information concerning or evidencing the
underwriting, placement, purchase, sale, issuance, renewal, failure to renew, increase
or decrease in coverage, cancellation, termination, drafting, execution, construction,
meaning, or interpretation of, or payment of premiums for, Your Insurance Policies.⁸⁹

12
13 The term “Underwriting Files” is also overly broad because, as discussed above, Underwriting Files
14 only contain information regarding the inception of insurance policies – nothing more. Here, the
15 relevant policies were written around sixty years ago. The Committee has not even attempted to
16 show a need for files that old.

17 Request Number 7 demands “[d]ocuments to show Your current reserves for each of the Abuse
18 Claims tendered by or on behalf of RCBO to You” and Request Number 8 demands

19 [a]ll Documents and Communications that relate to Your setting, calculating, analysis,
20 adjustment, investigation, evaluation of, and decision-making process with respect to,
Your reserves identified in response to Request No. 7, above, including the working
papers and actuarial reports, if any, relating to the establishment of those reserves.⁹⁰

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22 The Subpoena does not define, with particularity, or at all, the term “reserve” and without that
23 information, LMI cannot definitively state what responsive documents could encompassed in the
24 requests.

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26 ⁸⁸ *Id.*

27 ⁸⁹ *Id.*

28 ⁹⁰ *Id.*

1 **IV. CONCLUSION**

2 Based on the foregoing, LMI respectfully request the Court grant the Motion as outlined in the
3 proposed order attached as **Exhibit A**.

4 Dated: March 4, 2024

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Attorneys Certain Underwriters at Lloyd's,
London, subscribing severally and not jointly
to Slip Nos. CU 1001 and K 66034 issued to
the Roman Catholic Archbishop of San
Francisco, and Nos. K 78138 and CU 3061
issued to the Roman Catholic Bishop of
Oakland

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

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

**DECLARATION OF RUSSELL W.
ROTEN IN SUPPORT OF CERTAIN
UNDERWRITERS AT LLOYD'S,
LONDON, SUBSCRIBING SEVERALLY
AND NOT JOINTLY TO SLIP NOS. CU
1001 AND K 66034 ISSUED TO THE
ROMAN CATHOLIC ARCHBISHOP OF
SAN FRANCISCO, AND NOS. K 78138
AND CU 3061 ISSUED TO THE ROMAN
CATHOLIC BISHOP OF OAKLAND
MOTION FOR PROTECTIVE ORDER**

Date: April 3, 2024

Time: 10:30 a.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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1 I declare under penalty of perjury that the foregoing is true and correct and to the best of my
2 knowledge and belief.

3 Executed this 4th day of March, 2024.

4 /s/ Russell W. Roten
5 Russell W. Roten
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Exhibit A

Northern District of California
Oakland Division

Chapter 11

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii)

disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

DEFINITIONS

The following definitions apply herein to these requests for production (these “Requests”):

1. “Abuse Claim(s)” means any Document or Documents describing facts (whether admitted, disputed or otherwise), memorializing statements, or otherwise recording allegations Related to bodily injury, personal injury, child abuse, sexual abuse, or sexual misconduct, including but not limited to complaints or similar Documents initiating legal proceedings (whether civil, criminal, regulatory, or ecclesiastical) filed (and pending) in any court or tribunal of any jurisdiction, claim forms for compensation submitted in this Chapter 11 Case, or any other Document attributing liability or responsibility for such conduct, in each case asserted by, or on behalf of, a Survivor against RCBO.

2. “All” includes the word “any,” and “any” includes the word “all.”

3. “And” includes the word “or,” and “or” includes the word “and.”

4. “Catholic Entities” means all Parishes, schools, missions, and other Catholic entities that operate within the territory of RCBO.

5. “Chapter 11 Case” means the bankruptcy proceeding initiated by RCBO on the Petition Date in the United States Bankruptcy Court for the Northern District of California captioned 23-40523 (WJL).

6. “Claim Files” means all files denominated as such and/or created and maintained for the purpose of collecting Documents, Communications, and other information that relate to a claim for insurance coverage by a policyholder. This definition includes, without limitation: (a) all Documents and Communications that relate to Your handling, analysis, adjustment, investigation, evaluation of, and decision-making process with respect to, any claim for

insurance coverage; (b) all Documents and Communications that relate to Your possession, collection, receipt, and gathering of Documents and other information in connection with any claim for insurance coverage by a policyholder; and (c) all of Your internal and external Communications that relate to any claim for insurance coverage by a policyholder.

7. “Committee” means The Official Committee of the Unsecured Creditors in the Chapter 11 Case.

8. “Communication” means the transmittal of information, in the form of facts, ideas, inquiries, or otherwise. The term is used here in the broadest sense, and includes any and all conversations, meetings, discussions, copying or forwarding e-mails and other Documents and any other mode of verbal or other information exchange, whether in person or otherwise, as well as all letters, correspondences, memoranda, telegrams, cables, and other Documents memorializing or constituting any information exchange.

9. “Concerning” or “Concern(s)” means constituting, Relating to, pertaining to, based upon, bearing upon, referring to, with reference to, arising in connection with, arising out of, regarding, by reason of, having to do with, or having any relation to, in the broadest sense.

10. “Debtor” or “RCBO” means, for purposes of these Requests, The Roman Catholic Bishop of Oakland, the Catholic Entities, and each of the foregoing’s current and former affiliates, corporate parents, subsidiaries, officers, directors, employees, representatives, insurance brokers, attorneys, joint ventures, partners, and anyone acting on its or their behalf.

11. “Document” or “Documents” is used in its broadest sense and includes all Communications and writings of every kind, whether sent or received, including the original, drafts, copies and non-identical copies bearing notations or marks not found on the original, and including, but not limited to, text messages, short messaging service (SMS), multimedia

messaging service (MMS), any instant messages through any instant message service, letters, memoranda, reports, studies, notes, speeches, press releases, agenda, minutes, transcripts, summaries, self-sticking removable notes, telegrams, teletypes, telefax, cancelled checks, check stubs, invoices, receipts, medical records, ticket stubs, maps, pamphlets, notes, charts, contracts, agreements, diaries, calendars, appointment books, tabulations, analyses, statistical or information accumulation, audits and associated workpapers, any kinds of records, film impressions, magnetic tape, tape records, sound or mechanical reproductions, all stored compilations of information of any kind which may be retrievable (such as, but without limitation, the content of computer memory or information storage facilities, and computer programs, and any instructions or interpretive materials associated with them), electronic files or Documents or any electronically stored information of any kind (including associated metadata, email, and voice-mail messages), and any other writings, papers, and tangible things of whatever description whatsoever including, but not limited to, any information contained in any computer, even if not printed out, copies of Documents which are not identical duplicates of the originals (e.g., because handwritten or “blind” notes appear thereon or attached thereto), including prior drafts, whether or not the originals are in Your possession, custody, or control.

12. “Each” shall mean each, every, any, and all.

13. “Including” means including without limitation.

14. “Relate(d) to” or “Relating to” means: constitutes, refers, reflects, Concerns, pertains to, supports, refutes, consists of, summarizes, discusses, notes, mentions, corroborates, demonstrates, shows, embodies, identifies, analyzes, describes, evidences, or in any way logically or factually connects with the matter described or referenced in the request.

15. “Petition Date” means May 8, 2023.

16. “Secondary Evidence” means any Documents or Communications that may support or contradict the existence, terms, or conditions of any insurance policy.

17. “Survivor(s)” means all sexual or child abuse claimants that have a pending or otherwise unresolved claim against RCBO.

18. “Underwriting Files” means all files denominated as such and/or created and maintained for the purpose of collecting Documents and Communications that relate to Your possession, collection, receipt, or gathering of Documents and other information concerning or evidencing the underwriting, placement, purchase, sale, issuance, renewal, failure to renew, increase or decrease in coverage, cancellation, termination, drafting, execution, construction, meaning, or interpretation of, or payment of premiums for, Your Insurance Policies.

19. “You” or “Your” means the Insurer that is responding to these Requests.

20. “Your Insurance Policies” means every general liability insurance policy, comprehensive general liability insurance policy, commercial general liability insurance policy, umbrella liability insurance policy, excess insurance policy, and claims-made insurance policy, as well as any insurance policy that insures or may insure against claims of bodily injury, personal injury, child abuse, sexual abuse, or sexual misconduct, issued by You to RCBO or that are alleged to provide insurance coverage from You to RCBO for Abuse Claims.

INSTRUCTIONS

1. These Requests are governed by the definitions and instructions contained in the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the Northern District of California, which are supplemented as permitted by the specific instructions and definitions herein.

