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

UNITED STATE BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

LMI'S MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS SERVED IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND PURSUANT TO THE STIPULATION CONSENT ORDER TO TRANSFER ACTION AND LMI'S MOTION TO QUASH AND/OR MODIFY THE SUBPOENA

Date: April 17, 2024
Time: 10:30 A.M.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

[In person or via Zoom/AT&T Teleconference]

MOTION TO QUASH

Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market Insurers" or "LMI"), by and through their undersigned counsel, hereby move, pursuant to Federal Rules of Civil Procedure 45, to quash the subpoena issued by the Official Committee of Unsecured Creditors' ("Committee") to LMI.

The Motion is based on the following documents filed in the United States District Court, District of New Jersey, 2:24-cv-01467-CCC-JSA ("New Jersey District Court Case") and ordered transferred to the Bankruptcy Court by the United States District Court, District of New Jersey:

- *LMI's Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors Served in Connection with the Chapter 11 Case Filed by the Roman Catholic Bishop of Oakland* ("Motion to Quash") attached hereto as **Exhibit A**[1];
- *LMI's Notice of Hearing on Motion to Quash* attached hereto as **Exhibit B**[2];
- *LMI's Declaration of Russell W. Roten In Support of Motion to Quash* attached hereto as **Exhibit C**[3];
- *LMI's Brief in Support of Motion to Quash* attached hereto as **Exhibit D**[4];
- *Stipulation and Consent Order to Transfer Action and Motion to Quash* attached hereto as **Exhibit E**[5]; and
- New Jersey District Court Case Civil Docket is attached hereto as **Exhibit F**.

The Motion is further based on the papers and pleadings on file in this case and in the New Jersey District Court Case, and such other evidence that may be presented to the Court at the hearing, if any.

Dated: March 20, 2024

By: /s/ *Russell Roten*
Russell W. Roten
Jeff D. Kahane
Nathan Reinhardt
Betty Luu
DUANE MORRIS, LLP
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[1] *In re The Roman Catholic Bishop of Oakland*, 2:24-cv-01467-CCC-JSA, ECF No. 1 (D.N.J.).
[2] *Id.* at ECF No. 2.
[3] *Id.* at ECF No. 3
[4] *Id.* at ECF No. 4.
[5] *Id.* at ECF No. 12.

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

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No.: _____ United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m. **REQUEST FOR ORAL ARGUMENT**

LMI'S[1] MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS SERVED IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[2]

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

[2] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor") in United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland's (collectively, "London Market Insurers" or "LMI"), hereby move this Honorable Court for entry of an order in substantially the form attached hereto as **Exhibit A**, pursuant to Federal Rule of Civil Procedure 45, quashing and/or modifying the subpoena issued to it by the Official Committee of Unsecured Creditors' appointed in the Bankruptcy Case.

In support of this Motion, LMI rely on the memorandum of points and authorities set forth filed concurrently herewith, the Declaration of Russell W. Roten filed concurrently herewith, any and all supplemental papers that may be filed by LMI, the papers on file in the Bankruptcy Case, and on such arguments or evidence as may be presented at any oral argument that is scheduled. Copies of all pleadings and papers filed in the Bankruptcy Case, can be obtained from the website maintained by the Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC, at https://www.kccllc.net/rcbo.

LOCAL RULE 10.1 STATEMENT

Per Local Rule 10.1, the street and post office address of each named party involved in the Motion, or if not a natural person, the address of its principal place of business is as follows:

Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland
c/o Resolute Management Services Ltd.
4th Floor, 8 Fenchurch Place
London EC3M 4AJ

Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland
c/o Duane Morris LLP
Attn: Sommer L. Ross, Esq.
1940 Route 70 East, Suite 100
Cherry Hill, NJ 08003-2171
Telephone: (856) 874-4200
E-mail: slross@duanemorris.com

Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland
c/o Duane Morris LLP
Attn: Russell W. Roten (to be admitted pro hac vice)
Jeff D. Kahane (to be admitted pro hac vice)
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Official Committee of Unsecured Creditors appointed in the Chapter 11 Case of the Roman Catholic Bishop of Oakland

c/o LOWENSTEIN SANDLER LLP
Michael A. Kaplan, Esq.
Colleen M. Maker, Esq.
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Email: cmaker@lowenstein.com

Roman Catholic Bishop of Oakland
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Oakland, CA 94612

Roman Catholic Bishop of Oakland
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Respectfully submitted,

Dated: March 4, 2024 **DUANE MORRIS LLP**

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and

Russell W. Roten (to be admitted pro hac vice)
Jeff D. Kahane (to be admitted pro hac vice)
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Counsel for Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No.: _____ United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m. **REQUEST FOR ORAL ARGUMENT**

[PROPOSED] ORDER GRANTING LMI'S[1] MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS SERVED IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[2]

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

[2] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor") in United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

THIS MATTER having been brought before the Court upon the *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors Served in Connection with the Chapter 11 Case Filed by the Roman Catholic Bishop of Oakland* ("Motion") filed by LMI, by and through their counsel, for entry of an order quashing and/or modifying the subpoena, and due notice of the Motion having been properly provided; and the Court having considered the papers and arguments submitted by counsel; and the Court having overruled any objections to the Motion; and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED in its entirety.
2. The Subpoena that is the subject of the Motion is quashed.
3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

END OF ORDER

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND a California corporation sole, Debtor.	Case No.: _____ United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m. **REQUEST FOR ORAL ARGUMENT**

NOTICE OF HEARING ON LMI'S[1] MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[2]

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

[2] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor") in United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

PLEASE TAKE NOTICE that on April 1, 2024, at 9:30 a.m., or as soon thereafter as counsel may be heard, Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland's (collectively, "London Market Insurers" or "LMI"), shall move ("Motion") this Honorable Court at the United States Courthouse, Martin Luther King, Jr. Federal Building & Courthouse, 50 Walnut Street, Newark, New Jersey 07101, to quash and/or modify the subpoena issued to it by the Official Committee of Unsecured Creditors appointed in the chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor").

