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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: The Roman Catholic Bishop of Oakland, Debtor in Possession.	Chapter 11 Case No. 23-40523-WJL **WESTPORT'S OPPOSITION TO COMMITTEE'S MOTION TO ENFORCE RULE 2004 ORDER AND COMPEL COMPLIANCE WITH SUBPOENAS**

Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation ("Westport"), submits the following opposition to the Official Committee of Unsecured Creditors (the "Committee") of the Roman Catholic Bishop of Oakland's (the "Debtor") Motion to Enforce the Rule 2004 Order and Compel Compliance with Subpoenas (the "Motion to Compel"). In support of its opposition, Westport states the following:

PRELIMINARY STATEMENT

As the Court made clear on several occasions, it granted the Committee's Rule 2004 application to facilitate an efficient and cost-effective resolution of this matter through mediation. Yet, the Committee's approach to obtaining documents for purposes of mediation has thus far been beyond counterproductive. The Committee's Motion to Compel is but one example of this wasteful approach.

The Committee's claim that Westport is "defying the Court's prior rulings" begins with its misrepresentation that, at the November 14, 2024 hearing on the Committee's Rule 2004 application, the Court "ordered" Westport and the other insurers (collectively, the "Insurers") to produce all documents the Committee requests, irrespective of any valid objections the Insurers might have. It then proceeds with the false premise that Westport has somehow disregarded the Court's rulings by raising timely and valid objections that the Court's January 18, 2024 order expressly allows. *See* Dkt. No. 796 (January 18 Order) at ¶ 4.[1] Finally, it ends with the unsupported and erroneous assumption that Westport is intentionally withholding responsive documents other than the reserves information that is the subject of its pending motion for protective order. None of this is even remotely true.

"A nonparty served with a subpoena has three options: it may (1) comply with the subpoena, (2) serve an objection on the requesting party," or "(3) move to quash or modify the subpoena…." *In re Downs*, No. 8:16-BK-12589-SC, 2021 WL 4823508, at *11 (Bankr. C.D. Cal. Oct. 13, 2021). Westport has done all three. Westport has complied with the Court's January 18 Order and the Committee's subpoena in every respect, first timely serving objections, then producing more than

[1] The Court's January 18 Order is attached as Exhibit A to the Curet Declaration accompanying Westport's Motion for Protective Order (the "MPO Curet Decl."). Dkt. No. 978-2.

4,000 pages of responsive, non-privileged documents in its possession, custody, and control for almost all of the Committee's requests, with the lone exception of reserves related information that is the subject of a timely filed motion for protective order based on grounds expressly preserved and allowed by the January 18 Order. Westport then identified for the Committee, as a courtesy, the specific Bates ranges within Westport's production corresponding to each of the Committee's requests for which Westport produced documents. Westport also provided the Committee with a log of all documents that had been produced with redactions.

Westport's motion for a protective order on the one remaining issue, reserves, is currently scheduled for argument on April 26, 2024, and it is axiomatic that a party is excused from complying with a discovery request while a motion for protective order is pending. *See* Fed. R. Civ. P. 37(d)(2); *Vietnam Veterans of Am. v. Cent. Intel. Agency*, No. C 09-0037 CW (JL), 2010 WL 11730757, at *8 (N.D. Cal. Nov. 12, 2010) (an alleged failure to comply with a subpoena is excused if "the party failing to act has a pending motion for a protective order"). The only outstanding issue with respect to the Committee's Rule 2004 subpoena will therefore be decided by the Court's resolution of Westport's pending motion, making the Committee's instant motion entirely unnecessary. Westport raised these exact points in an email to the Committee, explaining that the Motion to Compel should be withdrawn because, "[o]ther than the reserves issue, which is subject to a protective order, Westport has produced responsive, non-privileged documents" and "even sent the Committee a by Bates number list of where to find the documents."[2] The Committee did not contest – or even acknowledge – these facts; it simply responded that "[w]e will not be withdrawing the motion."[3]

The Committee's attempt to manufacture a dispute where none exists, and/or which is already being briefed and will be decided by the Court on a different motion, is nothing more than a waste of the parties', the estate's, and this Court's time and resources. The Committee's motion should be denied and Westport should be awarded its expenses incurred responding to the motion.

[2] A copy of Westport's March 26, 2024 email to the Committee is attached as Exhibit A to the accompanying Declaration of Blaise S. Curet ("Curet Decl.").

[3] *Id.*

ARGUMENT

A. The Committee Misrepresents the Court's Previous Rulings.

The Committee's Rule 2004 application, filed on October 5, 2023, included a proposed subpoena containing 37 separate document requests that Westport and the Insurers argued far exceeded what was necessary for the Committee's stated goal of understanding the Debtor's insurance coverage and facilitating a "global resolution" of the case. *See* Dkt. No. 502, ¶ 21. The Court agreed. Instead of authorizing the subpoena the Committee proposed, the Court ruled during the November 14 hearing that the Committee's document requests should be limited to three topics – current claims files, underwriting information, and reserve working papers. The Court did not, however, authorize the Committee to serve a revised subpoena post haste, but instead ordered the parties to meet and confer regarding its precise scope and language. To that end, the Court instructed the parties to "sit down … and just make sure everybody is agreeing on what the wording is because this is a moving target … I think we need a little precision on what you mean by claims files, the reserve working files, and the underwriting information." 11/14/23 Hearing Tr. at 175:14-20.[4] The Court concluded the hearing by again telling the parties to "put your heads together about appropriate working for the three categories … I think could be produced, I think I can – I'll be happy to see your handiwork. ***And I'll approve that, okay, subject to that being worked out.***" *Id.* at 177:10-14.

The first premise of the Committee's motion – that Westport's response to its subpoena is untimely because the Court ruled it would allow Rule 2004 discovery from the Insurers during the November 14 hearing – is thus plainly wrong. While the Court orally granted the Committee's Rule 2004 application at the November 14 hearing, it did not approve the form, language, or order of the subpoena to be served or document requests to which Westport would be subject. To the contrary, the Court instructed the Committee to go back to the drawing board and confer with the insurers regarding the scope of its eventual requests regarding the three categories of documents the Court identified. At that point, there were no document requests for Westport or the other Insurers to

[4] A copy of the transcript of the November 14, 2023 hearing in this matter is attached as Exhibit B to the accompanying Curet Declaration.

respond to, let alone a subpoena for the Committee to seek to enforce.[5]

That did not occur until January 18, 2024, when the Court entered the proposed order and subpoenas the parties had agreed to and submitted for the Court's approval. While the January 18 Order required Insurers to produce documents responsive to the subpoenas within 45 days of entry, the Committee simply ignores that part of the order which completely contradicts its argument now. Namely, the January 18 Order expressly states that the Insurers' "rights to object to the Subpoenas as permitted under Rule 45 of the Federal Rules of Civil Procedure … are fully preserved, including, without limitation (a) any and all applicable evidentiary privileges and (b) proper scope of discovery." *See* January 18 Order at ¶ 4. The January 18 Order is therefore consistent with the Court's other rulings. *See, e.g.*, 02/07/2024 Hearing Tr. at 21:23-22:11 (the Court explaining that the Committee's 2004 application was granted "on the basis that nobody intended to do – to obliterate any privilege concerns. That never came up and it was never anybody's intent. So, to the extent that there were to be preserved attorney-client privilege or actual work product issues, … I was never intending to forestall that agreement or leapfrog any of those concerns").

The second premise of the Committee's motion – that Westport somehow violated the Court's order by timely objecting to and filing a motion for protective order with respect to the Committee's request for reserves information is thus plainly wrong as well.

B. Westport Has Fully Complied with the Court's January 18 Order by Timely Producing Responsive Documents and Timely Objecting to the Committee's Request for Reserve Information.

Westport timely served its responses and objections to the Committee's subpoena on February 5, 2024.[6] It agreed to produce non-privileged documents in its possession, custody, or control responsive to Requests 1, 3, 5, and 6, which requested Westport's relevant policies,

[5] Rule 2004 specifies that the method of compelling "the production of documents" is "provided in Rule 9016" (*i.e.*, via subpoena). Fed. R. Bankr. P. 2004(c); *see also* Fed. R. Bankr. P. 2004 advisory committee's note ("Subdivision (c) specifies the mode of compelling attendance of a witness or party for an examination and for the production of evidence under this rule."); *Raynor v. Greenlight Capital Qualified, L.P.*, 2008 WL 2224897, at *4 (Bankr. D. Neb. May 23, 2008) ("I find that ... the law required a subpoena to be served" in the context of Rule 2004 discovery from a non-debtor). Thus, an order authorizing Rule 2004 discovery is not self-executing as to non-debtors; it must be accompanied by a subpoena.

[6] Westport's Responses and Objections ("Westport's R&Os") are attached as Exhibit B to the MPO Curet Declaration. Dkt. No. 978-2.

coverage position letters, claim files, and underwriting files, respectively. *See* Dkt. 796-5, Ex. 11. Westport also determined and informed the Committee that is has no documents responsive to Request 2 or 4.[7] Westport objected to producing any materials in response to Requests 7 or 8 on grounds including that reserve information is protected by the attorney-client privilege and work-product doctrine, constitutes trade secret and/or confidential commercial information that is not discoverable, will not facilitate a mediated consensual resolution, and requiring insurers to produce reserves information would contravene regulatory public policy. Westport's R&Os at pp. 8-9.

The Committee responded on February 14, 2024, by claiming that a number of Westport's objections, including its objections to the requested reserve information, were "improper."[8] Westport addressed the Committee's position by letter dated February 20, 2024, proposing that the parties meet and confer to discuss the issues raised as required by Bankruptcy Local Rule 2004-1(b) and Civil Local Rule 37-1(a).[9] Counsel for the Committee responded by email, however, that they would not be available to meet and confer until the week of March 4, 2024.

On March 4, 2024, Westport timely produced to the Committee over 4,000 pages of documents consisting, *inter alia*, of its policies, and all non-privileged portions of its claims and underwriting files. The Motion to Compel first acknowledges that Westport produced underwriting materials, among other documents. Mot. to Compel at ¶ 35. The Committee then argues the opposite – that Westport "did not produce documents responsive to … Request #6 (underwriting files)." *Id*. This sloppy contradiction is especially odd given that counsel for Westport identified for the Committee, as a courtesy, the specific Bates ranges within Westport's production corresponding to each of the Committee's requests (including Request No. 6) for which Westport produced responsive non-privileged documents.[10]

---

[7] Request No. 2 sought secondary evidence with respect to any missing or incomplete Westport policies, of which there is none. Request No. 4 requested documents related to any exhaustion, erosion, or impairments of Westport's policy limits. *See* Dkt. No. 796-5, Ex. 11.

[8] The Committee's February 14, 2024 response letter is attached as Exhibit C to the MPO Curet Declaration. Dkt. No. 978-2.

[9] Westport's February 20, 2024 response letter is attached as Exhibit D to the MPO Curet Declaration. Dkt. No. 978-2.

[10] Westport's March 12, 2024 email to the Committee is attached as Exhibit C to the Curet Declaration.

The parties met and conferred on March 8, 2024 in connection with Westport's objections to the Committee's requests for reserves information, but were unable to reach an agreement. Westport moved for a protective order on March 18, 2024, requesting relief from the requests for reserves information. Dkt. No. 978. With Westport's motion filed, all issues regarding the Committee's 2004 Subpoena were either resolved or pending before the Court. The Committee was free to file – and Westport expects the Committee will file on April 12 – a response to Westport's motion. But the Committee apparently decided – while claiming to want a consensual, mediated resolution – that the best defense is a good offense; that more litigation is better than less; and that party, estate, and Court resources are best spent on duplicative and/or moot filings. The Committee therefore filed its Motion to Compel on March 20, 2024 (Dkt. No. 996), necessitating this response from Westport.

C. The Court Should Deny the Committee's Motion to Compel and Award Westport it's Expenses in Responding to the Motion.

As demonstrated above, for each of the eight categories of documents requested by the Committee, Westport has either: (a) produced all responsive, non-privileged documents in its possession (Request Nos. 1, 3, 5, 6); (b) informed the Committee that Westport has no responsive documents in its possession (Request Nos. 2, 4); or (c) timely moved for a protective order (Request Nos. 7, 8). Westport even provided the Committee an email outlining by Bates number where documents responsive to each request could be located.[11] Additionally, on March 22, 2024, Westport completed and served a log of documents that had been produced with redactions to the Committee on March 4. The Committee therefore has everything it is currently entitled to receive from Westport – there is nothing for the Court to compel. *See In re Downs*, 2021 WL 4823508, at *11 (Bankr. C.D. Cal. Oct. 13, 2021).

Until the Court rules on Westport's motion for a protective order following the hearing currently scheduled for April 26, Westport may withhold information subject to that pending motion. *See Vietnam Veterans of Am.*, 2010 WL 11730757, at *8 (N.D. Cal. Nov. 12, 2010) (an alleged failure to comply with a subpoena is excused if "the party failing to act has a pending

[11] Curet Decl., Ex. C.

motion for a protective order"). And in turn, the Committee's request for costs should plainly be denied because there has been no failure of any kind by Westport.

Westport, however, is entitled to recover its expenses in responding to the Committee's Motion to Compel. When a motion to compel "is denied, the court … ***must***, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees" unless the motion to compel was "substantially justified." Fed. R. Civ. P. 37(a)(5)(B); *see also Dague v. Dumesic*, 402 F. App'x 218, 219 (9th Cir. 2010) (affirming award of fees because, "[u]pon denying the motion to compel, it was within the magistrate's discretion to award attorney fees to appellees under Fed. R. Civ. P. 37(a)(5)(B)").

As demonstrated herein, the Committee's motion was not substantially justified. Before incurring the expense required to draft this opposition, Westport gave the Committee every opportunity to withdraw its baseless motion. On March 26, 2024, after reviewing the Committee's motion, Westport explained to the Committee that the motion is moot and the Committee's "[s]erial litigation purportedly in support of a mediated consensual resolution is not warranted or productive and in [counsel's] experience unheard of."[12] The Committee refused to respond to these arguments. Westport also noted that the Motion to Compel is "rife with inaccuracies," and explained, as an example, that the motion states both that Westport did *and* did not produce underwriting materials.[13] Westport asked the Committee to clarify whether it had received Westport's underwriting materials.[14] The Committee refused to clarify this simple, factual issue, betraying that the Motion to Compel was not filed to resolve genuine issues, but instead was filed with cynical, tactical goals in mind.

Awarding Westport its expenses therefore will serve the goal of Rule 37(a)(5)(B), which is "aimed at curbing discovery abuses and preventing waste of judicial time when there is no genuine dispute." *In re Morreale Hotels LLC*, 517 B.R. 184, 199 (Bankr. C.D. Cal. 2014). To be clear, while there may be a genuine dispute regarding reserves, that issue was already scheduled to be fully

12 Curet Decl., Ex. A.
13 *Id.*
14 *Id.*

briefed by both sides in the context of Westport's motion for a protective order. There are no *new* genuine disputes raised by the Motion to Compel, the briefing of which is therefore a complete waste for all parties. Bankruptcy courts have awarded fees for conduct far less egregious than the Committee's here. *See, e.g.*, *id.* at 201 (awarding attorneys' fees and costs "relating to the defense of Debtor's document subpoenas" which "were not substantially justified" because Debtor requested information "too attenuated to be relevant"); *In re Flanagan*, No. 12-24741 HRT, 2014 WL 3932647, at *8 (Bankr. D. Colo. Aug. 11, 2014) (awarding fees under Rule 37 because motion to compel "did not make the appropriate showing" to overcome confidentiality objections and therefore was "not substantially justified").

Dated: April 12, 2024

By: /s/ Blaise S. Curet

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Attorneys for Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: The Roman Catholic Bishop of Oakland, Debtor in Possession.	Chapter 11 Case No. 23-40523-WJL **DECLARATION OF BLAISE S. CURET IN SUPPORT OF WESTPORT'S OPPOSITION TO THE COMMITTEE'S MOTION TO ENFORCE RULE 2004 ORDER AND COMPEL COMPLIANCE WITH SUBPOENAS**

I, Blaise S. Curet, pursuant to 28 U.S.C. § 1746 and B.L.R. 9013-1(d), hereby declare as follows:

1. I am over twenty-one years of age, under no disabilities, and fully competent to give this Declaration.

2. I am a shareholder of Sinnott, Puebla, Campagne & Curet, APLC, co-counsel to Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation ("Westport"), a subpoena recipient in the above-captioned proceeding.

3. I respectfully submit this Declaration to provide the Court with copies of documents listed below that are referenced in Westport's Opposition to the Committee's Motion to Enforce Rule 2004 Order and Compel Compliance with Subpoenas, which is filed simultaneously herewith.

4. Attached as Exhibit A is copy of an email chain, the top email of which was sent by counsel for the Committee on March 26, 2024 to counsel for Westport and other recipients.

5. Attached as Exhibit B is a copy of the transcript of the hearing held in this matter on November 14, 2023.

6. Attached as Exhibit C is a copy of an email chain, the top email of which was sent by counsel for Westport on March 12, 2024 to counsel for the Committee and other recipients.

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

Dated: April 12, 2024

By: */s/ Blaise S. Curet*

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Attorney for Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation

EXHIBIT A

From:	Kaplan, Michael A.
To:	Todd C. Jacobs
Cc:	tburns; Prol, Jeffrey D.; Restel, Colleen M.; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg; John Bucheit; jbair; Matt M. Weiss; rdc@rcraiglaw.com; Blaise Curet; Wylly Killorin; R. David Gallo
Subject:	Re: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport"s Responses and Objections to the Committee"s Rule 2004 Subpoena
Date:	Tuesday, March 26, 2024 7:57:35 PM
Attachments:	image013.png image014.png image015.png image016.png image001.png image390623.png

---

Todd

We will not be withdrawing the motion. We reiterate our simple question: will you make the declarants whose declarations you submitted in support of your motion available for deposition and are you planning on bringing them to the hea ring?

We are in the process of finalizing a review on your privilege log and will revert with written correspondence on that, which is the predicate to any meet and confer.

Michael

Michael A. Kaplan
Partner
Lowenstein Sandler LLP

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F: (973) 597-2303

Lowenstein Sandler

On Mar 26, 2024, at 7:39 PM, Todd C. Jacobs <tjacobs@phrd.com> wrote:

Michael:

Thank you for your email. Two points to try to cut through this:

1. With respect to the Committee's motion to compel, there hasn't been "defiance of a Court order" by Westport. Other than the reserves issue, which is subject to a motion for protective order, Westport has produced responsive, non-

privileged documents. I believe Blaise even sent the Committee a by Bates number list of where to find the documents. Further, the Committee's motion is rife with inaccuracies. In the same sentence, for example, it says Westport did and did not produce underwriting files. Which is it? The Committee should have met and conferred to get its facts straight. We once again request that the motion be withdrawn.

2. On the privilege issue, the Committee hasn't identified a basis to contest privilege. Indeed, it appears that the Committee didn't even review Westport's privilege log which Blaise had to resend. And I have to disagree that context isn't critical here. Serial litigation purportedly in support of a mediated consensual resolution is not warranted or productive and in my experience unheard of. In light of the privileged nature of the reserves information – among other issues, see Westport's motion for a protective order – Westport asks once again that the Committee consider withdrawing its mediation-related discovery request.

We are always happy to talk if you think a resolution possible. Thanks.

Todd

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837
e: tjacobs@phrd.com

From: Kaplan, Michael A. <MKaplan@lowenstein.com>
Sent: Monday, March 25, 2024 5:35 PM
To: Todd C. Jacobs <tjacobs@phrd.com>; tburns <tburns@burnsbair.com>
Cc: Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; jbair <jbair@burnsbair.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Todd:

As we told Mark Plevin last week, and we know, based on my call from Russ today that all insurers discussed, we had several meet and confers about the 2004 before it was filed, and after the Court ruled. We have no obligation to meet and confer with

Westport (or any other insurer) to discuss defiance of a Court Order. We first served this discovery in October; the Court will hear this dispute for the fourth time in April; the meet and confer process has long been exhausted. Thus, there is nothing to withdraw.

As for the privilege log, I must have missed it. Can you please resend it as neither I nor Colleen can locate it?

As for the declarants, the context the discovery is sought in is irrelevant. You offered the declarations in support of your motion. Please confirm the declarants will be at the hearing live and provide us dates for their depositions. Either way, we should jointly raise this issue for the Court this week as it remains unclear if the Judge understands that April 17th could now be an evidentiary hearing. To be honest, I have never heard of a party offering testimony in connection with a discovery motion, and in particular, purported expert testimony, but there is a first for everything. To your question on witnesses on our side, we have not yet made a final determination. Assuming the Court plans to take testimony, we will likely need to regroup because unlike Westport, the Committee cannot simply hire experts.

Finally, as for challenging privilege, given that I have not even reviewed your log, it is premature to say whether we have an issue with the log. We obviously plan to oppose your motion.

Michael

Michael A. Kaplan
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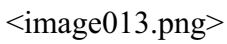

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Monday, March 25, 2024 6:11 PM
To: Kaplan, Michael A. <MKaplan@lowenstein.com>; tburns <tburns@burnsbair.com>
Cc: Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg

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Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Michael,

Thanks for your email. We are always happy to talk. In that vein, the Committee filed its recent motion to compel against Westport without meeting and conferring. In our view, the only live discovery issue between our clients pertains to the reserves issue and the Committee's motion to compel should be withdrawn.

With respect to your questions below, the Committee now has Westport's privilege log and declarations. Is the Committee challenging Westport's assertion of privilege and if so on what basis? Or planning to offer expert testimony of its own? I confess to not understanding the notion of taking depositions or live testimony in conjunction with privilege issues particularly in the context of discovery that was served for the express purpose of *reaching a consensual resolution through mediation* and not in aid of litigation.

I am available on Thursday or Friday of this week or next week after we have had a chance to review the Committee's opposition (assuming it is opposing).

Todd

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837
e: tjacobs@phrd.com

From: Kaplan, Michael A. <MKaplan@lowenstein.com>
Sent: Friday, March 22, 2024 3:32 PM
To: Todd C. Jacobs <tjacobs@phrd.com>; tburns <tburns@burnsbair.com>
Cc: Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; jbair <jbair@burnsbair.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's

Responses and Objections to the Committee's Rule 2004 Subpoena

Todd:

We saw that you filed two declarations along with your motion and have a couple questions. First, we are assuming you plan to have both declarants available, in person, on 4/17 to testify at the hearing. Please confirm this. Second, are you going to make both declarants available for deposition in advance of the hearing? We can likely arrange to do so via zoom.

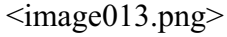
Relatedly, we are conferring with our local counsel about Judge Lafferty's practices with respect to what is seemingly going to be an evidentiary hearing. We think it makes sense to jointly seek a status conference with the Judge to ensure that he understands that this will not just be a motion hearing with the arguments of counsel.

Happy to discuss next week if needed.

Michael

Michael A. Kaplan
Partner
Lowenstein Sandler LLP

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



From: jbair <jbair@burnsbair.com>
Sent: Friday, March 15, 2024 1:12 PM
To: Todd C. Jacobs <tjacobs@phrd.com>; tburns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Todd—

Thanks for the meeting last week. In response to Westport's proposal, the Committee does not agree to withdraw its request for reserve information.

As you likely saw, American Home's motion to quash and LMI's various motions are now being heard on April 17.

Best,

Jesse

Jesse Bair
BURNS | BAIR
10 E. Doty Street, Suite 600
Madison, WI 53703
608.286.2840
jbair@burnsbair.com

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Wednesday, March 6, 2024 10:23 AM
To: Jesse Bair <jbair@burnsbair.com>; Tim Burns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Jesse – That works. Thanks.

Todd

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837

e: tjacobs@phrd.com

From: Jesse Bair <jbair@burnsbair.com>
Sent: Wednesday, March 6, 2024 6:54 AM
To: Todd C. Jacobs <tjacobs@phrd.com>; Tim Burns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Todd—

How about 4pm ET on Friday? Thanks.

Jesse Bair
BURNS | BAIR
10 E. Doty Street, Suite 600
Madison, WI 53703
608.286.2840
jbair@burnsbair.com

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Tuesday, March 5, 2024 8:03 PM
To: Jesse Bair <jbair@burnsbair.com>; Tim Burns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Jesse – Friday would be better for us. Most of our team is on the west coast so anytime between 8:30 and 4 Pacific would work. Let us know. Thanks.

Todd

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837
e: tjacobs@phrd.com

From: Jesse Bair <jbair@burnsbair.com>
Sent: Tuesday, March 5, 2024 1:23 PM
To: Todd C. Jacobs <tjacobs@phrd.com>; Tim Burns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Todd—

Could we talk on Thursday morning between 9:30am-10:30am ET? Thanks.

Jesse Bair
Burns | Bair
10 E. Doty Street, Suite 600
Madison, WI 53703
608.286.2840
jbair@burnsbair.com

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Monday, March 4, 2024 7:00 PM
To: Tim Burns <tburns@burnsbair.com>
Cc: Kaplan, Michael A. <MKaplan@lowenstein.com>; Jesse Bair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; jblease@foley.com; tcarlucci@foley.com; smoses@foley.com;

auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: Re: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

> You don't often get email from tjacobs@phrd.com. Learn why this is important

Tim/Jesse: Can you provide your availability? We should talk soon. Thanks much.

Todd

Todd C. Jacobs, Partner

Two N. Riverside Plaza, Suite 1850, Chicago, IL 60606
d: 312 477 3306 m: 847 370 1837
e: tjacobs@phrd.com   

On Feb 21, 2024, at 2:24 PM, Tim Burns <tburns@burnsbair.com> wrote:

Okay, thank you!

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Wednesday, February 21, 2024 4:22 PM
To: Tim Burns <tburns@burnsbair.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; Jesse Bair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

> You don't often get email from tjacobs@phrd.com. Learn why this is important

The following week would work. Thanks.

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837
e: tjacobs@phrd.com

From: Tim Burns <tburns@burnsbair.com>
Sent: Wednesday, February 21, 2024 3:45 PM
To: Todd C. Jacobs <tjacobs@phrd.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; Jesse Bair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Just FYI. Jesse and I are in a jury trial next week.

From: Todd C. Jacobs <tjacobs@phrd.com>
Sent: Wednesday, February 21, 2024 3:35 PM
To: Kaplan, Michael A. <MKaplan@lowenstein.com>; Tim Burns <tburns@burnsbair.com>; Jesse Bair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Thanks, Michael. Sounds good.

