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

Case No. 23-40523 WJL  
 Chapter 11

*In re:*

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

**OFFICIAL COMMITTEE OF  
 UNSECURED CREDITORS'  
 OBJECTION TO AMERICAN HOME  
 ASSURANCE COMPANY'S MOTION TO  
 QUASH OR IN THE ALTERNATIVE  
 FOR A PROTECTIVE ORDER**

**[Related to Docket No. 920]**

Judge: Hon. William J. Lafferty  
 Date: April 26, 2024  
 Time: 10:00 a.m. (Pacific Time)  
 Place: United States Bankruptcy Court  
 1300 Clay Street, Courtroom 220  
 Oakland, CA 94612

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The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman Catholic Bishop of Oakland (the “**Debtor**”) files this objection (this “**Objection**”) to *American Home Assurance Company’s Motion to Quash the Official Committee of Unsecured Creditors’ Subpoena for Rule 2004 Examination or in the Alternative for a Protective Order* [Dkt. No. 920] (the “**Motion**”) filed by American Home Assurance Company (“**American Home**”). In support of this Objection, the Committee states as follows:

## PRELIMINARY STATEMENT<sup>1</sup>

1. After the Rule 2004 Motion was filed, American Home sat idly for *five months*—failing to meaningfully participate in the meet and confers or Court hearings prior to issuance of the Subpoenas and merely signing on to the Insurer Objection.

2. Despite the Court’s Rule 2004 Ruling and the 2004 Order requiring the production of documents by March 4, 2024, American Home has not produced *any* documents nor a privilege log.

3. In the Motion, filed on the return date of the Subpoena (five months after the Rule 2004 Motion was filed) American Home asserts new arguments, for the first time, claiming it should not have to participate in discovery in this case *at all*. Despite American Home's new contentions, it should not be treated any differently than the other Insurers and should be required to comply with the Subpoena as already approved by the Court.

4. American Home's remaining arguments parrot the arguments already made in opposition to the Rule 2004 Motion and continuously made by certain other Insurers, all of which have already been fully heard and rejected by this Court.

5. As a result, the Committee requests that the Court deny the Motion and require production of documents responsive to the each of the Requests and a privilege log, if applicable, preserving the right of the Committee and Debtor to challenge any allegations of privilege. American Home should further be required to reimburse the Debtor's estate the costs associated with the Motion.

<sup>1</sup> Capitalized terms not defined in this Preliminary Statement shall have the meanings set forth herein.

1 **RELEVANT BACKGROUND**

2 **A. The Rule 2004 Motion Litigation**

3 6. This discovery dispute started over six months ago and involves a myriad of  
4 motions and machinations summarized in the following pages.

5 7. On October 5, 2023, the Committee filed *The Official Committee of Unsecured*  
6 *Creditors Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of*  
7 *Insurers* [Dkt. No. 502] (the “**Rule 2004 Motion**”).<sup>2</sup>

8 8. Despite the Court having entered the *Order Approving Revised Confidentiality*  
9 *Agreement and Stipulated Protective Order* [Dkt. No. 331] (the “**Original Confidentiality**  
10 **Order**”) on August 4, 2023, on October 11, 2023, certain of the Insurers filed the *Moving Insurers’*  
11 *Motion for Court’s Approval of Confidentiality and Protective Order* [Dkt. No. 523] (the  
12 “**Confidentiality Motion**”). Through the Confidentiality Motion, counsel for certain of the  
13 Insurers sought the Court’s approval of a confidentiality order in a different form and with different  
14 protections than that in the Original Confidentiality Order.

15 9. On October 11, 2023, Westport Insurance Corporation, formerly known as  
16 Employers Reinsurance Corporation and Insurance Company of North America, Pacific Indemnity  
17 Company, and Pacific Employers Insurance Company (“**Pacific**”), filed the *Insurers’*  
18 *(I) Preliminary Statement & Response to Committee’s 2004 Motion and (II) Request for Court to*  
19 *Abstain Entry of an Order in Connection Therewith Pending Further Discussion* [Dkt. No. 521]  
20 (the “**Insurer Preliminary Objection**”).

21 10. Prior to the Hearing (defined below), the Committee met and conferred with the  
22 Insurers and the Debtor in an attempt to consensually resolve the Rule 2004 Motion. At the  
23 conclusion of the meet and confer, a resolution could not be reached.

24 11. On October 12, 2023, the Debtor filed a response [Dkt. No. 532] in support of the  
25 Rule 2004 Motion and requested that any order granting the Rule 2004 Motion “require all  
26  
27

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28 <sup>2</sup> Capitalized terms not defined herein shall have the meanings set forth in the Rule 2004 Motion.

responsive, non-privileged documents produced to the Committee be contemporaneously produced to the Debtor.” [Dkt. No. 532 at 2.]