The Motion is based upon this Notice, the Motion itself, the memorandum of points and authorities in support of the Motion, the Declaration of Russell W. Roten in support of the Motion, and any and all supplemental papers that may be filed by LMI, the papers on file in the Bankruptcy Case, and on any such arguments or evidence as may be presented during any oral argument that is scheduled on the Motion. Copies of all pleadings and papers filed in the Bankruptcy Case, can be obtained from the website maintained by the Debtor's claims and noticing agent, Kurtzman Carson Consultants LLC, at https://www.kccllc.net/rcbo.

Respectfully submitted,

Dated: March 4, 2024 **DUANE MORRIS LLP**

/s/ Sommer L. Ross
Sommer L. Ross, Esq. (NJ Bar No. 004112005)
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and

Russell W. Roten (to be admitted pro hac vice)
Jeff D. Kahane (to be admitted pro hac vice)
Nathan Reinhardt (to be admitted pro hac vice)
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Counsel for Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND[1], a California corporation sole, Debtor.	Case No.: _____ United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m. **REQUEST FOR ORAL ARGUMENT**

DECLARATION OF RUSSELL W. ROTEN IN SUPPORT OF LMI'S[2] MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[3]

---

[1] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland in United States Bankruptcy Court, Northern District of California, 23-40523 WJL ("Bankruptcy Case").

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

[3] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor") in United States Bankruptcy

I, Russell W. Roten, pursuant to 28 U.S.C. § 1746(e), under penalty of perjury, hereby declare as follows:

1. I am a partner at the firm Duane Morris LLP, attorneys for Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market Insurers" or "LMI"). I am a member of good standing of the Bar of the State of California, and admitted to practice in the United States District Court for the Northern District of California.

2. I have personal knowledge of the facts contained in this declaration, which I submit in support of LMI's *Motion* ("Motion") *to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* ("Committee") appointed in the chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor").

3. A true and correct copy of the transcript for a hearing held by the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court") on November 14, 2023 is attached hereto as **Exhibit A.**

4. A true and correct copy of the subpoena issued by the Committee is attached hereto as **Exhibit B**.

5. A true and correct copy of LMI's Responses and Objections to Subpoena for Rule 2004 Examination is attached hereto **as Exhibit C**.

6. A true and correct copy of the transcript for a hearing held by the

---

Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

Bankruptcy Court on February 12, 2024 is attached hereto as **Exhibit D**.

7. A true and correct copy of the Committee's February 14, 2024 correspondence is attached hereto as **Exhibit E**.

8. A true and correct copy of LMI's February 20, 2024 correspondence is attached hereto as **Exhibit F**.

9. A true and correct copy of the Committee's February 21, 2024 e-mail is attached hereto as **Exhibit G**.

10. As of the filing of this declaration, LMI have not received a further response from the Committee.

11. A true and correct copy of the transcript from *In re Diocese of Camden, New Jersey*, Case No. 20-21257-JNP (Bankr. D.N.J.) is attached hereto as **Exhibit H**.

12. Pursuant to Local Rule 11.2, the matter in controversy is the subject of the Chapter 11 case filed by the Debtor in the United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

13. Attached hereto as **Exhibit I** is a Notice of Core Service List as of February 8, 2024 filed the Debtor in the Bankruptcy Case identifying all parties thereto.

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

Executed this 4th day of March, 2024.

/s/ *Russell W. Roten*
Russell W. Roten

Exhibit A

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)
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(415)434-4484

MATTHEW D. LEE, ESQ.
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For California Insurance Guarantee Association: MICHAEL D. COMPEAN, ESQ.
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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
For Continental Casualty Company:	MARK D. PLEVIN, ESQ. Crowell & Moring LLP 3 Embarcadero Center 26th Floor San Francisco, CA 94111 (415)365-7446
For London Market Insurers:	CLINTON E. CAMERON, ESQ. BRADLEY PUKLIN, ESQ. (Via Zoom) Clyde & Co US LLP 55 West Monroe Street Suite 3000 Chicago, IL 60603 (312)635-6917
For United States Fire Insurance Company:	GEORGE R. CALHOUN, ESQ. (Via Zoom) Ifrah Law 1717 Pennsylvania Avenue, Northwest Suite 650 Washington, DC 20006 (202)524-4140

Court Recorder: P.L. WRIGHT
United States Bankruptcy Court
1300 Clay Street
Oakland, CA 94612

Transcriber: MICHAEL DRAKE
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Proceedings recorded by electronic sound recording; transcript provided by transcription service.

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

-oOo-

(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.

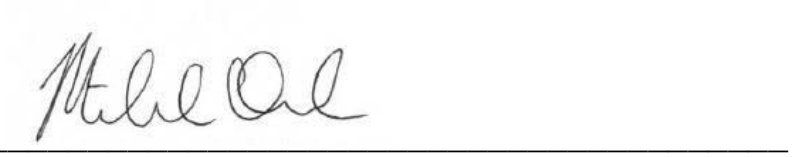
MS. UETZ: Thanks. Bye.

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

eScribers
7227 N. 16th Street, Suite #207
Phoenix, AZ 85020

Date: November 20, 2023

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Exhibit B

UNITED STATES BANKRUPTCY COURT

Northern District of California

Oakland Division

In re THE ROMAN CATHOLIC BISHOP OF OAKLAND,
Debtor

Case No. 23-40523 (WJL)

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Certain Underwriters at Lloyd's, London subscribing severally and not jointly to Slip Nos. CU 1001, K 66034, K 78138, and CU 3061

☐ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE	DATE AND TIME
One Lowenstein Drive Roseland, New Jersey 07068	March 4, 2024 5:00 PM (ET)

The examination will be recorded by this method: _____

☒ *Production:* You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached **Schedule A**.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(c) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: January 19, 2024

CLERK OF COURT

OR

_____ /s/ Gabrielle L. Albert

Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, email address, and telephone number of the attorney representing the Official Committee of Unsecured Creditors, who issues or requests this subpoena, are: Colleen Restel, Esq., One Lowenstein Drive, Roseland, New Jersey 07068, crestel@lowenstein.com, (973) 597-2500.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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

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

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____

_____ on (*date*) _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____

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

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

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

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)

(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

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

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

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

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

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

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

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

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

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

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

(2) Command to Produce Materials or Permit Inspection.

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

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

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

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

(3) Quashing or Modifying a Subpoena.