Todd C. Jacobs, Partner

d: 312 477 3306
m: 847 370 1837
e: tjacobs@phrd.com

From: Kaplan, Michael A. <MKaplan@lowenstein.com>
Sent: Wednesday, February 21, 2024 3:15 PM
To: tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; Todd C. Jacobs <tjacobs@phrd.com>
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Todd

Let us circle up with Tim and Jesse, and we will propose some times next week.

Michael A. Kaplan
Partner
Lowenstein Sandler LLP

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

From: Stacey Snead <ssnead@phrd.com>
Sent: Tuesday, February 20, 2024 6:06 PM
To: tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com;

galbert@kbkllp.com
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Todd C. Jacobs <tjacobs@phrd.com>; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; R. David Gallo <dgallo@phrd.com>
Subject: FW: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Counsel,

On behalf of Mr. Jacobs, please see the attached correspondence.

Thank you,
Stacey

Stacey Snead, Paralegal

d: 312 477 3307
t: 404 523 5300
e: ssnead@phrd.com

From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Wednesday, February 14, 2024 1:34 PM
To: R. David Gallo <dgallo@phrd.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com; Weisenberg, Brent I. <BWeisenberg@lowenstein.com>
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Todd C. Jacobs <tjacobs@phrd.com>; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>; Matthew Roberts <mroberts@phrd.com>
Subject: RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Counsel,

On behalf of Michael Kaplan, please see the attached.

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310
M: (973) 768-5161

From: R. David Gallo <dgallo@phrd.com>
Sent: Monday, February 5, 2024 4:47 PM
To: tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Prol, Jeffrey D. <jprol@lowenstein.com>; Kaplan, Michael A. <MKaplan@lowenstein.com>; Restel, Colleen M. <crestel@lowenstein.com>; tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com
Cc: jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Todd C. Jacobs <tjacobs@phrd.com>; Harris Winsberg <hwinsberg@phrd.com>; John Bucheit <jbucheit@phrd.com>; Matt M. Weiss <mweiss@phrd.com>; rdc@rcraiglaw.com; Blaise Curet <BCuret@spcclaw.com>; Wylly Killorin <wkillorin@phrd.com>
Subject: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Counsel,

I have attached Westport's Responses and Objections to the Committee's Rule 2004 Subpoena.

Thanks,
David

R. David Gallo, Of Counsel

303 Peachtree Street NE, Suite 3600, Atlanta, GA 30308
d: 404 880 4769 t: 404 523 5300
e: dgallo@phrd.com

product doctrine, or other legal restrictions on its use or disclosure. If you are not an intended recipient of this e-mail or if you have received it in error, any review, re-transmission, copying, use, disclosure, or dissemination of the e-mail or its attachment is strictly prohibited. If you received this e-mail in error, please notify the sender and delete and destroy the e-mail and its attachments. Thank you.

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This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

Exhibit B

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re:	) Case No. 4:23-Bk-40523
	) Chapter 13
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	) Tuesday, November 14, 2023
Debtor.	) 9:00 AM

ADV#: 23-04028
THE ROMAN CATHOLIC BISHOP OF OAKLAND, ET AL. v. PACIFIC INDEMNITY, ET AL.

1. SCHEDULING CONFERENCE

2. MOTION FOR PROTECTIVE ORDER FILED BY PLAINTIFF THE ROMAN CATHOLIC BISHOP OF OAKLAND. (DOC. 124)

1. STATUS CONFERENCE. CONT'D FROM 10/18/23, 11/17/23

2. MOTION FOR 2004 EXAMINATION OF INSURERS FILED BY CREDITOR COMMITTEE (DOC. 502). CONT'D FROM 11/17/23

3. MOTION FOR PROTECTIVE ORDER RE SURVIVOR CLAIMS FILED BY CREDITOR COMMITTEE (DOC. 517). CONT'D FROM 11/17/23

4. MOVING INSURERS' MOTION FOR ENTRY OF AN ORDER PERMITTING INSURER EXPERTS AND/OR CONSULTANTS TO HAVE ACCESS TO SEXUAL ABUSE PROOFS OF CLAIMS AND SUPPLEMENTS FILED BY CREDITOR PACIFIC INDEMNITY COMPANY, INSURANCE COMPANY OF NORTH AMERICA, AND PACIFIC EMPLOYERS INSURANCE

COMPANY (DOC. 522). CONT'D FROM 11/17/23

5. MOVING INSURERS' MOTION FOR COURT'S APPROVAL OF CONFIDENTIALITY AND PROTECTIVE ORDER FILED BY CREDITOR PACIFIC INDEMNITY COMPANY, INSURANCE COMPANY OF NORTH AMERICA, AND PACIFIC EMPLOYERS INSURANCE COMPANY (DOC. 523). CONT'D FROM 11/17/23

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WILLIAM J. LAFFERTY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor-Plaintiff: SHANE J. MOSES, ESQ.
EILEEN R. RIDLEY, ESQ.
(Via Zoom)
ANN MARIE UETZ, ESQ.
(Via Zoom)
Foley & Lardner LLP
555 California Street
Suite 1700
San Francisco, CA 94104
(415)434-4484

MATTHEW D. LEE, ESQ.
(Via Zoom)
Foley & Lardner LLP
150 East Gilman Street
Suite 5000
Madison, WI 53703
(608) 258-4203

For California Insurance Guarantee Association: MICHAEL D. COMPEAN, ESQ.
(Via Zoom)
Black, Compean & Hall, LLP
275 East Hillcrest Drive
Suite 160-1021
Thousand Oaks, CA 91360
818-883-9500

For Official Committee of Unsecured Creditors:	GABRIELLE ALBERT, ESQ. Keller Benvenutti Kim LLP 650 California Street Suite 1900 San Francisco, CA 94108 (415)796-0709
	JESSE J. BAIR, ESQ. TIMOTHY W. BURNS, ESQ. Burns Bair LLP 10 East Doty Street Suite 600 Madison, WI 53703 (608)286-2302
	MICHAEL A. KAPLAN, ESQ. COLLEEN M. RESTEL, ESQ. Lowenstein Sandler LLP One Lowenstein Drive Roseland, NJ 07068 (973)597-2490
For Westport Insurance Corporation:	TODD C. JACOBS, ESQ. (Via Zoom) Parker, Hudson, Rainer & Dobbs LLP Two North Riverside Plaza Suite 1850 Chicago, IL 60606 (312) 477-3306
	MATTHEW M. WEISS, ESQ. (Via Zoom) Parker Hudson Rainer & Dobbs LLP 303 Peachtree Street, Northeast Suite 3600 Atlanta, GA 30308 (404)523-6988
	BLAISE S. CURET, ESQ. (Via Zoom) Sinnott Puebla Campagne & Curet 2000 Powell Street Suite 830 Emeryville, CA 94608 (415)352-6200

For Pacific Indemnity Company, Insurance Company of North America, Pacific Employers Insurance Company, and Westchester Fire Insurance Company:	TANCRED V. SCHIAVONI, ESQ. O'Melveny & Myers LLP 7 Times Square New York, NY 10036 (212)326-2000 JUSTINE DANIELS, ESQ. O'Melveny & Myers LLP 400 South Hope Street 18th Floor Los Angeles, CA 90071 (213)430-6000
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Proceedings recorded by electronic sound recording; transcript provided by transcription service.

OAKLAND, CALIFORNIA, TUESDAY, NOVEMBER 14, 2023, 9:01 AM

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(Call to order of the Court.)

THE CLERK: All rise. The court is in session. This is the United States Bankruptcy Court, Northern District, California, the Honorable William J. Lafferty presiding.

THE COURT: Okay. Please be seated.

This is a specially set matter, so let's go ahead and just call the matter.

THE CLERK: Yes, Your Honor. Would Your Honor like me to call the adversary along with the bankruptcy?

THE COURT: Yeah. Let's just do that, then we'll see where we proceed. Okay.

THE CLERK: Yes, Your Honor. Calling line items number 1 and 2 jointly. Line item number 1 is for the Roman Catholic Bishop of Oakland, et al., v. Pacific Indemnity, et al., case number 22-04028. And line item number 2 is the Roman Catholic Bishop of Oakland bankruptcy, case number 23-40523.

Moving the parties over now from Zoom, Your Honor.

THE COURT: Okay. Why don't we start out with appearances in the courtroom.

MR. MOSES: Good morning, Your Honor. Shane Moses, Foley & Lardner, for the debtor Roman Catholic Bishop of Oakland.

THE COURT: Okay.

MR. MOSES: And I believe Mr. Lee and Ms. Uetz are on the line on Zoom.

THE COURT: Okay. All right. Well, we'll get to them in a minute or two.

MS. ALBERT: Good morning, Your Honor. Gabrielle Albert, Keller Benvenutti Kim, on behalf of the unsecured creditors committee.

THE COURT: Okay.

MS. ALBERT: And with me, we have counsel from Lowenstein and Burns Bair, who will introduce themselves.

THE COURT: Okay. Go ahead.

MR. KAPLAN: Good morning, Your Honor. Michael Kaplan from Lowenstein Sandler on behalf of the committee, along with my colleague Colleen Restel, who is in the gallery for now.

THE COURT: Okay.

MS. RESTEL: Good morning, Your Honor.

MR. BURNS: So --

THE COURT: Yeah, get up to a microphone so we don't Ms. a beat.

MR. BURNS: Good morning, Your Honor. Tim Burns, special insurance counsel for the committee. And with me is my partner Jesse Bair.

THE COURT: Great. Nice to see you. Okay.

MR. BURNS: Thank you, Your Honor.

THE COURT: All right.

MR. PLEVIN: Good morning, Your Honor. Mark Plevin for Continental Casualty Company.

THE COURT: Okay. Good morning.

MR. SCHIAVONI: Good morning, Your Honor. Tancred Schiavoni from O'Melveny for Pacific Indemnity and the I name Pacific Employers and maybe even Westchester, too, I think, in this case. Okay.

THE COURT: Okay.

MR. SCHIAVONI: And Your Honor, I'm proud to just introduce you to Justine Daniels from my office also. Thank you.

THE COURT: Great. Nice to see you. Okay.

All right. On the screen, why don't we start with --

MS. UETZ: Good morning, Your Honor.

THE COURT: Yeah, we'll start with other debtors' counsel. Go ahead, Ms. Uetz.

MS. UETZ: Thanks, Your Honor. Nice to see you. Ann Marie Uetz from Foley & Lardner on behalf of the debtor.

THE COURT: Okay.

MR. LEE: Good morning, Your --

MS. RIDLEY: Good morning, Your --

MR. LEE: Matthew Lee of Foley & Lardner on behalf of the debtor.

THE COURT: Okay.

MS. RIDLEY: And good morning, Your Honor. Eileen

Ridley on behalf of the debtor, specifically on the adversary proceeding.

THE COURT: Right. Okay. Anybody else for the debtor?

MS. UETZ: Not today.

THE COURT: How about anybody on screen for the committee?

MR. KAPLAN: No, Your Honor.

THE COURT: Okay. Then let's go ahead and just pick up the other folks on screen. I'm assuming they're all insurance company counsel.

MR. CALHOUN: Good morning, Your Honor. George Calhoun for United States Fire Insurance Company.

THE COURT: Okay. Good morning.

MR. WEISS: Morning, Your Honor. Matt Weiss of Westport Insurance Corporation.

THE COURT: Okay.

MR. WEISS: And Todd Jacobs and Blaise Curet --

THE COURT: Okay.

MR. WEISS: -- on as well.

THE COURT: Good morning.

UNIDENTIFIED SPEAKER: Good morning.

UNIDENTIFIED SPEAKER: Good morning, Your Honor.

MR. CAMERON: Good morning, Your Honor. Clinton Cameron on behalf of the London Market insurers.

THE COURT: Okay. Good morning.

MR. PUKLIN: Morning, Your Honor. Bradley Puklin for the London Market insurers as well.

THE COURT: Okay. Now, that connection is not so great. I don't know if you're able to hear me well.

MR. PUKLIN: I am. I apologize.

THE COURT: That's a little better. That's a little better. Thank you.

Okay. Anybody else? That's all the appearances?

MR. COMPEAN: On behalf of the defendant in the adversary proceeding California Insurance Carrier Association.

THE COURT: Right. You're here to see if I do the same thing as I did last week, right?

MR. COMPEAN: That's right, Your Honor.

THE COURT: Okay. All right. Well, that's a good question.

All right. Anybody else on screen? Got everybody?

Okay. We have a lot that's on today. So who has a suggestion re the order of procedure.

MS. UETZ: Your Honor, it's Ann Marie Uetz for the debtor. Maybe we could just set the table to confirm that we're all on the same page with respect to what's on --

THE COURT: Yeah, sure.

MS. UETZ: -- (Indiscernible).

THE COURT: Sure, sure, sure.

MS. UETZ: Thank you. Our understanding is there are cross-motions for entry of a protective order --

THE COURT: Um-hum.

MS. UETZ: -- regarding the discovery to be produced to the insurers. The committee has also filed a further motion for protective order in respect of the proofs of claim.

THE COURT: Um-hum.

MS. UETZ: I believe there is a status or case management conference set generally.

THE COURT: Um-hum.

MS. UETZ: And we did just want to at the foot of this mention Alvarez & Marsal's fee application, which is out there without decision and just check on that.

THE COURT: Yeah, I'm thinking about it.

MS. UETZ: Okay. Thank you, Your Honor. That's why I have --

THE COURT: Well, let me -- well, let me tell you -- since you mentioned, let me tell you what I'm thinking about. Okay.

MR. SCHIAVONI: Your Honor, there is one motion missing from that list.

MR. KAPLAN: Yes.

THE COURT: Okay. Can we get to it in one second?

MR. SCHIAVONI: Sure. I'm sorry.

THE COURT: All right. Appreciate it.

MR. SCHIAVONI: I'm sorry, Your Honor.

THE COURT: What I tried to indicate during the fee app hearings, and I probably didn't do it as directly as I should, was a concern, both with the relative brevity of the descriptions of what Alvarez & Marsal were doing and particular tasks, but also my concern -- and I might have said it in a way that came across somewhat archly. I didn't mean it to be arch. I meant it to be quite literal.

I was concerned that it -- I mean, I don't know -- if A&M is doing everything they say they're doing, I don't know who else is doing anything with respect to any financial or accounting or business advisory or other functions that are within the diocese. And I didn't really expect through the order that I entered to have A&M totally supplant the diocese. It kind of looks like that's what's happened. And that was the other concern I had.

The additional descriptions were better. I could probably find a way to live with them on the theory that everything is interim until it isn't, in the same way that baseball season is very long until suddenly it's very short. And similarly here, everything's --

MS. UETZ: I've never heard that one, Your Honor.

THE COURT: Yeah, well --

MS. UETZ: That's a good one.

THE COURT: Okay. So but my concern was just to

figure out really who's doing what here because the numbers are very large. I'm not suggesting that they aren't performing wonderfully important services. But if they've basically just taken over all these functions from the debtor, I'd like to know that because I think that's something I need to -- I need to chat about with them possibly. Okay.

MS. UETZ: And Your Honor, I do believe that Charles Moore from Alvarez is here today. I think raises as --

THE COURT: Okay.

MS. UETZ: -- point of procedure because we don't have anything on calendar. So --

THE COURT: No, no. But I just, I've been kind of going back and forth on this one in my head, and I wanted you to know why because I did indicate I would try to --

MS. UETZ: Yeah.

THE COURT: -- I'd try to enter an order promptly. And I've been struggling with whether I do that or not. So that's the second -- that's the other half of my concern. Okay.

MS. UETZ: If it's helpful to either have him available or set it for a hearing, whatever you suggest, we'll take your direction on it.

THE COURT: We'll come back --

MS. UETZ: I think we can answer those questions --

THE COURT: Yeah, we'll come back to that at the end

if that's --

MS. UETZ: -- when the time's right.

THE COURT: Yeah, we'll come back to that --

MS. UETZ: Sure.

THE COURT: -- at the end. Okay. In the meantime, I --

MS. UETZ: Okay. And then --

THE COURT: Okay. You want to go ahead and see if Mr. Schiavoni thinks that you forgot something?

MS. UETZ: Well, the ruling on the motions to dismiss maybe what he's suggesting, or maybe I've --

THE COURT: Yeah.

MS. UETZ: -- completely forgotten something else. But we do have on our radar that you were going to issue --

THE COURT: Right.

MS. UETZ: -- a ruling on this motion.

THE COURT: Right. Right. And there's a 2004 exam.

MR. KAPLAN: Yeah. Your Honor, that's the other piece.

MS. UETZ: Oh, thank you.

THE COURT: That's on too?

MR. KAPLAN: The committee's 2004 of the insurers, yes, Your Honor.

THE COURT: Right. Okay. And the insurer's response to that?

MS. ALBERT: Yes, Your Honor.

THE COURT: All right. Which I think it was really primarily Mr. Levin's pleading, right?

UNIDENTIFIED SPEAKER: Okay.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: Yep.

THE COURT: I'm sorry, Mr. Plevin. Excuse me.

Okay. Well, anybody have a suggestion where we start?

MR. KAPLAN: Your Honor, if I might, the committee's protective motion seems rather uncontroverted with except for a couple of clarifications. Maybe we could start off on agreement or we could start off on the most --

THE COURT: Well, are you talking about the motion that would restrict certain information from, example, ISO?

MR. KAPLAN: Yes, Your Honor.

THE COURT: Well, I don't know that -- I think I read the response a little differently, as in shouldn't it be dealt with in the context of the disagreement about the form of a protective order; is that fair?

MR. SCHIAVONI: We think it's moot, Your Honor, because the protective orders we've proposed specifically --

THE COURT: Okay.

MR. SCHIAVONI: -- exclude ISO from --

THE COURT: Okay.

MR. SCHIAVONI: -- authorized party, and I explained

the reasons for that.

THE COURT: Okay.

MR. SCHIAVONI: Judge, there is one motion missing still.

THE COURT: Okay. All right.

MR. SCHIAVONI: Okay. And I'm sorry to interrupt you before. I think I had too much coffee this morning. Okay. So --

THE COURT: Look, don't ever worry about that. That's okay.

MR. SCHIAVONI: No disrespect was intended. It's there is this package, so to speak, of protective order motions. We have a motion that so we can use experts --

THE COURT: Uh-huh.

MR. SCHIAVONI: -- and consultants. It's really essential to us. So that's another motion in that little package.

THE COURT: Okay.

MR. SCHIAVONI: I have no objection to starting with this ISO issue if that's what is --

THE COURT: Okay.

MR. SCHIAVONI: -- the pleasure of Your Honor.

THE COURT: Well, I mean, if it's essentially moot because through one protective order or the other, we're all going to agree that absent some other agreement or development,

information is not going to be shared with them, it's fine with me.

MR. KAPLAN: Well, might I, Your Honor, just --

THE COURT: Yeah.

MR. KAPLAN: Yeah.

THE COURT: Come on up.

MR. KAPLAN: Just for record purposes, good morning, Your Honor, again. Michael Kaplan from Lowenstein on behalf of the committee. We don't agree with Mr. Schiavoni's assessment that it's moot because of the protective order. We'll save the argument on which protective order should apply, but --

THE COURT: Um-hum.

MR. KAPLAN: -- very clearly, our view is is that the bar date order that Your Honor already entered and we heard argument about and Your Honor made balls and strikes calls, just to keep the baseball analogy going today, governs --

THE COURT: Um-hum.

MR. KAPLAN: -- the proofs of claim in this case. It was the bar date order in four other diocesan bankruptcy cases that one insurer who is not in this particular case violated by sharing data with this third-party ISO. So our view is is it is not a matter of questions of the protective orders is our motion seeks to clarify and ensure that the protections afforded in the bar date order are crystal clear --

THE COURT: Um-hum.

MR. KAPLAN: -- that you cannot share this data with ISO because what happened in these other cases, Your Honor, is is the insurer filed a the letter, same letter, four separate cases on September 28th, attempting to justify the disclosure ISO under the bar date order. We don't want to get to that point.

THE COURT: Um-hum.

MR. KAPLAN: And so when I said it was uncontroverted, it seems to me that everyone agrees that we should not be sharing the data with ISO. We're not talking about publicly available information. We're talking about strictly proof of claims. We would just like the protective order entered to ensure that there is clarity that the bar date order Your Honor entered does not permit that data to be shared with ISO.

THE COURT: Um-hum.

MR. KAPLAN: This is separate and apart from the conversations of the protective order because none of the motions as I read them -- I'd be happy to be corrected if I'm wrong -- modify Your Honor's bar date order.

THE COURT: Okay.

MR. KAPLAN: So that's why I think that it is -- it should be uncontroverted and should be a fairly simple way to get started.

THE COURT: Okay.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: Thank you.

Let me invite response.

MR. SCHIAVONI: So Tancred Schiavoni from O'Melveny for Pacific Indemnity. Your Honor, this issue is moot because -- and I'm glad I brought up this expert motion, right --

THE COURT: Um-hum.

MR. SCHIAVONI: -- because the limitation -- `what we've done is under the bar date order, there's a mechanism to sort of -- it's unclear to me whether experts were intended to be excluded for us. I mean, it seems inconsistent with a lot of things for that to be the case. But just jumping beyond that, there's a provision that allows us to seek court approval to have another party made part of the bar date protection, so to speak.

So we have that motion before you. We ask for experts and consultants. And what we do in that is specifically the order that defines what an expert is says -- like, it says ISO is not an expert. ISO is not an authorized party. It says it right there. So that would moot any perceived ambiguity that maybe ISO is an expert under the bar date order.

THE COURT: Um-hum.

MR. SCHIAVONI: To the extent they're saying that experts aren't even permitted, there's not even really an issue about ISO, so to speak, under that. But that would cure that.

That would address that.

And on the protective orders, we have no problem with a line in those orders. In fact, we proposed it. It's in our -- it's in our protective order that says ISO is not a authorized party.

And to be clear, I think it's inadvertent, but this separate order that they're seeking, it kind of hits -- it hits a nail with a sledgehammer instead of a hammer because it goes beyond just saying they're not an authorized party. It reinvokes all sorts of confidentiality, and it does it one-sidedly, just for insureds. It doesn't say nobody can use ISO or nobody can use claims database people or what have you.

And we lay that in our brief. I could explain it to you further. But I think, if you've read it, Your Honor, I won't --

THE COURT: Um-hum.

MR. SCHIAVONI: -- go through it any further. The cleanest way to deal with this is just to say ISO is not an authorized party. And we're prepared to do that. We did it in our two protective orders. When they contacted us, we wrote them back right away, saying that's the way to deal with this. It's like, and we have no problem with that.

And to be clear about this, like, much has made ado about ISO and Interstate here. But if you read the fine print of what their accusations are against ISO, it says they shared

it with them. But it says that, like, in five instances, maybe someone else looked at it, okay, other than ISO. When I read the ISO website to this, it says it's an anti-fraud mechanism. In other words, it looks like you put a name in and it would tell you whether somebody has submitted fifty other claims, okay, for the same thing.

So we don't need to get into a huge debate about whether that's proper or not proper. But it doesn't seem to me there was some evil motive --

THE COURT: Um-hum.

MR. SCHIAVONI: -- behind the whole thing. And Interstate, as far as I read the record, self-reported. They've done everything they can to sort of cure. They've been punished with having to pay all of Lowenstein's fees. They have a bill already of a hundred-and-some-odd-thousand dollars for them --

THE COURT: Um-hum.

MR. SCHIAVONI: -- examining them, et cetera, about it. So we all want to be careful about this. But it's like, let's not to try to cure this problem make a bigger problem --

THE COURT: Um-hum.

MR. SCHIAVONI: -- okay, so to speak. It's like, I would just take them out of the definition of authorized party, and we're fully prepared to do that, Your Honor.

THE COURT: Okay. Let me ask Mr. Kaplan a question.

MR. KAPLAN: Yes, Your Honor.

THE COURT: Come on up.

MR. KAPLAN: Yes.

THE COURT: I'll tell you what my instinct here is. It may be that this is a sledgehammer hitting a nail, but there are some things that are sensitive, and it doesn't hurt to have a sledgehammer. So I want you to address what you heard Mr. Schiavoni suggest is some overreach here, or it's maybe some unintended consequences. But the point of this is simply to say that there would be a protective order. ISO will not be -- nobody will share the following information with ISO, and that's it. That doesn't sound like a problem.

MR. KAPLAN: Well, it's not a problem, Your Honor. But we've put ISO, and we tried to define as best we could because I am not an expert in the --

THE COURT: Sure.

MR. KAPLAN: -- insurance world.

THE COURT: Yeah.

MR. KAPLAN: I disagree with most everything Mr. Schiavoni said about the sensitivity, but I'll get to that. We want to make sure exactly that, Your Honor, that that we're not going to get a letter on September 28th of 2024, which says, oops, we shared it with --

THE COURT: Yeah.

MR. KAPLAN: -- SFO and it's okay and we did it.

So --

THE COURT: Yeah.

MR. KAPLAN: -- we definitely want that clarity. I don't want to conflate the other motion that the insurers filed, Your Honor, with the extra disclosure pieces with the experts because we are prepared to address that. But we don't think it's hitting a -- I mean, is it a sledgehammer? Possibly. But keep in mind, Your Honor, the survivor's information, only talking about information from the proofs of claim, only exists because of the debtor filing bankruptcy.

THE COURT: Um-hum.

MR. KAPLAN: And they did so under the guise of filing these proofs of claim that the information would be kept confidential.

THE COURT: Um-hum.

MR. KAPLAN: So that's pretty important, I think. So if it's a sledgehammer or a jackhammer or --

THE COURT: Well, the only question is what are the implications, other than if any, ISO is not going to have this information? I mean, is this one-sided, the way Mr. Schiavoni suggests? Then it should be -- it should be -- the order should be modified to make it clear that the restrictions work both ways.

MR. KAPLAN: Well, Your Honor, I don't think it needs to be. And this actually goes to the second sort of motion out

there, which is --

THE COURT: Um-hum.

MR. KAPLAN: -- neither the debtor nor the committee is able to retain anybody without Your Honor's approval, which is specifically provided for in the bar date order. It's the same for everyone else. So we can't go out and retain a third-party service provider of any kind unless we tell Your Honor why, what we're planning to do, how we're going to pay for it, and the list goes on.

THE COURT: Um-hum.

MR. KAPLAN: The insurers are in the unique position, and they're the only ones in this position, who do not have to tell you necessarily who they're retaining and for what.

THE COURT: Um-hum.