2. The words “all,” “any,” and “each” shall each be construed as encompassing any and all. The singular shall include the plural and vice versa; the terms “and” or “or” shall be both conjunctive and disjunctive; and the term “including” means “including without limitation.” The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense. The singular and masculine form of nouns and pronouns shall embrace, and be read and applied as including, the plural, feminine, or neuter, as circumstances may make appropriate.

3. The phrase “possession, custody, or control” shall be construed in the broadest possible manner and includes not only those things in Your immediate possession, but also those things which are subject to Your control.

4. Unless otherwise stated in a specific Request herein, the relevant time period for the discovery being sought shall be the period from the inception of RCBO to the present.

5. These Requests shall be deemed continuing in nature. In the event You become aware of or acquire additional information Relating or referring to any of the following Requests, such additional information is to be promptly produced.

6. Produce all Documents and all other materials described below in Your actual or constructive possession, custody, or control, including in the possession, custody, or control of current or former employees, officers, directors, agents, agents’ representatives, consultants,

contractors, vendors, or any fiduciary or other third parties, wherever those Documents and materials are maintained, including on personal computers, personal digital assistants (PDAs), wireless devices, local area networks, application-based communications services (including, without limitation, Facebook Messenger, Instant Bloomberg, WeChat, Kakao Talk, WhatsApp, Signal, iMessage, etc.), and web-based file hosting services (including, without limitation, Gmail, Yahoo, etc.). You must produce all Documents in Your possession, custody, or control, whether maintained in electronic or paper form and whether located on hardware owned and maintained by You or hardware owned and/or maintained by a third party that stores data on Your behalf.

7. Documents not otherwise responsive to these Requests for production should be produced: (a) if such Documents mention, discuss, refer to, explain, or Concern one or more Documents that are called for by these Requests for Production; (b) if such Documents are attached to, enclosed with, or accompanying Documents called for by these Requests for Production; or (c) if such Documents constitute routing slips, transmittal memoranda or letters, comments, evaluations, or similar materials.

8. Documents should include all exhibits, appendices, linked Documents, or otherwise appended Documents that are referenced in, attached to, included with, or are a part of the requested Documents.

9. If any Document, or any part thereof, is not produced based on a claim of attorney-client privilege, work-product protection, or any other privilege, then in answer to such Request for Production or part thereof, for each such Document, You must:

- a. Identify the type, title and subject matter of the Document;
- b. State the place, date, and manner of preparation of the Document;

- c. Identify all authors, addresses, and recipients of the Document, including information about such persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim.

10. Documents should not contain redactions unless such redactions are made to protect information subject to the attorney-client privilege and/or work-product doctrine. In the event any Documents are produced with redactions, a log setting forth the information requested in Instruction 9 above must be provided.

11. To the extent a Document sought herein was at one time, but is no longer, in Your actual or constructive possession, custody, or control, state whether it: (a) is missing or lost; (b) has been destroyed; (c) has been transferred to others; and/or (d) has been otherwise disposed of. In each instance, identify the Document, state the time period during which it was maintained, state the circumstance and date surrounding authorization for such disposition, identify each person having knowledge of the circumstances of the disposition, and identify each person who had possession, custody, or control of the Document. Documents prepared prior to, but which Relate or refer to, the time period covered by these Requests are to be identified and produced.

12. If any part of the following Requests cannot be responded to in full, please respond to the extent possible, specifying the reason(s) for Your inability to respond to the remainder and stating whatever information or knowledge You have Concerning the portion to which You do not respond.

13. If You object to any of these Requests, state in writing with specificity the grounds of Your objections. Any ground not stated shall be waived. If You object to a particular portion of any Request, You shall respond to any other portions of such Request as to which there is no objection and state with specificity the grounds of the objection.

14. If the identity of Documents responding to a Request is not known, then that lack of knowledge must be specifically indicated in the response. If any information requested is not in Your possession but is known or believed to be in the possession of another person or entity, then identify that person or entity and state the basis of Your belief or knowledge that the requested information is in such person's or entity's possession.

15. If there are no Documents responsive to a particular Request, please provide a written response so stating.

16. If You believe that any Request, definition, or instruction is ambiguous, in whole or in part, You nonetheless must respond and (a) set forth the matter deemed ambiguous and (b) describe the manner in which You construed the Request in order to frame Your response.

17. All Documents produced shall be provided in either native file ("native") or single-page 300 dpi-resolution group IV TIF ("tiff") format, along with appropriately formatted industry-standard database load files and accompanied by true and correct copies or representations of unaltered attendant metadata. Where Documents are produced in tiff format, each Document shall be produced along with a multi-page, Document-level searchable text file ("searchable text") as rendered by an industry-standard text extraction program in the case of electronic originals, or by an industry-standard Optical Character Recognition ("ocr") program in the case of scanned paper Documents.

18. Documents and other responsive data or materials created, stored, or displayed on electronic or electro-magnetic media shall be produced in the order in which the Documents are or were stored in the ordinary course of business, including all reasonably accessible metadata, custodian or Document source information, and searchable text as to allow the Plan Proponents

through a reasonable and modest effort, to fairly, accurately, and completely access, search, display, comprehend, and assess the Documents' true and original content.

19. If a Document is or has at any time been maintained by any insurance broker or intermediary, specifically identify such Document, state whether it is currently maintained by such broker or intermediary and if not, the period during which such Document was maintained by such broker or intermediary and the date when such custody ceased, and describe in detail the circumstances under which such custody ceased and the present location and custodian of the Document.

20. Notwithstanding the scope of these Requests, pursuant to agreement of the parties, You need not produce the Official Proof of Claim Forms and Supplements (collectively, the "Proofs of Claim") in response to these Requests.

DOCUMENTS TO BE PRODUCED

1. Copies of all Your Insurance Policies issued to, or insuring, RCBO, including any endorsements or attachments to those policies.
2. All Secondary Evidence of Your Insurance Policies issued to, or insuring, RCBO, but only with respect to any of Your Insurance Policies that are missing or incomplete.
3. All coverage position letters, including reservations of rights or denials of coverage, that You or anyone acting on Your behalf sent to RCBO Concerning insurance coverage for any Abuse Claim tendered by or on behalf of RCBO to You.
4. Documents sufficient to show any exhaustion, erosion, or impairment of the limits of liability of each of Your Insurance Policies, such as loss runs, loss history reports, and/or claims reports.
5. The entire contents of Your Claim Files Relating to any Abuse Claims tendered by or on behalf of RCBO to You.
6. All Underwriting Files Relating to Your Insurance Policies concerning any Abuse Claims tendered by or on behalf of RCBO to You.
7. Documents sufficient to show Your current reserves for each of the Abuse Claims tendered by or on behalf of RCBO to You.
8. All Documents and Communications that relate to Your setting, calculating, analysis, adjustment, investigation, evaluation of, and decision-making process with respect to, Your reserves identified in response to Request No. 7, above, including the working papers and actuarial reports, if any, relating to the establishment of those reserves.

Exhibit B

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*Attorneys for Certain Underwriters at Lloyd's,
London, subscribing severally and not jointly to
Slip Nos. CU 1001 and K 66034 issued to the
Roman Catholic Archbishop of San Francisco,
and Nos. K 78138 and CU 3061 issued to the
Roman Catholic Bishop of Oakland*

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

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

**CERTAIN UNDERWRITERS AT
LLOYD'S LONDON, SUBSCRIBING
SEVERALLY AND NOT JOINTLY TO
SLIP NOS. CU 1001 AND K 66034
ISSUED TO THE ROMAN CATHOLIC
ARCHBISHOP OF SAN FRANCISCO
AND NOS. K 78138 AND CU 3061
ISSUED TO THE ROMAN CATHOLIC
BISHOP OF OAKLAND'S RESPONSES
AND OBJECTIONS TO SUBPOENA
FOR RULE 2004 EXAMINATION**

**CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING SEVERALLY
AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN
CATHOLIC ARCHBISHOP OF SAN FRANCISCO AND NOS. K 78138 AND CU 3061
ISSUED TO THE ROMAN CATHOLIC BISHOP OF OAKLAND'S RESPONSES AND
OBJECTIONS TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'
SUBPOENA FOR RULE 2004 EXAMINATION**

Pursuant to Federal Rules of Bankruptcy Procedure 2004 and Federal Rule of Civil Procedure

1 45, made applicable by Federal Rule of Bankruptcy Procedure 9016, Certain Underwriters at
2 Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 and Nos.
3 K 78138 and CU 3061 (collectively, "London Market Insurers" or "LMI"), respond and object to the
4 Subpoena for Rule 2004 Examination ("Rule 2004 Subpoena") issued by the Official Committee of
5 Unsecured Creditors (the "Committee"). LMI state as follows:

6 **PRELIMINARY STATEMENT**

7 On December 15, 2023, LMI filed its *Motion to Clarify or, in the Alternative, Amend, Alter,*
8 *or Reconsider the Court's Oral Ruling on the Official Committee of Unsecured Creditors' Ex Parte*
9 *Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* ("Motion to
10 Clarify"; Dkt. No. 697). On January 17, 2024, the Committee filed its *Objection* ("Objection"; Dkt.
11 No. 788). On January 18, 2024, the Court issued an *Order Granting the Official Committee of*
12 *Unsecured Creditors' Ex Parte Application for Federal Bankruptcy Procedure 2004 Examination of*
13 *Insurers* ("Order"; Dkt. No. 796). On January 24, 2024, LMI filed its *Reply* in support of the Motion
14 to Clarify ("Reply"; Dkt. No. 812). The Motion to Clarify is currently set for hearing on February 7,
15 2024. As outlined in the Motion to Clarify and the Reply, LMI seek clarification and/or
16 reconsideration of the Court's rulings at the November 14, 2023 and January 9, 2024 hearings, and
17 subsequent Order regarding the relevancy of Reserve Information, Underwriting Files, and Claims
18 Files.¹ Thus, LMI's objections and responses to the Rule 2004 Subpoena do not constitute a waiver
19 of its rights to raise further objections pending the hearing on the Motion to Clarify. On the contrary,
20 LMI specifically object to the demand to produce each and every of the categories of documents
21 requested in the Rule 2004 Subpoena to the extent incompatible with the Court's ruling on the Motion
22 to Clarify, and/or any related appeals.

23 The LMI responses are based upon information and documents known or believed to be in
24 existence by LMI at the time of responding to the Rule 2004 Subpoena. LMI reserve the right to
25 modify, amend, and/or supplement their responses if or when they learn of new information through
26 discovery or otherwise. LMI will supplement these responses to the extent required under the Federal
27

28 ¹ Capitalized terms not defined shall have the set meanings set forth in the Motion to Clarify.

1 Rules of Bankruptcy Procedure 2004 and 9016, and Federal Rule of Civil Procedure 45, the
2 Bankruptcy Local Rules for the Northern District of California, any other local rule or procedure, or
3 any Order entered in this action.

4 By referring to documents that they will produce in response to the Rule 2004 Subpoena, LMI
5 do not concede the admissibility or the relevance of any individual document(s) produced or that the
6 document(s) is original, true, accurate, complete, or authentic. LMI reserve the right to challenge the
7 competency, relevancy, materiality, and admissibility of, or to object on any ground to the use of, any
8 information set forth herein or documents produced in any subsequent proceeding, hearing, deposition
9 or trial of this or any other action. Furthermore, the fact that LMI assert a General Objection or a
10 specific objection to any category of Documents to be Produced (“Request”) does not imply nor should
11 it be deemed or construed as a representation that such requested information or documents even exist.
12 This Preliminary Statement is incorporated into each Objection set forth below.

13 **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

14 1. LMI object to the Instructions and Definitions to the extent that they impose
15 obligations on LMI beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules
16 of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of California, any
17 other local rule or procedure, or any Order entered in this action.

18 2. LMI object to the extent the Committee is seeking to impose discovery obligations on
19 LMI beyond that which is required by the Federal Rules of Civil Procedure, the Federal Rules of
20 Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of California, or any
21 other local rule or procedure. In this regard, as outlined further below, the entities most likely to possess
22 underwriting and claims handling documents are the London Brokers and the Roman Catholic Bishop
23 of Oakland’s (“RCBO”) Service Organization. Information from the London Brokers or the RCBO’s
24 Service Organization may from time-to-time be presented to the lead underwriter on the relevant LMI
25 Policies². The following market companies and syndicates typically retained little, or no documents. As

26 ² LMI allegedly subscribed severally, and not for the other, and as their respective interests may
27 appear, to certain insurance policies, on which the Roman Catholic Archbishop of San Francisco is a
28 Named Assured and certain Diocese-related entities were also Assureds, that were effective for
periods from March 12, 1962 to October 25, 1963, and on which the Roman Catholic Bishop of

1 a result, only the lead underwriter on the LMI Policies at issue is responding to these Requests. If the
2 Committee is seeking discovery from individuals beyond the lead underwriter, the burden of such a
3 request outweighs the benefit and is unreasonably cumulative or duplicative.

4 3. LMI object to the Definition of “You” and “Your” to the extent that these Definitions
5 refer to attorneys and their associates, investigators, servants, agents, employees, and representatives
6 who are not parties to this litigation. LMI shall interpret the terms “You” and “Your” to mean LMI.

7 4. LMI object to the Definition of “Your Insurance Policies” as overly broad, unduly
8 burdensome, and the burden of such a request outweighs the benefit and is unreasonably cumulative or
9 duplicative.

10 5. LMI object to the Definition of “Claim Files” on the grounds that the Definition is
11 vague, overly broad and unduly burdensome. LMI also object to this Definition to the extent the
12 Committee seeks to include within such Definition information, documents, or communications that
13 are not subject to LMI’s control. LMI further object to the Definitions to the extent that the Definition
14 purports to seek information that is proprietary in nature or which is protected from disclosure by the
15 attorney-client privilege, tripartite privilege, proprietary trade secrets and confidential
16 communications privilege, work-product doctrine, joint-defense privilege, mediation privilege,
17 settlement communication privilege, or any other applicable privilege or immunity.

18 6. LMI object to the Definition of “Catholic Entities” as the term “means all Parishes,
19 schools, missions, and other Catholic entities that operate within the territory of RCBO.” To date,
20 LMI do not have sufficient information to determine all entities falling within this Definition.

21 7. LMI object to the Definitions of “Abuse Claim(s)”, “All”, “And”, “Communication”,
22 “Concerning” or “Concern(s)”, “Document” or “Documents”, “Including”, “Relate(d) to” or
23 “Relating to”, and “Secondary Evidence”, as vague, overly broad and unduly burdensome. LMI also
24 object to these Definitions to the extent the Committee seeks to include within such Definition
25 information, documents, or communications that are not subject to LMI’s control. LMI further object

26 _____
27 Oakland is a Named Assured and certain Diocese-related entities were also Assureds, that were
28 effective for periods from October 25, 1963 to October 25, 1966.

1 to these Definitions to the extent that the Definitions purport to seek information that is proprietary
2 in nature or which is protected from disclosure by the attorney-client privilege, tripartite privilege,
3 proprietary trade secrets and confidential communications privilege, work-product doctrine, joint-
4 defense privilege, mediation privilege, settlement communication privilege, or any other applicable
5 privilege or immunity.

6 **GENERAL OBJECTIONS**

7 1. “Beyond the Scope of Court Rules and Order”: LMI object to the Requests to the
8 extent that they seek to impose any obligations upon LMI beyond those imposed by the Federal
9 Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules
10 for the Northern District of California, any other local rule or procedure, or any Order entered in this
11 action.

12 2. “Privileged Information”: LMI object to the Requests to the extent they seek
13 information protected by the attorney-client privilege, tripartite privilege, proprietary trade secrets and
14 confidential communications privilege, work-product doctrine, joint-defense doctrine, common-
15 interest privilege, mediation privilege, constitute a settlement communication, or any other applicable
16 privilege, immunity, protection or restriction or on the ground that the information is not otherwise
17 discoverable the Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the
18 Northern District of California, any other local rule or procedure, or any Order entered in this action,
19 or other applicable statute. Further, LMI object to the Requests to the extent that they seek documents
20 containing the impressions, conclusions, opinions, legal research, or theories of LMI or their
21 attorneys, or materials prepared in anticipation of litigation or information that is proprietary in
22 nature. Nothing contained in these General Objections or any specific objection to the Requests is
23 intended as, or shall in any way be deemed or construed as, a waiver of any attorney-client privilege,
24 any tripartite privilege, any proprietary trade secrets and confidential communications privilege, any
25 work-product privilege, any joint-defense privilege, common-interest privilege, mediation privilege,
26 settlement privilege or any other applicable privilege.

27 3. “Non-Relevant Information”: LMI object to the Requests to the extent that they seek
28 non-relevant information, including requests for information or documents that are not reasonably

1 calculated to lead to the discovery of admissible evidence, that have no bearing on coverage issues
2 (including reserves).