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

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

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

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

(iv) subjects a person to undue burden.

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

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

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

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

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

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

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) Claiming Privilege or Protection.

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

(i) expressly make the claim; and

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

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

…

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

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

SCHEDULE A

DEFINITIONS

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

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

2. "All" includes the word "any," and "any" includes the word "all."

3. "And" includes the word "or," and "or" includes the word "and."

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

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

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

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

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

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

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

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

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

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

12. "Each" shall mean each, every, any, and all.

13. "Including" means including without limitation.

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

15. "Petition Date" means May 8, 2023.

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

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

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

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

a. Identify the type, title and subject matter of the Document;

b. State the place, date, and manner of preparation of the Document;

c. Identify all authors, addresses, and recipients of the Document, including information about such persons to assess the privilege asserted; and

d. Identify the legal privilege(s) and the factual basis for the claim.

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED

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

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

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

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

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

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

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

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

Exhibit C

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Bankruptcy Case No.: 23-40523 WJL Hon. William J. Lafferty Chapter 11 **CERTAIN UNDERWRITERS AT LLOYD'S LONDON, SUBSCRIBING SEVERALLY AND NOT JOINTLY TO SLIP NOS. CU 1001 AND K 66034 ISSUED TO THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO AND NOS. K 78138 AND CU 3061 ISSUED TO THE ROMAN CATHOLIC BISHOP OF OAKLAND'S RESPONSES AND OBJECTIONS TO SUBPOENA FOR RULE 2004 EXAMINATION**

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

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

GENERAL OBJECTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OBJECTIONS AND RESPONSES TO DOCUMENTS TO BE PRODUCED

DOCUMENTS TO BE PRODUCED NO. 1:

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

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

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

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

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

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

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

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

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

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

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

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

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

LMI further object to the undefined terms "endorsements," "attachments", and "policies" as vague and ambiguous.

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

DOCUMENTS TO BE PRODUCED NO. 2:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED NO. 3:

All coverage position letters, including reservation 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED NO. 4:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED NO. 5:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LMI further object to the undefined terms and phrases "entire contents" and "tendered by" as vague and ambiguous.

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

DOCUMENTS TO BE PRODUCED NO. 6:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED NO. 7:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LMI further object to the undefined terms "sufficient", "current reserves", and "tendered by" as vague and ambiguous.

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

DOCUMENTS TO BE PRODUCED NO. 8:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

against LMI on June 22, 2023.

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

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

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

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Dated: February 5, 2024

By /s/ *Bradley E. Puklin*

Catalina J. Sugayan
Clinton E. Cameron (*pro hac vice*)
Bradley E. Puklin (*pro hac vice*)
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Attorneys *Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland*

PROOF OF SERVICE

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

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

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☒ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent.

☐ by causing the document(s) listed above to be personally delivered to the person(s) at the address(es) set forth below.

☒ by transmitting via electronic mail the document(s) listed above to each of the person(s) as set forth below.

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

BURNS BAIR LLP TIMOTHY W. BURNS (Pro Hac Vice) tburns@burnsbair.com JESSE J. BAIR (Pro Hac Vice) jbair@burnsbair.com 10 East Doty Street, Suite 600 Madison, Wisconsin 53703-3392 Telephone: (608) 286-2808	*Special Insurance Counsel for the Official Committee of Unsecured Creditors*

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

Dated: February 5, 2024

/s/ Betty Luu
Betty Luu

Exhibit D

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
	) Monday, February 12, 2024
Debtor.	)10:00 AM
_____	)
	ADV#: 23-04028
	THE ROMAN CATHOLIC BISHOP OF OAKLAND, ET AL. v. PACIFIC INDEMNITY, ET AL.
	SCHEDULING CONFERENCE
	STATUS CONFERENCE
	STATUS CONFERENCE

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

APPEARANCES (All present by video or telephone):

For the Debtor-Plaintiff: EILEEN R. RIDLEY, ESQ.
ANN MARIE UETZ, ESQ.
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For California Insurance Guarantee Association:	MICHAEL D. COMPEAN, ESQ. FREDERICK G. HALL, ESQ. 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
	JEFFREY D. PROL, ESQ. Lowenstein Sandler LLP One Lowenstein Drive Roseland, NJ 07068 (973)597-2490
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	JUSTINE M. DANIELS, ESQ. O'Melveny & Myers LLP 400 Sout Hope Street 18th Floor Los Angeles, CA 90071 (213)430-7657

For Pacific Indemnity Company:	ALEXANDER E. POTENTE, ESQ. Clyde & Co LLP 150 California Street 15th Floor San Francisco, CA 94111 (415)365-9800
For Certain Underwriters at Lloyd's of London Subscribing:	MARK D. PLEVIN, ESQ. Crowell & Moring LLP 3 Embarcadero Center 26th Floor San Francisco, CA 94111 (415)365-7446
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For American Home Assurance Co.:	AMY P. KLIE, ESQ. Nicolaides Fink Thorpe Michaelides Sullivan LLP 10 South Wacker Drive 21st Floor Chicago, IL 60606 (312)585-1422
For Travelers Casualty & Surety Company:	JOSHUA K. HAEVERNICK, ESQ. Dentons 1999 Harrison Street Suite 1300 Oakland, CA 94612 (415)882-5000
For Westport Insurance Corporation:	JOHN E. BUCHEIT, ESQ. Parker, Hudson, Rainer & Dobbs LLP Two North Riverside Plaza Suite 1850 Chicago, IL 60606 (312)477-3305

For Westport Insurance Corporation:	BLAISE S. CURET, ESQ. Sinnott, Puebla, Campagne & Curet, APLC 2000 Powell Street Suite 830 Emeryville, CA 94608 (415)352-6200
Court Recorder:	D CHAMBERS United States Bankruptcy Court 1300 Clay Street Oakland, CA 94612
Transcriber:	RIVER WOLFE eScribers, LLC 7227 N. 16th Street Suite #207 Phoenix, AZ 85020 (800) 257-0885

Proceedings recorded by electronic sound recording; transcript provided by transcription service.

OAKLAND, CALIFORNIA, MONDAY, FEBRUARY 12, 2024, 10:02 AM

-oOo-

(Call to order of the Court.)