MR. KAPLAN: So it is, in fact, one-sided, absolutely, because there are already additional protections built in place in the bankruptcy and the bar date order for that. But to the extent, Your Honor, to make clear, I'm happy for the order to say that nobody can share the proofs of claim information with any third-party without court intervention. We want -- right.

THE COURT: Look, and that would just confirm something that's already the case as to the debtor and other authorized professionals. Right. I think that's a good idea.

MR. KAPLAN: With pleasure. And we will --

THE COURT: Okay.

MR. KAPLAN: -- circulate a revised language --
THE COURT: Okay.
MR. KAPLAN: -- to that regard.
THE COURT: Okay.
MR. KAPLAN: And --
THE COURT: Thank you.
MR. KAPLAN: -- thank you, Your Honor.
THE COURT: And on that basis, the motion is granted. Okay.
MR. KAPLAN: Thank you, Your Honor.
THE COURT: Thank you. Where do we go next?
MR. KAPLAN: Shall we continue onto Mr. Schiavoni's motion on the experts on the bar date order if the --
THE COURT: Would you like to do that, Mr. Schiavoni?
MR. SCHIAVONI: Sure, Your Honor.
THE COURT: Okay. It's your motion. Come on up.
MR. SCHIAVONI: Your Honor, again, Tanc Schiavoni for Pacific.
THE COURT: Um-hum.
MR. SCHIAVONI: In some ways, I'm sorry that we had to burden you with a series of motions on this, but I don't want you to -- like, this is collectively of enormous importance to us --
THE COURT: Um-hum.
MR. SCHIAVONI: -- because we need to have experts.

We need to have consultants. We need to have the ability to question adverse witnesses. We need to be able to have the ability to present evidence to a jury at some point here.

And like, the maze of, like, whatever is done with these confidentiality provisions throughout the day, and we'll talk about them, has to be done in a way that's consistent with 107 and it doesn't take away our basic rights under the Seventh Amendment to basically try a case. Okay. And that's all said with we have no problem with protecting the names and the identities of the claimants --

THE COURT: Um-hum.

MR. SCHIAVONI: -- and other reasonable protections. But we can't be boxed into a position where we're giving up -- like, we're being forced to sign an agreement that says we consent to giving up our right under Rule 26 to have an expert or a consultant. We can't even function that way as a practical matter to get through these proofs of claim.

In Camden, in Boy Scouts, in Buffalo, and I could go on, the ability to kind of look at these things and analyze them from an aggregate basis and an individual basis -- like, we've given you citations to experts who were experts in the field of sexual abuse, who reviewed proofs of claim and reached conclusions and gave opinions to the court about them that were picked up in Boy Scouts about manners in which protective measures would be adopted, et cetera.

We had other experts look at them and give views about where there were issues about deficient claims and how to deal with them. In Boy Scouts, a court has adopted anti-fraud provisions as a result. This was salutary. It was positive in a sense for everybody.

So what is it at issue with the bar date order, it specifically provides as we set out. It says that the debtor and the committee can use experts. The Camden order and other orders then went on to say the insurers -- like, it mirrored it. It used the same language. Here, it says the insurers are a "authorized party", and then it goes on to list, I don't know, a series of other, like, related entities, successors, reinsurers, et cetera, but it doesn't include a specific designation for experts.

On Thursday, there was argument in the San Francisco case about the specific terms. And there, the term "professional" is used. And I don't want to get into a huge debate about what happened at a hearing that I don't have a record for yet, a transcript. But Your Honor, in a matter of days, I believe you'll see a proposed order go in that will have professionals in it which incorporates experts. Okay.

Now, there was some big debate about whether or not each person at a professional had to sign --

THE COURT: Um-hum.

MR. SCHIAVONI: -- the acknowledgment --

THE COURT: Um-hum.

MR. SCHIAVONI: -- there or whether the entity itself could itself cover it.

THE COURT: Yeah.

MR. SCHIAVONI: And that was a matter of some debate. I don't know how that's going to resolve itself, to be candid. But I don't think there was any debate that, like, parties get to use experts and consultants. Everybody benefits from it.

So the order here, again, by oversight or whatnot, it's not explicit about this. And we want to be cautious. We don't want a repeat of the thing that's been made out of this ISO thing. So we came to the Court under a provision of the order. It's, I think, 14 Romanette (iii)(J) that allows a moving party with the authority of the Court to share with someone else.

And we've asked for that authority to share it with our experts and consultants. We would only share it with them if they signed the appropriate agreements, acknowledgment that that applies in this case so that they're being bound to the -- they're agreeing to be bound to the order. We do that candidly for our own protection, but also, obviously --

THE COURT: Um-hum.

MR. SCHIAVONI: -- we want to comply with the order to the letter. But --

THE COURT: Is this a request to amend the order or to

clarify or what's the --

MR. SCHIAVONI: I don't think it's -- that's not how --

THE COURT: What's the relief?

MR. SCHIAVONI: Okay. We have not presented it as a motion to amend or clarify.

THE COURT: I mean, I'm not saying that's wrong, but I'm just curious.

MR. SCHIAVONI: Okay. And we've presented it to Your Honor in the first instance as the order itself provides, it says, here are the authorized parts.

THE COURT: Um-hum.

MR. SCHIAVONI: And then under Romanette 14(iii)(J) -- Um-hum.

MR. SCHIAVONI: -- it says that any other person can be added, but we've got to come to you. We've got to --

THE COURT: Okay.

MR. SCHIAVONI: -- give notice to everybody.

THE COURT: So it's under that --

MR. SCHIAVONI: Yes.

THE COURT: -- rubric? Okay.

MR. SCHIAVONI: So we're invoking that provision --

THE COURT: Okay.

MR. SCHIAVONI: -- to say that we're asking for that -- we're moving, asking for authority. We've actually

identified two specific experts that we proposed to use. Like, nobody can help themselves at throwing stones at them, whether they're good or bad. That's the litigation world. People do that. But it's like, they're very legitimate enterprises, let me put it that way.

THE COURT: Um-hum.

MR. SCHIAVONI: I mean, they're big consulting entities. Okay. They're not people we pulled off the street, the Brattle Group and NERA (phonetic). We may not use both of them. Okay.

THE COURT: Um-hum.

MR. SCHIAVONI: But I wanted to have their names in there so that, like, we weren't just dealing with this totally in the abstract.

THE COURT: Um-hum.

MR. SCHIAVONI: But yeah, we may need another consultant or two in there, and we give that right. So the issue here -- I'm sorry, Your Honor. I (indiscernible)--

THE COURT: No, I just, I have a question. And I apologize. Remind me whether the relief requested is in the abstract, as in we want a -- we want an understanding that we can consult with -- let's just use the word "professionals" because it is fairly broad and probably helpful here. And that doesn't require you particularly to disclose who they are to the other side; is that the idea? I mean, you happen to be

disclosing to folks here because they're known entities.

MR. SCHIAVONI: Well, we do qualify it in this respect, Your Honor.

THE COURT: Um-hum.

MR. SCHIAVONI: I think it does say in the specific order, and God forbid I've remembered it wrong, we want it this way. It said, these are people who would be specifically hired --

THE COURT: Um-hum.

MR. SCHIAVONI: -- for this engagement.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay. It would not -- it would be someone we've retained for this very engagement, not --

THE COURT: Um-hum.

MR. SCHIAVONI: -- somebody like -- like the ISO instance that came up, okay, I guess nobody knew about. Right. It's like, here, it'd be someone we specifically engaged --

THE COURT: Um-hum.

MR. SCHIAVONI: -- for the engagement. And in a sense, the proposed order in San Francisco, I think it's constructed that way. It says professionals, and parties then are able to get them. Now, look, it is true that there is, in effect, sort of disclosure --

THE COURT: Um-hum.

MR. SCHIAVONI: -- by professionals that are

retained --

THE COURT: Well, they have to sign something.

MR. SCHIAVONI: -- for -- well, we would have to sign them.

THE COURT: Um-hum.

MR. SCHIAVONI: And we would ask Your Honor that we get to -- like, we don't have to -- we would ask that we follow, in essence, the Federal Rules and we not have to disclose a nontestifying expert who we consult with to get advice, maybe advice to try to resolve the case --

THE COURT: Um-hum.

MR. SCHIAVONI: -- okay, that we're not putting up as a testifying expert.

THE COURT: Um-hum.

MR. SCHIAVONI: That is how it -- that is how Congress envisioned the distinction being testifying and nontestifying experts.

THE COURT: Um-hum.

MR. SCHIAVONI: And we would hold the agreement to be bound by the order.

THE COURT: Um-hum.

MR. SCHIAVONI: And we'd obviously be in peril, like if there was -- if we didn't get it and there was some violation because we didn't get it, we'd have that in hand. But --

THE COURT: But whoever that is, whether they're testifying or nontestifying, they're signing that --

MR. SCHIAVONI: Absolutely.

THE COURT: -- Exhibit A, right?

MR. SCHIAVONI: Absolutely. That would --

THE COURT: But you wouldn't have to disclose they had done -- I mean, you would be responsible for that --

MR. SCHIAVONI: Yes.

THE COURT: -- and you wouldn't necessarily have to disclose that to the debtor or the committee, right?

MR. SCHIAVONI: That's the proposal, Your Honor.

THE COURT: Okay. All right.

MR. SCHIAVONI: Okay. You can reject that. Okay.

THE COURT: Uh-huh.

MR. SCHIAVONI: You'll hear from the other side that they feel that because there's a different set of rules that apply in a sense to a professional who's getting paid from the estate. It's like, they have to make an application here.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay. But I think that's really different -- that's just a different -- that applies for a different reason. Okay. And it's not, I don't think, right to rob us of what the rules are under Rule 26 for disclosing nontestifying experts.

THE COURT: Um-hum.

MR. SCHIAVONI: I also don't think it's helpful. I think we ought to be encouraged to have nontestifying experts who help us better understand the situation here. And I think that ought to be frankly encouraged. I think that's why Congress wrote it that way.

THE COURT: Um-hum.

MR. SCHIAVONI: But it's here. It has particular rationale and benefit. But that's why we -- that's the request --

THE COURT: Okay.

MR. SCHIAVONI: -- so to speak.

THE COURT: Okay.

MR. SCHIAVONI: Okay. And the other thing, just the other point on this, is there's some issue here about, well, have we followed the provision by the letter of the rule, okay, and it says we're supposed to serve the claimants, comma, if known. All right. And Your Honor, what we did was we served the -- I forget what they call it, the core service list.

THE COURT: Um-hum.

MR. SCHIAVONI: I think that's what it's called.

THE COURT: Um-hum.

MR. SCHIAVONI: And that does include counsel of record for plaintiffs' lawyers. And it does include a number of plaintiffs' lawyers. I'd be the first to say it probably doesn't include every plaintiffs' lawyer.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay. But it's if known. We're literally in the situation where we don't know who the plaintiffs -- like, we don't know who the claimants are.

THE COURT: Um-hum.

MR. SCHIAVONI: We know from the complaints who some of them are. Right. But we don't have a full list. It's like, it's impossible for us to serve all of the individual claimants, Your Honor. And I submit that that can't be, like, a reasoned interpretation of what Your Honor meant when you signed the order that we would have to go out and individually serve all the claimants. It seems inconsistent with everything that the protective order was trying to achieve, that all of a sudden, they'd be getting notices from, like, an insurance company, saying, we're going to use the Brattle Group. Right.

It's like, they are represented here in a fiduciary capacity by the TCC, by the committee, and they're certainly in the best position, if they felt any additional service was necessary, to provide that service. They may have the list of all the plaintiffs' lawyers and whatnot in the case. And I think certainly they're in contact with them. They're in the best position to sort of do that, Your Honor. And so I think we've done everything to kind of comply. Okay.

If the order is construed in this sort of literalistic way, it makes the terms of the order. And this is sort of like

a rule of construction for interpreting contracts, but also orders and statutes. Right. It makes the statute, or here, like, the order, it's not a reasoned interpretation because it makes it illusory. There's no way to use this provision if you have to serve people and you don't know who they are or you don't know who their counsel are. We've made service of the folks that we know who are on this by the mechanism provided through ECF service and through the service list. So Your Honor, we submit that that's good service.

To the extent, Your Honor, there's some literalistic sort of other analysis of this, we're not moving for reconsideration. But the Court always has the power to interpret its own orders and to tweak them and to sort of leave us in a position where we don't get to use experts or we are left with months of litigation over whether we can use an expert. It's not productive to -- like, where we're going to go on this. It's like, it makes it impossible for us to sort of -- to function on a going-forward basis.

THE COURT: Okay.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Thank you very much.

Yeah. Come on up.

MR. KAPLAN: Okay. Good morning again, Your Honor. Michael Kaplan from Lowenstein. A lot to unpack there. I'm going to do my best to sort of follow it.

THE COURT: Um-hum.

MR. KAPLAN: Let's start with a couple of points. The service argument that you just heard Counsel argue about is it's just not right. The service argument that was made is is that the goods we're talking about proofs of claim. So let's just make sure we ground ourselves in this argument.

This is to do with proofs of claim. And it really is, Your Honor, a motion for reconsideration of the bar date order, which was already litigated once before. And then 0.25 this morning, we did another round on it. But this is all about the bar order. So procedurally, I would argue that the motion is not properly before you to do it, but let's set the sort of form over substance aside here.

The issue we have, Your Honor, with this proposed modification is a couple things. Number one, we have the main case, then we have the adversary proceeding. There is no contested matter currently in the main case for application of Rule 26. Depending what Your Honor says in about half an hour or maybe a little bit more about the adversary proceeding, there might not be any discovery going on yet in the adversary proceeding. But admittedly, at some point, we would hope that discovery ensues in the adversary, at which time Rule 26 through 7026 and otherwise would apply.

So the whole notion about disclosure of nontestifying and consulting experts under Rule 26, that is a red herring,

Your Honor. It has no application here. That has to do with the adversary proceeding. But that is actually part of where we have the problem because if you look at the insurers' proposed order, which broadly defines the term.

"Expert shall mean any entity or person with specialized knowledge or experience in a matter pertinent to the Chapter 11 case and/or adversary proceeding who has been retained by an authorized party or its counsel to serve as an expert witness or as a consultant in connection with the Chapter 11 case and/or the adversary," including, he goes on, Mr. Schiavoni lists the Brattle Group and NERA.

I'm not going to get into the Brattle Group and NERA, Your Honor. The citations that were made to Your Honor in the moving brief about their utility is not true. The citations we provided you in the transcript about their utility, that's the record.

THE COURT: I think that's neither here nor there.

MR. KAPLAN: Yeah.

THE COURT: Yeah.

MR. KAPLAN: And that's the point.

THE COURT: I mean, it's we'll see.

MR. KAPLAN: We may come a fine -- and I think that's exactly the point, Your Honor, is is --

THE COURT: Um-hum.

MR. KAPLAN: -- we are not in a contested matter yet

in the main case. There is nothing in which the parties are about to take depositions. There is nothing in which there is that type of formal discovery occurring.

And what the bar date order provides is again, we're only talking about proofs of claim. We're not talking about any documents the debtor provides otherwise. We are talking about only proofs of claim. Says that if you want to show that proof of claim to someone, you have to follow the procedures in the bar date order, which means you have to disclose who they are under Exhibit A, you have to give the parties ten days to do it, and you have to provide the specific survivor whose claims information it is with notice.

Those are the protections, Your Honor, that we litigated extensively before you. I can't remember the date exactly, but I think it was sometime this summer when we went through all of this. And it's exactly what Your Honor entered. And again, we only have this situation -- it's not because we're trying to single out the insurers. It's because the folks sitting on this side of the courtroom can't retain experts without the Court approving it and knowing it and disclosing it. And those experts are still subject to sign the authorized party agreement and otherwise.

So all we're asking for here, Your Honor, is we are not trying to limit anybody that the insurers want to retain. We can argue about the utility of that retention at a different

time. But what we're simply saying is is if you want to show them a proof of claim or the information in the sort of supplement to the proof of claim, you need to follow the bar date, which says you have to provide notice, you have to sign the agreement, and you have to give the parties a chance to object.

We should not have endless lists. I lost count, Your Honor. I think there are nine separate insurers here, but I might be off by a digit here or there, so forgive me. We should not have a world where nine separate parties have a right to retain anyone that they deem pertinent and that the universe of people who have access to proof-of-claim information is twenty-five, thirty, forty-five, fifty. That's not what the proof of claim information is.

Again, nothing to do with discovery that provided pursuant to 2004 in the main case. This is only proof-of-claim information. If you get the information somewhere else, share it as you see fit. But I don't think it's really onerous, Your Honor, and burdensome for the main case to limit who sees the proofs of claim and to have to follow the procedures that Your Honor carefully thought about and implied.

No one's being limited. We're simply just saying you have to disclose it. This isn't the adversary proceeding. There's a separate procedure there. And it really goes, Your Honor, to the argument of whether or not the proofs of claim

belong in the adversary proceeding. But we will get to that at the appropriate time in the adversary proceeding.

I don't see really how it's more complicated than that. But this broad definition of expert, that they don't have to tell -- that the insurers don't have to disclose who they're showing proofs of claim to, in the committee's mind, that is unacceptable and that is inconsistent with the confidentiality that is provided in the bar date order. And there is no way to police that, and there is no way to check that because the Exhibit A has to be signed by both the debtor and committee, Your Honor.

So I'm not sure what we're getting at here. If they're willing to sign Exhibit A, it's got to be signed by both of us, and there's still a disclosure and a period for us to object and say, no, you shouldn't give the proof of claim information to those people. Your Honor would have to call it. I've never objected to a name yet when these have come through. I'm not sure who we're talking about. But there are no depositions. There are no document demands. There is no discovery. I'm not sure why we're really back here.

THE COURT: Yeah Let me give you one reaction to that.

MR. KAPLAN: Okay.

THE COURT: And this is not a ruling. It's an observation. Okay. The challenge of these kinds of cases is so many things are happening in parallel. And I take your

point that there's technically no contested matter here.

But for the same reason that I'm going to look somewhat askance at the insurers' position re the motions to dismiss, although not as askance as you might like me to, but the same reason that I question anybody's puzzlement as to why we're here, we know where we're going here. Okay. I mean, they're going to have to look at these things. And it's just a question of what should be the impediments and what should be the barriers. Right. So the fact that there is or isn't a contested matter right now, I agree with you, but we have to sort of get past that. Right.

MR. KAPLAN: Fully agree with Your Honor.

THE COURT: Okay.

MR. KAPLAN: And that is why if they wanted to -- if the insurers would like to disclose all the folks they want to use now -- again, it's not a matter of --

THE COURT: Right.

MR. KAPLAN: -- it's not a matter of telling us every person at the Brattle Group so we can go back through and sit down and search through everyone's name, although I certainly know Mr. Hinton and some of the other experts well.

THE COURT: Yeah.

MR. KAPLAN: And we may get to see them again on Monday on the other side of the country. This is simply just --

THE COURT: In Camden?

MR. KAPLAN: In Camden, yes, Your Honor.

THE COURT: Okay.

MR. KAPLAN: They're a proposed -- Mr. Hinton's proposed to testify again.

THE COURT: Okay.

MR. KAPLAN: But nevertheless, the point is simply to have a disclosure at a level -- for instance, Your Honor, we retained Stout (phonetic).

THE COURT: Um-hum.

MR. KAPLAN: Your Honor saw the application. You approved it. Stout signed the authorized party agreement. And everybody knows Stout is in the case.

I don't think it is particularly onerous or burdensome to simply say that the Brattle Group is in the case. They are going to be looking at proofs of claim. I don't think it's onerous to say NERA is in the case. They're looking at proofs of claim. But I will say that had we known in this procedure we're followed in another case, we probably would not have been in the position we're in in some of those talking about ISO and others.

So I'm not sure what the impediment is. I don't think Your Honor would look kindly on us over0objecting to everyone the insurers wanted to retain, and I'm not sure that I would personally come argue that. I might bring one of my colleagues

to stand in front of the proverbial firing line if we chose to do that.

But specifically for the proof of claim information, Your Honor, the disclosure required and the notice, to simply give the individual survivors, whose rights have been violated many, many times, an opportunity to be told your information that you submitted confidentially in the bankruptcy is going to be shared with people who you may not have known. Ten days, Your Honor, for them to give the opportunity to do that, I'm hard-pressed to understand how that's slowing anything down in this particular case. But that's what -- I mean, we --

THE COURT: Let me just ask you this. And if you don't know, that's fine. I mean, is this aberrational in the sense that this bar date order is different from others that have been entered around the country? This issue has never come up before, versus in what sense is this typical?

MR. KAPLAN: Your Honor, I can represent to you that this is not an issue that I have litigated in other --

THE COURT: Okay.

MR. KAPLAN: -- cases previously.

THE COURT: Okay.

MR. KAPLAN: This has become a specific issue, I think, because of the additional disclosures that occurred in the Rochester, Rockville, Camden, and Syracuse cases. But in the other diocesan cases, there are provisions that allow the

insurers to get access to all the proofs of claim. They still had to sign the authorized party agreement. And I do not recall -- Mr. Schiavoni has a far better memory than me in some respects.

THE COURT: Um-hum.

MR. KAPLAN: I do not recall this similar motion being presented in the Camden case, of which I litigated virtually every motion that was before the court, and I do not recall this being presented in any other case. The provision to share strictly the proofs of claim, I believe, is nearly identical. I could certainly check it, Your Honor, but I know there's an authorized party agreement --

THE COURT: Um-hum.

MR. KAPLAN: -- that requires parties to be signed. It has to be cosigned by the debtor and the committee. And I believe there's a notice provision there. There's a (indiscernible).

THE COURT: Okay. Appreciate it. Thank you.

MR. KAPLAN: Okay.

THE COURT: Okay.

MR. SCHIAVONI: Your Honor, if I could just --

THE COURT: Yeah. Come on up.

MR. SCHIAVONI: So I have a proposal, okay, which, like --

THE COURT: Always happy to hear a proposal.

MR. SCHIAVONI: -- that may, like, get us where we need to be. But --

THE COURT: Okay.

MR. SCHIAVONI: -- let me just quickly just cover a couple of points.

THE COURT: Yeah.

MR. SCHIAVONI: So the Camden order says -- and I'm reading -- it's in footnote 7 of our moving brief.

THE COURT: Yeah. Um-hum.

MR. SCHIAVONI: And exhibit and whatnot. It says in Section 15(iii), then (iv), it provides that authorized party shall include, "any insurance company ... together with their respective successors, reinsurance counsel, experts, and consultants." So --

THE COURT: And that was the similar order that was the --

MR. SCHIAVONI: Mr. Kaplan's right. It's like, he didn't come up there because it was specifically in the order.

THE COURT: Okay. But is that the bar date order in that case?

MR. SCHIAVONI: Yes.

THE COURT: Okay.

MR. SCHIAVONI: Yes.

THE COURT: Thanks. Appreciate it. Thanks.

MR. SCHIAVONI: It's not really come -- as I

understand, it's not really coming up before Judge Montali whether or not experts are permitted. It's just a matter of who exactly signs it because professionals is right in the form. That's how --

THE COURT: Um-hum.

MR. SCHIAVONI: -- almost all of these are set up.

THE COURT: Okay.

MR. SCHIAVONI: What happened here was whether -- I don't know whether we missed it. I don't know. But like, there was a lot before --

THE COURT: Right. I missed it. Okay.

MR. SCHIAVONI: -- assigned to protect -- there was a --

THE COURT: So nobody has a -- nobody has any concerns. Okay.

MR. SCHIAVONI: There was a lot before us on the protective order.

THE COURT: Okay.

MR. SCHIAVONI: And if I'm at fault for not bringing that to your attention --

THE COURT: That's all right.

MR. SCHIAVONI: -- I take the fault.

THE COURT: Okay.

MR. SCHIAVONI: But I can't believe Your Honor really, like, meant to, like, limit us in that way. So --

THE COURT: I appreciate it.

MR. SCHIAVONI: -- just two other quick things. All right.

THE COURT: Yeah. Okay.

MR. SCHIAVONI: So this notion of there is not really a contested matter now, it's like, look, we're not waiting until the eve of a confirmation hearing or the beginning of --

THE COURT: Um-hum.

MR. SCHIAVONI: -- the claims allowance process --

THE COURT: Um-hum.

MR. SCHIAVONI: -- to then present you with an expert and then have them start his work.

THE COURT: Yeah, I get it.

MR. SCHIAVONI: Okay.

THE COURT: I get it.

MR. SCHIAVONI: There is a contested matter here.

THE COURT: Yeah.

MR. SCHIAVONI: And whether whatever happens with the adversary, I suspecting it's not going away entirely, okay, we need to be prepared for both things and --

THE COURT: Um-hum.

MR. SCHIAVONI: -- we need one set of experts looking for it.

THE COURT: Okay.

MR. SCHIAVONI: But also, like, we like to try to get

a handle on this. Okay.

THE COURT: Um-hum.

MR. SCHIAVONI: And Rule 26 does allow for nontestifying experts for a very good reason. And we should be encouraged in that regard, Your Honor. Thank you.

THE COURT: You bet. Okay.

MR. SCHIAVONI: Oh, so I had a proposal. Okay.

THE COURT: Yeah.

MR. SCHIAVONI: If Your Honor is really concerned about us complying with the letter of whatever it is, 14(3)(ii)(J) --

THE COURT: Um-hum.

MR. SCHIAVONI: -- giving notice to all of the claimants on ten days for this proposal we have before Your Honor, this request for relief, you could either enter the order on negative notice and then have the committee notice it out to -- I don't have -- I noticed the claimants I know of. Those are, like, their counsel, the ones on the 2002 service list.

THE COURT: Okay.

MR. SCHIAVONI: So the committee could notice out -- if they haven't probably have already done it, but like, if they haven't, it's like, they could notice it out and the order wouldn't be effective for ten days if any of them come in to object to experts being permitted to review this, the order

wouldn't go into effect within ten days.

THE COURT: Well, it's just funny because at the risk of parsing this too fine, which is the last thing we need in this case, are there two issues? I mean, one is with respect to this motion to whom it should have been noticed. And the second is the issue that's underneath it.

Is it with respect to any particular instance in which you're going to get a proof of claim that that particular claimant -- I mean, are those two different things? Or are you suggesting that because of the effect of the relief that you're requesting here, the question is whether the notice of this was sufficient, and that's all?

MR. SCHIAVONI: The motion before Your Honor is to ask under J --

THE COURT: Yeah.

MR. SCHIAVONI: -- let me just call it that --

THE COURT: Yeah.

MR. SCHIAVONI: -- is that authorized parties -- that the Court include, among authorized parties, experts and consultants, exactly as the order did in Camden --

THE COURT: Okay.

