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

In re:

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

 Debtor.

Case No. 23-40523 WJL
 Chapter 11

**OFFICIAL COMMITTEE OF
 UNSECURED CREDITORS'
 OBJECTION TO LMI'S MOTION FOR
 PROTECTIVE ORDER AND MOTION
 TO QUASH**

[Related to Docket Nos. 918 & 992]

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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TABLE OF CONTENTS

| | <u>Page</u> |
|---|--------------------|
| TABLE OF AUTHORITIES | ii |
| PRELIMINARY STATEMENT | 1 |
| RELEVANT BACKGROUND | 2 |
| OBJECTION..... | 6 |
| A. Any Claim of Privilege Can Be Recorded in a Privilege Log, Subject to the Committee’s and the Debtor’s Right to Challenge the Privilege..... | 6 |
| B. Any Confidentiality Concerns Are Addressed Through the Confidentiality Order Entered by the Court..... | 8 |
| C. The Court Already Ruled the Information in the Requests is Relevant and Not Overly Burdensome. | 9 |

TABLE OF AUTHORITIES

Page(s)

CASES

Brandt v. nVidia Corp. (In re 3dfx Interactive, Inc.),
347 B.R. 394 (Bankr. N.D. Cal. 2006)7

In re Caterpillar Credito,
No. C22-1549 JLR, 2022 U.S. Dist. LEXIS 201838 (W.D. Wash. Nov. 6, 2022).....5, 6

Rigby v. Mastro (In re Mastro),
585 B.R. 587 (B.A.P. 9th Cir. 2018).....9

Woodway USA, Inc. v. LifeCORE Fitness, Inc.,
No. 22CV492-JO (BLM), 2023 U.S. Dist. LEXIS 212479 (S.D. Cal. Nov. 29, 2023).....6, 10

RULES

Fed. R. Bankr. P. 2004..... passim

Fed. R. Bankr. P. 7026.....6, 7

Fed. R. Civ. P. 26(b)(5)(A)6, 7

1 The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman
2 Catholic Bishop of Oakland (the “**Debtor**”) files this objection (this “**Objection**”) to the *Motion*
3 *for Protective Order* [Dkt. No. 918] (the “**Motion for Protective Order**”) and the *Motion to*
4 *Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors in*
5 *Connection with the Chapter 11 Case Filed by the Roman Catholic Bishop of Oakland* [Dkt. No.
6 992] (the “**Motion to Quash**” and together with the Motion for Protective Order, the “**Motions**”)
7 filed by Certain Underwriters at Lloyd’s, London, subscribing severally and not jointly to Slip
8 Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos.
9 K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (“**LMI**”). In support of
10 this Objection, the Committee states as follows:

11 **PRELIMINARY STATEMENT**¹

12 1. The Motions represent LMI’s fourth and fifth attempt to relitigate this Court’s 2004
13 Order.

14 2. Ignoring the Court’s prior rulings, LMI insists that it should not be required to
15 produce documents responsive to the Requests and has withheld the production of documents on
16 that basis.

17 3. Without showing any particularized harm, the crux of LMI’s basis for withholding
18 documents is merely that it believes the information sought is irrelevant. Further, blanketly
19 alleging privilege and confidentiality concerns, LMI ignores the well-settled procedures, both in
20 federal court generally and as ordered by this Court, to alleviate privilege and confidentiality
21 concerns. As such, neither are bases to quash the Subpoena and/or for a protective order.

22 4. As a result, the Committee requests that the Court deny the Motions and require
23 production of documents responsive to the each of the Requests and a privilege log, if applicable,
24 preserving the right of the Committee and Debtor to challenge any allegations of privilege. LMI
25 should further be required to reimburse the Debtor’s estate the costs associated with the Motion.

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27
28 ¹ Capitalized terms not defined in this Preliminary Statement shall have the meanings set forth
herein.