THE CLERK: This is the United States Bankruptcy Court, Northern District of California, the Honorable William J. Lafferty presiding.

THE COURT: Okay. This is Judge Lafferty, and this is a matter that we specially set. Did you call the matter yet?

THE CLERK: No, not yet.

THE COURT: Go ahead and call the matter. Okay.

THE CLERK: Your Honor, this is your special set hearing for 10 o'clock. Line item number 1, Your Honor, the Roman Catholic Bishop of Oakland v. American Home Assurance Company.

THE COURT: Okay. Let's have appearances, please.

MS. UETZ: Good morning, Your Honor. Anne Marie Uetz of Foley & Lardner on behalf of the debtor.

THE COURT: Okay.

MS. RIDLEY: Good morning, Your Honor. Eileen Ridley, Foley & Lardner, on behalf of the debtor, particularly regarding the adversary proceeding.

THE COURT: Okay.

MR. BREALL: Good morning, Your Honor. Joseph Breall.

THE COURT: Anybody else for the -- oh, sorry.

MR. BREALL: No.

THE COURT: I interrupted you. Go ahead.

MR. BREALL: For the debtor for the advocacy proceeding.

THE COURT: Okay. Thank you.

Anybody for the committee? Let's do that next.

MR. BURNS: So good morning, Your Honor. It's Tim Burns for the committee.

THE COURT: Okay. Okay, Ms. Albert. I'm not hearing you. Yeah, you're muted somehow so --

MR. BURNS: Am I muted, Your Honor?

THE COURT: No, I heard you loud and clear. No problem at all.

MR. BURNS: Okay.

THE COURT: But Ms. Albert is muted so if she wants to -- I will assume she was saying that she's here for the committee. Okay.

All right. How about anybody else making an appearance, please?

MS. ALBERT: I believe that (indiscernible) --

THE COURT: There you go. I can hear you. There we go.

MS. ALBERT: Oh, oh, good.

THE COURT: Thank you.

MS. ALBERT: Wonderful.

THE COURT: Okay.

MS. ALBERT: I believe that Jeff Prol is also making an appearance for --

MR. PROL: Good morning, Your Honor. It's Jeff Prol.

THE COURT: Okay.

MR. PROL: I was just admitted to the Zoom --

THE COURT: Okay.

MR. PROL: -- for the committee as well. Thank you.

THE COURT: Okay. You bet. Okay.

All right. Other appearances, please.

MR. PUKLIN: Good morning, Your Honor. Bradley Puklin and Nathan Reinhardt for London Market Insurers.

THE COURT: Okay.

MR. HALL: Good morning, Your Honor. Frederick Hall for the defendant California Insurance Guarantee Association in the adversary proceeding.

THE COURT: Okay. Anybody else?

MS. KLIE: Good morning, Your Honor. Amy Klie --

THE COURT: Who else do we have? Go ahead.

MS. KLIE: -- for American home.

THE COURT: Okay. Thank you.

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

THE COURT: Okay. Thank you.

MR. CURET: Good morning. Blaise Curet for Westport Insurance Corporation.

THE COURT: Okay. Thank you.

Is that it? Any other appearances? Anybody else?

Okay. Well, let me put a couple of ideas out there, and you guys tell me how you want to proceed. We did have some argument last week about the motion for clarification, and I did promise to go back and take a look at the papers and particularly the transcript with respect to a couple of matters that were raised.

We're going to get one more appearance.

MS. DANIELS: Good morning, Your Honor, and apologies. I just got promoted to a panelist. Justine Daniels for the Pacific Insurance (indiscernible).

THE COURT: Okay. Very good. Thank you. Okay.

And Mr. Schiavoni.

MR. SCHIAVONI: Your Honor, I'm sorry. I had a problem with just figuring out how to get the computer on. I apologize.

THE COURT: That's okay. You're not the only one who's joining us a little late, but it's always nice to see you.

MR. SCHIAVONI: Thank you, Your Honor.

THE COURT: Okay. Anybody else? Is that the whole gang?

THE CLERK: One more, Your Honor.

THE COURT: Okay. We're going to start making the

last person to join here buy a round of drinks or something.

MR. POTENTE: Your Honor, this is Alex Potente, also for Pacific Indemnity. Clyde & Co.

THE COURT: Okay. Okay. Very good. Is that everyone?

THE CLERK: That's correct, Your Honor.

THE COURT: Okay. I started to remark before we had a couple of the last folks join us that at the last hearing, I promised to -- although I don't think we have Mr. Rubin here, I promised to respond to some of his comments by going back and looking at the papers and in particular looking again at the transcript, which I had done before. And I'm prepared to give you some thoughts/rule on the clarification motion.

And then the matter that I think we left more obviously untied up with some questions about scheduling with respect to the APs. And in connection with that, I did take a more systemic look at the motions to withdraw the reference and went back then, of course, to the complaints to kind of make sure I was understanding the arguments. And I have some thoughts about that if they would be helpful.

So if you got -- if you have something to suggest to me or there's an update, I'm delighted to hear it. Otherwise I'm inclined to give you thoughts about the motion for clarification, and I'm inclined to give you some thoughts that would track what I would -- what I suspect I would be likely to

write as a comment under my opportunity under our Local Rule 5011, with respect to the motion to withdraw the reference. So I will defer -- why don't I start with Ms. Uetz and see if there's anything she wants to tell me right -- organization or how we proceed?

MS. UETZ: Your Honor, I like the organization that you just suggested. I think that we'll have some comments following Your Honor's statements, but they may inform what I would otherwise say. So if you wouldn't mind proceeding as you've outlined, I think that makes perfect sense.

THE COURT: Yeah, I'm happy to.

MS. UETZ: Thank you.

THE COURT: Well, do we have anybody else from Duane Morris here because they really were the principal --

MR. REINHARDT: That's me, Your Honor. Nate Reinhardt. I'll be Mr. Rubin's eyes and ears, I guess, for this, but anything you say, I'll relay to him as well.