3 4. “Overly Broad”: LMI object to the Requests to the extent that they are overly broad,
4 beyond the scope of permissible discovery, or seek information without proper limit to the subject
5 matter.

6 5. “Undue Burden”: LMI object to the Requests to the extent that locating and retrieving
7 information and/or materials to formulate a response imposes an undue burden or is oppressive.

8 6. “Burden Outweighs Benefit”: LMI object to the Requests to the extent that the burden
9 or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the
10 case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the
11 litigation, and the importance of the proposed discovery in resolving the issue.

12 7. “Unreasonably Cumulative or Duplicative”: LMI object to the Requests to the extent
13 that the information sought is unreasonably cumulative or duplicative, can be obtained from some
14 other source in a manner that is more convenient, less burdensome or less expensive, or is already in
15 the possession of the Committee.

16 8. “Vague and Ambiguous”: LMI object to the Requests to the extent they are vague and
17 ambiguous and to the extent that LMI are unable to determine what information and documents are
18 sought and are thus likely to lead to confusing, misleading, inaccurate or incomplete responses from
19 LMI.

20 9. “Information Not In Possession”: LMI object to the Requests to the extent they seek
21 information and documents that may not be in LMI’s possession, custody or control.

22 10. “Confidential and Proprietary Information”: LMI object to the Requests to the extent
23 they seek confidential business information of a proprietary nature.

24 11. “Request Not Limited to Relevant Period(s)”: LMI object to the Requests to the extent
25 they: (1) are not limited to a specific time; (2) are not limited in time to the effective period of the
26 LMI Policies at issue in this action; and/or (3) are not limited to the time period relevant to LMI, if
27 any, of the claims at issue in this action, on the grounds that such Requests are overly broad, unduly
28

1 burdensome, oppressive, seek information that is not relevant to the subject matter involved in the
2 pending action, and/or are not reasonably calculated to lead to the discovery of admissible evidence.

3 12. "Information for Litigation": LMI object to the Requests to the extent that they seek
4 information prepared, generated, or received in anticipation of litigation, including after the time
5 RCBO filed the Adversary Proceeding against LMI on June 22, 2023.

6 Subject to, and without waiving the foregoing Preliminary Statement, Objections to
7 Instructions and Definitions, and General Objections, LMI further respond and object to the Rule
8 2004 Subpoena as follows:

9 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED**

10 **DOCUMENTS TO BE PRODUCED NO. 1:**

11 Copies of Your Insurance Policies issued to, or insuring, RCBO, including any endorsements
12 or attachments to those policies.

13 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 1:**

14 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
15 Definitions, and General Objections as set forth herein.

16 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
17 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
18 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
19 procedure, or any Order entered in this action.

20 LMI further object to the Request to the extent it seeks information protected by the attorney-
21 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
22 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
23 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
24 protection or restriction or on the ground that the information is not otherwise discoverable the
25 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
26 California, any other local rule or procedure, or any Order entered in this action, or other applicable
27 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
28 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials

1 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
2 in these General Objections or any specific objection to the Requests is intended as, or shall in any
3 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
4 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
5 any other applicable privilege.

6 LMI further object to the Request to the extent that it seeks non-relevant information,
7 including requests for information or documents that are not reasonably calculated to lead to the
8 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

9 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
10 and vague and ambiguous.

11 LMI further object to the Request to the extent that the burden or expense of the proposed
12 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
13 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
14 importance of the proposed discovery in resolving the issue.

15 LMI further object to the Request to the extent that the information sought is unreasonably
16 cumulative or duplicative, can be obtained from some other source in a manner that is more
17 convenient, less burdensome or less expensive, or is already in the possession of Committee.

18 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
19 not limited in time to the effective period of the LMI Policies at issue in this action; and/or (3) is not
20 limited to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds
21 that such Requests are overly broad, unduly burdensome, oppressive, seeks information that is not
22 relevant to the subject matter involved in the pending action, and/or is not reasonably calculated to
23 lead to the discovery of admissible evidence.

24 LMI further object to the defined terms "all", "Your", "Insurance Policies", and "any" as
25 vague, ambiguous, and overbroad. LMI also object to these Definitions to the extent the Committee
26 seeks to include within such Definition information, documents, or communications that are not
27 subject to LMI control. LMI further object to these Definitions to the extent that the Definitions
28 purport to seek information that is proprietary in nature or which is protected from disclosure by the

1 attorney-client privilege, tripartite privilege, proprietary trade secrets and confidential
2 communications privilege, work-product doctrine, joint-defense privilege, mediation privilege,
3 settlement communication privilege, or any other applicable privilege or immunity.

4 LMI further object to the undefined terms “endorsements,” “attachments”, and “policies” as
5 vague and ambiguous.

6 Subject to and without waiving the foregoing objections, LMI respond as follows: On March
7 4, 2024, LMI will produce relevant non-privileged documents in response to this Request for LMI
8 insurance policies alleged to provide insurance coverage by LMI to RCBO for alleged claims in this
9 Bankruptcy Case, subject to the Court’s ruling on the Motion to Clarify, and/or any related appeals.
10 The LMI production will be subject to any and all confidentiality orders applicable to the information
11 contained therein.

12 **DOCUMENTS TO BE PRODUCED NO. 2:**

13 All Secondary Evidence of Your Insurance Policies issued to, or insuring, RCBO but only
14 with respect to any of Your Insurance Policies that are missing or incomplete.

15 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 2:**

16 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
17 Definitions, and General Objections as set forth herein.

18 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
19 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
20 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
21 procedure, or any Order entered in this action.

22 LMI further object to the Request to the extent it seeks information protected by the attorney-
23 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
24 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
25 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
26 protection or restriction or on the ground that the information is not otherwise discoverable the
27 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
28 California, any other local rule or procedure, or any Order entered in this action, or other applicable

1 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
2 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
3 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
4 in these General Objections or any specific objection to the Requests is intended as, or shall in any
5 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
6 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
7 any other applicable privilege.

8 LMI further object to the Request to the extent that it seeks non-relevant information,
9 including requests for information or documents that are not reasonably calculated to lead to the
10 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

11 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
12 and vague and ambiguous.

13 LMI further object to the Request to the extent that the burden or expense of the proposed
14 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
15 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
16 importance of the proposed discovery in resolving the issue.

17 LMI further object to the Request to the extent that the information sought is unreasonably
18 cumulative or duplicative, can be obtained from some other source in a manner that is more
19 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

20 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
21 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
22 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
23 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
24 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
25 discovery of admissible evidence.

26 LMI further object to the defined terms "Secondary Evidence", "Your", and "Insurance
27 Policies" as vague, ambiguous, and overbroad. LMI also object to these Definitions to the extent the
28 Committee seeks to include within such Definition information, documents, or communications that

1 are not subject to LMI's control. LMI further object to these Definitions to the extent that the
2 Definitions purport to seek information that is proprietary in nature or which is protected from
3 disclosure by the attorney-client privilege, tripartite privilege, proprietary trade secrets and
4 confidential communications privilege, work-product doctrine, joint-defense privilege, mediation
5 privilege, settlement communication privilege, or any other applicable privilege or immunity.

6 LMI further object to the undefined term as "missing or incomplete" as vague and ambiguous.

7 Subject to and without waiving the foregoing objections, LMI respond as follows: On March
8 4, 2024, LMI will produce relevant non-privileged documents in response to this Request for LMI
9 insurance policies alleged to provide insurance coverage by LMI to RCBO for alleged claims in this
10 Bankruptcy Case, to the extent they may exist, subject to the Court's ruling on the Motion to Clarify,
11 and/or any related appeals. The LMI production will be subject to any and all confidentiality orders
12 applicable to the information contained therein.

13 **DOCUMENTS TO BE PRODUCED NO. 3:**

14 All coverage position letters, including reservation of rights or denials of coverage, that You
15 or anyone acting on Your behalf sent to RCBO Concerning insurance coverage for any Abuse Claim
16 tendered by or on behalf of RCBO to You.

17 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 3:**

18 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
19 Definitions, and General Objections as set forth herein.

20 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
21 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
22 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
23 procedure, or any Order entered in this action.

24 LMI further object to the Request to the extent it seeks information protected by the attorney-
25 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
26 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
27 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
28 protection or restriction or on the ground that the information is not otherwise discoverable the

1 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
2 California, any other local rule or procedure, or any Order entered in this action, or other applicable
3 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
4 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
5 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
6 in these General Objections or any specific objection to the Requests is intended as, or shall in any
7 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
8 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
9 any other applicable privilege.

10 LMI further object to the Request to the extent that it seeks non-relevant information,
11 including requests for information or documents that are not reasonably calculated to lead to the
12 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

13 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
14 and vague and ambiguous.