MR. SCHIAVONI: -- and similar to the order in San Francisco.

THE COURT: Okay, as opposed to a further notice issue?

MR. SCHIAVONI: That's the request.

THE COURT: Uh-huh.

MR. SCHIAVONI: The objection to that request is that somehow we haven't complied with the notice procedure because even though the notice procedure says that we serve claimants if known, that we didn't serve the ones we don't know --

THE COURT: Yeah, yeah. Okay.

MR. SCHIAVONI: -- who they are.

THE COURT: Okay.

MR. SCHIAVONI: Okay. It's like, if -- like, I don't think that's a reasoned analysis, and I don't think we should have to --

THE COURT: Okay.

MR. SCHIAVONI: -- provide other notice. But if Your Honor wants more notice --

THE COURT: Okay.

MR. SCHIAVONI: -- give them ten days to give it.

THE COURT: Okay. Thank you. Appreciate it.

Okay. Submitted?

MR. KAPLAN: Unless Your Honor has further questions.

THE COURT: No. No. I want to think about this for literally a day or two.

MR. KAPLAN: Okay. Sure.

THE COURT: Okay.

MR. KAPLAN: Just to be clear, Your Honor, we did not

raise the service of the actual motion.

THE COURT: Yeah, I wasn't sure --

MR. KAPLAN: Yeah.

THE COURT: -- you had. I'm sorry. I mangled my question to Mr. Schiavoni.

MR. KAPLAN: That's okay.

THE COURT: -- but I think you got -- but you saw what I was asking.

MR. KAPLAN: I saw where you were go --

THE COURT: Yeah.

MR. KAPLAN: We didn't raise it.

THE COURT: Okay.

MR. KAPLAN: It's not an issue.

THE COURT: All right. I'm going to get back to you promptly on this. Okay. I'm thinking end of the week or Monday. All right.

Okay. Where do we go next?

MR. KAPLAN: Shall we stay on the theme of protective orders, or should we move to 2004?

THE COURT: Well, you can. I mean, when would it be appropriate to hear my thinking about the motion to dismiss?

MR. KAPLAN: Right now.

THE COURT: Okay. So it's good enough? Okay. All right. And look, there's going to be overlap here in several different ways. Okay.

So we had a fairly lengthy argument about a couple of motions to dismiss back on October 18. And I want to thank the parties for doing really a wonderful job of illuminating their views of the subjects. And again, this is another one of those situations where I think we're proceeding in some ways in parallel in terms of what's going on in the main case and what's going on in the AP.

And apropos of absolutely nothing, I'm struck by what I understand to be all the different ways that these kinds of APs are dealt with in different cases. There seem to be cases where they just get filed and they kind of sit there and they're just a vehicle to do something someday but it's not really urgent or necessarily joined in battle initially. And there are other situations where I think they're more immediately sort of a means to advance all kinds of important questions.

This one has provoked a couple of 12(b)(6) and 12(e) motions, which is fine because I think at the end of the day, my ruling is going to suggest how I think we need to clarify a few things here. So let me go back to the beginning.

So on June 22nd, the plaintiff in this case, the Roman Catholic Bishop of Oakland, filed a complaint, later amended, breach of contract and declaratory judgment against certain primary access and umbrella insurers. Plaintiffs allege jurisdiction under 28 U.S.C. 1334. They also allege that all

these matters are core under 28 U.S.C. 157(b), but there's not much elaboration as to what little part of 157(b) might render these things core. Plaintiffs also consent to this Court entering final orders, judgments, or decrees.

Certain of the defendants have filed demands for jury trials. The defendants also assert that these matters are state law causes of action that are not core. And they don't consent to this Court entering final orders, judgments, or decrees.

Clearly, this Court would have no ability to conduct a jury trial on the matter as presently set, I believe. Okay. certain of the insurers have also indicated a desire to file a motion to withdraw the reference, but I don't think that's been filed yet. And at some point, we'll circle back to that because that's going to implicate some timing questions on a couple of different matters here. Okay.

And let me just say as an aside, whether something is core or isn't is initially theoretically my call, but it's not ultimately my call. So the fact that somebody alleges that something isn't core or I shouldn't be entering final orders of the motion -- the reference should be withdrawn. The only thing I care about is certainty, not that I am never offended when anybody tells me I shouldn't be doing a thing. Congress has told me that, and I have to interpret it. But somebody else may interpret it differently, so I don't want anybody ever

to think that that is problematic.

The problem occurs when in all too many APs people don't say what they think about that and you get to the eve of a trial and suddenly somebody thinks that there's a problem. So I appreciate the fact this has come up early. That helps the process. Okay.

And the curious thing about this is although it's reasonably clear to me that even at this 12(b)(6), 12(e) stage, there are some factual disputes about fundamental aspects of these issues. I don't think any factual disputes have to be resolved here. So in the sense that if purely from a related to jurisdiction core, noncore matter, if I'm not resolving a factual dispute, I don't think that there's any Constitutional implications or problems because if what I do were to be reviewed, it would be reviewed de novo in any event, in which case the Stern issue just isn't a problem. So I intend to go ahead and rule on these motions. Okay.

So the amended complaint alleges that -- and here, I'm going to do sort of a laundry list. Don't take notes because it's going to -- don't feel the need to jot down every thought. Okay.

The complaint alleges that the defendant Pacific Indemnity on information and belief issued primary insurance policies to the plaintiff under various policy numbers for a period from roughly 1963 to 1966.

The Insurance Company of America information and belief issued primary insurance policies to plaintiff under various policy numbers as set forth in the complaint for periods 1966 to '69 and '69 to 1970.

Defendant Aetna Travelers issued written primary policies of insurance to the plaintiff under various policies for different periods of time commencing in 1975 and running through 1981.

Certain Underwriters of Lloyd's wrote primary -- I'm sorry, wrote excess policies under certain policy numbers for periods allegedly beginning 1962 and running through 1966.

Oh, I think I skipped somebody here. Yeah. Commercial Union/Armour Insurance Company obligations were later assumed by California Insurance Guaranty Association, allegedly issued written policies of insurance, various numbers from periods allegedly from 1970 to 1975. And those we dealt with last week. Okay.

Insurance Company of North America issued a written excess policy of insurance allegedly under a policy for the period of 1966 to 1970.

United States Fire Insurance issued a written policy of excess insurance, allegedly, for a period 1970 to 1971.

The Employer's for the Insurance written policy of excess insurance allegedly in 1971 to 1974.

CNA Insurance Company allegedly wrote a written policy

of excess insurance, various policy numbers from a period beginning 1974 running through 1980.

Industrial Indemnity issued a written policy of excess insurance, allegedly, again during 1980 and 1981.

And Lloyd's Underwriters allegedly issued written umbrella policies of insurance for a period 1963 to -- I'm sorry, 1962 to '63 and then '63 to '66.

Employers re issued a written umbrella policy of insurance to plaintiff under a policy number for a period 1974 to 1977.

Aetna Travelers allegedly issued written umbrella policies of insurance from periods 1978 to 1981 and then 1981 to 1987.

Pacific Employer's Insurance allegedly issued a written umbrella policy for a period 1985 -- I'm sorry, March 1985 through December 1985.

So attached to the amended complaint is Exhibit A is a chart listing the pending lawsuits filed in the (indiscernible) County Superior Court against plaintiff for alleged negligent supervision and hiring of certain clerical and ministerial personnel. The list underlies most of the claims that need to be resolved.

In this adversary proceeding, the plaintiff alleges generally that the primary and excess insurers have a duty to defend and indemnify the plaintiff through the state court

actions and further alleges that the insurers have either denied or failed to confirm coverage and/or provide defense and/or indemnity. As a result, the plaintiffs claim they have been damaged because one, the plaintiffs' been denied the benefits of the insurance policies that it purchased, despite having complied with all of the requirements under the policies. And two, plaintiff has been forced to defend itself against the lawsuits without the appropriate defense and indemnity from the insurers.

Plaintiff believes that the foregoing demonstrates a need for declaratory relief because there appears to be a dispute regarding coverage, and plaintiff believes some or all of the insurers breached their contracts because of their deficient response. Primary insurers contend that they did not breach any contract for failure to furnish a defense because they provided plaintiff a qualified defense under a reservation of rights. And the primary insurers who filed a 12(b)(6) motion further argue that they are not obligated to indemnify the plaintiff because the duty to indemnify only arises after the primary insurers' liability is established, which they argue has not yet happened.

Primary insurers contend that because the plaintiff has failed to allege or provide any evidence of the existence of any judgment or settlement in any underlying state court proceedings, primary insurers have no duty to indemnify the

plaintiff. Therefore, the primary insurers moved the Court to either dismiss this adversary proceeding or require plaintiff to provide a more definite statement.

So let me take a step back here. As background, the Court has made a comment few hearings ago that it finds it a little bit unusual to approach the issue of insurance coverage through this adversary proceeding, considering the fact that most of the questions related to the coverage can be resolved through comprehensive 2004 exams and through the parties' extensive discussions that are under way. That's neither here nor there. I mean, there's clearly two paths here. It's curious to me that we're on both, but there we are. Okay. This dichotomy persists and is going to be addressed in several applications today, small way applications.

With that and thinking about the motion to dismiss or a motion for a more definite statement, this dispute plays out sort of on two strata, one, a sort of meta conceptual level, what's this case about, and on a more particularized level, what are the duties allegedly implicated and have they been breached. And those are really two different questions.

To the extent that the insurers are basically taking the position, at least thematically, that they are uncertain as to what the plaintiff is seeking here at large. That argument generally lacks credibility with me. It's clear to me that the plaintiff is alleging that there is coverage, which is hardly a

surprise in this case or in any other disease case. Thus, for the insurers to claim they're uncertain how to respond is on that meta level unpersuasive.

However, we're talking about a complaint here, which is a much more particularized form of request for relief, and it needs to be precise in its allegations and assertions of duties and breaches. So the Court agrees with the insurers that for them to respond to the complaint, the plaintiff should amend the complaint to clarify at least the following points.

One, to the extent that the plaintiff believes that the obligation to indemnify has been triggered, the plaintiff should clarify the reasons why it believes that's the case.

Two, to the extent the plaintiff believes that the duty to defend has been breached, the plaintiff should provide further details concerning the instances of the alleged breach, including but not necessarily limited to, one, the dates the plaintiff tendered the claims to the insurers, two, the dates of the -- I'm sorry, I lost my place here -- dates of the insurers' responses, if any, and three, the reasons why the plaintiff asserts that the insurers' responses, if there was a response, were unsatisfactory or deficient under California law. I think we have to have that to understand that we have a breach or don't have a breach.

Further, to the extent that the insurance companies are asking for more particulars about the individual policies

or why the policies may or may not be in effect or exclusions may or may not apply, the Court believes that and agrees with Ms. Ridley. Those are really merits issues, but I don't think we need to get into it at pleading stage. So to the extent there was a request for that kind of information, I'm not granting the motion to dismiss.

But the primary motions, primary insurers' motions to dismiss, a motion for a more definite statement, are granted. And the plaintiff is directed and shall be permitted to amend its complaint consistent with the concerns described above.

With respect to the excess insurers, the excess insurers replicate many of the primary insurers' arguments regarding indemnity and defense. In addition, they argue that under Iolab Corp. v. Seaboard Surety Company, which is 15 F.3d 1500 (9th Cir. 1994), they have no duty whatsoever to an insured until the insured can demonstrate that the primary insurance has been exhausted and that the excess has been accessed.

Let me take a minute with respect to Iolab because it's clearly a very important case. In Iolab, Iolab was sued in the Central District of California for allegedly infringing the patent for an optical device owned by Dr. Jenson. The trial was bifurcated between liability and damages. And at trial, Iolab was found liable for patent infringement, and the parties subsequently settled. Iolab agreed to pay 13.5 million

dollars to Dr. Jenson.

Iolab then filed an action seeking indemnification from its insurers, both primary and excess insurers, for 13.5 million dollars, together with costs estimated at 1 million dollars, for a total of 14.5 million. Iolab's aggregate primary coverage during the infringing period amounted to thirty-six million dollars.

Further, the excess policy specifically provided that their liability does not attach until the underlying jurors have paid or have been held liable to pay. The district court dismissed on the pleadings the actions against four insurers, dismissing a fifth based on the complaint alone, and granted summary judgment, dismissing the remaining ten causes of action Iolab appealed.

The Ninth Circuit found that under California law, as they were interpreting California law, primary insurance must be exhausted before liability attaches under a secondary policy. This is true even if the total amount of primary insurance exceeds the amount contemplated in the secondary policy. So the Ninth Circuit affirmed the trial court finding the Iolab could not have sued for excess -- I'm sorry, could not exclude the excess policyholders for breach of contract until the legal obligations of the primary insurers have been determined and the excess policies had been triggered.

Now, the argument was raised at the oral argument in

the papers that there is other pertinent law in California with respect to declaratory relief actions in particular. And the case that was cited to the Court was Ludgate Insurance Company v. Lockheed Martin Corp., which is 82 Cal. App. 4th 592 (2008).

In looking at this case, my instinct is that there is greater flexibility under California law, specifically with respect to declaratory relief actions than I think was necessarily contemplated by Iolab. I think Ludgate stands for the proposition. And again, that's more of a pleading case. And they pointed out in Ludgate that Iolab was largely a summary judgment case.

But what I think Ludgate stands for is the proposition that at a pleading stage, it's sufficient, at least plausibly, to allege a likelihood that the excess can be implicated. In fact, the actual pleading in Ludgate might have gone beyond that and might have alleged on the numbers presented that the excess would be implicated. But I think that the point of Ludgate, in my view, is that there should be greater flexibility in looking at these issues through the prism of declaratory relief and that what needs to demonstrate through declaratory relief is an actual, plausible controversy and that that can be done even in this excess insurance concept.

I think that's particularly relevant here, and I think it's particularly relevant to a diocese case at this stage, because unlike Iolab, where the damages were set and everybody

knew what the numbers were, we may have ideas what numbers are likely to be based on other cases here, but we just don't know. I think that, as I look at the complaint, I don't believe that the plaintiff has yet alleged anything with respect to any kind of likelihood that there's going to be a likely invasion of the excess policies. I think they should be required to do that and have some basis for doing it.

So I think I'm going to grant the excess insurers motion to that extent. I think there needs to be some statement consistent with Ludgate where the reasonable possibility or reasonable plausibility they're looking to get to something implicating the excess policies, I don't think that has to be necessarily down to the penny. But I do think that Ludgate suggests that there can be a declaratory relief action, but it does require some pleading beyond what we have here.

So I'm going to grant the excess insurers' policy as well and permit the debtor, the plaintiff, to amend the complaint with respect to statements with respect to a plausibility under a Ludgate analysis that we're going to -- we are going to or are likely to implicate the excess policies as well.

So we talked about a deadline for amendment last week. The plaintiff suggests on November 28th. I don't know if Ms. Ridley wants to comment on whether in light of these rulings,

November 28th still make sense for one amended complaint or whether something else should be considered.

MS. RIDLEY: Thank you, Your Honor. This is Eileen Ridley for the debtor in the adversary proceeding. Given the information, and I understand the Court's ruling, I would ask for a bit more time --

THE COURT: Okay.

MS. RIDLEY: -- because we're going to combine this with the amendments --

THE COURT: Yeah.

MS. RIDLEY: -- that the Court granted and amended for CIGA.

THE COURT: Okay.

MS. RIDLEY: And so I would ask for a little leniency --

THE COURT: Okay.

MS. RIDLEY: -- for time in the holidays.

THE COURT: All right. Well, let me give you one other thought, too. I mean, the argument primarily went to the dec relief aspect of this. I don't know if you want to allege that there's some immediate breach, other than what you're suggesting in the dec relief, failure to respond. If you have that in mind, I don't think that's been pled yet. And I think that you would need to do so. If you want to simply rely on what I think is my interpretation of Ludgate, here, re a dec

relief action, that's fine. And then you might get another 12(b)(6) motion.

But if you have something else to say about a breach of a current duty, I think the complaint needs to be amended to say that because I don't think it -- it doesn't say it clearly to me right now. Okay.

MS. RIDLEY: Understood.

THE COURT: All right.

MS. RIDLEY: Understood.

THE COURT: All right. You want to suggest a amended date?

MS. RIDLEY: I'm sorry. I couldn't --

THE COURT: I'm sorry. Do you want --

MS. RIDLEY: -- tell if that was -- I'm assuming that's directed to me.

THE COURT: Do you want to suggest a different date for amending?

MS. RIDLEY: I do. Could I suggest -- I'm looking at a calendar right now. Could I suggest by the 18th of December?

THE COURT: Anybody want to comment?

MR. PLEVIN: Your Honor, Mark Plevin for Continental. 18th of December sort of puts us in a hole if we are responding to the complaint, either by motion or answer. So if Ms. Ridley wants that much time, that's great. I think we would need more than the amount of time --

THE COURT: Well, maybe you get to January 10th or something to file, for example.

MR. PLEVIN: Yes. Yeah.

THE COURT: That's the idea?

MR. PLEVIN: Right.

THE COURT: Okay. All right. Ms. Ridley. I mean, I pulled --

MS. RIDLEY: I'm happy to say so --

THE COURT: -- that out of my head, so I don't know what -- if we're looking at December 18, that is --

THE CLERK: It's the Monday, Your Honor.

THE COURT: It's a Monday? Okay.

THE CLERK: The 10th would be a Wednesday, Your Honor.

THE COURT: Okay. Well, I just pulled January 10th out of thin air. So if you want to make a different suggestion, let me know.

MR. PLEVIN: So assuming people are taking off the Christmas holiday and New Years', we're back in the office on the 2nd --

THE COURT: Um-hum.

MR. PLEVIN: -- I would say two weeks from that is the 16th of January.

THE COURT: Ms. Ridley, any comments on that?

MS. RIDLEY: I think what Counsel said is probably right, and I don't object to the 16th.

THE COURT: Okay. So January 16 for a response date to the amended complaint, okay, assuming it's filed on December 18. Okay. Okay.

MS. RIDLEY: Thank you, Your Honor.

THE COURT: All right. Is it appropriate to -- should we take the case management issues last, or given that we're now talking about timing on amended complaints, is it appropriate to take that up to some degree now? I mean, part of the response to what the insurers believe is a fairly aggressive schedule by the plaintiff was we're not even sure where we are with the pleadings yet, which is now truer than it was twenty minutes ago. I mean, I have two thoughts I'll just give you, and then we can get into the conversation.

It doesn't surprise me that the insurers have in mind a motion to withdraw the reference, and that is something that the reasons for that potentially go way beyond this isn't core. And I'm of two minds about that. In my experience, the experience has been party files that motion with the district court, the bankruptcy court under our Local Rules has the ability to "comment thereon". I've done that in a number of instances.

I will just tell you from my perspective in this instance, were I do comment on a motion to withdraw the reference in this instance, it would be probably not much more than I stand ready to do whatever the district court tells me I

should do. And there are plenty of instances where the district court says, just, Lafferty, you do all the grunt work. When we're ready to try this thing to a jury, then come see me. But whatever the district court suggests, obviously we will do.

I doubt that my comment would go much beyond tell me what you'd like me to do, District Court Judge. So I don't think I'm going to take issue necessarily with the motion to withdraw the reference in this circumstance. I mean, when I see it, I'll respond more precisely. But I suspect that's really all I'm going to say.

My experience has been, without meaning to be arch, that motions to withdraw the reference are presented to the district court. They are rarely argued. District court simply decides what it wants to do when it decides it wants to do it and does it. And we all go forward from there.

Which really is a bit of a dilemma for deadlines because on the one hand we can set all the deadlines we want here. If the reference were withdrawn, the district court would simply rethink all of them, and I don't think it would -- unless deadlines were to be coming up and being adhered to prior to the time the district court would decide a motion to withdraw the reference, and they have been known to linger up there for a period of weeks to months, if we're talking about simply things that the parties are going to be doing, it's maybe not such a big deal. If we're talking about things a

judge is going to be asked to do, I mean, we have to hold those for a while until we know what the district court's up to.

So those are just some general comments on scheduling. If anybody wants to come to the podium and give me your thoughts, I'm all ears, including Ms. Uetz, I can see.

MS. UETZ: Thanks, Your Honor. I can follow Mr. Schiavoni and others in the courtroom.

THE COURT: Okay.

MS. UETZ: I just wanted to let you know that I had a couple of comments for --

THE COURT: Okay.

MS. UETZ: -- to record on this.

THE COURT: Okay.

MS. UETZ: Thank you.

MR. SCHIAVONI: Tancred Schiavoni for Pacific.

THE COURT: Pacific. Uh-huh.

MR. SCHIAVONI: Your Honor, this is an occasion where it's sort of maybe less said is better, right, which maybe that's warmly received right off. But I do think that -- so we were -- I was flying here yesterday, and I did receive an email from Ms. Uetz that I just only read this morning.

THE COURT: Okay.

MR. SCHIAVONI: I didn't want to get into that email because I don't know whether it, like, is a privileged email, like, in a sense. Right. But it might make sense, given your

ruling for -- in a sense for us to be able to now use this opportunity to meet-and-confer --

THE COURT: Sure.

MR. SCHIAVONI: -- on what's the next best step --

THE COURT: Sure.

MR. SCHIAVONI: -- for the case. Okay. I will say, Your Honor, it's like, these cases -- like, I have two kids in Catholic schools, and I have eight years at Georgetown.

THE COURT: Um-hum.

MR. SCHIAVONI: I would like to bring this case to a soft landing personally.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay. And I commit to work as hard as humanly possible. It is enormous challenges here. But I'm very committed to that. I'm a good litigator, and I can fight too, if, like, I'm put in an unreasonable position. But that's where I'd like to see the case go.

THE COURT: Okay.

MR. SCHIAVONI: So like, I think, rather than getting into a whole thing about what our competing schedules are, I don't --

THE COURT: I kind of thought we'd go this tact.

MR. SCHIAVONI: I don't think it's --

THE COURT: That's fine.

MR. SCHIAVONI: You've looked at the Rule 26

statements. For me, on a personal level --

THE COURT: Um-hum.

MR. SCHIAVONI: -- it's not a win to go off and litigate this thing in a district court or have jury trials. And that's not what I personally want to see happen.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay. I will protect my clients rights and they want to do everything. But to the extent I can bring about a different outcome, then I'm committed to that. So that's one thing. Okay.

THE COURT: Um-hum.

MR. SCHIAVONI: The second thing is on the motion to withdraw the reference, I appreciate Your Honor's comments about it. One of the main issue, there's two sort of issues that you'll see when you get -- if we have to bring the motion --

THE COURT: Um-hum.

MR. SCHIAVONI: -- okay, like, you'll see sort of, like, there is an issue about -- like, we think, and I know this may be disputed, but that this is very much a jury-trial issue. And in a jury trial case, it's like, very important for a judge, I think, to have the case early on. Okay. And that is no -- you are the great.

THE COURT: No, no. Look, look --

MR. SCHIAVONI: All right. All right. But anyway,

that's --

THE COURT: The district judge will decide that --

MR. SCHIAVONI: Right.

THE COURT: -- and I mean, I couldn't be offended by that because they know something I don't know. Absolutely. No problem.

MR. SCHIAVONI: Mainly in some respects because the way every district court judge and every judge tries a jury trial --

THE COURT: Um-hum.

MR. SCHIAVONI: -- I have found in my experience trying jury trials, everybody, it's a very personal thing --

THE COURT: Um-hum.

MR. SCHIAVONI: -- I mean, how they interact with the jury and how they want --

THE COURT: Um-hum.

MR. SCHIAVONI: -- to do things.

THE COURT: Um-hum.

MR. SCHIAVONI: And it's just very individualized. Right.

THE COURT: Um-hum.

MR. SCHIAVONI: So I think it's sort of different than ninety-nine percent of the cases that --

THE COURT: Not a problem.

MR. PLEVIN: -- that arise -- when I'm representing,

like, a commercial party in a commercial bankruptcy --

THE COURT: Um-hum.

MR. SCHIAVONI: -- look, it's like, disputes about bond indentures, it's theoretically possible we could have a jury trial and a bond indenture. But I have yet to try that case.

THE COURT: Um-hum.

MR. SCHIAVONI: Okay.

THE COURT: Um-hum.

MR. SCHIAVONI: They normally resolve, frankly, with the very good advice of a judge in a bankruptcy court is extremely experienced in commercial matters. But --

THE COURT: Um-hum.

MR. SCHIAVONI: -- this is sort of a different animal. That's one thing.

The second thing, Your Honor, is it just as far as the precise timing, I would like the benefit of just -- like, I think the motion is best presented to the Court with the complaint attached, so to speak. Okay. But honestly, I'd like to do a little extra research on that because I'm not trying to slow things down or whatnot. It's like --

THE COURT: Um-hum.

MR. SCHIAVONI: -- I'm happy to sort of look into that a little bit further.

THE COURT: Um-hum.

MR. SCHIAVONI: But I'm embarrassed to say that's not an issue I've particularly studied.

THE COURT: Yeah.

MR. SCHIAVONI: So I benefit from a little time looking at that.

THE COURT: Okay. Well, if we're -- on the current schedule, we'd be here roughly the middle of -- if we're in 12(b)(6) land again, we're here in the middle of February, right? I think. Something like that.

MR. SCHIAVONI: Okay. Right.

THE COURT: Okay.

MR. SCHIAVONI: So like, we'd be -- like, if the cases suggest that I really should have that right after the motion to --

THE COURT: Um-hum.

MR. SCHIAVONI: -- right after the amendment, like, we'd be looking like very reasonable time shortly thereafter of that.

THE COURT: Yeah, that's fine.

MR. SCHIAVONI: Okay.

THE COURT: That's fine.

MR. SCHIAVONI: But if my research shows that we could do it sooner, I'm happy to entertain that.

THE COURT: Okay. All right.

MR. SCHIAVONI: But I would like to meet-and-confer

first.

THE COURT: No, I asked the question thinking somebody would tell me this is a pause moment or something along those lines. That's fine. Appreciate it.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Okay. Thank you very much. Appreciate it.

Okay. Ms. Uetz.

MS. UETZ: Thanks, Your Honor.

THE COURT: Unless you want to defer to your insurance counsel, who is --

MS. UETZ: (Indiscernible).

MR. KAPLAN: He's my insurance counsel.

THE COURT: I'm sorry. The committee's -- well, we're all sharing here, right? I mean, clearly. Okay. All right.

MR. KAPLAN: Sharing is good.