THE COURT: Okay. Okay. All right. Well, let me proceed in two fashions. I think what I heard from Mr. Rubin last week was that the extent the motion for clarification was concerned about matters that were truly matters of privilege, whether they be attorney-client or work product, that that was no longer an issue, that the parties had discussed privilege issues. And I don't know if the parties literally agreed that nothing in the 2004 exam request was meant to obliterate any

privilege, but I can tell you right now, it was not my intent to obliterate any privileges. So to the extent that's an issue that's off the table, that's appropriate for all purposes.

Having said that, I probably made a comment or two about what might be the proper scope of privileges or work product, and I'll circle back to that when I get into what my thinking was in giving the ruling that I believe I gave on November 14th. So number one, I'm glad that privilege issues are being dealt with responsibly by the parties. That's terrific.

To the extent that what Mr. Rubin was telling me was he was genuinely uncertain what my ruling was, I find that very difficult to accept, having read the transcript. We had lengthy argument about the categories that were being requested. I will give you this -- and Mr. Plevin, I think in particular was helpful in focusing us on this particular aspect of the motion. It was arguably, from the insurance company's perspective, a moving target in that the initial request was not exactly the same thing as the request as articulated in the reply brief, where I think Mr. Plevin identified six categories, and the committee, I think, identified basically six categories of documents.

But we certainly moved, I thought quite, adeptly into that discussion, and it was a long standing discussion. And everybody except Mr. Schiavoni got to make their thoughts

known. I'll come back to Mr. Schiavoni's characterization of that in a few minutes, with which I thoroughly disagree. And I'll tell you why.

But what I was trying to articulate through my questions and through my ruling was that I thought there was a difference between a 2004 exam, which is meant to get information about the debtor's assets, liabilities, financial condition, and the matters necessary to administer the case and do what you need to do in the course of a bankruptcy case, and litigation issues, which are going to be dealt with differently in the AP.

And if I was not clear about that, I'm not sure how I could have made myself any clearer. That was a theme throughout my comments and my questions. And that was how I approached the decision that I made at the end of the hearing, which I think is articulated at pages 175 and 176 of the transcript, to not require that there be, at least for now, any production or disclosure of matters having to do with the resolution of claims in prior cases. In my view, that was much more of a sort of a litigation-type posture. I didn't think it was necessary or appropriate to get into that.

I did think that there were three categories that, while I think they might in some ways arguably have been litigation-related rather than 2004-related, and those are, as I said, the current claims files, the reserve working papers,

and the underwriting information. I thought those were all fair game for a discovery because in my view, they were in some ways the mirror image of the claim information. The claim information is one side of the ledger. What the insurance companies are doing about it is the other side of the ledger. So that was my thinking in making that ruling, and I thought it was quite clear.

Where I left a little bit of room for you folks to discuss was being more precise than I probably was being about what those categories mean because you know that better than I do. So what I did say is, please get in a room and talk about these categories so that you're talking about the same thing and that you're defining them the same way and that we can get closure on this. And that was the point of my ruling and that was my ruling. So to the extent there's an argument that it wasn't clear, I simply can't accept that.

So to the extent this is a motion for clarification, I'm going to deny it. I don't think clarification was necessary. And I think the party filing the motion for clarification could simply have done what everybody else did, which was try to get in the same room and talk about these categories. But rather than do that, they up with a motion for clarification, which I just don't think really makes any sense.

To the extent there's an argument that the relevancy concerns were not fully articulated and these materials weren't

relevant, again, for the reasons I set forth during my ruling, I believe they were. And I'll go a little bit further and say something that I think was probably implicit in my ruling, but I'll say it more directly. One cannot survey the scattered history of mediations in these types of cases and come up with the idea that anybody has figured out how to do them perfectly. Far from it. I don't think you can pull any rule from those experiences, as far as I can tell, as to what's the perfect way to get a mediation or get people the information they need.

So I think we need to be sensitive to possibly doing things a little bit differently. And it was my theory that having the insurance companies provide this information was going to help that process and was going to get everybody into the mediation with the optimum amount of information. On the debtor to committee side, that's the claim information produced to the insurers. From the insurers, that is a snapshot of where they are with their evaluations. And in my view, those are simply mirror images of each other. I did not think there was anything necessarily categorically confidential or privileged about that information. To the extent something truly is privileged, I was not intending to obliterate that, and the parties can work through that.

So that was my ruling. I stand by it. I continue to think for those reasons that there was relevancy established, at least for the limited purposes of a 2004 exam, which again,

I'm contrasting with litigation theories. Okay. Litigation is a whole other story, and you're going to get into that in the AP. That is different. So for all those reasons, I'm going to deny the motion for clarification and/or for reconsideration. I will not get into whether it's really a motion for reconsideration. Arguably it isn't, but that's really neither here nor there.

I do want to make one other point. Mr. Schiavoni was perceptive enough, I guess, at the last hearing to attempt to remind me that we had a very long hearing and that at one point he asked to speak and was not permitted to do so. That's true. But when I went back and looked at the transcript, I reminded myself that the reason that that wasn't true was because Mr. Schiavoni had not filed papers with respect to that issue. And I turned to the other side, and I said, do you have any objection to one more person arguing this from the insurers' side? The answer was yes. And I said, okay, I'm sustaining that objection.

So let me just say this and leave it at that. Far from that being a result of everybody being tired or me being arguably discourteous, there was a very good reason why in that instance Mr. Schiavoni didn't add to what Mr. Plevin had already said with great articulation. So that point is -- that's all I want to say about that, and I want to leave it at that.

So I would ask the committee, who I think was the principal responding party with respect to the motion for clarification, to prepare an order that is simply for the reasons stated on the record, the motion is denied. And I would move off to the APs and some thoughts about the withdrawal of the reference.

Anything else?

No? Okay. Would it be -- let me begin this discussion this way. Obviously, a motion to withdraw the reference is not directed to me. I will not decide it. And it would not be appropriate for me to support or oppose it necessarily. I do have this right in our Local Rules to comment on it. And I realized that on the one hand, I don't think we have any opposition papers yet on the motions to withdraw the reference; is that correct?

MS. UETZ: Correct, Your Honor.

THE COURT: Okay. Having said that, there are a couple of -- if it's going to be helpful, there are a couple comments I would make. So if you want to tell me where you are before I say anything, I'm delighted to hear it. If you're ready to hear some thoughts from me, I'm happy to give you them.