15 LMI further object to the Request to the extent that the burden or expense of the proposed
16 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
17 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
18 importance of the proposed discovery in resolving the issue.

19 LMI further object to the Request to the extent that the information sought is unreasonably
20 cumulative or duplicative, can be obtained from some other source in a manner that is more
21 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

22 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
23 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
24 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
25 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
26 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
27 discovery of admissible evidence.
28

1 LMI further object to the defined terms “You”, “Your”, “Concerning”, and “Abuse Claim” as
2 vague, ambiguous, and overbroad. LMI also object to these Definitions to the extent the Committee
3 seeks to include within such Definition information, documents, or communications that are not
4 subject to LMI’s control. LMI further object to these Definitions to the extent that the Definitions
5 purport to seek information that is proprietary in nature or which is protected from disclosure by the
6 attorney-client privilege, tripartite privilege, proprietary trade secrets and confidential
7 communications privilege, work-product doctrine, joint-defense privilege, mediation privilege,
8 settlement communication privilege, or any other applicable privilege or immunity.

9 LMI further object to the undefined terms and phrases “coverage position letters”,
10 “reservation of rights or denials of coverage”, and “tendered by” as vague and ambiguous.

11 Subject to and without waiving the foregoing objections, LMI respond as follows: On March
12 4, 2024, LMI will produce relevant non-privileged documents in response to this Request for LMI
13 insurance policies alleged to provide insurance coverage by LMI to RCBO for alleged claims in this
14 Bankruptcy Case, to the extent they may exist, subject to the Court’s ruling on the Motion to Clarify,
15 and/or any related appeals. The LMI production will be subject to any and all confidentiality orders
16 applicable to the coverage position letters and the information contained therein.

17 **DOCUMENTS TO BE PRODUCED NO. 4:**

18 Documents sufficient to show any exhaustion, erosion, or impairment of the limits of liability
19 of each of Your Insurance Policies, such as loss runs, loss history reports, and/or claims reports.

20 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 4:**

21 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
22 Definitions, and General Objections as set forth herein.

23 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
24 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
25 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
26 procedure, or any Order entered in this action.

27 LMI further object to the Request to the extent it seeks information protected by the attorney-
28 client privilege, tripartite privilege, proprietary trade secrets and confidential communications

1 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
2 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
3 protection or restriction or on the ground that the information is not otherwise discoverable the
4 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
5 California, any other local rule or procedure, or any Order entered in this action, or other applicable
6 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
7 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
8 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
9 in these General Objections or any specific objection to the Requests is intended as, or shall in any
10 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
11 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
12 any other applicable privilege.

13 LMI further object to the Request to the extent that it seeks non-relevant information,
14 including requests for information or documents that are not reasonably calculated to lead to the
15 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

16 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
17 and vague and ambiguous.

18 LMI further object to the Request to the extent that the burden or expense of the proposed
19 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
20 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
21 importance of the proposed discovery in resolving the issue.

22 LMI further object to the Request to the extent that the information sought is unreasonably
23 cumulative or duplicative, can be obtained from some other source in a manner that is more
24 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

25 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
26 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
27 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
28 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant

1 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
2 discovery of admissible evidence.

3 LMI further object to the defined terms “You” and “Insurance Policies” as vague, ambiguous,
4 and overbroad. LMI also object to these Definitions to the extent the Committee seeks to include
5 within such Definition information, documents, or communications that are not subject to LMI’s
6 control. LMI further object to these Definitions to the extent that the Definitions purport to seek
7 information that is proprietary in nature or which is protected from disclosure by the attorney-client
8 privilege, tripartite privilege, proprietary trade secrets and confidential communications privilege,
9 work-product doctrine, joint-defense privilege, mediation privilege, settlement communication
10 privilege, or any other applicable privilege or immunity.

11 LMI further object to the undefined terms and phrases “sufficient”, “exhaustion, erosion, or
12 impairment of the limits of liability,” and “loss runs, loss history reports, and/or claims reports” as
13 vague and ambiguous.

14 Subject to and without waiving the foregoing objections, LMI respond as follows: On March
15 4, 2024, LMI will produce relevant non-privileged documents in response to this Request for LMI
16 insurance policies alleged to provide insurance coverage by LMI to RCBO for alleged claims in this
17 Bankruptcy Case, to the extent they may exist, subject to the Court’s ruling on the Motion to Clarify,
18 and/or any related appeals. The LMI production will be subject to any and all confidentiality orders
19 applicable to the information contained therein.

20 **DOCUMENTS TO BE PRODUCED NO. 5:**

21 The entire contents of Your Claim Files Relating to any Abuse Claims tendered by or on
22 behalf of RCBO to You.

23 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 5:**

24 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
25 Definitions, and General Objections as set forth herein.

26 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
27 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
28

1 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
2 procedure, or any Order entered in this action.

3 LMI further object to the Request to the extent it seeks information protected by the attorney-
4 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
5 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
6 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
7 protection or restriction or on the ground that the information is not otherwise discoverable the
8 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
9 California, any other local rule or procedure, or any Order entered in this action, or other applicable
10 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
11 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
12 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
13 in these General Objections or any specific objection to the Requests is intended as, or shall in any
14 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
15 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
16 any other applicable privilege.

17 LMI further object to the Request to the extent that it seeks non-relevant information,
18 including requests for information or documents that are not reasonably calculated to lead to the
19 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

20 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
21 and vague and ambiguous.

22 LMI further object to the Request to the extent that the burden or expense of the proposed
23 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
24 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
25 importance of the proposed discovery in resolving the issue.

26 LMI further object to the Request to the extent that the information sought is unreasonably
27 cumulative or duplicative, can be obtained from some other source in a manner that is more
28 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

1 LMI further object to the Request to the extent it seeks confidential business information of a
2 proprietary nature.

3 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
4 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
5 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
6 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
7 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
8 discovery of admissible evidence.

9 LMI further object to the Request to the extent that it seek information prepared, generated, or
10 received in anticipation of litigation, including after the time RCBO filed the Adversary Proceeding
11 against LMI on June 22, 2023.

12 LMI further object to the defined terms “Your”, “Claim Files”, “Relating”, and “Abuse
13 Claims” as vague, ambiguous, and overbroad. LMI also object to these Definitions to the extent the
14 Committee seeks to include within such Definition information, documents, or communications that
15 are not subject to LMI’s control. LMI further object to these Definitions to the extent that the
16 Definitions purport to seek information that is proprietary in nature or which is protected from
17 disclosure by the attorney-client privilege, tripartite privilege, proprietary trade secrets and
18 confidential communications privilege, work-product doctrine, joint-defense privilege, mediation
19 privilege, settlement communication privilege, or any other applicable privilege or immunity.

20 LMI further object to the undefined terms and phrases “entire contents” and “tendered by” as
21 vague and ambiguous.

22 LMI further object that it reserves all rights and objections pending the Court’s ruling on the
23 Motion to Clarify, and/or any related appeals.

24 **DOCUMENTS TO BE PRODUCED NO. 6:**

25 All Underwriting Files Relating to Your Insurance Policies concerning any Abuse Claims
26 tendered by or on behalf of RCBO to You.

27 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 6:**

1 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
2 Definitions, and General Objections as set forth herein.

3 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
4 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
5 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
6 procedure, or any Order entered in this action.

7 LMI further object to the Request to the extent it seeks information protected by the attorney-
8 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
9 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
10 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
11 protection or restriction or on the ground that the information is not otherwise discoverable the
12 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
13 California, any other local rule or procedure, or any Order entered in this action, or other applicable
14 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
15 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
16 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
17 in these General Objections or any specific objection to the Requests is intended as, or shall in any
18 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
19 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
20 any other applicable privilege.

21 LMI further object to the Request to the extent that it seeks non-relevant information,
22 including requests for information or documents that are not reasonably calculated to lead to the
23 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

24 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
25 and vague and ambiguous.

26 LMI further object to the Request to the extent that the burden or expense of the proposed
27 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
28

1 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
2 importance of the proposed discovery in resolving the issue.

3 LMI further object to the Request to the extent that the information sought is unreasonably
4 cumulative or duplicative, can be obtained from some other source in a manner that is more
5 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

6 LMI further object to the Request to the extent it seeks information and documents that may
7 not be in LMI's possession, custody or control.

8 LMI further object to the Request to the extent it seeks confidential business information of a
9 proprietary nature.

10 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
11 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
12 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
13 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
14 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
15 discovery of admissible evidence.