1 **RELEVANT BACKGROUND**

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

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

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

14 8. On October 11, 2023, Westport Insurance Corporation, formerly known as
15 Employers Reinsurance Corporation and Insurance Company of North America, Pacific Indemnity
16 Company, and Pacific Employers Insurance Company (“**Pacific**”), filed the *Insurers’ (I)*
17 *Preliminary Statement & Response to Committee’s 2004 Motion and (II) Request for Court to*
18 *Abstain Entry of an Order in Connection Therewith Pending Further Discussion* [Dkt. No. 521]
19 (the “**Insurer Preliminary Objection**”). On October 12, 2023, LMI joined in the Insurer
20 Preliminary Objection [Dkt. No. 528].

21 9. 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 10. 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 _____
28 ² 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.]

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

12. On November 7, 2023, the Committee filed a reply in further support of the Rule 2004 Motion. [Dkt. No. 583.]

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

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

15. 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.

16. 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**”).

17. Following the Hearing and Rule 2004 Ruling, the Committee narrowed the requests in the subpoenas attached to the Rule 2004 Motion (the “**Requests**”) in accordance with the Rule 2004 Ruling.

18. 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.

1 19. On December 15, 2023, LMI filed the Motion to Reconsider. No other Insurer
2 joined in the Motion to Reconsider.

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

8 21. On January 18, 2024, the Court entered the *Order Granting the Official Committee*
9 *of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004*
10 *Examination of Insurers* [Dkt. No. 796] ("**2004 Order**").

11 22. The 2004 Order requires LMI to produce documents responsive to the Requests
12 within forty-five days of entry of the 2004 Order.

13 23. On January 19, 2024, the Committee served a subpoena as permitted by the 2004
14 Order (the "**Subpoena**") to LMI's counsel via email. On January 22, 2024, LMI's counsel
15 confirmed acceptance of service of the Subpoena. [See Dkt. No. 838 at 2.]

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

21 25. On February 5, 2024, LMI served their *Responses and Objections to the Subpoena*
22 *for Rule 2004 Examination* (the "**Responses and Objections**"), whereby LMI primarily reserved
23 their right to object and/or refuse to produce documents pending the outcome of their objections
24 to several requests, the hearing on the Motion to Reconsider, and any subsequent appeal.

25 26. On February 7, 2024, the Court held a hearing on the Motion to Reconsider.

26 27. On February 12, 2024, the Court denied the Motion to Reconsider. During the oral
27 ruling on the Motion to Reconsider, the Court reiterated that the Requests were relevant and "fair
28

game,” noting that the information sought in the Requests is “the mirror image of the claim information,” which the Insurers obtained based on their claim that such information was necessary to a productive mediation. *See Declaration of Betty Luu in Support of LMI’s Motion for Stay Pending Appeal of Order Granting the Official Committee of Unsecured Creditors’ Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* [Dkt. No. 907-1] (the “**Luu Decl.**”) Ex. A, at 13:1–3, 14:10–18. The Court further emphasized the importance of exchanging this information to assist in entering mediation with the “optimum amount of information.” *Id.* at 14:14.

28. On February 14, 2024, the Court entered the *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* [Dkt. No. 875] (the “**Reconsideration Order**”).

29. Following entry of the Reconsideration Order, the Committee requested that LMI revise its Responses and Objections in light of the Court’s ruling. LMI refused.

30. On February 28, 2024, LMI filed a *Notice of Appeal and Statement of Election* [Dkt. No. 905] (the “**Appeal**”), and *Motion for Leave to Appeal* [Dkt. No. 906] to be heard in the United States District Court, Northern District of California (the “**District Court**”).

31. On February 28, 2024, LMI also filed a motion a motion for a stay pending resolution of the Appeal [Dkt. No. 907] (the “**Stay Motion**”).

32. On March 4, 2024, LMI electronically produced certain documents responsive to the requests in the Subpoena (the “**Requests**”), comprised of copies of insurance policies and coverage letters. LMI did not produce a privilege log describing the basis for any responsive documents withheld from the production on the basis of privilege.