MS. UETZ: Your Honor, we'd prefer to hear your thoughts again, just because for the debtor --

THE COURT: Okay.

MS. UETZ: -- it may inform our position --

THE COURT: Okay.

MS. UETZ: -- which we will swiftly share with you, following your thoughts.

THE COURT: Okay. Well, well, look, putting aside brilliant arguments I'm sure I'd see in the oppositions to the motions to withdraw the reference, putting that aside for a second, I have some initial thoughts here. When I have commented on a motion to withdraw the reference, it's usually fallen into one of three categories.

Either somebody is completely mistaken about a jurisdictional point or a judicial power point in the motion to withdraw the reference, and it's my opportunity to tell the district court, respectfully, I think the argument that you're seeing here simply isn't consistent with my understanding of the jurisdictional and judicial power points that I think are -- and efficiency points that are relevant to a motion to withdraw the reference. That's number one.

Number two, there are times such as the NH Investment case, which was somebody reminding me about where there's kind of a funny hook and the motion to withdraw the reference, which is almost always about something that looks like an AP, is connected to a case that is extremely troubled, as was the NH Investment case. So my comment there to the district court was really, you might want to let me dispose of the main case, if

I'm going to, because then that may affect the viability or whatever you want to call it of the APs one way or the other, which in that case had been removed.

The third area where this comes up and where the rubber meets the road here is in those areas where there is, for example, a jury trial right but the subject matter of the AP is something that the bankruptcy courts do day in and day out. The primary example of that for me is fraudulent transfers, where because of the holding in Granfinanciera v. Nordberg, it was the Supreme Court's ruling that fraudulent transfer matters, if they proceeded all the way to trial, could be tried to a jury. And if that's the case, then the ruling was that that would be something that I wouldn't do without consent of the parties.

Having said that, I have adjudicated fraudulent transfer matters even in the face of somebody telling me they would decline to have me either come to jury trial or to the extent they're reserving the right, have me "enter" a "final order" on the theory that the judicial power infirmity in me entering a "final order" goes to the deference that my factual findings would be entitled to, were I to be making them undisputed questions of fact, where I am not making a ruling on a disputed question of fact, as in a 12(b)(6) motion by definition, where it's purely a legal issue, or to be perfectly blunt, even a summary judgment motion, where it's purely a

legal issue and/or there are no disputed issues of fact.

I have taken the position on the United States v. Phattey, which is 943 F.3d 1277, that I have the ability to enter what you might otherwise call a "final order". So while I appreciate the arguments in the motions to withdraw the reference that I lack the judicial power to enter a final order here, that's true in only the most generic and sort of blunderbuss of ways. I think I probably would have the ability here to enter an order on what's basically a 12(b)(6) motion. And the question then becomes, should I. And here is where I think this is a little bit different scenario.

There's, I think, a good reason for me to continue to have before me and potentially rule on those kinds of motions in a subject where, to be perfectly blunt, the bankruptcy courts are making the law every day, fraudulent transfers, and where the district courts, frankly, if they get involved, that's lovely, but the law is emanating from the bankruptcy courts. I think I can be helpful there.

That's just not the case here. I'm delighted to help you folks any way I can with an insurance coverage matter. I have absolutely no special expertise in that at all, period. End of story. There is simply no benefit to having me make a decision about those issues as opposed to having the district court make a decision about those issues, particularly where if there are jury trial rights, and honestly, from what I can

tell, there are likely to be significant and numerous questions of disputed fact, I'm not going to be determining those with anything that looks like a final order.

So my instinct, were I to be writing a recommendation right now, would be to tell the district court something they already know, which is I'm happy to do anything you'd like me to do, anything I can do that would be helpful to the process, but I don't think I'm adding a whole lot here that is otherwise particularly likely to advance the ball. So and I think Judge Corley knows that, so I'm not sure I even need to say that in a recommendation.

But my instinct is that you've now filed motions to withdraw the reference. You had (audio interference) DJ assigned. My instinct would be to -- if you guys want to finish up the briefing, just because that would sort of be fair to have everybody deal with the deadlines you had, that's fine. But my strong instinct would be to let Judge Corley first rule on the motions to withdraw the reference. And if she wants to leave something for me to do, I'm happy to do it. If she doesn't, then I think you just have the whole matter before Judge Corley.

So those are my thoughts. And now I'll turn to Ms. Uetz and listen to anybody else's thoughts or observations.

MS. UETZ: Your Honor, thank you, as always, for providing your comments and your thoughts about this. I think

that, for the debtor's part, when we got the motions in last week and there was a third motion filed Friday, we spent time even on Super Bowl Sunday with San Francisco in the game with our client --

THE COURT: Um-hum.

MS. UETZ: -- trying to assess our position with respect to the motions. It remains a key objective for the debtor to obtain coverage from the insurers. It remains a key objective of the debtor to achieve, if possible, a settlement which would form the basis for a plan of reorganization that this Court could confirm. And it remains a goal of the debtors to include the insurers in that mediation and hoping to get to that goal.

In light of that, Your Honor, the debtor is determined that it will not oppose the relief sought in terms of withdrawing the reference. We think --

THE COURT: Right. Okay.

MS. UETZ: -- estate's resources are much better spent on getting to the merits of the insurance claims and moving swiftly toward mediation. So --

THE COURT: Okay.

MS. UETZ: -- we would intend to file something, certainly with the district court, making plain our position.

THE COURT: Um-hum.

MS. UETZ: Two of the three motions have now been

transferred to the district court --

THE COURT: Okay.

MS. UETZ: -- by my count. The third one --

THE COURT: Okay.

MS. UETZ: -- is still on its way.

THE COURT: Okay.

MS. UETZ: But the debtor intends to swiftly file with the district court its position with respect to those motions. Again, just in light of the goals of the debtor in this Chapter 11 case, as well as the goals of the debtor with respect to its claims against the insurers. And we appreciate the Court's position, comments regarding the motion. It does reinforce and help us as we --

THE COURT: Okay.

MS. UETZ: -- file with the district court. So --

THE COURT: Okay.

MS. UETZ: -- I'm happy to answer any questions, but thank you.