THE COURT: I apologize. Okay. Ms. Uetz, you had your hand up first.

MS. UETZ: Yeah. Thanks, Your Honor. Ann Marie Uetz --

THE COURT: Okay.

MS. UETZ: -- for the debtor. Try to lower my hands. There we are. A couple of comments, Your Honor. And I think as Your Honor was observe, we, as on behalf of the debtor, are intent on proceeding down a path of pursuing the adversary,

proceeding against the insurers while also inviting and try to work toward resolution. I think to a great degree the insurers hold a little bit of the keys to some of the timeline here in the following sense, Your Honor.

And let me just -- let me just emphasize, it is the debtors' belief that the best way to get to a resolution with the insurers, the most effective way to get to a resolution with the insurers in this Chapter 11 case, is to pursue the adversary proceeding as well. Mr. Schiavoni noted that he's a real good litigator, but he also likes to settle. I'm lucky. I have a really good litigator. I have Eileen Ridley. And as the debtor lead lawyer, I like to settle. So we are very much trying to work down that parallel path.

And when we talk about timing -- and that's the reason I raised my hand. When we talk about timing here for the adversary proceeding case, Your Honor, I think the reason I said that the insurers hold a little bit of the keys to the timing for resolution discussions with me is the following. They have identified that they want to file a motion to withdraw the reference. We just talked a minute ago about maybe even returning in mid-February for 12(b)(6) motions.

There are some gating issues which we believe the insurers will raise, negating coverage. So those actions by the insurers, whether it's to bring the 12(b)(6) after the next complaint is amended or whether it's to bring the motion to

withdraw the reference, that timing is a little bit in their camp, right.

As well, and Mr. Schiavoni alluded to it and I don't think it's -- I didn't intend it to be a secret, we have reached out to counsel for the insurers, and we asked them to consider who they might want to mediate the insurer issues in this case. And we're trying to move forward on really what is it they're allowed to have. Again, based on the firm belief by the debtor, right or wrong, hopefully I'm right, hopefully we're right, that by pursuing the adversary proceeding, we are moving the parties closer to a potential resolution.

So all of that, Your Honor, is to say that in light of the Court's ruling today and the intended amendment date, we have made clear to the parties and hopefully to the Court in the statement that we filed this week, we had intended to address the date for the adversary proceeding anew after the Court ruled on the motions to dismiss because we know those would be (indiscernible).

THE COURT: Got it. Got it. Got it. Got it. Okay.

MS. UETZ: So from the debtors' perspective, what I'm hoping to do is to meet-and-confer with counsel for the insurers regarding some schedule or timing on the motion to withdraw the reference. And then Mr. Schiavoni maybe say that the timing for that motion, in his view, is more appropriate after amendment. I don't actually agree with that, but that's

their motion and it's their motion to bring.

But as well, I'm happy to state we will continue to pursue mediation, having just started to (indiscernible) yesterday and I acknowledge that.

THE COURT: Yeah.

MS. UETZ: We reached out, and I'm hoping to have those discussions with counsel for the insurers and then return to this court on that subject as well.

THE COURT: Okay.

MS. UETZ: So I'll pause there. Ask if you have any questions for me.

THE COURT: No, I don't. Thank you.

MS. UETZ: Thank you.

THE COURT: Okay. Mr. Burns wanted to be heard.

MR. BURNS: Good morning again, Your Honor. So the committee agrees with the debtor.

THE COURT: Um-hum.

MR. BURNS: We believe that an aggressive litigation schedule in the adversary will help the resolution --

THE COURT: Okay.

MR. BURNS: -- of this case. Frankly, when I looked at the case management proposals of the debtor and of the insurers --

THE COURT: Um-hum.

MR. BURNS: -- there were things I liked in both.

Neither was wholly - neither was correctly -- what I'd call perfect.

THE COURT: Um-hum.

MR. BURNS: But there were things that the committee liked in both. Given the withdrawing the reference issue, it probably does make sense to me to meet-and-confer about the filing of that motion.

THE COURT: Um-hum.

MR. BURNS: But I didn't rise to speak --

THE COURT: Um-hum.

MR. BURNS: -- to talk specifically about those things. I thought it was important to get --

THE COURT: Okay.

MR. BURNS: -- the committee's position out there. But --

THE COURT: Um-hum.

MR. BURNS: -- I do want to say one word about how this impacts the 2004 motion that the committee's brought.

THE COURT: Um-hum.

MR. BURNS: I think the Court is correctly looking at this case, meta-level look at the case, plus an adversary-proceeding-level look at the case.

THE COURT: Um-hum.

MR. BURNS: If we're going to be waiting two to four months before this, the motions even filed at the adversary

proceeding level, I think it very much heightens the need for the 2004 examination to begin, as we discuss in our papers.

THE COURT: Okay.

MR. BURNS: The 2004. So I wanted to make that point. The meta will impact the litigation.

THE COURT: Um-hum.

MR. BURNS: And by proceeding down the road with the 2004, I think everyone benefits.

THE COURT: Okay. I appreciate that. Thank you.

MR. PLEVIN: Your Honor, Mark Plevin for Continental. I'm not going to respond now to what Mr. Burns just said about the Rule 2004 motion. I'll save that for later.

THE COURT: Um-hum.

MR. PLEVIN: I just wanted to say a word because I had understand that Your Honor wanted to rule on the motions to dismiss last week, and many of us on the insurers' side were not in attendance. And I wanted to explain that the --

THE COURT: You don't need to. I mean --

MR. PLEVIN: Well --

THE COURT: -- I'm happy to hear it, but you don't need to.

MR. PLEVIN: Yeah. Well, I wanted to explain that the reason was that the communication didn't come to us.

THE COURT: Okay.

MR. PLEVIN: And I've spoken with Ms. Ridley about

coordinating on providing the Court with a --

THE COURT: Uh-huh.

MR. PLEVIN: -- email distribution list for the --

THE COURT: Okay.

MR. PLEVIN: -- adversary proceeding --

THE COURT: Okay.

MR. PLEVIN: -- so that the next time the Court wants to --

THE COURT: Okay.

MR. PLEVIN: -- reach out to everybody will have an up-to-date list --

THE COURT: Yeah.

MR. PLEVIN: -- in order to do that.

THE COURT: Okay. Well, I mean, I missed you, but I was I was okay.

MR. PLEVIN: Right. Okay.

THE COURT: I will learn to love again. It's okay.

MR. PLEVIN: All right.

THE COURT: Okay.

MR. PLEVIN: Thank you.

THE COURT: Thank you very much. Okay. But no, look, that's a good point. There are a lot of people to keep apprized about things. And if we need to come up with a better system to do that, we'll certainly work with all of you to do that. So thank you. Thank you for raising that point. I

appreciate it.

Okay. Well, is this a time to sort of put on hold further discussion re case management while the parties chat, I think?

MS. UETZ: Your Honor, if I may, Ann Marie Uetz for the debtor. I would suggest that's appropriate. And I would just like to mention in respect to the schedule for the hearing this morning --

THE COURT: Yeah.

MS. UETZ: -- and Ms. Ridley was here for the insurance ruling and the insurance matters. She needs to get on a plane soon. So --

THE COURT: Okay.

MS. UETZ: -- we're going to ask if she can be excused --

THE COURT: Yeah. Thank you.

MS. UETZ: -- as Mr. Lee and I will handle the balance of the hearing.

THE COURT: All right. Thank you very much. Nice to see you, Ms. Ridley. Safe travels.

MS. RIDLEY: Thank you, Your Honor.

THE COURT: Okay. Thank you.

MS. RIDLEY: Okay. Thank you.

THE COURT: Okay. I would ask where we go next and then wonder whether people want a five-minute break.

MR. KAPLAN: Would love the five minute break.

THE COURT: Okay.

MR. KAPLAN: That's the second question.

Mr. Burns, before Mr. Burns previewed the 2004, Mr. Plevin --

THE COURT: Should we go to 2004 next?

MR. SCHIAVONI: Your Honor, I think we ought to maybe close out on the protective order motions while that's fresh in your mind, or if you want to change of pace, so to speak, we can move to --

THE COURT: I think I'm okay either way. Whatever you guys believe is the better --

MR. SCHIAVONI: Then I would suggest we close out on the protective orders.

THE COURT: Which is the -- which is the cross-motions, right?

MR. SCHIAVONI: Yeah.

THE COURT: Okay. Ten minutes?

MR. SCHIAVONI: Excellent.

THE COURT: Okay. Thank you.

(Whereupon a recess was taken.)

THE COURT: Okay. So protective orders?

MR. LEE: Yes, Your Honor. Matt Lee for the debtor. I'll be arguing these motions on behalf of the debtor.

THE COURT: Okay. Do we start one place or the other?

Anybody with Mr. Lee starting off?

MR. LEE: I haven't got to speak yet of this hearing, so I thought I'd jump in but --

THE COURT: Okay.

MR. LEE: However you'd prefer.

THE COURT: No, no. No, no, that's fine. Go ahead.

MR. LEE: Thank you, Your Honor. So we're here on the -- I guess I'd call them dueling protective order motions, one technically filed in case --

THE COURT: Yeah.

MR. LEE: -- one in the adversary proceeding.

Your Honor, in the six months that have passed since this case was filed, I think the debtors demonstrated, or at least I hope the debtors demonstrated, that it's willing to work hard to reach consensus with any party on just about any issue. And the debtor will obviously abide by whatever protective order or orders end up governing this case.

There are two primary reasons -- all that said, there's two primary reasons why the debtor submits that the Court should enter the debtor's proposed order governing the adversary proceeding and then reject the insurer's proposed order governing everything. The first reason is that the debtor absolutely -- and I think the case absolutely needs a two-tiered level of confidentiality here. Not all confidential documents are created equal. And as the Northern District's

model form in patent cases recognizes, it's appropriate in the patent context and the trade secret context. And it's no different here. I mean, these aren't trade secrets, but this is -- I mean, there's a dramatic difference between who should be allowed to see things like the debtor's retirement plans and trust agreements or like nonpublic corporate documents versus who should be allowed to see really any document detailing allegations of sexual abuse and the things that, from the debtors standpoint, people stand accused of.

And as the Court knows and has been argued ad nauseam in this case, California law requires the information to stay private and nonpublic the most sensitive information in the case, It may be the most sensitive information under California law at this point. And what the debtor's proposed order effectively does is make information regarding allegations of sexual abuse attorneys' eyes only with specific exceptions for, for example, lay and expert witnesses, people who were authors or recipients of the document, and anyone else the parties consent. In each case, all those people have to do in order to get access to the information is sign a form declaration indicating that they've read the protective order and that they agree to be bound by it.

And the insurers, in their motion and in any of their briefing, never explain why this is unwarranted, why the two levels of confidentiality is unwarranted, or why they shouldn't

be held to the same standard that thus far the debtor and the committee are held to in this case. What they allege, and they never really support this, is that somehow the debtor's proposed order, and by extension the order that has already been entered in this case because that's exactly what the debtors proposed order is modeled off of, doesn't adequately account for California law.

And what -- the law that they point to is called the Silenced No More Act which limits the scope of confidentiality provisions in settlement agreements between employers and employees or former employees relating to harassment, discrimination, or retaliation at work. It has nothing to do with the subject matter in this case. And even if it did, the insurers don't explain how their proposed order adequately accounts for it or how the debtor's proposed disorder doesn't. So that's the first reason. And the second reason is and we briefed this extensively. And so I don't want to belabor the point, but to adopt the insurer's proposed order quite simply changes everything about how confidential information is treated in this case. And it's going to require enormous time and expense burdens on the part of the estate to comply with either two orders simultaneously or to redo everything that they've done before up to this point under the existing main case protective order.

And I got to say that this wasn't the premise under

which the insurers brought their rule 2004 motion. The premise was that the debtor would be making the same production to the insurers that they made to the committee, that the debtor made to the committee. And if insurer's proposed order is granted, that won't the case. That debtor is going to have to redesignate, reproduce everything that's been produced. But more importantly, it's going to have to reassess the confidentiality of every document that it's already produced and all the documents that it's going to produce going forward. This is going to slow down discovery. It'll slow down the work of the case, and again, require a redo of work that's already done at tremendous expense to the estate.

This is just -- I submit that this is the opposite of what nature has promised. There's no reason to start over and really for what amounts to the reason that the insurers just don't like our order. The only issue that -- of any substance that they actually point to in objection to the debtor's proposed order is whether their witnesses, lay and expert witnesses, will have to sign a declaration saying that they'll be bound by whatever protective order is entered.

And if you look at the Northern District's model that they claim to have based their proposed order off of, it includes a provision that does exactly that. It's section 7.2F of the model order. And it says that witnesses who are being prepped for deposition or who are having their deposition

taken, all they've got to do is sign the form declaration saying they'll agree to be bound by the order. It cures that provision, that protection out for only that category of people.

But then they want you to say, well, the moral order from the Northern District should govern on all fronts, notwithstanding all the issues I mentioned before, notwithstanding the inconvenience and the cost of the estate, notwithstanding the fact that for three months, more than three months now, almost four months, the parties have been operating under a protective order that complies with Section 107 of the Bankruptcy Code, complies with and allows for the application of the bankruptcy rules, the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure, and that the Court has already acknowledged there's nothing untoward or surprising about any of the provisions of that order.

So but getting back to getting back to the witness question, I don't know why that would be the one category of people that the insurers think should not have to comply with the protective order. And their proposed order, all it does is says that the witness has to simply acknowledge it, not that they have to be bound by it. And I don't know -- there's no justification for that carveout.

I think the -- there's also a concern, although again, it's not explained, that the debtor's proposed order somehow

hamstrings the insurers or anyone from trying the case, adequately preparing the case. Neither the debtor nor the committee would have agreed to anything like that. And all this order does is control who sees the -- who gets to see the confidential information and says anybody who gets to see the confidential information, all they have to do is sign a declaration saying, yes, I agree to be bound by the protective order. And that's it. There's no limitation on anybody's ability to prepare a case or prosecute this case.

And we're talking about nondebtors through the Court doesn't otherwise have jurisdiction over. So this is literally the only way to control not only the dissemination of information, but also to compel people who get to see the highly confidential information to maintain the level of secrecy that the parties have to maintain.

I can address specific points in the motions. Those are the primary reasons why the motion that the debtors filed should be granted and why the motion the insurers filed should be denied.

THE COURT: Okay. Thanks very much. Appreciate it.

MR. LEE: Thank you.

THE COURT: Thank you. Who's going next to you?

MS. RESTEL: That's up to you, Your Honor. Your Honor, if you'd like, the committee supports the debtors position. So if you want to hear all in favor of that and then

the opposing or --

THE COURT: Yeah, why don't you do that? Okay.

MS. RESTEL: Thank you, Your Honor. Colleen Restel from Lowenstein Sandler on behalf of the committee.

There are a few things that can't be disputed in terms of the dueling motions. The Court entered a protective order in the main case back in August. The insurers objected at that time. And you, as we discussed earlier, called balls and strikes and entered the order. No party filed a motion for reconsideration of that order. And documents have already been produced pursuant to those procedures.

The debtors filed their proposed protective order and the adversary proceeding which is at least under the committee's interpretation, what Your Honor meant when you said that we would involve the insurers later on at the August hearing.

The proposed protective order by the debtors is substantially similar. All parties agree, and the procedures are the same as what was entered in the main case. And the insurers now want to replace the protective order with a completely new protective order with different procedures, and as we mentioned, only one layer of protection.

The insurers primary argument for the brand new protective order is that they want to use the District Court's form. Just want to note that the District Court website is

very clear that the form is optional. And it says, and I quote, "The local rules do not require the parties to use any of the model protective orders, and counsel may stipulate or move for any other form of protective order."

As Mr. Lee mentioned, the most problematic portion of the protective order is the difference between the one tier and the two tiers. And I will note that the model form does contemplate for a highly sensitive confidential information, a two-tier system, but the insurers didn't elect to use that model form.

THE COURT: Well, what if they did? I mean, what if they said, okay, we'll modify our order to have the two tiers that you'd would have in patent or other matters? Would that alleviate the problem?

MS. RESTEL: I think it would alleviate that one problem. But I think we would need to compare the highly sensitive information and who's able to see it under the current protective order versus the new protective order. And it would be up to the debtors because it's their sensitive information to determine who needs to -- if any revisions need to be made. And as Mr. Lee mentioned, that will set things back probably several months. It would be costly to the estate. And it would really just cause delay.

The one thing I will note for the committee as we -- it was a theme this morning is, as I mentioned, the information

that we're receiving from the debtor is the debtor's sensitive information. And I just want to be clear that the proofs of claim and the supplements to the proofs of claim are governed by the bar date order and not by the current protective order, the debtor's proposed protective order. It's very clear in both of those orders that the bar did order controls for proofs of claim and supplements. And I haven't seen that in the insurer's. It might be there and I just missed it somehow, so I'd be happy to be wrong. But in any -- if a new protective order is to be entered, we would just request that those protections are also very clear.

THE COURT: Okay.

MS. RESTEL: Thank you.

THE COURT: Thank you very much.

MR. SCHIAVONI: Tancred Schiavoni for Pacific, Judge.

As we are here at this very moment, there's a hearing going on in New Orleans, in the Diocese of New Orleans case, with a courtroom full of the press and individual plaintiffs lawyers trying to put into evidence documents that are about the abuse of the church in that case and a dispute about whether the press should have access and whether the judge engaged in a cover up with the church about preventing things.

In the Diocese of Buffalo, as we sit here, there is a action pending that the Buffalo News has intervened to try to get from the attorney general documents that were produced

about the abuse of the church in that case. And the church proceeding in an Article 78 unique to New York about whether those documents and the method to keep them confidential is in place. There will be hearing on that another week or so.

The point here is that we need here a form of order that has been appellate tested and has the backing of the Ninth Circuit. This is not a situation where we ought to have two-party agreements that all of us, everyone here, is going to be subject to attack and claiming and allegations about the underlying claim here by the plaintiffs lawyers are replete with allegations of cover-up and this and that. I'm not giving merit or credit to any of that. The point here is that what we've suggested -- and I know I -- like, before the day is out, so I'm going to say Tanc is Greeks bearing gifts, but it's like we all need a form of order that is as consistent with what the circuit has approved as possible. There's very good reasons for that.

So what's on the table with the, quote, competing orders? In the first instance, Your Honor, what the debtor, the TCC, the committee keeps referring to them as having a protective order, but it's not a protective order what they've put in place. What they presented you with in July was a nondisclosure agreement, the two-party agreement between two parties which Bankruptcy Courts see and approve all the time. It would say it's a confidentiality agreement, a nondisclosure

agreement, for which they ask the Court to authorize them to enter, into which the Court did. And the Court, when it did that, made very clear -- it said on the transcript on page 48 that the insurance companies will have their say down the road on a different form of agreement. That's a nondisclosure agreement. It's perfectly appropriate and used all the time for due diligence. It's used all the time in bankruptcies in connection with sales. It's used on basic things about how among commercial parties to put together a plan, those sorts of things.

What it's not is it's not the form of order that's used by District Courts to deal with litigated matters, matters that involve presenting evidence to juries or extended proceedings in the court, precisely because those courts are -- the Court is bound and has limited authority about exactly what sealing can be done with respect to locking the doors of a court when a hearing takes place or in presenting evidence to a jury or in keeping its docket sealed.

THE COURT: Can I ask you a couple of questions?

MR. SCHIAVONI: Yes.

THE COURT: Thanks to both of you. I think this is incredibly important. The point that at least up to now, a couple of important constituents in the case have been acting with respect to a two-level confidentiality regimen. Is that something that could, in your view, be imported into the form

that you would like to use?

MR. SCHIAVONI: Your Honor, we're definitely open to it. It's like what we did -- I want you to understand --

THE COURT: Yeah.

MR. SCHIAVONI: -- is we took precisely the official form that's used. And did mark it up and we gave you a black line because the whole point of the District using an official form is, I think, to minimize relitigation of the form. So a court could see -- and I've seen many proceedings where the judge said I want to see -- I want to see who's diverting in what way. Okay? So you have that in front of you. I don't believe that form --

THE COURT: I actually read it.

MR. SCHIAVONI: Yeah. I don't think the form has a two tier --

THE COURT: So I --

MR. SCHIAVONI: But I think maybe Montali might have done an order where he had to two tiers. Okay? My biggest concern --

THE COURT: Well, let me -- can I just pose it back --

MR. SCHIAVONI: Yes. I'm sorry, Your Honor.

THE COURT: -- and see if I'm thinking the same way you are?

MR. SCHIAVONI: Yeah.

THE COURT: Do you have a concern that either the mere

fact of creating two tiers or doing it along the lines that they've been -- the debtor and the committee have been working so far would be so far out of whack with what the District Court does that it would be -- there would be different issues on appeal than you would expect or different outcomes on appeal because of that, or do you know?

MR. SCHIAVONI: My biggest concern -- first of all, I think it's essentially having an order because it's the way to bind a third party who doesn't have to -- who doesn't consent to it, okay? So without that, there's not a vehicle. I mean, this is sort of a false analysis to say, oh, why can't I have my own expert sign a confidentiality agreement. Well, if he's an employee of the company, he's going to -- he's probably going to sign it, okay? Not getting into a lot of details on how that sausage is cut. It's like that will sign it.

But it's like most of the witnesses normally in a trial, a third-party witnesses, right? You call them, you subpoena them, they come. It's like -- I'm a persuasive guy, but it's like who's going to say -- who's going to say, yeah, I'm happy to come to the deposition, I'll sign your copy, right? They won't come. That's that. Right? So it's an actual real impediment. So having an order is very important, right?

As far as the two tiers, Your Honor, it's like -- my biggest -- like, maybe this is a wordsmithing issue, but my

biggest concern would just be that the so-called exception or doesn't swallow the rule, it's like what I hear is sort of -- and our concern about signing a private agreement, right, it's that if anything about sexual abuse gets subject to the higher tier, what's actually left for the lower tier, right? I mean, that's sort of what the case is about, so to speak, right? I mean, so everything would be subject to the higher tier.

THE COURT: Well, I think one -- off the top of my head, one possible distinction that I think this side of the room was alluding to is it's one thing to protect at the highest level of sensitivity the information of a third person who alleges they were abused. It might be a very different thing for the church to make available their private files about what they did about it. Those might be -- I mean, that's just an example. Those might be two different things. And that would be -- that would be a possibly a significant difference.

What I'm really trying to figure out is, is there a way to meld these things so that we can have the certainty of what you're telling me -- and I've used this. I've modified it. I've used it. I've not used it. So I'm open to lots of different possibilities here. But is there something about the way that the debtor and the committee have structured their definitions of confidential and highly confidential that's going to be a problem in this order that it just wouldn't work

in some fashion other than what you've told me so far? Because I think there could be more to the confidential world than your creditor.

MR. SCHIAVONI: So if the issue is whether in importing into the official form the second tier, Your Honor, we'd work with that. Okay? And I just would want --

THE COURT: Okay. Is it definitional that you think there's a definition -- I mean, for the patent and other proprietary, is there a definition there that just doesn't work for what they're suggesting?

MR. SCHIAVONI: Well, I think what's in the -- what's in the official form are the actual definitions are the ones that in a sense are tested. And there's provision for if something doesn't really -- like, if somebody designates everything at the highest tier or at a tier and it really shouldn't be, there is a mechanism to resolve that with the Court.

THE COURT: Can I tell you? If that happens, come see me? I mean, I've been through this before and I'm hearing you, okay?

MR. SCHIAVONI: But that's -- the point is having an order instead of -- like, the problem with a two-party agreement is once I sign it, I'm -- like, I now have a contract that I'm bound by that. The Court arguably maybe loses even power over that. You've just heard this argument about the --

somehow under the bar date you've lost control over experts and whatnot. It's like if I signed an agreement, they're going to -- it's the whole reason it's presented that way, to be honest. Right? It's like normally it'd be presented as a protective order. The Court would be ordering us to do something. And maybe we would consent or stipulate to the of order.

THE COURT: Yeah.

MR. SCHIAVONI: But that the confidentiality provisions are in the order. They're not in a private contract. We have a contract with the debtor. It's called an insurance policy. We don't normally deal with this in the real world. It's just like we submitted a declaration here showing that in the actual underlying cases, in most of them, the claimants actually have their names right on the complaints. They're filed on the public docket. You can access them and see that information. It's all there.

It's like this creates a whole mechanism that makes it impossible to investigate the claims and impossible present evidence about them. And that's a concern.

So could the official form be modified to have a second tier? Yes. Would we cooperate with that? Yes.

THE COURT: And does that -- I mean, the fact that it is presented as an order as opposed to, as you're suggesting to me, an agreement between two parties, does that implicate how

the parties designate the level of confidentiality?

MR. SCHIAVONI: I don't -- I think what would happen is in this again, I think Montali might have entered a form of order with a second tier on it. So we could look at that. But it's like there would be -- there's typically like a definition of what sort of would qualify for that. And a party would designate that way. And then there'd be if there's a disagreement, it could be brought to the Court and the Court could address it. That's typically how that's set up. If it's a private contract, well, then, it's like -- you're going to hear how's of like, well, I'm stuck with that. It's like, that's what I agreed to. That's my contract now.

And we're also going to hear -- or I don't I don't want to hear this. My wife says I go around and I only think about what could go wrong. Okay. And maybe -- I say, well, that's a good trait for a lawyer. And she said, well, it's a bad trait for a husband. But I don't want to see whatever it is, the San Francisco news in here saying that we entered into a private contract and that we're --

THE COURT: Your view of protective order will help --

MR. SCHIAVONI: It like, hey, we --

THE COURT: -- is the safeguard with respect to that.

MR. SCHIAVONI: We did an order that the Ninth Circuit and the -- it's the official order of the District. It's like there's nobody up to any bad business here. It's like this is

straightforward, consistent with what happens in this District. And if some newspaper takes it, brings a challenge, I'm not facing -- it's fine for counsel to say the Silence No More Act, oh, that wouldn't really bring about a private cause of action against us. But hey, this is California. We have very good plaintiffs lawyers here. This gentlemen right here is excellent, right? I don't want to see collateral lawsuits against -- in Superior Court in Alameda County like addressing why I signed a private contract.

THE COURT: So if I can -- can I summarize where I think we are so far? And you correct me. Okay?

MR. SCHIAVONI: Sorry, Your Honor.

THE COURT: No, no, no. We're having a good conversation. I appreciate it. You believe that a protective order in the form that you're proposing is protective of the process and protective of the parties and protective of the Court in a way that, as you're conceiving what the other side has done so far, which is a contract that the courts approved, you're conceiving a material difference between those two?