33. On March 4, 2004, LMI filed the Motion for Protective Order.

34. On March 4, 2024,³ LMI also filed the Motion to Quash in the United States District Court for the District of New Jersey (the “**District of New Jersey**”) (Case No. 24-01467).

³ The 2004 Order, entered on January 18, 2024, required production of all documents responsive to the Subpoena within forty-five days of entry of the 2004 Order, which fell on Sunday, March

35. Subsequently, LMI agreed to transfer the Motion to Quash to be heard in this Court on the same date as the Motion for Protective Order, [Dkt. No. 994], and the Motion to Quash was filed on the docket in the Chapter 11 Case [Dkt. No. 992].

OBJECTION

36. LMI, as the moving party, has the burden of showing good cause and specifically “showing specific prejudice or harm will result if no protective order is granted.” *Woodway USA, Inc. v. LifeCORE Fitness, Inc.*, No. 22CV492-JO (BLM), 2023 U.S. Dist. LEXIS 212479, *6 (S.D. Cal. Nov. 29, 2023) (citations omitted).

37. Rather than attempting to meet its burden of particularized harm, LMI reiterates its previously litigated arguments that the Requests seek information that LMI believes is irrelevant and overly broad (an argument with which the Committee, Debtor, and the Court disagreed) and that the information sought may be subject to privilege and/or confidentiality concerns—each of which have been previously discussed with the Court and can be remedied, if necessary, through the entered Confidentiality Order and the preparation of a detailed privilege log.

38. Because LMI has not shown any particularized harm that would befall it if required to comply with the Court’s 2004 Order, it has not met its burden to show “good cause,” and the Motions must be denied.

A. Any Claim of Privilege Can Be Recorded in a Privilege Log, Subject to the Committee’s and the Debtor’s Right to Challenge the Privilege.

39. LMI’s attempt to re-litigate the Rule 2004 Motion, by arguing that the Court must give LMI authority to unilaterally exclude the production of privileged information without a privilege log or opportunity for objection, ignores the standard procedures set forth in the Federal Rules of Civil Procedure (the “**Federal Rules**”) (made applicable by the Federal Rules of

3, 2024. The Committee agreed that deadline was extended to the next business day, March 4, 2024. A motion to quash and/or for a protective order is generally considered timely “if it is made *prior to the return date of the subpoena*.” *E.g., In re Caterpillar Credito*, No. C22-1549 JLR, 2022 U.S. Dist. LEXIS 201838, at *10 (W.D. Wash. Nov. 6, 2022) (emphasis added). Because the Motions were not filed *prior to* March 4, 2024, the Motions are untimely. *See id.* at *10–11.

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

9 40. Federal Rule 26(b)(5)(A), made applicable in bankruptcy discovery through
10 Bankruptcy Rule 7026, provides:

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

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

20 41. The Committee appreciates that the Court takes privilege concerns seriously and
21 believes the Court should have the opportunity to address any issues regarding privilege as those
22 issues arise. Any dispute that the parties cannot resolve with respect to the basis for privilege of
23 any information withheld and listed on a privilege log can be brought to the Court—rather than
24 asking the Court to rule on the issue in the abstract. LMI’s proposed abstract ruling would unfairly
25 give LMI *carte blanche* to deem something as privileged without giving the Committee an
26 opportunity to understand or challenge the basis for that privilege as to particular documents, to
27 bring that dispute before the Court, or even to know that particular documents exist and were
28 withheld, contrary to what is clearly provided for in the Federal Rules.

42. Further, LMI ignores this Court’s prior statements that there was not “anything
necessarily categorically confidential or privileged about that information.” Luu Decl. Ex. A, at

1 14:18–20. As such, a categorical ruling that the information is privileged, without the opportunity
2 to challenge the applicability of privilege on a document-by-document basis, is inappropriate.