THE COURT: No, I'll make one other comment, and it's a little out of left field, but Ms. Albert may remember this. About a year and a half ago, I had the privilege of addressing the Bar Association of San Francisco Commercial Law and Bankruptcy Section on Bankruptcy Appeals with Judge Corley and with Judge Daniel Bress of the Ninth Circuit. And we got into a lot of scenarios, including motions to withdraw the reference

or everything that I just said. She may not remember it, but she heard me say it once already. So I don't think that any of this is likely to be terribly surprising to Judge Corley.

And if anybody else needs to be heard on the issue, it sounds like with a nonopposition from the debtor, you have a path forward. And I think that's -- my instinct is that's well chosen. It's not for me to say one way or the other, but there you are. If anybody else needs to be heard on that issue, I'm happy to hear you, but it sounds like that's a resolution about to occur.

MS. UETZ: And Your Honor, may I just, if I may, clarify one thing with this Court. I think implicit in this Court's comments, and perhaps even in all of this procedure, is that this Court will not proceed on the pending motions to dismiss? I'm just --

THE COURT: That's the idea. Yeah, I think that's --

MS. UETZ: At least for now?

THE COURT: No, absent Judge Corley asking me to do something that I've not yet been asked to do, yes. I think it is eminently more sensible to have one judge dealing with this and not more than one so --

MS. UETZ: That will help inform our approach and the briefing schedule and such.

THE COURT: Okay. Now -- yeah, I mean, whatever you guys want to agree on to a briefing schedule, I don't know that

that's my business, but I think that's an open question for you folks.

MS. UETZ: Thanks, Your Honor. I have nothing further --

THE COURT: Sure.

MS. UETZ: -- on this right now.

THE COURT: Okay. Anybody else?

MR. PROL: Your Honor, this is Jeff Prol. May I be heard on behalf of the committee briefly?

THE COURT: Yeah. Uh-huh.

MR. PROL: Thank you, Your Honor. We, too, appreciate your comments. That's always very helpful to understand where Your Honor is coming from as we develop our positions. We've discussed the motions to withdraw the reference with the committee. And just to take Your Honor back a bit, I think when we started this case, we had indicated to Your Honor that it was really important to the committee to get through this case in an expeditious manner.

THE COURT: Sure.

MR. PROL: And to that end, we supported the debtor's goal of bringing this insurance adversary proceeding in the hopes that we'd be able to file motions for partial summary judgment on the issues --

THE COURT: Um-hum.

MR. PROL: -- that we think were important to the case

and to driving the case forward. But here we are, more than seven months into this case, and we haven't even joined any issue in the adversary proceeding. And so in the interest of moving the case forward, we're not as concerned about where these issues are decided --

THE COURT: Sure.

MR. PROL: -- or about how and when they'll be decided.

THE COURT: Um-hum.

MR. PROL: And so we agree with the debtor that it's not judicious to expend resources fighting this motion.

THE COURT: Sure. Sure.

MR. PROL: And so the committee has also determined that it will not object to the motions to withdraw the reference either, and we hope that they'll move forward expeditiously in the district court --

THE COURT: Okay.

MR. PROL: -- if the motions are granted.

THE COURT: Okay. Very good. Thank you so much. Anybody else need to be heard?

MR. SCHIAVONI: Yes, Your Honor. Tanc Schiavoni. Just two things. The first is a point of just guidance from Your Honor. Do you want us to forward the transcript of today or -- I kind of take the comments you made were meant sort of you -- I'm not sure, that it was sort of in the way of

guidance. And it's appreciated. And this is not a transcript we would pass on --

THE COURT: Um-hum.

MR. SCHIAVONI: -- unless you asked us to or unless you said that was fine. I'm not quite certain about your own practice here, whether you would typically write a short paragraph or if you're telling us that you're not going to write anything and just leave it or if you want us to send the transcript or -- but I'm not going to send the transcript, to be clear, unless Your Honor -- because I think Your Honor (indiscernible) --

THE COURT: No, yeah. Well, let me restate -- let me restate where I was coming from and then see where you think this can be helpful. This is not a situation where I think that -- I want this to come out the right way. I don't need to explain anything to the district court here. There is no aspect of this that will not be a hundred percent clear to Judge Corley. There is no aspect of this case, as opposed to the APs, that requires somebody to think about staging or choreography or anything else you want to call it. That I think she will understand thoroughly, and we can do what we do in these situations with you keeping both courts apprised of progress. And we'll go from there.

There is nothing in the subject matter of the AP that implicates my particular expertise in such a way that I would

be suggesting to Judge Corley that I need to be involved in this. And that leaves me with a -- were I to file a comment, it would be, I'm delighted to do whatever I can do to help the process and whatever Judge Corley asks me to do. I mean, I don't know that -- I think she already knows that, so I don't know that a separate comment is necessary. I would have no problem with you sharing the transcript with her if you think it would be helpful. But I think everything that I'm saying here, she already knows, and if it is of any aid or assistance, it's fine with me.

Anybody have a problem with any of that? I mean, I don't know that filing something is really going to be all that -- it's not going to add much.

MR. SCHIAVONI: Your Honor, I'm inclined to think it's probably unnecessary unless she asks us what (indiscernible) --

THE COURT: No, if she does, then by all means, I would give her a written response. But I mean, there's just so little -- there's just almost no there there to what I'm saying. It's just what goes with the territory. I'm at her and your disposal, okay, which is always the case.

MR. SCHIAVONI: Thank you, Your Honor. Just --

THE COURT: Sure.

MR. SCHIAVONI: -- the other point, Your Honor, with the adversary going forward, at least to the motion to dismiss, I just wanted to sort of flag for you that it puts us now in

real peril with the order that limits our experts from not knowing who the claimants are. And they're on a different footing from the experts of the committee and the debtor, especially if there's somehow going to be bringing summary judgment motions promptly. We're going to need to get a motion -- if we can't reach agreement with them over the next two or three days on this, we're going to need to get a motion in front of you pronto and maybe ask for it to be heard on shortened notice to -- I think, Your Honor, when you entered the expert order limiting the experts to not knowing who the claimants were, it was without -- it was without prejudice to (indiscernible).