12. On November 1, 2023, the Insurers, including American Home, filed the *Insurers’ Objection to Committee’s Rule 2004 Motion Seeking Discovery from Debtor’s Insurers* [Dkt. No. 571] (the “**Insurer Objection**”).

13. On November 7, 2023, the Committee filed a reply in further support of the Rule 2004 Motion (the “**Reply**”). [Dkt. No. 583.]

14. On November 10, 2023, Pacific and Continental Casualty Company filed a sur-reply in further support of the Insurer Objection. [Dkt. No. 604.]

15. On November 14, 2023, the Court held a lengthy hearing during which it considered the Rule 2004 Motion, among other motions (the “**Hearing**”).

16. At the conclusion of the Hearing, the Court granted the Rule 2004 Motion with respect to a narrower subset of documents than originally requested in the Rule 2004 Motion, without prejudice to the Committee’s ability to request the remaining documents at a later date.

17. The Court specifically found that certain categories of documents—namely, claim files, underwriting information, and reserves—were relevant to the Committee’s investigation and granted the Rule 2004 Motion with respect to those categories, along with other categories which the Insurers agreed to (as set forth on the record at the November 14, 2023 hearing, the “**Rule 2004 Ruling**”).

18. Following the Hearing and Rule 2004 Ruling, the Committee narrowed the requests in the subpoenas attached to the Rule 2004 Motion in accordance with the Rule 2004 Ruling.

19. On December 7, 2023, at the Court’s direction, the Committee met and conferred with the Insurers regarding the form of the subpoenas and made certain changes based on input from the Insurers. However, the parties did not reach complete agreement regarding the form of the subpoenas.

20. On December 15, 2023, 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

1 Bishop of Oakland (“**LMI**”) filed the *Motion to Clarify or, in the Alternative, Amend, Alter, or*  
2 *Reconsider the Court’s Oral Ruling on the Official Committee of Unsecured Creditors’ Ex Parte*  
3 *Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* [Dkt. No.  
4 697] (the “**Motion to Reconsider**”).

5 21. During a hearing on January 9, 2024, the Court held a status conference in  
6 connection with the Rule 2004 Motion and Motion to Reconsider, during which the Court  
7 reaffirmed that it had already ruled on relevancy issues with respect to the Rule 2004 Motion but  
8 determined that it would leave the Motion to Reconsider on the calendar for the January 31, 2024  
9 hearing date.

10 22. On January 18, 2024, the Court entered the *Order Granting the Official Committee*  
11 *of Unsecured Creditors’ Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004*  
12 *Examination of Insurers* [Dkt. No. 796] (“**2004 Order**”), which approved the form of subpoenas  
13 to be served on the Insurers containing requests for documents and information as approved by the  
14 Court (the “**Requests**”).

15 23. The 2004 Order requires American Home to produce documents responsive to the  
16 Requests within forty-five days of entry of the 2004 Order.

17 24. On January 19, 2024, the Committee sent a subpoena as permitted by the 2004  
18 Order (the “**Subpoena**”) to American Home’s counsel via email. After not receiving confirmation  
19 of acceptance of service, on February 1, 2024, the Committee served the Subpoena on American  
20 Home via process server. [See Dkt. No. 838 at 3.]

21 25. On January 30, 2024, after objections and a hearing relating to the Confidentiality  
22 Motion, the Court entered the *Confidentiality and Protective Order* [Dkt. No. 832] (the  
23 “**Confidentiality Order**”), which governs the “production, review, disclosure, and handling” or  
24 any material designated as confidential or highly confidential in the Chapter 11 Case and related  
25 adversary proceeding. [Dkt. No. 832 at 1.]

26 26. On February 28, 2024, counsel to American Home requested a 17-day extension of  
27 the time to respond to the Subpoena, to March 21, 2024. Given the Committee’s position that  
28 American Home has been aware of the Requests since, at the latest, the 2004 Ruling on November

1 14, 2024, and the need for discovery to further progress any progress in the Chapter 11 Case vis-  
2 à-vis the Insurers, the Committee could not agree to the extension. *See* Kaplan Decl.<sup>3</sup>, Ex. A.