16 LMI object to the defined terms "All", "Underwriting Files", "Relating", "Your", "Insurance
17 Policies", and "Abuse Claims" as vague, ambiguous, and overbroad. LMI also object to these
18 Definitions to the extent the Committee seeks to include within such Definition information,
19 documents, or communications that are not subject to LMI's control. LMI further object to these
20 Definitions to the extent that the Definitions purport to seek information that is proprietary in nature
21 or which is protected from disclosure by the attorney-client privilege, tripartite privilege, proprietary
22 trade secrets and confidential communications privilege, work-product doctrine, joint-defense
23 privilege, mediation privilege, settlement communication privilege, or any other applicable privilege
24 or immunity.

25 LMI further object to the undefined terms and phrases "concerning" and "tendered by" as
26 vague and ambiguous.

27 LMI further object that it reserves all rights and objections pending the Court's ruling on the
28 Motion to Clarify, and/or any related appeals.

1 **DOCUMENTS TO BE PRODUCED NO. 7:**

2 Documents sufficient to show Your current reserves for each of the Abuse Claims tendered
3 by or on behalf of RCBO to You.

4 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 7:**

5 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
6 Definitions, and General Objections as set forth herein.

7 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
8 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
9 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
10 procedure, or any Order entered in this action.

11 LMI further object to the Request to the extent it seeks information protected by the attorney-
12 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
13 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
14 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
15 protection or restriction or on the ground that the information is not otherwise discoverable the
16 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
17 California, any other local rule or procedure, or any Order entered in this action, or other applicable
18 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
19 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
20 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained
21 in these General Objections or any specific objection to the Requests is intended as, or shall in any
22 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
23 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
24 any other applicable privilege.

25 LMI further object to the Request to the extent that it seeks non-relevant information,
26 including requests for information or documents that are not reasonably calculated to lead to the
27 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).
28

1 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
2 and vague and ambiguous.

3 LMI further object to the Request to the extent that the burden or expense of the proposed
4 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
5 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
6 importance of the proposed discovery in resolving the issue.

7 LMI further object to the Request to the extent that the information sought is unreasonably
8 cumulative or duplicative, can be obtained from some other source in a manner that is more
9 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

10 LMI further object to the Request to the extent it seeks information and documents that may
11 not be in LMI's possession, custody or control.

12 LMI further object to the Request to the extent it seeks confidential business information of a
13 proprietary nature.

14 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
15 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
16 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
17 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
18 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
19 discovery of admissible evidence.

20 LMI further object to the Request to the extent that it seek information prepared, generated,
21 or received in anticipation of litigation, including after the time RCBO filed the Adversary Proceeding
22 against LMI on June 22, 2023.

23 LMI further object to the defined terms "Documents", "Your", and "Abuse Claims" as vague,
24 ambiguous, and overly broad. LMI also object to these Definitions to the extent the Committee seeks
25 to include within such Definition information, documents, or communications that are not subject to
26 LMI's control. LMI further object to these Definitions to the extent that the Definitions purport to
27 seek information that is proprietary in nature or which is protected from disclosure by the attorney-
28 client privilege, tripartite privilege, proprietary trade secrets and confidential communications

1 privilege, work-product doctrine, joint-defense privilege, mediation privilege, settlement
2 communication privilege, or any other applicable privilege or immunity.

3 LMI further object to the undefined terms “sufficient”, “current reserves”, and “tendered by”
4 as vague and ambiguous.

5 LMI further object that it reserves all rights and objections pending the Court’s ruling on the
6 Motion to Clarify, and/or any related appeals.

7 **DOCUMENTS TO BE PRODUCED NO. 8:**

8 All Documents and Communications that relate to Your setting, calculating, analysis,
9 adjustment, investigation, evaluation of, and decision-making process with respect to, Your reserves
10 identified in response to Request No. 7, above, including the working papers and actuarial reports, if
11 any, relating to the establishment of those reserves.

12 **OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED NO. 8:**

13 LMI incorporate and assert the Preliminary Statement, Objections to Instructions and
14 Definitions, and General Objections as set forth herein.

15 LMI object to the Request to the extent that it seeks to impose any obligations upon LMI
16 beyond those imposed by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy
17 Procedure, the Bankruptcy Local Rules for the Northern District of California, any other local rule or
18 procedure, or any Order entered in this action.

19 LMI further object to the Request to the extent it seeks information protected by the attorney-
20 client privilege, tripartite privilege, proprietary trade secrets and confidential communications
21 privilege, work-product doctrine, joint-defense doctrine, common-interest privilege, mediation
22 privilege, constitute a settlement communication, or any other applicable privilege, immunity,
23 protection or restriction or on the ground that the information is not otherwise discoverable the
24 Federal Rules of Bankruptcy Procedure, the Bankruptcy Local Rules for the Northern District of
25 California, any other local rule or procedure, or any Order entered in this action, or other applicable
26 statute. Further, LMI object to the Request to the extents that it seeks documents containing the
27 impressions, conclusions, opinions, legal research, or theories of LMI or their attorneys, or materials
28 prepared in anticipation of litigation or information that is proprietary in nature. Nothing contained

1 in these General Objections or any specific objection to the Requests is intended as, or shall in any
2 way be deemed or construed as, a waiver of any attorney-client privilege, any work-product privilege,
3 any joint-defense privilege, common-interest privilege, mediation privilege, settlement privilege or
4 any other applicable privilege.

5 LMI further object to the Request to the extent that it seeks non-relevant information,
6 including requests for information or documents that are not reasonably calculated to lead to the
7 discovery of admissible evidence, that have no bearing on coverage issues (including reserves).

8 LMI further object to the Request to the extent that it is overly broad, unduly burdensome,
9 and vague and ambiguous.

10 LMI further object to the Request to the extent that the burden or expense of the proposed
11 discovery outweighs its likely benefit, taking into account the needs of the case, the amount in
12 controversy, the parties' resources, the importance of the issues at stake in the litigation, and the
13 importance of the proposed discovery in resolving the issue.

14 LMI further object to the Request to the extent that the information sought is unreasonably
15 cumulative or duplicative, can be obtained from some other source in a manner that is more
16 convenient, less burdensome or less expensive, or is already in the possession of the Committee.

17 LMI further object to the Request to the extent it seeks information and documents that may
18 not be in LMI's possession, custody or control.

19 LMI further object to the Request to the extent it seeks confidential business information of a
20 proprietary nature.

21 LMI further object to the Request to the extent it: (1) is not limited to a specific time; (2) is
22 not limited in time to the effective period of the Policies at issue in this action; and/or (3) is not limited
23 to the time period relevant to LMI, if any, of the claims at issue in this action, on the grounds that
24 such Request is overly broad, unduly burdensome, oppressive, seeks information that is not relevant
25 to the subject matter involved in the pending action, and/or is not reasonably calculated to lead to the
26 discovery of admissible evidence.

27 LMI further object to the Request to the extent that it seek information prepared, generated,
28 or received in anticipation of litigation, including after the time RCBO filed the Adversary Proceeding

1 against LMI on June 22, 2023.

2 LMI further object to the defined terms “Documents”, “Communications”, and “Your” as
3 vague, ambiguous, and overly broad. LMI also object to these Definitions to the extent the Committee
4 seeks to include within such Definition information, documents, or communications that are not
5 subject to LMI’s control. LMI further object to these Definitions to the extent that the Definitions
6 purport to seek information that is proprietary in nature or which is protected from disclosure by the
7 attorney-client privilege, tripartite privilege, proprietary trade secrets and confidential
8 communications privilege, work-product doctrine, joint-defense privilege, mediation privilege,
9 settlement communication privilege, or any other applicable privilege or immunity.

10 LMI further object to the undefined terms and phrase “relate”, “setting, calculating, analysis,
11 adjustment, investigation, evaluation of, and decision-making process”, “reserves”, “working
12 papers”, “actuarial reports”, and “relating to the establishment” as vague and ambiguous.

13 LMI further object that it reserves all rights and objections pending the Court’s ruling on the Motion
14 to Clarify, and/or any related appeals.