MR. SCHIAVONI: I am, Your Honor.

THE COURT: Okay. That's number 1. Number 2, to the extent that they have a concern that, look, we've lived with a regiment of confidential and highly confidential, and to change that, you're saying we can accommodate that?

MR. SCHIAVONI: I think we could, Your Honor.

THE COURT: Is there a reason why I think you can't?

MR. SCHIAVONI: Well, it's always a little bit of we don't want the exception to swallow the rule. But it's a sort of -- we pick up whatever Montali did, two tiers if he did -- if my memory does serve me, it would be within the ballpark of the --

THE COURT: Okay. And then I guess the other question I have you haven't quite got to yet, or maybe you have and I just don't remember it, is whether there's any difference here dealing with true third parties and what they're going to.

MR. SCHIAVONI: With third parties?

THE COURT: With third parties, yeah.

MR. SCHIAVONI: Here's the real -- the rub there, so to speak, okay? The way -- the structure right now that the debtors put in place is a nondisclosure agreement with a cooperating party on due diligence. Okay? And I don't -- just respectfully, I don't think it really contemplates actual litigation, right? It contemplates the sharing of financial information, et cetera, et cetera. It doesn't really contemplate a contested kind of environment. They can say it applies to that sort of thing.

But in a situation where we have -- you know, in Boy Scouts we had a whistleblower witness, okay --

THE COURT: Yeah.

MR. SCHIAVONI: -- who was not -- came from one of

these claims aggregator shops, was not necessarily totally cooperative and whatnot, but there was no way that person is going to sign -- like bringing an agreement to sign. And we had other such witnesses. We need a mechanism. And what we proposed in there was that, look -- and it doesn't even suggest that like in the -- that we could share documents with a hostile witness on the streets of San Francisco and question him about it.

It says in a deposition where everybody is there if we need to and we have good reason to. And people could come and complain that somehow we put a pile of eighty-seven privileged documents. If we had good reason to, we could use an exhibit with that witness. And first the witness would be advised it would be an exhibit to the deposition that there is a protective order from this Court holding this stuff -- this document is confidential. The transcript is confidential. And you don't get to keep -- you don't get to keep the exhibit. You can see it for purposes of this examination, but that's it.

And if you're a trial witness on the stand, the same thing. It's like it's like you're bound by the order. You don't have to sign it. But the courts enter those forms of order, and they're tested in the appellate courts. Right now we have testing of it, in a sense, with our former president, with these quote -- they call them gag orders, right? But it's like they're not asking Mr. Trump to sign a confi, right?

Imagine the circus about that, right? It's like the judge issues an order. He's advised of it. And the penalty is contempt if he doesn't honor it. Right? That's how you would deal with this problem otherwise.

The problem otherwise is we're actually -- like, by signing the agreement, we are giving up our right -- and this is why I'm going to have a problem getting authority to sign an agreement like this. Right? It's like we're giving up a right to present a hostile -- like, to question a hostile witness. I mean, my colleagues told me, don't even raise this because the judge will say you're -- like, he'll think you're completely in La La Land. But if you read this, it actually prevents us from presenting exhibits in court with a jury. We'd have to get the jury members to sign it. Now, that's not going to happen. Okay?

But what would happen is I would be told that I sign the agreement. I can't present an exhibit or information about an exhibit in court because I'm bound by the agreement. Okay? That can't be. It's like that would be -- that'd be an enormous problem for us. The same thing with having to like, closing a courtroom because of concerns that we signed an -- but I don't -- actually, I think the way it would manifest itself is we would get (indiscernible) that we can't use a range of documents or exhibits, because if we do, we'd be violating the agreement and subject to suit. So it would

hamstring us in actually presenting a case, okay?

Courts deal with all the time -- and I can't tell you that the District Court judges relish it, right? But that they deal with cases with lots of confidential information. And they find mechanisms. I tried years ago the first Microsoft antitrust case where I actually had like the Windows program on a disk. And I had a little suitcase with like a chain on it. It's like, there were -- we had various levels of protection. But at the end of the day, that judge didn't lock the courtroom with the press outside. That just doesn't fly when in a -- that's not -- 107 doesn't offer us that. But we found ways to deal with it. But we didn't sign an agreement saying, oh, no, we won't present any evidence about the Microsoft code. It's like it would -- like, that would have bound us in a way that that would have just really hamstrung us.

So let me just deal with a couple of what I think are conundrums here or maybe things that might give some ease. We're not suggesting that by entering the official form of a site modification of it, we're modifying the protective -- the bar date order. And if so be it, we need some sort of just a little statement to that effect --

THE COURT: You've asked me for relief on that already.

MR. SCHIAVONI: We've asked for specific relief in that regard. But the entry of the protective order wouldn't

override the existing bar date order, okay, first of all.

Secondly, this notion that, like, somehow we'll be dealing with this incredible complication, it's like documents have been produced to the committee under an NDA for their due diligence in preparing a plan. Those include a lot of financial documents which are not being given to us. Like, to be clear, under our -- we just are getting the ones that were subject of the TCCs 2004.

So it's like I think this is sort of a nonissue. Whatever documents are in that that are in there that they want to use as part of the main case, they can just reproduce them. The ones that they're going to produce to us, they can produce to the committee the same way. And there's not some weird overcomplication. On the financial documents, they can keep them under their NDA if they want it, but there wouldn't be this sort of tremendous burden at all, I don't think, in this respect. And if you added a second tier, that might not even be much of a sort of difference in the practical application of it.

And there is sort of the secondary issue of like just because the TCC -- the committee and the debtor entered into a private agreement and the Court blessed it, it doesn't -- it shouldn't like, have us give up our Seventh Amendment rights thereafter. Okay?

It's like, so I don't think it's in any way

complicates the case. They just have to reproduce those documents that they're going to produce to us to the committee. And they can do it -- again, they can add the second tier under an actual protective order, not a private agreement.

The second thing, Judge, is not only does this not add complications, but what we're proposing, it's just that this one protective order cover both the adversary and the main case. Because, look, I mean, the documents about like the claims and whatnot, they're going to come from that source. It's like they would apply in both. And we wouldn't have competing separate little orders complicating things. There'd just be one order that applies to both the adversary and the main case. And it would be a form of order that would be tested by the circuit and everything else.

There's nothing -- this whole notion of, like -- we're all in favor of protecting the names of the claimants. And we have some -- some of the documents have been coded with -- so their names are redacted and there's codes on them, sort of as a day-to-day manner adds extra efforts -- extra protections.

Our ability to use experts is another vehicle, frankly, that eliminates somewhat the need to actually put individual documents into evidence. As a practical matter how that how the Boy Scouts confirmation trial in the Camden trial went forward, there weren't a lot of proofs of claims being offered in evidence because the experts have reviewed them and

were able to talk about them in an aggregate way without getting into people's names, et cetera. It was salutary. It was beneficial to have experts in that regard and counsel found ways around it. But we weren't hamstrung by an agreement, a private agreement that would be alleged that we'd be breaching if we presented evidence.

The other two points is as far as how this is handled in the State system, it's like, again, most of the complaints have the claimants' names on them, not all of them to be clear. And when there's a trial, different courts handle it differently. Oftentimes the name of the claimant is protected. I will say if there's actually a child victim involved, like who is a child at the time of a trial, there are extra protections as there might be there. Right? But when they're adults, the names are protected. But the regular process of -- like, these courts are not generally shutting their doors and having secret star chamber trials. That's just not sort of what's happening. Right? It's like everyone is -- the identities are protected.

And the main concern sort of in those proceedings is to make sure that if there's an active perpetrator loose and there's a case against him, that we're not setting up a situation where the perpetrator is like in a position where he's able to commit violence against the defendant. That's not really -- like, this would be for the trial court handling

this, sort of how it would play out ultimately. But that's not really, I think, how this case presents itself fundamentally, because it's a -- it's a case against us and against -- it's like there's not -- I don't think there's going to be a big parade of perpetrators involved here. All right?

So just the last point I'd make about the use of the official form is the touchstone here -- I see it -and cited in some of these papers is that you're entering a protective order under Rule 26 which is a protective order for the production of -- when somebody moves to produce documents and they want an order limiting what gets produced because it's too burdensome or what have you, that's not the rule that applies.

It's like in Bankruptcy Courts, it's Rule 107. That's the rule. It starts off with that. This is an open proceeding and it sets a very high standard for what -- and a very specific standard about what can be held confidential. All right? It talks very specifically about trade secrets, et cetera. It is not that all your records about how you handled something are confidential. This notion of like, oh, in sexual abuse, everything is confidential and we've already presented that to you. Your Honor, we presented the -- it's like -- we presented a case to you on -- coming out of the clergy 3 cases involving one of the Catholic orders where the plaintiffs had moved to produce the medical that were the sort of internal records of the brothers of that entity and have them produced.

And the District Court -- or not the -- it was a superior court found that like those should be -- that was public. Okay?

I'm not -- we're not really advocating necessarily for any of that. Right? But it's like to invoke 107 to -- it's like -- and they're very crafty about it because they're not presenting an order where you set out here all the things you must do. You must give up your right to question witnesses, because I think they know that's not permissible, okay? that's not supported. There is no support offered. There's no declarations or analysis or anything else explaining why it is that, like all of the material that that the church is going to produce is subject to 107. There's just no explanation for that. And there's no citation to why these other cases wouldn't apply. They don't meet -- they don't do anything to offer their burden on those things at all. They really just sort of fall back on, well, an order was previously entered as if it's res adjudicata, but that was expressly not the ruling of the Court when it entered the order.

We have a completely different situation here. We're totally supportive of having the names of the people, the highest level of confidentiality who are alleging abuse. And the other stuff can be under an order as long as Your Honor -- as long as whoever the judge is has got -- and you are the judge. I'm sorry. I didn't mean to suggest otherwise. But it's like whoever tries the case or whatever it goes, it's like

should have full flexibility in in how the proceeding then goes forward. You shouldn't be faced later with, well, well, they signed this agreement. There's an expectation among claimants that the insurance companies have given up their Seventh Amendment right. In fact, they can't put on any evidence at all.

It's like -- it's like what's going to happen here is there's going to be a problem with whether or not we can get authority to sign that agreement. It's like we might end up suggesting that, well, jeez, why don't we present that with the motion, withdraw the reference to the District court, and maybe he can -- we can sort of get a sense of how a jury trial. But I think we've tried to come up with something that's very reasonable.

I heard before like this statement about, well, this definition of experts like that we used, and we're like, where did that come from, like it's very tricky how we put it together. You know here it comes from? It comes right out of the standard official order. That's how experts are defined there. We put it right -- we use the official form's definition of experts and consultants.

So I would suggest, Your Honor, that the way to deal with this is to use the official form and the parties have a dispute, you can just look at the black line between wherever we have the dispute against the official form and call balls

and strikes on what is the benchmark for the District. Thank you, Your Honor.

THE COURT: Thank you.

Before I let Mr. Lee talk again, anybody else want to weigh in?

Okay. Mr. Lee, go ahead.

MR. LEE: Thank you, Your Honor. I'm just going to start by saying that the form order, as far as we can tell, has never been tested in the appellate courts. I'm not sure -- the insurers cited PG&E and two other cases as support for that argument. We looked at all three of the cases they cited. Not a single appeal was taken from any order that had anything to do with protective orders in those cases. So I think we can discount that.

As to the point about the committee and the debtor's stipulated protective order, which was then approved by an order of this Court being a two-party private agreement, the stipulation and then the order literally say protective order. And the proposed protective order for the adversary proceeding literally says protective order that would govern all discovery requests in the adversary proceeding. And the one that you entered in the main case, Your Honor, says that it covers all disputes, contested matters, et cetera, in the main case, and that it applies to anybody who is bound by the protective order.

As most protective orders go, there's a stipulation and then an order entered by the Court. There is no risk of anybody being hamstrung in or accused of entering some kind of private agreement that they didn't approve. And when Attorney Schiavoni goes to his client, if you enter our proposed order and say -- he's not going to say, well, you know, I have to get into this private agreement that I didn't negotiate in order to get the documents, that's not what he's going to say. He's going to say, well, the judge has ordered X, Y, and Z; do you want the documents or not? The answer is going to be yes. They're going to sign the agreement. And that's going to be the end of it.

As far as the issue of how a document is designated, if you look at paragraphs 24 and 25 of both the main case order that you've already entered and the proposed order for the adversary proceeding that the debtor submitted, it provides a specific procedure for contesting any designation that anybody wants to contest. So that that built-in protection is there. And as Attorney Restel pointed out, it encourages the parties to reach consensus so that we don't have to go in front of the Court and justify extreme positions. So -- and that's the case -- that's the case for the other issue that the insurers are worried about, and that's whether witnesses being prepped or being actually deposed have to sign a declaration.

I'm going to, again, point out that the model form

that the insurers are saying is the Bible of protective orders, and that absolutely has to be applied in this case reads as follows: 7.2, Section F. "Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose any information or item designated confidential only to F, during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the acknowledgment and agreement to be bound, Exhibit, A unless otherwise agreed by the designated party designating party or ordered by the court."

That is the one provision that the insurers took out of Section 7.2, the one category of people that they don't --

THE COURT: Do they take it out or just modify it?

MR. LEE: No, they removed it. Their version of the order says during their depositions, witnesses in the Chapter 11 case, to whom disclosure is reasonably -- do you see that, Your Honor? You don't need me to read it?

THE COURT: No, I'm with you. I'm just -- okay.

MR. LEE: And they're saying who have been -- they can see it if they have been advised of and provided a copy of this order. So the model form, which again isn't mandatory, has not been tested on appeal, the model form says those people should have to sign a declaration agreeing and acknowledging that they're bound by the protective order. The insurers don't want them to be bound by your protective order. They don't want

them to be bound by the protective order in this case. And they don't want them to be bound by the rule that everybody else in the case sees this information is going to -- is going to be bound by.

I don't want to speculate as to their motivations, but that might be a question that's worth asking them, Your Honor. And again, this this this idea that this somehow is going to make trial impossible, the order doesn't even address trial. What the order addresses is discovery. And it addresses the use -- I'm sorry, it addresses the production, the use, and the dissemination of documents and information that are designated either confidential or highly confidential. And again, the stipulated protective order from the main case is almost verbatim exactly what's been proposed for the adversary proceeding. The only tailors that we proposed were to specify that, okay, this governs this adversary proceeding. We're not talking about contested matters. We're not talking about rule 2004 motions. We're talking about discovery requests in this adversary proceeding, not stuff going back and forth between the committee, stuff going back and forth between -- discovery requests, going back and forth between the parties to the adversary proceeding like any protective order would.

It doesn't get into trial. I think it would be premature to get into the trial. The one thing that -- and procedures for trial because who knows if we're ever even going

to have a trial in this matter. With press, with witnesses, with multiple parties-in-interest beyond who's in the courtroom right now, we don't know that. And so the order consciously leaves that out. And frankly, so does the insurer's proposed order, because that's not what we're dealing with. We're dealing with discovery.

So I guess in closing, I would just add that the insurers are just utterly dismissive and seem to take the too bad, so sad attitude toward the debtor's arguments about the burden and the cost to the estate. I can't tell you how difficult it is, Your Honor, to keep track of just two constantly evolving lists of email addresses. That one for the insurers and their people and another for the committee and their people, because at this point they have different levels of access so I have to keep them separate.

And just the -- just the job of doing that takes a lot of time and it takes a lot of administrative effort. And the cost of the debtor of screwing up, getting it wrong, sending information to somebody who doesn't have permission to see it is dire. It is a -- it is an absolute constitutional right of privacy that that people who have alleged that they were sexually abused as children have, that their information and their accusations and their pain gets to stay confidential.

The insurers have already secured an order saying that they get access to all that subject to a protective order. And

Your Honor, the protective order that the debtor negotiated with the with the committee that was a stipulated protective order that this Court signed, that is expressly a protective order that is expressly open to any other party in the case, and that expressly covers any dispute that could come up in the case, including other adversary proceedings. There is nothing wrong with that order. And the only thing that the insurers have complained about is something that it has to do with witnesses at deposition or preparing for deposition having to sign -- having to sign a declaration saying that they agree to be bound.

And ironically, their proposed language on that is different than the model form that they think you should follow and that they think should supplant the one that's been working for months and will continue to work for months. Thank you, Your Honor.

THE COURT: Well, let's say hypothetically, I like their order. Let's say hypothetically, I asked whether if they were to reinsert the portion that you point out they've excluded and accommodate the current definition of confidential and highly confidential, whether that works for the debtor and the committee.

MR. LEE: So what that does, assuming -- again, assuming that the language is identical, that we're operating --

THE COURT: Yeah.

MR. LEE: -- on the same standards that we have that addresses a lot of the convenience issues. However, the issue of who gets to review the documentation that is designated confidential or highly confidential, that issue remains. And the witnesses -- anybody who looks -- our position is that anybody who looks at this should be bound by some standard of confidentiality.

THE COURT: Well, the -- may I see if I'm misunderstanding you? I suggested if you also were to re-import the language that you suggest they have excised with respect to witnesses, what you cited to me as 7F, if that were to be reincorporated, would that take care of the problem or would that not take care of the problem?

MR. LEE: That would address that problem.

THE COURT: Okay. Okay. But you would tell -- and I'm trying not to be angels on the head of a pin here, but you would tell me that there's no enforceability difference between what we've achieved already in this case, which is two parties agreed to something and I blessed I, and something that is called a protective order that more obviously emanates from a form that is frequently used in the Northern District. And you're Mr. Schiavoni may believe there's some difference between those two things. You're telling me there isn't from your perspective.

MR. LEE: I don't think so, Your Honor, because as you pointed -- as you pointed out previously, the terms of the existing main case protective order are typical of what you see in these kinds of protective orders. And I can say from practicing seventeen years, it's typical of what I see in protective order. And thus far it's worked in this case. The debtor has produced over 10,000 documents to the committee on -- based on the protections that that were put in there.

And, again, like I said, we'll continue to -- we'll abide by whatever order -- whatever order or orders control. But we submit that the simplest thing to do is just to roll it over into the adversary proceeding and make it applicable to everybody.

THE COURT: Okay.

MR. LEE: And the insurers have had a chance to weigh in on that. And we adopted some of their some of their suggestions. The bit about the common interest privilege in paragraph 26, that was something the insurers demanded and you ordered.

THE COURT: Okay.

MR. LEE: And we accepted it because you ordered it.

THE COURT: Okay. Mr. Schiavoni, let me give you the same hypothetical. What if I just liked your order better and asked you to accommodate the two levels of confidentiality that we've been working under so far and reincorporate the paragraph

that debtor tells me was excised with respect to witness treatment? Is that workable?

MR. SCHIAVONI: I think that's workable if -- I am a lawyer, so I got to add just one little thing.

THE COURT: Oh, of course.

MR. LEE: Okay. We did absolutely modify provision about witnesses.

THE COURT: Yeah. I thought you -- I didn't think you excised it. I thought you modified it. Am I wrong?

MR. SCHIAVONI: Right, we did.

THE COURT: Okay, yeah.

MR. SCHIAVONI: And, we were not hiding the ball. We gave you a black line. Okay? It's in most litigations the day-to-day, right? You're dealing with two parties, and they both have their own witnesses. And that it works very well to make your company employees sign an acknowledgment.

And let's be clear here, the difference that we're talking about. The official form attaches something called acknowledgment.

THE COURT: Yeah.

MR. SCHIAVONI: And what it does is it says I acknowledge I've read the Court's order, and I think it says I will abide by it, something to that effect.

THE COURT: Yeah.

MR. SCHIAVONI: By the way, not to bring in the news,

but I think that's actually what happened in court for Mr. Trump. He was -- like, his lawyer was told, make sure he read -- you can confirm he's read it and he acknowledges it.

THE COURT: Well --

MR. SCHIAVONI: Okay?

THE COURT: Well, it's the difference between breach of contract and contempt, right, is what you're saying?

MR. SCHIAVONI: Right. It's totally different than saying the Court entering an order saying, hey, you can have access to stuff if you sign -- like, go sign a private contract. That's different. The official form doesn't have all of the -- all of the imitations are in this contract they want us to sign.

In the official form, the acknowledgment is simply having us acknowledge -- the recipient acknowledge that they're aware of the order.

THE COURT: Well, which is a predicate for contempt.

MR. SCHIAVONI: Exactly. And further, it goes actually a step further. Theirs doesn't. It says that they'll submit to the jurisdiction of this Court, okay, which if they're parties out of state, it's sort of -- it's extra protection.

THE COURT: Okay.

MR. LEE: Your --

MR. SCHIAVONI: But the other -- just --

THE COURT: Just I'm sorry. Mr. Lee has something he wants to interject real fast. Go ahead, Mr. Lee.

MR. LEE: I mean, our form declaration expressly says I stipulate to the jurisdiction of this Court solely with respect to the provisions of this order.

THE COURT: Okay. All right. So there's no difference there in your view. Okay. I appreciate it. Thank you.

Mr. Schiavoni, go ahead.

MR. SCHIAVONI: So, Your Honor, with this issue about the witnesses, look, the key thing here, the difference between the two-party agreement and the official form, my memory isn't exact, but there's a precursor. I think it says unless otherwise ordered by the Court, witnesses shall sign. So that gives you the ability to say, oh, you have a recalcitrant witness who won't sign, I'll deal -- I will deal with it in some such way. Okay? The private agreement, it doesn't give any such --

THE COURT: But that's the language you're telling me you would be re-importing, right?

MR. SCHIAVONI: Yes. But I would -- Your Honor, if that's what you want to do, all right, I just would suggest that so that we're not back here every day, right -- not that --okay. I exaggerate. It wouldn't be every day. But it's like I don't know if we could qualify that in some way so

that if there's -- we tried. The little carveout we have is actually very limited. It's for -- it's not for people on the street. It's not for some witness on preparing. It's for somebody in a deposition who is declining to sign it, okay, in the presence of other -- the other folks, right? So if we were to say abuse it, pick a janitor out and then try to give him a pile of documents as high, the deposition would stop and I'm sure they'd call the Court of some such thing. Right?

But if we have -- but in that kind of instance, do we need to make full application to you on fourteen days' notice or everything else?

THE COURT: No, of course not.

MR. SCHIAVONI: I just wonder whether we could retain -- like, we could wordsmith that a little bit to say that sort of in essence, for in a deposition setting for (indiscernible) in person that would apply. Otherwise, we use the standard language saying, otherwise for our witnesses and whatnot, they would sign this. They would they would have to sign --

THE COURT: All right.

MR. SCHIAVONI: -- unless otherwise ordered by the Court.

THE COURT: All right. Mr. Lee, any reaction to that?

MR. LEE: My first reaction is that in the twenty-four days that they -- that passed between us sending our proposed

order and then getting back their completely different proposed order, like, that might have been something they could have suggested either in a red line or an email, and that that never happened here. There was never any effort to do this except on the record -- by the insurers except on the record right now. That's my that's my first reaction. My second --

THE COURT: By the way, Mr. Lee, I hear you. Okay? I get it.

MR. LEE: Thank you, Your Honor.

My second reaction is I guess that Your Honor is the ultimate arbiter of everything relating to whichever version of these orders get entered. And if we have a recalcitrant witness who won't sign, you go before the Court and either get him to sign or the Court to compel them to sign or not compel them to sign it.

The purpose of the version that we that the debtor proposed is to force the parties to avoid all that and to be reasonable and to let the case go -- let the case flow without constantly being interrupted by discovery disputes. And I don't see any reason why the insurer's proposed order would be any better at preventing that than the proposed order that the debtor submitted.

So I mean, I guess there's a lot of statements here that that theirs is better than ours, but they don't really say how. And every time they say how, they point out something

that is very directly in our order in the same substantive way. I hope I answered your question.

THE COURT: Oh, you did. Thank you. And I thank you. And I know it's somewhat maddening to talk about these things. As important as they are, they're also a little mind-numbing. So thanks to all of you for your patience and your perseverance on this. All right. Submitted?

MR. LEE: Thank you, Your Honor.

MR. SCHIAVONI: Thank you, Your Honor.

MR. LEE: The debtor, yes.

THE COURT: Look -- I'm sorry, did you want to --

UNIDENTIFIED SPEAKER: No. I'm switching seats, Your Honor.

THE COURT: Okay. Okay. Look, I am inclined to use the form Mr. Schiavoni and the insurers are proposing with the suggested modifications that we've talked about here which is accommodating. And I think it ought to be word for word. I think we can modify the form of the order to take account of what has been done so far in terms of highly confidential and confidential. I think those definitions ought to be imported essentially word for word into this form. And I think with the accommodation further that the language that had been modified or deleted with respect to witnesses from the official form be reinserted.

And I would just -- look, I'll deal with it. If we

have a problem, we'll deal with it the way I deal with most discovery issues, which is very quickly. And you don't have to file twenty-page briefs.

All right. If you want to take a whack at that, I'm happy to look at it. And if parties want to talk about it further and you need my help in talking about it, let me know. I will do that at the drop of a hat. Okay? Sensible? Okay. Did you want to -- Sensible. Okay. I'm sorry. Did you want to --

MS. RESTEL: Just one question, Your Honor. Would it be all right if we also added the language that's in the current order so that the bar date order controls?

THE COURT: Absolutely.

MS. RESTEL: Thank you.

THE COURT: So I will decide that independently. Okay? I appreciate it. Okay. Thank you.

MR. SCHIAVONI: May I ask clarifying question, Your Honor?

THE COURT: of course.

MR. SCHIAVONI: Will this order essentially abrogate the previous order and govern both the main case and the adversary proceeding or --

THE COURT: Well, I'm reluctant to have it abrogate because you've done things and you've relied on it. So I mean, I think go forward is probably a better way of thinking about

it than abrogate. Makes sense?

MR. SCHIAVONI: Yes, Your Honor.

THE COURT: Thank you.

All right. Does that leave the 2004 exam?

UNIDENTIFIED SPEAKER: It does, Your Honor.

THE COURT: Anything else? Okay. Everybody ready?

MR. SCHIAVONI: Your Honor, can we just take a five-minute break?

THE COURT: Of course we can.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Thank you.

MR. KAPLAN: Your Honor, just in way -- what time is the Court planning to break for lunch today?

THE COURT: Well, are we likely to come back after lunch?

MR. KAPLAN: Hopefully not, Your Honor.

THE COURT: Yeah, I've got another ruling I have to do at 1:30 with a number of folks. So, I mean, I'm anticipating you want to take ten minutes now, longer?

Lesser.