3 27. On February 12, 2024, the Court denied the Motion to Reconsider. During the oral  
4 ruling on the Motion to Reconsider, the Court reiterated that the Requests were relevant and “fair  
5 game,” noting that the information sought in the Requests is “the mirror image of the claim  
6 information,” which the Insurers obtained based on their claim that such information was  
7 necessary to a productive mediation. *See Id.* Ex. B, at 13:1–3, 14:10–18. The Court further  
8 emphasized the importance of exchanging this information to assist in entering mediation with the  
9 “optimum amount of information.” *Id.* Ex. B, at 14:14.

10 28. On February 14, 2024, the Court entered the *Order Denying Motion to Clarify or,*  
11 *in the Alternative, Amend, Alter, or Reconsider the Court’s Oral Ruling on the Official Committee*  
12 *of Unsecured Creditors’ Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004*  
13 *Examination of Insurers* [Dkt. No. 875].

14 29. On February 28, 2024, LMI filed an appeal of the 2004 Order with its *Motion for*  
15 *Leave to Appeal* [Dkt. No. 906]. The Court has not yet ruled on the Motion for Leave to Appeal.

16 30. On March 1, 2024, counsel to American Home reached out to the Committee’s  
17 counsel regarding the Subpoena. Specifically, American Home asserted that, as an excess insurer,  
18 it was differently situated from the other Insurers, and therefore should not be obligated to respond  
19 to the Requests—specifically those relating to reserves and underwriting files. American Home  
20 further raised concerns regarding the production of privileged and/or confidential information.  
21 Kaplan Decl., Ex. A.

22 31. On March 2, 2024, counsel to the Committee responded, acknowledging that  
23 American Home is an excess insurer. However, the Committee asserted its position that because  
24 the excess is over approximately \$5 million in key coverage years, and given the magnitude of  
25 claims in the case, American Home’s policies are implicated, and American Home should

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26 <sup>3</sup> Citations to the “Kaplan Decl.” herein refer to the *Declaration of Michael A. Kaplan, Esq. in*  
27 *Support of Official Committee of Unsecured Creditors’ Objection to American Home*  
28 *Assurance Company’s Motion to Quash or in the Alternative for a Protective Order* filed  
simultaneously herewith.



1 therefore respond to discovery in the same way as the other Insurers. With respect to privilege  
2 and confidentiality, the Committee noted that American Home's concerns could be addressed by  
3 the production of a privilege log and the protections of the Confidentiality Order, respectively. *Id.*

4 32. On March 4, 2004, American Home filed the Motion.

5 33. To date, American Home has not produced any documents to the Committee nor  
6 has American Home provided a privilege log describing any documents withheld on that basis.

7 **B. American Home's Insurance Policies Issued to the Debtor**

8 34. Although American Home asserts that it issued an excess insurance policy to the  
9 Debtor, and therefore it has no liability in this Chapter 11 Case, the record has no evidence to  
10 support those assertions.

11 35. The insurance policies are not before the Court for review, and American Home  
12 has not submitted any evidence to support its assertion that the sexual abuse claims will not  
13 implicate its policies. Indeed, the statements of counsel are not evidence. Yet, American Home  
14 asks the Court to assume that it will have no liability, supported by nothing more than argument  
15 in the Motion.

16 **OBJECTION**

17 36. American Home (i) belatedly seeks reconsideration of the 2004 Order by arguing  
18 the 2004 Order should not apply to it, (ii) asserts that the Subpoena should be quashed based on  
19 arguments already considered and rejected by the Court, and (iii) ignores the Confidentiality Order  
20 entered by the Court and standard privilege-related discovery procedures in an attempt to quash  
21 the Subpoena *in toto*. For these reasons, as set forth more fully below, the Motion should be  
22 denied.

23 **A. American Home Is Not Differently Situated than the Other Insurers.**

24 37. American Home chose not to raise *any* arguments regarding any reason it should  
25 be treated differently from the other Insurers while the Court was considering whether to grant the  
26 Rule 2004 Motion. The extent of American Home's participation in litigating the Rule 2004  
27 Motion was signing its name to the Insurer Objection. American Home did not meaningfully  
28

1 participate in any of the meet and confers between the Committee, Debtor, and Insurers, and did  
2 not participate in any hearings before the Court on the Rule 2004 Motion.

3 38. Had American Home believed it should have been treated differently than the other  
4 Insurers, it should have raised that issue sooner and should not have merely signed on to the  
5 arguments *of the other Insurers*.

6 39. Not surprisingly—and revealing the hypocrisy of American Home’s new  
7 position—American Home has not taken the position that it need not participate in mediation nor  
8 have access to the proofs of claim filed in this Chapter 11 Case on the basis that its insurance  
9 policies are not implicated.