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1 Dated: February 5, 2024

2 By /s/ Bradley E. Puklin
3 Catalina J. Sugayan
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5 Bradley E. Puklin (*pro hac vice*)
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25 BLuu@duanemorris.com

26 *Attorneys Certain Underwriters at Lloyd's,*
27 *London, subscribing severally and not jointly*
28 *to Slip Nos. CU 1001 and K 66034 issued to*
the Roman Catholic Archbishop of San
Francisco, and Nos. K 78138 and CU 3061
issued to the Roman Catholic Bishop of
Oakland

PROOF OF SERVICE

I, the undersigned, certify and declare that I am a resident of the State of California, I am over the age of 18 years, and I am not a party to this lawsuit. I am an employee of Duane Morris LLP and my business address is 865 South Figueroa Street, Suite 3100, Los Angeles, CA 90017. I am readily familiar with this firm's practices for collecting and processing correspondence for mailing with the United States Postal Service and for transmitting documents by FedEx, fax, email, messenger and other modes. On the date stated below, I served the following documents:

CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO AND NOS. K 78138 AND CU 3061 ISSUED TO THE ROMAN CATHOLIC BISHOP OF OAKLAND'S RESPONSES AND OBJECTIONS TO SUBPOENA FOR RULE 2004 EXAMINATION

- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☒ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent.
- ☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below.
- ☒ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

LOWENSTEIN SANDLER LLP JEFFREY D. PROL (Pro Hac Vice) jprol@lowenstein.com MICHAEL A. KAPLAN (Pro Hac Vice) mkaplan@lowenstein.com BRENT WEISENBERG (Pro Hac Vice) bweisenberg@lowenstein.com COLLEEN M. RESTEL (Pro Hac Vice) crestel@lowenstein.com One Lowenstein Drive Roseland, New Jersey 07068 Telephone: (973) 597-2500	<i>Counsel for the Official Committee of Unsecured Creditors</i>
KELLER BENVENUTTI KIM LLP TOBIAS S. KELLER (Cal. Bar No. 151445) tkeller@kbbkllp.com JANE KIM (Cal. Bar No. 298192) jkim@kbbkllp.com GABRIELLE L. ALBERT (Cal. Bar No. 190895) galbert@kbbkllp.com 425 Market St., 26th Floor San Francisco, California 94105 Telephone: (415) 496-6723	<i>Counsel for the Official Committee of Unsecured Creditors</i>

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Telephone: (608) 286-2808

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 5, 2024

/s/ **Betty Luu**

Betty Luu

Exhibit C

February 14, 2024

VIA EMAIL

Russell W. Roten, Esq.
Jeff D. Kahane, Esq.
Nathan Reinhardt, Esq.
Betty Luu, Esq.
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**Re: *In re The Roman Catholic Bishop of Oakland*, Case No. 23-40523-WJL
Committee's Subpoena to Certain Underwriters at Lloyd's, London, subscribing
severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman
Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the
Roman Catholic Bishop of Oakland ("LMI")**

Counsel,

As you know, this Firm represents the Official Committee of Unsecured Creditors (the "Committee") of The Roman Catholic Bishop of Oakland (the "Debtor") in the above-referenced chapter 11 case (the "Chapter 11 Case"). We write regarding LMI's responses and objections (the "Responses and Objections"), dated February 5, 2024, to the subpoena served by the Committee on January 22, 2024.

To recap, the Committee filed an application for federal rule of bankruptcy procedure 2004 examination of the Debtor's insurers, including LMI, on October 5, 2023 [Dkt. 502]. After a lengthy hearing on November 14, 2023, the Court ruled that the Committee is permitted discovery from the insurers with respect to certain specific topics (the "Requests"). During hearings on both January 9, 2024 and February 7, 2024, the Court reinforced its ruling that the Requests seek relevant information. *See, e.g.*, Tr. of Hr'g Jan. 9, 2024, at 112:1-7 ("With respect to relevance, I think we did resolve that. And I think that the long discussion we had, I found very helpful. . . . But in my view, we thoroughly exhausted the relevance arguments. . . ."). Subsequently, the Court reiterated its ruling and denied LMI's motion to clarify and/or reconsider its ruling on the Requests. Again on February 12, 2024, after the Responses and Objections were served, the Court reiterated that the Requests are "fair game" and that the relevance issue had already been litigated in the Committee's favor. As such, to the extent the Responses and Objections refuse to produce

documents on the basis of relevance, such objections have already been overruled by the Court. *See, e.g., id.; see also In re Mastro*, 585 B.R. 587, 597 (B.A.P. 9th Cir. 2018) (noting the scope of Rule 2004 examinations is “unfettered and broad” and has been compared to a “fishing expedition”). The Committee will ignore as moot each reference in the Responses and Objections to LMI’s Motion to Clarify, as such objection was expressly overruled.

In addition to ignoring the Court’s clear rulings regarding relevance, the Responses and Objections are improper for several reasons.

First, LMI’s objection to the definition of “Claim Files” ignores the lengthy meet and confer between the Committee, Debtor, and insurers regarding the definition of such term. LMI’s objection to the term is thus frivolous and should be withdrawn.

Second, with respect to any documents which LMI intends to withhold on the basis of privilege, LMI has the burden of proving the applicability of such privilege to each document withheld. The Committee agrees with the Court’s statement at the February 12, 2024 status conference that there is nothing categorically confidential or privileged about the information sought by the Requests. To the extent LMI disagrees, LMI must provide a privilege log that is “sufficiently specific to allow a determination of whether each withheld document is or is not [in] fact privileged.” *In re 3dfx Interactive, Inc.*, 347 B.R. 394, 402–03 (Bankr. N.D. Cal. 2006); *see* Fed. R. Civ. P. 45(e)(2)(A). Federal Rule of Civil Procedure 45(e)(2)(A) made applicable in bankruptcy discovery through Federal Rule of Bankruptcy Procedure 9016, provides that a party withholding information on the basis of privilege must “(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” Fed. R. Civ. P. 45(e)(2)(A). As such, please confirm LMI will provide, by March 4, 2024, a detailed, line-by-line privilege log fully explaining the basis for withholding any document, in compliance with the Federal Rule 45(e)(2)(A).

Third, to the extent the Responses and Objections object to the Requests on the basis that such Requests are “unduly burdensome”, such objection is improper. Federal Rule of Civil Procedure 26, made applicable in this Chapter 11 Case by Federal Rule of Bankruptcy Procedure 7026, was amended in December 2015 to remove the language that discovery be “reasonably calculated to lead to the discovery of admissible evidence” and instead focus on proportionality factors. *See* Fed R. Civ. P. 26 advisory committee’s note to 2015 amendment. The scope of discovery under Federal Rule of Civil Procedure 26 is not whether the request is “unduly burdensome.” The request is relevant to Committee’s investigation of the Debtor’s assets, proportional to the needs of the case, and its burden does not outweigh its likely benefit, as required by Federal Rule of Civil Procedure 26(b)(1). Further, requests under Bankruptcy Rule 2004 are permitted to be broader than what is permitted under the Federal Rules. *See Mastro*, 585 B.R. at 597; *see also In re Subpoena Duces Tecum & Ad Testificandum Pursuant to Fed. R. Bankr. P. 2004*, 461 B.R. 823, 831 (Bankr. C.D. Cal. 2011) (holding conclusory statements that requests are overly broad and unduly burdensome are inadequate and insufficient objections to requests under Bankruptcy Rule 2004).

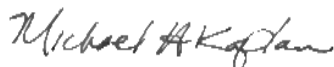
Fourth, LMI's contention that it need not produce documents that are within its possession, custody, or control because those documents can potentially be obtained from another source violates the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 45. LMI cited no case law for the proposition that the documents and information must be obtained from another source where possible. As a self-proclaimed party in interest in the Chapter 11 Case, and pursuant to the Court's order, LMI is required to produce responsive documents regardless of if the Debtor, or any other party, is already in possession of that document. If the requested documents are in the possession, custody, or control of LMI, LMI must produce them.

Fifth, LMI's refusal to produce any documents in response to Request Nos. 5, 6, 7, and 8 is improper. This Court already ruled, on several occasions, that the Requests are relevant and proper, acknowledging other courts may have elected not to require production of such documents, and overruling LMI's objections. As such, LMI must produce responsive documents in in possession, custody, and control in response to these Requests.

Finally, to the extent LMI objects to the Requests because the responsive documents and information are in the possession, custody, or control of London Brokers, and LMI refuses to obtain such documents from London Brokers, please provide the address for London Brokers as well as the contact information for any counsel representing London Brokers in this matter. The Committee will thereafter seek Court approval to serve the additional subpoena on London Brokers, in addition to the subpoena already served on LMI.

Please advise us by **Tuesday, February 20, 2024** if LMI intends to revise its Responses and Objections, and/or will run the searches and produce responsive documents in connection with each of the Requests. If not, the Committee will file a motion to compel compliance with the subpoena and seek all other ancillary relief necessary.

Yours truly,



Michael A. Kaplan

cc: Jeffrey D. Prol, Esq.
Brent Weisenberg, Esq.
Colleen M. Restel, Esq.
Timothy Burns, Esq.
Jesse Bair, Esq.
Gabrielle Alberts, Esq.
Ann Marie Uetz, Esq.
Matthew D. Lee, Esq.