THE COURT: All right. All right. I mean, is there any reason why we wouldn't be done by 12:30ish?

MR. KAPLAN: I hope to be, Your Honor. I think that on our side, that's --

THE COURT: Okay. Then that'll be our --

MR. KAPLAN: I do believe we're good to go.

THE COURT: All right. That'll be our goal. We'll be back in five, okay? Thanks.

(Whereupon a recess was taken)

THE COURT: Okay. 2004 exam.

MR. KAPLAN: Thank you, Your Honor. Michael Kaplan again for Lowenstein Sandler on behalf of the committee.

Just by sort of setting the groundwork, Your Honor, I'm going to just briefly give an overview of where we are with this motion. And then my special insurance counsel, who the debtors may want to borrow, Mr. Burns, is going to come forward and talk specifically about the insurance. So if Your Honor has ask questions specifically about the insurance request, I will probably just stand here and give you a blank stare and then go to the bullpen.

THE COURT: Okay.

MR. KAPLAN: So, Your Honor, we were here a couple of months ago, I believe, maybe a month and a half ago, in response with respect to the insurer's 2004 motion of the debtor seeking documents that were being produced to the committee related to the sexual abuse.

We argued vigorously, Your Honor, about the application of the pending proceeding rule. We argued vigorously about why the insurers don't need the information. I think I even argued that the insurers we don't even really

need them in the case. But because the plan might be insurance neutral, it might come back another time.

All those arguments aside, Your Honor said that that the insurers are in the case. They do have standing to be heard. They are heard on issues. The more information the shared is, the better which Your Honor, I believe said, I'm paraphrasing, of course, hope will help move this case along in a quicker resolution.

And, Your Honor, with that in mind, we said, okay, the insurers want to participate. They have represented to you time and time again that they want to participate, that they want to provide solutions and not problems, that they want to move this case along, and they want to be constructive participants. And so we said, okay, we recognize -- Ms. Uetz has said that we're all moving towards a mediation path. We've heard that a couple of times. I think she called it a little pea plan the last time we were here last time. And we're all moving in that direction at the debtor's desire to move toward it.

With that said, Your Honor, we can't go to mediation blind and uninformed with respect to what some courts have called the debtors potentially largest asset, which is the insurance, which I believe Your Honor commented on last time with respect to in talking about the insurance.

And so we have served on the insurers a 2004 request,

which Mr. Burns is going to talk about the specifics designed to address issues that are arising in the main case, issues that from experience, Your Honor, we have seen the insurers raise in other cases. It has been impediments to moving forward, issues that may become part and parcel to different contested matters, and issues generally necessary so that we understand the sum and -- the specifics of the insurance asset that we are -- that everyone, the debtor in the community, are going to be asked to consider in resolving it.

It's disappointing, Your Honor, that what we've heard from the insurers, which is contrary to what we heard when they were the ones speaking first on their motion, is that we heard -- we hear about the pending proceeding rule and that before wasn't an impediment. We hear about we don't really need this information, it's for embarrassment or otherwise. And Mr. Burns is going to address that.

But, Your Honor, I simply leave it at this sort of overall theme, which is we talked about the pending proceeding rule last time. I believe Your Honor commented that you had less concerns over it with respect to documents and otherwise. And we and we understand that and we respect it.

As a technical matter, however, just by way of Your Honor's order a few moments ago, there's not much going on in the quote unquote pending proceeding right now that we should really be concerned about the duplicative discovery and the

documents, as Mr. Burns will explain, overlap very nicely.

But we've really gone beyond that, Your Honor, because what we expect we will hear at some point is, is we will hear about the vast insurance defenses that they have, the coverage defenses, including they want it in disclosure statements, they want to inform everyone about it. We should be able to inform ourselves about it to be able to assess it.

We're going to hear about financial solvency of various carriers possibly and why they can't possibly pay these amounts. We should be able to inform ourselves about that. We're going to hear about the strengths and weaknesses of various coverage positions. And again, my point, Your Honor, is simply we should be able to inform ourselves about that. We shouldn't be testifying from the podium. We should be -- we should be working off of the same amount of evidence. And if we're really moving towards this path where the insurers want to be meaningful participants in this process towards the mediation, we believe, and I believe the debtor joins, that we should all have the information we need in order to do that.

Unless you have any just general cases on that, I defer to my colleague, Mr. Burns, who will talk to you specifically about the request we ask for and why we need it.

THE COURT: Yeah, let's do that. Okay.

MR. BURNS: Tim Burns for the committee, Your Honor.

The committee's essentially seeking six categories of

insurer files, six categories. To understand why four of these categories are important, I have to talk with you about two fundamental principles of California insurance law. These two principles are going to play out, Your Honor, in what you've called the MABA (ph.) insurance case. They may have an impact on the adversary. They may shape them in some ways, but they are going to play out in the meta case. It will be how we resolve this case.

These two principles of California insurance law put the insurance companies in a vise. It's not a bankruptcy vice. It's not a Bankruptcy Code device. It's not a bankruptcy law device. They are regulated by California and California law. And California has chosen to put them in a vice.

The reason we need this information is because of what California law creates. It may well be the key to successful resolution of this case. And both of these cardinal principles of California insurance law, which I'm going to get to next, deal with the reasonable settlement value of sexual abuse cases and the impact on liability insurance policies of those values, and thus the reasonable value of the insurance asset.

Here are the cardinal principles of California insurance law. In California, if an insurer reserves its rights, which the insurers have contended they've done more so than deny, they reserve rather than deny coverage, the insurer must reasonably settle the underlying case if they have the

opportunity to do so. If they're offered a reasonable demand, they have to take it. They don't get to say like you can in some state, hey, wait a minute, I have all these coverage differences. They have to pay the demand.

And that's important. They may have a claim over against the debtor if it turns out things aren't covered. But if they're reserving, they need to pay a reasonable settlement demand. That makes how the insurers have valued these claims in the past and how they are valuing them now directly relevant to the value of the insurance asset and resolution of the case.

Now, the second cardinal principle of California insurance law is this. If the insurers deny the claim as opposed to reserving, the bishop can settle, the debtor can settle with the survivors for a stipulated reasonable amount in the form of a judgment collectible against the insurance companies. That's the vice under California law. They have their choice reserve and have to pay without reference to coverage reasonable claims of abuse or deny and risk the survivors getting a stipulated judgment against them.

The value of these claims are critical to both of those -- both prongs of California law, looks to the reasonable value of the underlying claims and their impact on the policies as far as value is concerned because they're liability policies whose value depends on the claims that they are covering. So the value will become key to help this case play out on a meta

mental level, whether we're able to globally resolve it, Your Honor.

Those two cardinal principles are where we're seeking four of the six categories of documents, claims files. All insurers are required to keep claims file. They're bound to have a claims filed that says RCBO. And in that claims file, there will be information on how they value the case and what their coverage defenses are and things like that. Critical to the value.

Reserve Working papers. Insurers have a statutory duty to create reasonable reserves for these claims. They look back at the history of their settlement of the claims and resolution of the claims to create these reserve working papers. And that goes to the reasonable value of these claims.

The third category is those two first categories. But with respect to the early California window in the early 2000, because what they paid them is relevant to what their reserves are and what these cases are worth as an insurance impact, recognizing its liability insurers and insurance.

And then the final category of these first four are the board minutes because they contain information in all likelihood on this valuation and exposure issue. This information goes to the heart of the resolution of this case. It goes to the very heart of what this insurance asset is worth. It will prevent the insurers from escaping their duty.

Insurers have to keep files. They're businesses. There's no mystery that they have reserve working papers, claims, files and the like. And their businesses, that can pull on those. It isn't the kind of burden they're describing.

Now, I want to talk to you briefly about the other two categories. The first of those is underwriting files. These files show the terms of the policies. This is the case with some lost or missing policies. There will likely be evidence of the terms of those policies within the underwriting files. The underwriting files show the reinsurance backing of the policy. So whether these claims present any type of collectability, how quickly can they be paid type issue, all insurance companies keep these files. They are organized. They're not a huge burden for the insurance company to produce.

Final category, organizational charts, documentary retention policies, and claims manuals. Why organizational charts? They'll help us understand the other documents. And if we go to depositions, they won't give us an idea of who we're deposing.

Why retention policies? This is coverage issues potentially turn on what these policies are and the some policies will be missing. We know what should be missing and shouldn't be missing based on retention policies.

Finally, claims manuals. Remember, Your Honor, the value of these policies aren't measured just by the claims for

coverage and the value of the sexual abuse claims. There may also be extra contractual and statutory claims. And whether the insurance companies are following their own procedures with respect to these claims will be part and parcel of that analysis.

Now, the insurers try to limit what's relevant in a 2004 proceeding to what would be relevant in a coverage proceeding. Before I was fortunate enough four or five years ago, Your Honor, to start representing survivors in these cases, we did day in, day out coverage actions usually for businesses. And coverage actions are about the meaning of policy terms. They turn on the meaning of a policy terms.

These days, they don't turn on contexts, unfortunately, so much. It's usually a fairly straightforward, leaning analysis. But that's not what 2004 exam turns on. That's not what the meta case is going to turn on here. We should not be constrained by what's available in a coverage action with respect to a 2004 proceeding.

We tried to make clear in the letter to the insurance companies a week ago, Your Honor, after the motion papers were filed, look, this is what we're seeking. Of course, we have broadly worded requests, but they all sort of fall within this category. We did the same thing every other litigant does, which is weary of folks gaming the system. But these six categories of documents are relevant. They don't impose a

burden and undue burden at least because insurance companies maintain these in the ordinary course of business. It doesn't require system-wide discovery.

The insurance companies tell the Court that why the committee needs these documents are mediation, and all we really need the policy and evidence of coverage. That's part of it. But it's the meta case, Your Honor, that we're trying to resolve. And that's why we need the documents. They shouldn't be left to a mediator. These documents go to the heart of the case.

These are my final words. The insurers are asking the Court to show as solicitude for insurers that is not warranted under the bankruptcy law under 2004. We've watched insurers across the country grasp at every advantage, Your Honor, in Bankruptcy Courts. But once their conduct is scrutinized under the bankruptcy law, the advantage they purport to seek tends to disappear. I'm sure Your Honor is aware of Judge Poslusny's (ph.) skepticism of Camden of the administrative claim. The insurers contend that because there was an insured diocesan settlement that hadn't been approved by the court that the diocese backed away from when it became clear that the committee wasn't going to join that settlement. That's happened elsewhere. It's happening in Rochester.

I will conclude on this point, Your Honor. Went to Martin Glenn of the Southern District of New York heard this

issue of administrative claim based on the purported insurance settlement, this advantage that the insurance companies were seeking was brought up to him. His reaction was there's no deal until I approve it. There's no breach. There's no administrative claim.

My point is this, Your Honor, 2004 applies to all apples just the same, even insurance companies. They shouldn't be grasping for advantages that just aren't deserved.

THE COURT: Let me make sure I have all the categories. Can you -- would you mind restating the first four?

MR. BURNS: Sure.

THE COURT: I had claims files, reserve working papers, board minutes. I think I missed one.

MR. BURNS: The third one was -- so the first two or the current claims files. Reserve working papers. The third category is we've asked for the same information with respect to the earlier California window.

THE COURT: Okay. All right. Thank you very much.

MR. BURNS: Thank you, Your Honor.

THE COURT: Okay.

MS. UETZ: Excuse me, Your Honor. I have just a brief comment regarding the motion. Would you like to hear that before the opposition?

THE COURT: I'm happy to if it's brief.

MS. UETZ: Super brief, Your Honor. We filed a response that simply said any documents that are produced to the committee from the insurers pursuant to this motion, we'd like copies of the same. We're not -- we just want to make sure that we get whatever is produced as well.

THE COURT: Okay. Okay.

MS. UETZ: Thank you.

MR. PLEVIN: Your Honor, Mark Plevin for Continental Casualty Company.

Your Honor may have thought that there was one Rule 2004 motion before the Court today, but there's actually two and apparently an administrative -- an objection to an administrative claim as well.

The first motion is the one that was filed by the committee, which attached subpoenas containing thirty-seven separate requests and nineteen subparts for a total of fifty-six requests. That's the motion that we responded to.

Then in its reply brief, the committee filed essentially a new motion with six categories, uncertain whether those six categories are a distillation of the first fifty-six or a supplementation or a replacement. I don't know what they are. There's no text of those requests. There's nothing that sets out other than what Mr. Burns just said. He pointed to a letter that he sent us, which I found frankly baffling because I got the letter about an hour before they filed the reply

brief, so I'm not sure what I was supposed to do with that letter. And we, of course, haven't had a chance to respond to that second motion because it was the reply brief. So they've completely gone in a new, different, and unexpected direction.

And I don't want to linger on it, but Mr. Burns finished his remarks with a very impassioned plea to the Court to reject an administrative claim based on a settlement between the insurers and the debtor that hasn't taken place, citing something from Judge Glenn in New York. I don't know what Judge Glenn said, but I do know if that's what he said, he wasn't aware of Second Circuit law. There's a case called Liberty Towers, I don't have the citation with me, although I can get it in a few minutes, which says exactly that when a debtor enters into a an agreement and has a rule 9019 motion, they can't just back away from it. They have to take it to the Bankruptcy Court. And the Bankruptcy Court has to determine whether it's a good deal or whether some deal that came along later is better. So it seems like Mr. Burns is trying to inoculate the Court against something. I'm not sure.

So I'd like to start my remarks with the first Rule 2004 motion, and then I'll come back to the second one.

THE COURT: Um-hum.

MR. PLEVIN: The key principle for the first one is that Rule 2004 is not without limits. It is broad, but it's not without limits. A request has to be reasonable and it has

to be relevant. Relevant to what? Relevant to the justification given for the Rule 2004 request.

The justification that was given in the committee's motion papers here was that they needed to fully understand the nature and extent of the insurance coverage. That's what they said. For purposes of mediation, I should add that. They needed to fully understand the coverage, the nature and extent of coverage for purposes of mediation. And then, as I said, they hit us with fifty-six separate requests, which ranged all over God's creation.

So we looked at their at their justification and their request and realize that there was a huge disconnect between the justification and the requests that were made. And what we did is we proposed a set of requests that was directly responsive to the asserted justification and avowed purpose for these requests. And those are set forth in our in our brief. We created a redline of their requests.

We also created a revised definition of the term insurance policies because their term insurance policies wasn't in any way linked to the debtor here. And we said, if you need policies, that's fair. People need policies for mediation. In fact, one could argue that's all that's needed to understand the coverage because it has the policy period, who the insurer is, the terms and conditions of coverage, the limits of liability. And that's what you look at to determine what the

coverage is, is the policy.

Second, we said, well, okay, some policies are alleged to be missing. And in that case, secondary evidence of the policies, whether that's a binder or correspondence with a broker or an application, whatever is relevant to proving the existence in terms of a policy that's fair as well.

The third thing that we thought would be appropriate would be coverage position letters. If they want to know whether the insurers accepted coverage, reserved rights, denied coverage, that would be in the coverage position letters, along with the grounds for any position the insurers have taken. And then we thought that was a fair thing to offer as well.

And then the fourth thing that was -- would be appropriate would be erosion or exhaustion information. In other words, how much of the policies are still available out of the -- out of the limits of liability?

And so we proposed these revisions. And that's all the committee needs for the avowed purpose stated in the motion of understanding the nature and extent of coverage for purposes of mediation. That's it, full stop. They don't need information about payments of claims over the past thirty years involving not just this debtor but other debtors.

A request that would require the insurers to go through their entire portfolio of insureds to determine who may have had a sexual abuse claim and then to present documentation

on that going back thirty years, that same request intrudes on the privacy rights of other insurers because in order to say what we paid and what the circumstances were, we'd have to present information about the -- I said other insurers. I meant the claimants. They'd have to present information about the claimants who were paid, the nature of the claims they made, their identities, et cetera.

They talk about things like organizational charts, which Mr. Burns said they need when they take a deposition. Well, if you're preparing for mediation, you're not taking a deposition. You're preparing for mediation. If they want to ask my client a question in a mediation, they can ask my client or they can ask the mediator to ask my client. I don't know why we're talking about depositions. We're not authenticating documents in a mediation. We're not tying down testimony in a mediation. It's not how mediations work.

THE COURT: Well, let me ask you this. Let's say we're not talking about depositions. Do you have a problem with the organizational charts one way or the other?

MR. PLEVIN: It's not -- well, the problem is what time frame. If you look at their subpoenas, Your Honor, it's not limited as to time.

THE COURT: Okay.

MR. PLEVIN: The only thing that's limited as to time is this request for thirty years of --

THE COURT: Yeah, yeah. No, I saw that too.

MR. PLEVIN: So I have to go back and find everything from my client, and all the other insurers would have to do the same thing going back decades to find out. And for what purpose? That doesn't help understand the coverage. The coverage is in the policy. It doesn't help to know who was a claim handler in this particular unit in 1973. That's just not -- it's not relevant for mediation.

There's a case I wanted to refer Your Honor to, it arises in a slightly different context, but I think it's relevant. It's Eleventh Circuit decision called in Re Gaddy And the citation is. 851 F.App'x 996. It arose in the context of a Rule 9019 motion. And the Bankruptcy Court didn't allow a lot of discovery in that 9019 context. And there was an appeal on the Eleventh Circuit said, No, that's right. And the thrust of the Eleventh Circuit's ruling was if you're going to make people go through all of the same litigation that they would have to go through without a settlement, it doesn't make sense to make them do it when they've settled.

And the same principle applies here in the sense that if we're preparing for mediation, we're not preparing for a full-scale litigation. We're preparing for -- we're not preparing for depositions. We're preparing to sit at a table with a mediator and talk about the claims that have come in that how the coverage might apply, and what a fair settlement

value would be. That's it.

All this other stuff that the committee asked for in its original fifty-six requests is not relevant to any of that. And to put us through all of that now under the guise of preparing for mediation just can't be justified.

This same issue came up before Judge Lane in New York and the Madison Square Boys and Girls Club case. Very broad Rule 2004 request by the committee to the insurers, objections by the insurers. And Judge Lane essentially ruled, as I've suggested in the redline in our brief, policies, secondary evidence, a few other small things, no depositions. And they've not pointed to any Bankruptcy Court in any one of these cases, Diocese and sex abuse cases or otherwise, where a court has gone beyond what Judge Lane did. And neither should this Court.

There's been a -- Mr. Kaplan started with this and Mr. Burns picked it up. There's an attempt to draw what I would call a false equivalence here. The insurers wanted information about the claims, and the Court said we should have that because we need it. And they then say, well, it's only fair for them to get whatever they want from us. Well, the difference is the claims are the very things that we're being asked to pay. And we need that that information in order to assess whether things end or in our policy period, what the severity of the claim is. Mr. Burns wants to set us up for a

bad-faith claim by putting us in a vice. And the one thing we need to even have a reasonable settlement obligation is information about the thing that we're being asked to settle.

So that's why we needed the information. I say it's a false equivalence because what we're offering them, what we've said would be appropriate, is the mirror image from their perspective. They have the information about the claims. We don't. We have the information about the policies. They don't. That's the two things that you need to determine the value of the claims and how the coverage applies, the claims information and the policy information. All the rest of it is unnecessary.

Mr. Burns said that they should not be bound in any way by the rules of relevance in an adversary proceeding because Rule 2004 is broader and they brought it in the main case. Well, as Your Honor knows, when the committee moved to intervene into the adversary proceeding, that intervention was granted subject to the express limitation that they not propound discovery. I am confident that the Court didn't do that for the purpose of saying you can go out and serve much, much, much broader discovery in the main case.

And we're not the people who invoke the pending proceeding rule, by the way. They did that in their opening motion trying to distinguish it. And we actually said in our opposition brief, Your Honor, that that's not the reason why

this is a problem. The reason it's a problem is because their discovery rights were limited for a particular and good purpose, and it wasn't for the purpose of allowing them to then go out and exceed all bounds of relevance in the Chapter 11 case under Rule 2004.

And when Ms. Uetz makes what sounds on its face like a very straightforward, fair-minded request that, oh, if they get stuff, we should get it to, the debtors are absolutely bound by the pending proceeding rule because they're the plaintiff in the adversary proceeding. And that request is an overt attempt to evade the restrictions of Rules 26 through 37.

One other thing worth noting, Mr. Burns said, and I think he used the phrase in all likelihood the insurers are going to claim financial solvency problems. The only example they propounded of an insurer -- of financial solvency problems with an insurer was Arrowood in the Rockville Center case. And Arrowood was under supervision of the Delaware insurance commissioner and just last week was actually placed in liquidation by the Delaware Insurance Commissioner. After we filed our brief, the court entered an order of liquidation.

So that is a unique one-off situation. It does not justify rifling through our files to see what our finances are, particularly since they can get the public documents that all the insurance companies have to file by doing that. They're all publicly available. They don't need to get into our files

and try to get all that information when no one in this case has said I don't have a financial problem paying what I might own under my policy.

Now, as I said, that's the first motion. We think that it's reasonable for them to seek some information for purposes of preparing for mediation. We think we've met them halfway. We've offered to give them the information that Judge Lane found was appropriate and Madison Square Boys and Girls Club. And we think that's all they need.

So now we have the second motion, and I can speculate as to why the second motion was made, what I'm calling the second motion and the reply brief.

As I said, I don't know what they're doing with the first fifty-six requests, whether these are six on top of those, whether these are six instead of those, whether this is some kind of, as I said, distillation of the fifty-six. These are new arguments that shouldn't be permitted in reply. Even if the Court considers them, they're living in a fantasy world, a fantasy world in which we've got robust claim files on claims where we don't even have the documents yet. We're still waiting to get the proofs of claim. The claim file I would venture of virtually all the insurers, if not all of them, at this point consists of a tender letter which attaches a complaint and a response to the tender letter which either reserves rights, declines coverage, or accepts coverage and

accepts the defense.

But that's all that there could be at this point. We don't have the information. These claims are actually still being tendered. Mr. Schiavoni told me this morning his client just got another whole bunch of claims in this case because I guess we all know the Alameda County Superior Court was so burdened by claims that pushing them out very slowly. So here we are in November, ten and a half months after the window closed for the filing of these claims, and claims are still being pushed out and tendered. So the idea that we have all these claims and robust claim files is just wrong.

Mr. Burns seems to think that it would be relevant to get all of the documents that were created or that are in files relating to claims that have been paid in the past because he says that way we know what the value of the claims are. But I don't see how you can draw a line between a claim involving John Doe Number 1 that was settled in 1970 and a claim today by John Doe Number 2 who's just asserted his claim. To determine for the first claim to be relevant, you'd have to know that it's actually the same kind of claim, invoking the same kind of coverage, that the circumstances of the claim were the same, that the knowledge of the church was the same, and that the knowledge of the insurers about the knowledge of the church was the same. I think we all know more in the year 2023 about what the various dioceses knew about what their priests and others

were doing than we knew about back in the 1970s and 1980s.

And so that's a whole kind of collateral litigation and investigation that doesn't make any sense. What we should be doing is valuing the claims that are being made in this case by proofs of claim that we still don't have but we're hoping to get soon and looking at those claims and determining the value of those claims.

In their reply brief, the committee also talks about the value of claims in other cases. Well, we can all, either ourselves or through consultants, go to the plans of reorganization that have been confirmed in other cases and figure out how many claims there were, what the total insurance contribution was, what the diocesan contribution was, and generate the numbers. You don't need to go through decades of the insurers' files in order to get there.

Skipping around a little bi, the claims manuals, we litigated under Rule 2004 in both the Imerys case and the Boy Scouts case, both before Judge Silverstein in Delaware whether claims manuals were accessible under Rule 2004. And she held for good reason no, because it doesn't tell you anything about the value of the claim for purposes of a mediation. For purposes of the mediation, you just look at the claim and the policy. You don't need to know what a company's claims manual is. It's not relevant in most coverage litigation. And Judge Silverstein held it's not relevant in a Rule 2004 context

either.

I think, Your Honor, that that covers most of it. Just to make a few points, in the brief, they demand that we respond in fourteen days. These new requests -- first of all, the fifty-six requests are incredibly broad. And there's no way that we could reasonably be required to respond to the fifty-six requests in fourteen days. It's just not possible. Even if you cut back to the four requests we think is appropriate, I think fourteen days is a bit aggressive.

We don't have a mediation scheduled. We don't have a mediator. Ms. Uetz sent a letter yesterday opening the door to discussion about who mediators might be. I welcome that approach from her. We've just been engaged in that very process in Santa Rosa. So I and many of the other insurers on the screen have recently been talking about mediators. So I think we should be able to respond fairly quickly to her.

But we don't have a mediation on the horizon. There's no reason we need to do this in fourteen days.

THE COURT: Let me ask a question or two. Let's say that I accept some of your arguments enough to draw a line between things that are generally probative of an asset and questions that are really kind of litigation posture questions. I think you would put your four categories that you're willing to produce under the first category, right? This is generally what assets are about. Well, I mean, would it be okay then

also to include underwriting files in those categories just as an example?

MR. PLEVIN: Right. So underwriting files can be complicated to the extent we're talking about policies in the '60s and '70s. I'm not sure that they necessarily exist. If they do exist, it's not on the top of someone's desk or their file drawer. There's undoubtedly going to have to be some search undertaken within the company. And some of these insurance companies have very prescribed manners of looking for policies and underwriting files, so that could be done. I would suggest that unless it's a missing policy situation where you're looking for secondary evidence that something was done, it's probably not necessary because the underwriting file will generally include correspondence between the broker and the insured or the broker and the insurance company, a lot of premium information people trying to --

THE COURT: Some reinsurance stuff, maybe.

MR. PLEVIN: Maybe reinsurance.

THE COURT: Yeah.

MR. PLEVIN: Although often done in a separate unit.

THE COURT: Okay.

MR. PLEVIN: But one of the big problems is just the age of those files and their accessibility.

THE COURT: That is ever with us, right?

MR. PLEVIN: Right.

THE COURT: Yeah.

MR. PLEVIN: Especially when we're this many years after --

THE COURT: I know, I know.

MR. PLEVIN: -- after the policies were written.

THE COURT: How about -- so you've suggested to me that the claims files, even were they to be produced that are relevant in this case, are kind of a nothing burger?

MR. PLEVIN: They're skeletons at best.

THE COURT: Okay. How about the reserve files or the reserve working papers?

MR. PLEVIN: So reserve working papers are --

THE COURT: And let's start initially with what we're talking what would be directly relevant here, okay?