10 40. Worse yet, there are no facts or documents in the record before this Court to support  
11 American Home’s position that it should be treated any differently than the other Insurers. The  
12 statements of counsel alone are insufficient for this Court to make any determination regarding  
13 American Home’s position in this Chapter 11 Case.

14 41. Regardless of the position of American Home’s counsel, the Committee’s right and  
15 fiduciary duty to investigate all assets of the estate—of which insurance makes up one of the  
16 largest—remains unchanged.

17 42. Because there is nothing in the record to show that American Home should be  
18 treated differently from the other Insurers—including each of the other excess insurers—and  
19 because the Committee’s fiduciary duty to investigate estate assets is not terminated by the mere  
20 statement of counsel, the Motion should be denied.

21 **B. The Court Already Ruled the Information in the Requests Is Relevant and Not**  
22 **Unduly Burdensome.**

23 43. This Court already made several clear rulings on the relevancy and breadth of the  
24 Requests, which, pursuant to Bankruptcy Rule 2004, are permitted to be in the nature of a broad  
25 fishing expedition. *See Rigby v. Mastro (In re Mastro)*, 585 B.R. 587, 597 (B.A.P. 9th Cir. 2018)  
26 (noting the scope of Rule 2004 examinations is “unfettered and broad” and has been compared to  
27 a “fishing expedition”).  
28

1           44.     Indeed, the Court has already ruled that the information is relevant and necessary  
2 for the possibility of a consensual resolution of this Chapter 11 Case on multiple occasions and  
3 limited the breadth of the requests initially sought by the Committee in the Rule 2004 Motion.

4           45.     During hearings on both January 9, 2024 and February 7, 2024, the Court  
5 reinforced its ruling that the Requests seek relevant information. *See, e.g., Kaplan Decl., Ex. C,*  
6 at 112:1–6 (“With respect to relevance, I think we did resolve that. And I think that the long  
7 discussion we had, I found very helpful. . . . But in my view, we thoroughly exhausted the relevance  
8 arguments.”).

9           46.     Again, during the February 12, 2024 oral ruling on the Motion to Reconsider, the  
10 Court reiterated that the Requests were relevant and “fair game,” noting that the information sought  
11 in the Requests is “the mirror image of the claim information,” which the Insurers obtained based  
12 on their claim that such information was necessary to a productive mediation. *See Kaplan Decl.,*  
13 *Ex. B,* at 13:1–3, 14:10–18. The Court further emphasized the importance of exchanging this  
14 information to assist in entering mediation with the “optimum amount of information.” *Id.* *Ex. B*  
15 at 14:14.

16           47.     As such, American Home’s relevance and breadth arguments should be overruled.<sup>4</sup>

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18 <sup>4</sup> In prior briefing, the Committee explained in detail why reserve and claim file information are  
19 relevant and discoverable. *See Reply* at 5–10. As the Committee explained, handling claims  
20 is a core business function of an insurance company and documents generated in the ordinary  
21 course of a company’s business are protected by neither the attorney client privilege nor the  
22 work product protection. *See, e.g., Klee v. Whirlpool Corp.*, 251 F.R.D. 507, 513 (S.D. Cal.  
23 2006) (“[A]n insurance company cannot reasonably argue that the entirety of its claims files  
24 are accumulated in anticipation of litigation when it has a duty to investigate, evaluate and  
25 make a decision with respect to claims made on it,’ nor can an insurance company ‘in good  
26 faith contend that there is a reasonable probability of litigation with respect to every claim  
27 submitted to it.’”) (internal citations omitted). Similarly, regarding reserves, American Home  
28 cites case law involving coverage actions under the narrower Federal Rules of Civil Procedure  
or state law counterparts. Even under those narrower rules, however, discovery into reserves  
is still available in certain circumstances, including when bad faith claims have been alleged.  
*See, e.g., Bernstein v. Travelers Ins. Co.*, 447 F. Supp. 2d 1100, 1115–16 (N.D. Cal. 2006)  
(concluding that insurers’ reserves and communication about reserves were discoverable in a  
bad faith case alleging that insurers delayed payment and made excessive demands for proof  
of loss in attempt to secure low-ball settlement); *see also Everest Nat’l Ins. Co. v. Santa Cruz*  
*Cnty. Bank*, No. 15-cv-02085-BLF (HRL), 2016 WL 6311876, at \*2 (N.D. Cal. Oct. 28, 2016)  
(finding reserve information relevant to whether insurer acted in good faith). In any event, the  
Committee is seeking discovery here under the much broader Bankruptcy Rule 2004 standards,  
not the narrower Federal Rules or state law counterparts. *In re N. Plaza, LLC*, 395 B.R. 113,  
122 (S.D. Cal. 2008) (“[I]t is well-settled that Rule 2004 discovery enjoys a broad scope,

1           **C. Any Claim of Confidentiality Is Not a Basis to Withhold Production.**

2           48. American Home's contentions that information responsive to the Requests should  
3 be withheld on the basis of confidentiality and privilege must similarly be overruled.