3 43. For the foregoing reasons, the Committee requests that this Court deny LMI's
4 request in the Motions for *carte blanche* authority to withhold documents on the basis of privilege.
5 Instead, LMI should be required to produce a detailed privilege log explaining the basis for any
6 document withheld, subject to the Committee and the Debtor's right to challenge that claim of
7 privilege.

8 **B. Any Confidentiality Concerns Are Addressed Through the Confidentiality**
9 **Order Entered by the Court.**

10 44. At the Insurers' insistence, and after the parties litigated the issue at length, the
11 Court entered the Confidentiality Order, which governs the production and handling of information
12 designated as confidential or highly confidential. As such, confidentiality does not provide a basis
13 for withholding information, but rather documents must be produced subject to and in compliance
14 with the Confidentiality Order.

15 45. Further, LMI has not described any irreparable harm that would befall it if such
16 information were shared with the Debtor and the Committee (neither of whom are competitors of
17 LMI).

18 46. Just as the Debtor and Committee are required to share sensitive information—
19 indeed there is arguably no information more sensitive than the excruciating details of claims of
20 sexual abuse—LMI must be required to produce information, even if it deems that information
21 sensitive or confidential. That is precisely the reason the Confidentiality Order was entered: to
22 provide a structure and process for designating information produced as confidential and for parties
23 to object to such designations where appropriate.

24 47. As such, even if the Confidentiality Order were somehow insufficient to govern the
25 sharing of information by the Insurers (if that were the case, it is unclear what the purpose of the
26 Confidentiality Order is), the undescribed potential harm to LMI in sharing the information would
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1 be outweighed by the importance to a resolution of this Chapter 11 Case of sharing the requested
2 information, particularly in light of the protections offered by the Confidentiality Order.

3 48. Because the Confidentiality Order is controlling, a protective order is unnecessary,
4 and the Motions should therefore be denied.

5 **C. The Court Already Ruled the Information in the Requests is Relevant and Not**
6 **Overly Burdensome.**

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

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

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

20 52. Again, during the February 12, 2024 oral ruling on the Motion to Reconsider, the
21 Court reiterated that the Requests were relevant and “fair game,” noting that the information sought
22 in the Requests is “the mirror image of the claim information,” which the Insurers obtained based
23 on their claim that such information was necessary to a productive mediation. *See id., Ex. B*, at
24 13:1–3, 14:10–18. The Court further emphasized the importance of exchanging this information
25 to assist in entering mediation with the “optimum amount of information.” *Id.* at 14:14.

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27 ⁴ Citations to the “Kaplan Decl.” herein refer to the *Declaration of Michael A. Kaplan, Esq. in*
28 *Support of Official Committee of Unsecured Creditors’ Objection to LMI’s Motion for*
Protective Order and Motion to Quash filed simultaneously herewith.

1 53. Even if LMI were correct that the information sought by the Requests is
2 superfluous, an argument that the information sought may be unnecessary is not a demonstration
3 of particularized harm worthy of a protective order or quashing a subpoena. *See Woodway*, 2023
4 U.S. Dist. LEXIS 212479, at *6. Similarly, a pending request for a stay of enforcement of the
5 Subpoena does not constitute cause for a protective order or justification to quash a subpoena. *See*
6 *id.* at *8–9.

7 54. Similarly, the Court already carefully considered and ruled on the breadth of the
8 Requests and ordered the parties to meet and confer on definitions. The parties met and conferred
9 (on multiple occasions) and were able to reach at least partial resolution with at least some of the
10 Insurers. That LMI chose not to meaningfully participate in that process, did not submit competing
11 definitions to the Court, and instead chose to cause delay by filing the Motions on the production
12 deadline does not warrant the relief sought.

13 55. As such, LMI’s relevance and breadth arguments should be overruled.

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

6
7 Dated: April 11, 2024

LOWENSTEIN SANDLER LLP
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8
9 By: /s/ Gabrielle L. Albert

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