Exhibit D

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ALLIANCES IN MEXICO

February 20, 2024

VIA E-MAIL

Michael A. Kaplan
Lowenstein Sandler
One Lowenstein Drive,
Roseland, New Jersey 07068

Re: *In re the Roman Catholic Bishop of Oakland, Case No. 23-40523-WJL*

Dear Counsel:

Clyde & Co. US LLP serves as insurance coverage counsel and Duane Morris LLP serves as bankruptcy counsel to certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 and Nos. K 78138 and CU 3061 (collectively, "London Market Insurers" or "LMI").

On behalf of LMI, we acknowledge receipt of the letter from the Official Committee of Unsecured Creditors ("Committee") dated February 14, 2024, sent in the captioned bankruptcy case regarding LMI's *Responses and Objections to Subpoena for Rule 2004 Examination* ("Responses and Objections"). Therein, the Committee makes a demand that LMI revise its Responses and Objections and, should LMI refuse, the Committee threatens to "file a motion to compel compliance with the subpoena and seek all other ancillary relief necessary." LMI will not comply with the Committee's demand for the reasons discussed below.

First, as discussed at the February 7, 2024, hearing, LMI will seek an appeal of the Court's order allowing the Rule 2004 discovery and a stay pending the appeal. On this ground, and the further grounds outlined below, LMI will not revise their Responses or Objections to Request Nos. 5, 6¹, 7, and 8.

¹ To the extent the Committee demands LMI obtain information from London Brokers, LMI are under no such obligation. Fed. R. Civ. P. 45(a)(1)(iii)(subpoena may only command production of documents in a person's possession, custody, or control). The London Brokers were retained by the Debtor and any request for their files should either go to the Debtor or to the London Brokers

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February 20, 2024
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Second, the Court's order and subpoena expressly reserves LMI's rights to object to the scope of the information requested. Doc. No. 796 ("The Insurers' rights to object to the Subpoenas...are fully preserved, including, without limitation (a) any and all applicable evidentiary privileges and (b) **proper scope of discovery.**") (emphasis added). Thus, LMI have not and will not waive their rights to object to the scope of the discovery the Committee seeks, which includes, without limitation, objections to defined and undefined terms, phrases, and instructions.

Third, LMI do not contest the use of a privilege log pursuant to Federal Rule of Civil Procedure 45. However, the Court's order and subpoena clearly protects "any and all applicable evidentiary privileges." Doc. No. 796. LMI do not agree to produce privileged information and will move to quash and for a protective order barring disclosure of irrelevant and/or privileged information, including, without limitation, information protected by the attorney-client privilege, attorney-work product privilege, the trade secret privilege, the confidential communication privilege, and all other applicable privileges and exclusions.² Would you kindly let us know when you are available on **Thursday, February 22, 2024**, to meet and confer regarding the motion to quash and protective order? If that date is inconvenient, would you please propose another date?

Fourth, the Committee's position that LMI's objection to the "Requests on the basis that such Requests are 'unduly burdensome'" is improper is erroneous. Federal Rule of Civil Procedure 45 explicitly contemplates and prohibits unduly burdensome requests. Fed. R. Civ. P. 45(d)(3)(A)(iv) (quashing a subpoena that subjects a person to undue burden).

Finally, LMI invite you to meet and confer regarding any documents already in the Committee's position that it received (or could easily receive) from another party, such as the Debtor. If the Committee already has (or could easily obtain) such documents, doing so would avoid redundancies and conserve the parties' resources. However, if the Committee wishes to receive duplicative information, LMI intend to produce non-privileged information in their possession, custody, or control responsive to Request Nos. 1, 2, 3, and 4 by March 4, 2024.

themselves. LMI will not further address the Committee's comments regarding the "Underwriting Files" because LMI do not intend to revise their Responses and Objections to Request No. 6.

² Further note that post-litigation privileged information need not be included on any privilege log. *Mon Cheri Bridals, LLC v. Cloudflare, Inc.*, 2021 WL 1222492, at *3 (N.D. Cal. Apr. 1, 2021)

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February 20, 2024
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We would be grateful if you could kindly let us know when you would be available on **Thursday, February 22, 2024**, to meet and confer, and, if that date is inconvenient, suggest another date.

Thank you.

Very truly yours,

/s/ Russell Roten
Russell Webb Roten

RWR

Exhibit E

Luu, Betty

From: Kaplan, Michael A. <MKaplan@lowenstein.com>
Sent: Wednesday, February 21, 2024 1:08 PM
To: Luu, Betty; Restel, Colleen M.; Prol, Jeffrey D.; Weisenberg, Brent I.; tkeller@kbkllp.com; galbert@kbkllp.com; jkim@kbkllp.com; tburns; jbair; eridley@foley.com; tcarlucci@foley.com; MDLee@foley.com; AUetz@foley.com; jblease@foley.com
Cc: Puklin, Bradley; Cameron, Clinton; Sugayan, Catalina; Kahane, Jeff D.; Roten, Russell W.; Reinhardt, Nathan
Subject: RE: 2024-02-20 - RCBO - LMI's Response to the Committee's Letter dated February 14, 2024

All

We are not available tomorrow for a meet and confer. We will circle back with available times next week, to the extent a meeting is still necessary. That said, we do not need to meet and confer on the your forthcoming appeal/motions. When you file them, we will respond, as we will not consent to an enlargement of time to file any appeal or other motion. We will review the issue with London Brokers take the appropriate action therefrom.

Michael

Michael A. Kaplan
Partner
Lowenstein Sandler LLP

T: (973) 597-2302
M: (215) 740-5090
F: (973) 597-2303



From: Luu, Betty <BLuu@duanemorris.com>
Sent: Tuesday, February 20, 2024 8:36 PM
To: Restel, Colleen M. <crestel@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; Weisenberg, Brent I. <BWeisenberg@lowenstein.com>; tkeller@kbkllp.com; galbert@kbkllp.com; jkim@kbkllp.com; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; eridley@foley.com; tcarlucci@foley.com; MDLee@foley.com; AUetz@foley.com; jblease@foley.com
Cc: Puklin, Bradley <Bradley.Puklin@clydeco.us>; Cameron, Clinton <Clinton.Cameron@clydeco.us>; Sugayan, Catalina <Catalina.Sugayan@clydeco.us>; Kahane, Jeff D. <JKahane@duanemorris.com>; Roten, Russell W. <RWRoten@duanemorris.com>; Reinhardt, Nathan <NReinhardt@duanemorris.com>
Subject: 2024-02-20 - RCBO - LMI's Response to the Committee's Letter dated February 14, 2024

Counsel,

Please see attached correspondence. Thank you.

Betty Luu

Associate

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Exhibit A

Russell W. Roten (SBN 170571)
Jeff D. Kahane (SBN 223329)
Betty Luu (SBN 305793)
Nathan Reinhardt (SBN 311623)
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*Attorneys for Certain Underwriters at Lloyd's,
London, subscribing severally and not jointly to
Slip Nos. CU 1001 and K 66034 issued to the
Roman Catholic Archbishop of San Francisco,
and Nos. K 78138 and CU 3061 issued to the
Roman Catholic Bishop of Oakland*

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

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

**[PROPOSED] ORDER GRATING
CERTAIN UNDERWRITERS AT
LLOYD'S, LONDON, SUBSCRIBING
SEVERALLY AND NOT JOINTLY TO
SLIP NOS. CU 1001 AND K 66034
ISSUED TO THE ROMAN CATHOLIC
ARCHBISHOP OF SAN FRANCISCO,
AND NOS. K 78138 AND CU 3061
ISSUED TO THE ROMAN CATHOLIC
BISHOP OF OAKLAND'S MOTION
FOR PROTECTIVE ORDER**

Date: April 3, 2024

Time: 10:30 a.m.

Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

1 **THIS MATTER** having been brought before the Court upon the *Motion for Protective Order*
2 (“Motion”) of LMI, by and through their counsel, for entry of a protective order of the subpoena
3 issued by the Official Committee of Unsecured Creditors, and due notice having been properly
4 provided; and the Court having considered the papers and arguments submitted by counsel; and the
5 Court having overruled any objections to the Motion; and for good cause shown,

6 **IT IS HEREBY ORDERED THAT:**

- 7 1. The Motion is hereby GRANTED in its entirety.
- 8 2. The Court shall retain jurisdiction to hear and determine all matters arising from or
9 related to the implementation of this Order.

10 ****END OF ORDER****