4           49. At the Insurers' insistence, and after litigating the issue at length, the Court entered  
5 the Confidentiality Order, which governs the production and handling of information designated  
6 as confidential or highly confidential. As such, confidentiality does not provide a basis for  
7 withholding information, but rather documents must be produced subject to and in compliance  
8 with the Confidentiality Order.

9           50. Further, American Home has not described any irreparable harm that would befall  
10 it if such information were shared with the Debtor and the Committee (neither of whom are  
11 competitors of American Home).

12           51. Just as the Debtor and Committee are required to share sensitive information—  
13 indeed there is arguably no information more sensitive than the excruciating details of claims of  
14 sexual abuse—American Home must be required to produce information, even if it deems that  
15 information sensitive or confidential. That is precisely the reason the Confidentiality Order was  
16 entered: to provide a structure and process for designating information produced as confidential  
17 and for parties to object to such designations where appropriate.

18           52. As such, even if the Confidentiality Order were somehow insufficient to govern the  
19 sharing of information by the Insurers (if that were the case, it is unclear what the purpose of the  
20 Confidentiality Order is), the undescribed potential harm to American Home in sharing the  
21 information would be outweighed by the importance to a resolution of this Chapter 11 Case of  
22 sharing the requested information, particularly in light of the protections offered by the  
23 Confidentiality Order.

24           53. Because the Confidentiality Order is controlling, a protective order is unnecessary,  
25 and the Motion should therefore be denied.

26  
27  
28           regardless of any background state law issues").

1           **D.     Privilege Concerns Can Be Addressed Through a Privilege Log Subject to the**  
2                           **Committee and Debtor’s Objections.**

3           54.     American Home’s argument that the Subpoena should be quashed because  
4 privileged information may be responsive to the Requests ignores the procedures used in every  
5 federal litigation for handling information which the producing party claims is entitled to  
6 privilege—production of a detailed privilege log. *See* Fed. R. Civ. P. 26(b)(5)(A); Fed. R. Bankr.  
7 P. 7026; *see also Brandt v. nVidia Corp. (In re 3dfx Interactive, Inc.)*, 347 B.R. 394, 402–03  
8 (Bankr. N.D. Cal. 2006) (“A party claiming a privilege has the burden of establishing that a  
9 particular document is privileged. The information in a privilege log must be sufficiently specific  
10 to allow a determination of whether each withheld document is or is not [in] fact privileged.”  
11 (alteration in original and internal citations and quotations omitted)).

12           55.     Federal Rule 26(b)(5)(A), made applicable in bankruptcy discovery through  
13 Bankruptcy Rule 7026, provides:

14                   *Information Withheld.* When a party withholds information  
15 otherwise discoverable by claiming that the information is  
16 privileged or subject to protection as trial-preparation material, the  
17 party must:

- 18                   (i)     expressly make the claim; and  
19                   (ii)    describe the nature of the documents, communications, or  
20                           tangible things not produced or disclosed—and do so in a  
21                           manner that, without revealing information itself privileged  
22                           or protected, will enable other parties to assess the claim.

23           56.     The Court should have the opportunity to address any issues regarding privilege as  
24 those issues arise. Any dispute that the parties cannot resolve with respect to the basis for privilege  
25 of any information withheld and listed on a privilege log can be brought to the Court—rather than  
26 asking the Court to quash the Subpoena on the basis that certain privileged documents may be  
27 responsive.

28           57.     Further, American Home ignores this Court’s prior statements that there was not  
“anything necessarily categorically confidential or privileged about that information.” Kaplan  
Decl. Ex. B, at 14:18–20. As such, a categorical ruling that the information is privileged, without

1 the opportunity to challenge the applicability of privilege on a document-by-document basis, is  
2 inappropriate.

3 For the foregoing reasons, the Committee requests that this Court (i) deny the Motion and  
4 require American Home to produce documents responsive to the Requests pursuant to the 2004  
5 Order, including a privilege log detailing any claim of privilege, subject to the Committee's rights  
6 to challenge such claim, and (ii) order American Home to reimburse the Debtor's estate the costs  
7 associated with objecting to the Motion.

8  
9 Dated: April 11, 2024

**LOWENSTEIN SANDLER LLP**  
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