MR. PLEVIN: Okay. So first of all, as a matter of coverage law, reserves are not relevant. And they're not relevant because they are not a determination of the value of the claim. It's a determination of how much the insurance company thinks it needs to have Under whatever statutory accounting rules are required. It doesn't reflect the value of the claim.

At this point in the development of these claims, Your Honor, where we don't have proofs of claim, I know because I asked my client we don't have any reserves because we don't have enough information to set reserves on any of these claims.

I don't know what the other insurers have, but I suspect many, if not most of them, are in the same boat. You can't set a reserve just because somebody filed a complaint with untested allegations. And that's all there is.

So reserves are set later. Reserves are set at a point when there's some confidence level about what you're dealing with. I think some companies may not even set reserves in a situation like this on a contingent litigated tort claim where there's scant information until settlements are reached or at least until mediations are underway and progressing and they have an idea of where the end point might be. So I don't think -- I think that's a nothing burger as well for that --

THE COURT: Let me ask you another question, which I'm also going to direct to Mr. Burns. You can take 2004 exams lots of different times in cases for lots of different reasons. It may be that this is a useful thing to do for a relatively limited purpose here without prejudice to. It's going to look a whole lot different un two months or three months or six months.

And I'm going to ask you a question because you've been through this and I haven't. Okay? Let's say you get a mediator and you're talking about how we're going to get everybody in the same room. What is the mediators role in trying to figure out what everybody needs to know? Can the mediator, for example, talk about that with both sides and then

let the Court know, I think, look, we need an X, Y and Z, we don't know it yet?

MR. PLEVIN: It's been my experience that mediators often carry back and forth information requests between the parties. And the mediator will endorse requests that he or she thinks are appropriate.

THE COURT: Okay.

MR. PLEVIN: And indeed --

THE COURT: Which end up back at the court.

MR. PLEVIN: Well --

THE COURT: Or not.

MR. PLEVIN: I know Mr. Schiavoni filed as a request for judicial notice a transcript from Amreys case where this issue just came up before Judge Silverstein. And what she said is I'm not going to allow any Rule 2004 discovery this point. You go talk to the mediators. And if you have a problem with what the mediators are either doing or not doing or what, then you can come back to me. So she put it on the mediators first to work with parties to get the information that the mediators thought would be appropriate for the valuation of the claims and the negotiations that would take place in the mediation. And there was no -- she was clear I'm not dealing with this today, but if there's a dispute that can't be solved in the context of the mediation, then you come back to me and I'll get involved at that point. And I think that that's something that

would make sense.

THE COURT: Finishing up the categories that Mr. Burns gave us, how about board minutes?

MR. PLEVIN: I guess that's the one where he said in all likelihood, because now I'm looking at my notes, I put that in quotes. That's just sheer speculation about what's going on here. These are insurance companies that are very big companies. Not every settlement is board-worthy. There are executives within the company who have delegated authority from the board in different amounts. Your claim handler will have desk authority and one amount. That claim handler's supervisor will have additional authority. That person supervisor will have additional authority. Only when you get to very, very, very high levels of authority is there even any chance that you'd go to the board of directors for authority.

And if you've ever seen board minutes, Your Honor, they are not -- they're not transcripts generally. They are -- they record in a very cursory way what's happened. So at most you would have something where somebody would say in the board minute that in such and such case, the board was asked to and did authorize a payment or an offer of X dollars. But if Mr. Burns thinks that board minutes are going to be some kind of opening the board's soul and talking about existential issues, that's not what --

THE COURT: Assumes facts not in evidence, correct.

MR. PLEVIN: Yeah. Well, it's speculative. It assumes facts not in evidence. And I don't think it's --

THE COURT: I mean boards having souls, but yeah.

MR. PLEVIN: Well, corporations are people, as some people --

THE COURT: We don't have to all agree with that, right, just because somebody prominent said it.

MR. PLEVIN: Right. But I think that the review of board minutes is also going to be very intrusive. And I think we might have disputes about that because some boards deal with lots of things. And so would we have to produce board minutes that don't deal with any of these claims at all? Would we be able to redact that? In which case all the board minutes might be redacted except for maybe one sentence. And again, what's the time frame here? We're actually dealing with Mr. Burns's request that isn't in the Rule 2004 application, so we don't even know what the text of it says. But what's the time frame? Are we going back thirty, forty, fifty years? You know, there's a burden. He says companies have to keep records. And that's true. Companies keep records. But they also don't necessarily keep records for thirty, forty and fifty years. And even if they do have them, they don't always know where they are. And it takes a huge effort to locate them.

And for what purpose? I mean, the board minutes, I don't think are probative of anything that's needed for the

committee to not be blindfolded in a mediation.

Mr. Kaplan, Mr. Burns, Mr. Bair, they all -- Ms. Restel, they're all very, very experienced at this, and they don't need to know what the board said in 1978 about a particular sex abuse claim to figure out what position they're taking in a mediation or how much they want to ask for on a particular claim.

THE COURT: Let me ask you one other question. And I'll try to ask it a couple of different ways. I hear your objection to going back thirty years, for lack of a better word, claim files and valuation of claims. I just don't know, and you're going to know better than me, whether there is a relevant subset. Is there a five-year period that would make some sense that could be more easily -- I mean, you're not -- you could still argue it's not relevant when the rubber meets the road. But is there a subset that you could identify or suggest that would be responsive to the thought that they have on the side?

MR. PLEVIN: I don't really think so Your Honor, because if you're talking about claims at a granular level, you're looking at individual claims. And what a particular claim settled for is not probative of what some unrelated different claim is worth. Because the claims are different, the circumstances are different, the insurance might be different, the policies might be different.

THE COURT: I know.

MR. PLEVIN: The applicable law might be different.

THE COURT: Yeah.

MR. PLEVIN: The attitude of the mediator might be different. If you're concerned -- if you're in litigation, your valuation of the judge and your chances of success in a trial might be different.

THE COURT: Sure.

MR. PLEVIN: So how you would take the information about one claim and use that as a basis to say, okay, now you're going to do this and some other claim later --

THE COURT: I --

MR. PLEVIN: But there's also one other point, Your Honor, is that in my experience in these types of cases, discussion of the individual claims is not typically how these mediations go forward. They go forward in bulk. The committee or the debtor makes a demand of X for the whole body of claims and for a channeling injunction. And then the insurer responds with an offer of Y. And then X and Y are at different extremes. And through the efforts of the mediator and the parties, hopefully a deal gets done and they come somewhere in the middle.

THE COURT: Yeah. I'm not disagreeing with you that any particular claim -- I mean, there's so much variation. My instinct, and you're both going to disabuse me of this is, that

when you get into this, what you need are various touchstones, right? You need reference point. There's not say that any one is going to get you one hundred percent from A to B, but you need them in the sense that where are we talking about twenty bazillion dollars ere or three? And I'm just exploring whether there is a -- whether there's a reasonable way to provide something that would be a touchstone that wouldn't be thirty years ago.

THE COURT: Well, so it's just way of --

MR. PLEVIN: And, well, just by way of example --

THE COURT: And maybe the answer is, well, go look at what happens in bankruptcy cases. Go look at the numbers. Maybe that's the answer.

MR. PLEVIN: I was going to say, that is exactly where I was going.

THE COURT: Yeah.

MR. PLEVIN: So let me just give you an example --

THE COURT: Sure.

MR. PLEVIN: -- since Mr. Mr. Burns raised it, the Rochester case, which is still pending. Right now it's got competing plans. There are, I think, four insurers, maybe five. The debtor settled at one set of values. The committee objected. All but one of the insurers then entered into separate -- or additional settlements. And the one settled -- one insurer who didn't settle proposed a plan and put forth

what it was -- its offering as its contribution. This is all public information. And the committee knows how many claims are against each insurer's policy, what each insurer has settled with or settled for or offered to pay. And they can do a per claimant calculation based on that. They can do the same thing in every single bankruptcy case that's been resolved. They can do it in Camden for the deal that the debtor cut with the insurers that the insurers claim is binding and that the other side claims is not. So that's at least a touchstone. The parties might have different views about whether that touchstone should be enforceable or not.

But that information is all out there. It's all out there. And the very experienced lawyers for the committee and the debtor are aware of all of those values and all of those cases going back to the Diocese of Billings case and the Diocese of Northern Alaska, whenever those took place in the '90s or early 2000, up through the more recent cases. They're involved in these mediations. They know -- even though it's not public, they know what's on the table between committees and debtors on the one hand and insurers on the other hand. So they have those touchstones they don't need to get that information from our files to the extent it's even relevant.

THE COURT: Okay.

MR. PLEVIN: Your Honor, Unless you have any other questions, I think --

THE COURT: No. Thank you for your -- thank you for your very helpful answers.

MR. PLEVIN: Thank you.

THE COURT: I appreciate it. Okay.

MR. SCHIAVONI: Your Honor, if I could just be heard very briefly.

THE COURT: Well, you didn't file anything. Do you want to say yes or no?

MR. KAPLAN: Your Honor, I think that's exactly what you said. Mr. Schiavoni didn't file anything.

THE COURT: Okay.

MR. KAPLAN: I think --

MR. SCHIAVONI: We did join, Your Honor, the brief. We're on the brief.

MR. KAPLAN: They're on the brief, but we've -- I mean, this is the problem we've raised before, which is we respect Mr. Plevin taking the lead on this. We have taken the lead. He argued. We have argued. And this just sort of -- it's Your Honor's courtroom and Your Honor's decision. But we would respectfully request that Mr. Plevin has represented the insurer.

THE COURT: I'm going to agree with you. Thank you very much.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Thank you.

MR. KAPLAN: Your Honor, just briefly, I saw Ms. Uetz doing a hand thing. I don't know if that was she had a -- I don't want to --

THE COURT: Okay. Okay. Ms. Uetz?

MS. UETZ: Thanks, Your Honor. Very briefly, just a couple of points.

My recall is that the insurers filed a 2004 motion. And when they did so, they didn't mind the single proceeding, one proceeding rule. It seems to me only fair that if this motion is granted and there's a production to the committee, that the debtor counted as well.

There's just one other point I would make. Your Honor, Mr. Plevin made some pretty sweeping statements about his view of the information that is important to mediation. And I would submit that that's just it. It's his view.

We have made claim on behalf of the debtor that we are pursuing the insurers and the adversary proceeding, as well we hope to pursue a mediation.

Candidly, had the committee not filed a 2004 motion, the debtor may have done so. So I just -- I want to -- I want to express my view to the Court that more is needed for mediation I think that Mr. Plevin suggested. That's all I wanted to say.

THE COURT: Okay.

MS. UETZ: Thank you, Your Honor.

THE COURT: Okay. Thank you so much. Okay. Who wants to talk for --

MR. KAPLAN: Your Honor, given that I can't answer the insurance specifics, I will save the parties the time of deferring to my -- Mr. Burns.

THE COURT: Okay. Let me give you a couple of thoughts to flesh out a bit where I was going with Mr. Plevin, okay?

Okay. Let me begin with, you know, the pending proceeding rule, I think, is going to be on the back of the stove for a while, this case. So I'm not -- I'm not taking the position that that you should, for all purposes, be foreclosed. That's not the way I'm looking at. And I'm also not accepting as broadly as maybe Mr. Plevin would like me to the implications of the committee intervening in the AP with an understanding that their discovery role was going to be limited or none. Okay. That's in the same way that it's kind of apples and oranges in terms of what you're doing in the AP and what you might do in the main case.

In the same way, it's kind of apples and oranges. What kind of questions get asked at 2004 exam or what kind of questions are litigation questions? And that's where I think I'm drawing a line here. I think there are some things that are -- that go generally to the kinds of what is the status of the case, what are the assets, what are the liabilities, what

do we have to work with here that are more modest than some of the questions that you're posing, which are great questions, but in my mind they're much more, you know, litigation take a position because we're going to contest it kind of situations which include things like valuing of claims from X years ago.

So that's generally my mindset now, which is to say I think this is also a moving target, that if I give you four or five or six things here, it's not like you can't come back in two months and say, well, now where at this stage we need something else. I'll hear that. But I'm thinking it makes sense to, for lack of a better word, stage this.

But let me put the same question to you that I put to Mr. Plevin, toward the end of his presentation, which is, is there a subset here of claims or claims analysis that you can't get just from looking at the last five bankruptcy cases, whatever they are? Is there a subset that you think would be relevant over a reasonable period of time that might be a little closer to what we're talking about here that you think should be produced?

MR. BURNS: Your Honor, let me answer that two ways.

THE COURT: Okay.

MR. BURNS: Because there are really two questions. The first question is what I would call the staging is, I think, the term you used. And then the second question is the subset.

Your Honor, with all due respect, and I do respect you --

THE COURT: You know what I say there, right? In my humble opinion. And we're both lying, Mr. Burns. Okay.

MR. BURNS: And, Your Honor, we have the experience of being in these cases in a number of bankruptcies for the last three or four years. We they have the experience of those cases not resolving. They just haven't resolved. And I would just suggest that public enemy number 1 in the cases not resolving is what I call the bankruptcy holiday that the insurers get. They get a holiday. They know they're not going to pay claims for four or five years because the bankruptcy -- the courts are not going to push them to fulfill the obligation that other litigants in other assets have.

Staging, there is a way of staging under the rules. It's called a continuing obligation to produce documents. That's the staging occasion by rules of just every subset.

Your Honor, it really goes to the nothing burger point because I heard it a couple of times, and I was aghast. But one of the leading lawyers for survivors is in court with us. nothing burger in the claims file, nothing burger in the reserves. California Window has been open for a while. The California window has been closed for a while. Test case number 1 was scheduled to go to trial two weeks before the bankruptcy filing. That's the Woodall of the case. Nothing

burger. There's no claims filed on Woodall by these guys. There's no claims. There's no reserve information set on Woodall. It --

THE COURT: Are we talking a proper name here for a particular reason? I mean, isn't that confidential?

MR. BURNS: I don't think --

UNIDENTIFIED SPEAKER: (Indiscernible).

THE COURT: Oh, okay. All right. Thank you. Go ahead.

MR. BURNS: So as these approaches trial, they lose some of their confidentiality.

THE COURT: Okay.

MR. BURNS: SO --

THE COURT: Well, you can tell you know more about this than I do. That kind of stopped me in my tracks for a second. But you go ahead.

MR. BURNS: Your Honor, And we appreciate the concern. And if I'd rather you called me on it than I make --

THE COURT: Okay. Well, especially if you can correct me, especially that.

MR. BURNS: Understood. A mistake.

THE COURT: Sure.

MR. BURNS: There were cases that were proceeding along before the bankruptcy was filed. We asked this board document requests, Your Honor, because of the unbelievable --

the not plausible answers from the insurance companies. If we just asked for the claims file and it's going to have nothing there, maybe some version of the claims file that has nothing there, I don't dispute that, I've seen it before, that's why we asked for all the additional information, because we want the claims file.

THE COURT: Well, let me just let me pull this apart a little bit, okay? Okay. One aspect would be the claims files for the claims that are relevant to this matter, right? Is the next step cases that are otherwise pending in California as opposed to just this case? Is that is that the progression?

MR. BURNS: It would be, Your Honor, the claims file relating to those other California claims.

THE COURT: Okay.

MR. BURNS: There are cases around the country. But Your Honor, frankly, that they haven't settled for the amount that the California claims have settled for.

THE COURT: Okay.

MR. BURNS: There's a different valuation. But while I'm on valuation, Your Honor, and the touchstones issue, the shorthand touchstone, earlier today, Mr. Schiavoni was talking about hiring Brattle Group and I think Casey Isaac. What are those folks being hired to do? They're being hired to look at those touchstones. Your Honor, they're being hired to look at other claims to come up with valuation figures for litigation.

What we want is the valuation figures for their statutory obligation to adjust these claims and set appropriate reserves for these claims.

And so as a first step, Your Honor, getting the complete set of claims documents for the cases related to the dioceses and the reserves workup --

THE COURT: For this case.

MR. BURNS: -- for this case, you put your finger on it, Your Honor. The underwriting files, maybe their response to the underwriting files, they'll sign the document requests that they just don't have any. And maybe we'll ask for a deposition on that and see if that's the case. But underwriting files, which seems like they should be there.

A second step would be the broader California universe.

And the third step would be what happened in these cases -- I think fifty-five cases were resolved back in '07. We don't have all the information.

The insurers -- we want these cases resolved. We want these cases to resolve by consensual solution. It's our experience that just going to mediation doesn't work. We have to be pushing on the insurers to fulfill the obligations of other assets, other litigants to litigate some of these covered issues or the case just won't -- it won't be resolved in anything like an ordinary period of time for a bankruptcy case.

THE COURT: Okay.

MR. BURNS: We are trying very hard, Your Honor, to make it so this case works. We're at the end. The bankruptcy plan is confirmed with everybody on board. But we've seen how it hasn't worked that way over the last several cases. And having these tools available for us, they love using bankruptcy tools in --

THE COURT: Well, they're not the only ones. That auto-stay thing is pretty nice, you know? Debtors love that.

MR. BURNS: In these cases. I love being in Bankruptcy Court. It was my second choice of profession.

THE COURT: I need to take a minute.

MR. BURNS: But what's good for the goose has to be for the gander.

THE COURT: No, I mean, that whole idea that you're going to step away for a minute or two is helpful on a bunch of levels. So I'm certainly hearing you. I don't think it's -- I would not infer anything inappropriate to the insurance companies if they found a benefit in there too as far as that goes. I know that you're saying something broader than that. And I'm not -- I'm just -- I'm hearing it, okay?

MR. BURNS: Okay.

THE COURT: Okay.

MR. BURNS: Thank you.

THE COURT: All right. Thank you very much.

MR. PLEVIN: Your Honor, very briefly.

THE COURT: Yeah, go ahead.

MR. PLEVIN: First of all, on that last point, the insurers are not the ones who filed for bankruptcy.

THE COURT: I know.

MR. PLEVIN: We're here because the debtor did.

THE COURT: Well, I mean, there's an argument that the process helps everybody in a that's all calm down kind of way.

MR. PLEVIN: Right. But pointing the finger at us --

THE COURT: You know what? I --

MR. PLEVIN: Yeah. We didn't file the case.

Second, Mr. Burns in his last remarks was very clear that the reason the committee wants this doesn't have anything to do with mediation. It's beyond mediation. But that's -- mediation was the reason they filed a Rule 2004 application. And the reason that they said you should grant it. And now they've showed their true colors.

He said he wants documents from relating to claims against other dioceses. Well, it seems to me the proper place to go ask for documents regarding the Diocese of Santa Rosa is in Judge Novak's courtroom, or the Archdiocese of San Francisco is in Judge Montali's courtroom, et cetera. I don't think it's appropriate for them to be fishing for that information here.

And then one last point, Your Honor, just about the board minutes. I was looking at Number 36 in their requests.

And the board minute requests are -- in the original application are tied to the -- what the board said about the Diocese of Oakland. What I now perceive in the new broad requests which Your Honor has no text and we have no text, is that it's board minutes writ large about, I guess, sexual abuse claims, period. That's not what they were asking for in their original application.

And I think that shows the danger of allowing them to change on the fly and to abandon the application and essentially replace it with a new one in their reply brief, not give us or Your Honor, the actual text of the requests that they're asking to propound. And I don't see how Your Honor could can respond to that because you don't know what you're being asked to authorize. And I think they should go back and do it again and file a new application. And if they want to ask just six categories, put the six categories in and give Your Honor and us an explanation of why they think they're entitled to it under Rule 2004, because as I said at the outset, it's got to be relevant, relevant to the reason for the request. And they haven't done this with respect to the new requests.

THE COURT: Okay.

MR. PLEVIN: Thank you.

THE COURT: Thank you. Submitted?

MR. KAPLAN: Submitted, Your Honor.

THE COURT: Okay. Thank you very much.

Let me give you some thoughts. Without casting any blame one way or the other, because these things frequently are moving target, this one is a moving target, I'm going to for convenience -- and this is not to say that if somebody renewed a request in a month or two, I wouldn't look at it differently. But for convenience today, I'm going to drop down to what I think is the last iteration of the request from Mr. Burns and what I think is a sort of a response from Mr. Plevin.

With respect to what the documents Mr. Plevin suggests they will produce, I think that's fine. They're helpful. They're not everything you want, but they're certainly helpful. So that will be done. And we can talk about how long that will take.

I am -- things like the claims files and the reserve working papers and the underwriting, working backwards a bit, I am disinclined at this point -- well, first of all, I think each of those arguably is much more of a litigation question than a 2004 what are the assets kind of question.

That having been said, I think there is some intellectual bleed-over between the idea that they wanted the claims and you wanted some things in their files. I think there's some similarities there. I am hard-pressed to think that there's tremendous relevance, as I understand it now, between what might have been a claim resolution in the early

2000s and what you're going to be looking at now.

So I think -- I mean, if somebody wants to renew that argument at some point, I'll listen to it. But for right now, I'm not inclined to require the production of anything having to do with the earlier periods as long as thirty years ago.

I'm inclined to entertain the request with respect to the current claims files, the reserve working papers, and the underwriting information, if any, with respect to these cases. I'm disinclined to go further than that for now because, among other things, privacy concerns. And I know that people would be diligent in redacting, but all we need is one slip-up and we would be in a bad place. I'm inclined to grant the request as to those.

I do think that you're going to want to sit down with Mr. Plevin and just make sure everybody is agreeing on what the wording is because this is a moving target. And that's not a critique because these things frequently are moving targets. It's okay. But I think we need a little precision on what you mean by claims files, the reserve working files, and the underwriting information.

I think with respect to this case, that is close enough. And it's analogous to getting the claims from their perspective, okay? So I -- but I think you should work to just give me some language that is agreed to between you guys so that we're talking about the same thing.

And I think as to any other request, I think it's -- we're really getting into litigation positions that I think is rarely a proper function for 2004. And I think there we are getting a little bit closer to being concerned about the committee's role in the AP where they basically said, listen, we're not going to be generating discovery. I'm not holding you to that exactly here, but I don't want to intrude on that too much.

I do think that what we're talking about here is acceptable for current purposes. And things are going to change. As you get closer to a mediation or other issues bubble up to the surface, I will hear this again. And I'll listen to people as to why the world is different now and I should do something else. And/or when you get to the mediation, either the mediator is going to tell you you've got to do X, Y, and Z, and you guys have been through that drill enough to know or it sounds like Mr. Plevin or maybe they both confirmed something that I suspected, which is the judge role at that point is fairly minimal in terms of -- I mean, would I take direction from the mediator? I'd certainly listen if there were communication that, Judge, I think we need X, Y, and Z and you can help with that. I think I'd be inclined to listen to it. I don't know if that puts me in conflict with Judge Silverstein. If it does, I'm probably going to be worried. But there you go.

So I do think it's not that this can't be revisited, but I think it's a fairly limited production now is what's appropriate. And I don't want to hear about depositions now. We'll see about depositions down the road. Okay? I'm not sure that -- I don't think that they're going to be necessary "clarify" anything that you're going to be getting. And to the extent that they're depositions and the more traditional sense, they really are litigation vehicles that I think were we're just not there yet. So that's my ruling.

If you guys can put your heads together about appropriate wording for the three categories I suggested with respect to this case, I think could be produced, I think I can -- I'll be happy to see your handiwork. And I'll approve that, okay, subject to that being worked out. All right?

Anything else for the good of the order?

Oh, you guys, I'm thinking about the bar date order. And I promise you that will be category 1, okay?

MR. KAPLAN: Thank you, Your Honor.

THE COURT: All right. Thank you very much.

MS. UETZ: Your Honor, excuse me. Sorry, sorry, sorry.

THE COURT: Yeah, Yeah.

MS. UETZ: Just I know it's late, so I just want to raise the subject of Alvarez responding to your questions and see if we can't maybe set that for hearing or how you'd like to

proceed. Because I know we've -- Mr. Moore has been in the hearing and is prepared to respond to you, but I recognize it's -- so I really didn't -- next procedurally --

THE COURT: Yeah. I really need to get ready -- IU need to get ready for something at 1:30.

MS. UETZ: Sure. May we set it with Ms. Vann perhaps for a date or something?

THE COURT: Well, let me ask her a quick question, okay?

S1: May we set it with Ms. Fand, perhaps for a date or.

THE COURT: Let me just ask her a quick question. Okay. Ms. Fand, how are we looking on the 22nd?

THE CLERK: We're pretty -- there's only three matters so far set.

THE COURT: All right. I've got -- if anybody wants to do the day before Thanksgiving, that's actually -- oddly enough, that's a light calendar. If you would rather not do it, then we can do it a little bit later. It's up to you folks.

MS. UETZ: Your Honor, Mr. Moore is on. And I'll defer to him. We will have someone from Foley here for that hearing on that date --

THE COURT: All right, the 22nd.

MS. UETZ: -- if he can make it. And I know he's on

the hearing.

THE COURT: All right.

MS. UETZ: So maybe he can say so.

MR. MOORE: Your Honor, it's --

THE COURT: Well, no. I mean, it's not as if you can't do this by -- you can do it by Zoom.

MS. UETZ: Sure.

MR. MOORE: That's fine, Your Honor.

THE COURT: Okay. All right. I appreciate it. We'll see you then.

MS. UETZ: Thank you so much. Sorry for the interruption.

THE COURT: Thank you. Okay. No, no. Thanks very much.

MS. UETZ: Thanks. Bye.

THE COURT: Okay. See you soon.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ MICHAEL DRAKE, CET-513

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EXHIBIT C

From:	Blaise Curet
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Cc:	tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com; Todd C. Jacobs; Harris Winsberg; John Bucheit; Matt M. Weiss; rdc@rcraiglaw.com; Wylly Killorin; R. David Gallo; Melissa Andrea Dubbs; jblease@foley.com
Subject:	RE: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport"s Responses and Objections to the Committee"s Rule 2004 Subpoena
Date:	Tuesday, March 12, 2024 7:00:59 PM
Attachments:	image001.png

Good afternoon,

This follows our discussion on Friday about the documents produced by Westport:

REQUEST FOR PRODUCTION NO. 1:

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

WEST 003533, WEST 003539

REQUEST FOR PRODUCTION NO. 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.

WEST 003607- WEST 004169

REQUEST FOR PRODUCTION NO. 5:

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

WEST 00001-WEST 003532

REQUEST FOR PRODUCTION NO. 6:

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

WEST 003557, WEST 003579

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Subject: Roman Catholic Bishop of Oakland, No. 23-40523-WJL - Westport's Responses and Objections to the Committee's Rule 2004 Subpoena

Good afternoon,

Here is a link to the documents being produced by Westport in response to the Rule 2004 subpoena.

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