THE COURT: Yep. Yeah.

MR. SCHIAVONI: I mean, so this sort of puts a real urgency on me to get that -- to get that issue resolved. So I'm going to work first with the committee and the debtor to meet and confer. Hopefully, a motion won't be necessary, but otherwise, we're going to try to get a motion on as quickly as we can draft it.

THE COURT: Well, look, that's fine. You can ask me for an order shortening time. Maybe I'm just -- maybe my experience with how these things play out at the district court is different from yours, but it'll be done on Judge Corley's time frame, and I'm not sure it's -- well, I mean, I'm not sure that expedition is required on this issue, but I'll certainly

hear you when you file the motion. Okay.

MR. SCHIAVONI: Thank you, Your Honor, very much.

THE COURT: You're welcome.

Anybody else?

MS. UETZ: Your Honor, if I may, I forgot to just mention, and again, just to be clear on our position, while we don't oppose the -- we won't oppose the relief sought to withdraw the reference, we view that position as not affecting other orders of this Court in the Chapter 11 case. And in fact --

THE COURT: Yeah.

MS. UETZ: -- I guess Mr. Schiavoni maybe just highlighted that for all of us as well. So I --

THE COURT: Okay.

MS. UETZ: -- just wanted to mention that.

THE COURT: All right. I appreciate it. Thank you.

MS. UETZ: Thank you.

THE COURT: Okay. Anything else?

No? Okay.

MS. UETZ: Nothing from the debtor, Your Honor.

MR. BREALL: Your Honor --

THE COURT: All right. Yes.

MR. BREALL: When we were in front of you on Wednesday, we were at our adversary status conference, and we talked about the fact that there was a motion to dismiss in the

American Home case.

THE COURT: Um-hum.

MR. BREALL: And that was set for the 27th and --

THE COURT: Right.

MR. BREALL: -- then this all came up about scheduling and other issues.

THE COURT: Yep.

MR. BREALL: Assuming we're going to keep to the schedule we had on the 27th for that one motion to dismiss, unless --

THE COURT: Well, I'm not going to hear it. Okay.

MR. BREALL: There is no -- that case is still in the court.

THE COURT: I'm not going to hear it then. I mean, unless I'm wrong, my sense is that there will be motions -- if there is not already a motion to withdraw the reference on that, there will be one; is that right or wrong?

MR. BREALL: I don't know but --

THE COURT: Well, because I -- okay, but --

MS. KLIE: Your Honor, yeah --

THE COURT: -- if I had a wrong impression of that, somebody correct me.

MS. KLIE: Yeah. No, we'll certainly be consulting with our client and advising them of what's happened at today's hearing. I can't say right now that I have authority to file

anything but --

THE COURT: Okay. All right. We're talking about March 27, right? Correct?

MR. BREALL: Correct.

THE COURT: Okay. Well, look, I mean, all right. I'm not going to move anything now, but to the extent that somebody moves to withdraw the reference with respect to that AP, it's going to be the same -- I'm going to be going in the same direction. Okay.

MR. BREALL: Understood.

THE COURT: Okay. Thank you.

Anything else?

MS. UETZ: Nothing for the debtor, Your Honor. Thank you.

THE COURT: Okay. All right. Thanks, everybody.

(Whereupon these proceedings were concluded at 10:38 AM)

I N D E X

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.

/s/ RIVER WOLFE, CDLT-265

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Date: February 14, 2024

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Exhibit E

Lowenstein Sandler

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February 14, 2024

VIA EMAIL

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

Counsel,

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

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

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

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

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

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

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

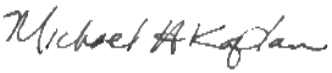
Fourth, LMI's contention that it need not produce documents that are within its possession, custody, or control because those documents can potentially be obtained from another source violates the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 45. LMI cited no case law for the proposition that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

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

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

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

Yours truly,



Michael A. Kaplan

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

Exhibit F

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ALLIANCES IN MEXICO

February 20, 2024

VIA E-MAIL

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

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

Dear Counsel:

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

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

First, as discussed at the February 7, 2024, hearing, LMI will seek an appeal of the Court's order allowing the Rule 2004 discovery and a stay pending the appeal. On this ground, and the further grounds outlined below, LMI will not revise their Responses or Objections to Request Nos. 5, 6[1], 7, and 8.

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

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

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

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

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

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

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

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

Thank you.

Very truly yours,

/s/ Russell Roten
Russell Webb Roten

RWR

Exhibit G

Luu, Betty

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

All

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

Michael

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

Counsel,

Please see attached correspondence. Thank you.

Betty Luu
Associate

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Exhibit H

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY (CAMDEN)

IN RE:	)	Bankruptcy No. 20-21257-JNP
	)	Chapter 11
THE DIOCESE OF CAMDEN, NEW JERSEY,	)	
Debtor.	)	
THE DIOCESE OF CAMDEN, NEW JERSEY,	)	Adversary No. 20-01573
Plaintiff,	)	
vs.	)	
INSURANCE COMPANY OF AMERICA, now known as C, et al,	)	Camden, New Jersey
	)	February 18, 2022
Defendants.	)	2:28 p.m.

TRANSCRIPT OF DECISION
BEFORE THE HONORABLE JERROLD N. POSLUSNY, JR.
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor/ Plaintiff:
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ARTHUR J. ABRAMOWITZ, ESQUIRE
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APPEARANCES (Continued):

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For the Trade Committee:	JOHN S. MAIRO, ESQUIRE PORZIO, BROMBERG & NEWMAN 100 Southgate Parkway P.O. Box 1997 Morristown, NJ 07962-1997
For Underwriters:	RUSSELL WEBB ROTEN, ESQUIRE SOMMER L. ROSS, ESQUIRE DUANE, MORRIS, LLP 30 South 17th Street Philadelphia, PA 19103-4196
For Lexington Ins. Co. & Granite State Ins. Co.:	JOSEPH SCHWARTZ, ESQUIRE RIKER, DANZIG, SCHERER HYLAND & PERRETTI, LLP 50 West State Street, Suite 1010 Trenton, NJ 08608-1220
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I N D E X

(The following took place in open court at 2:28 p.m.)

THE COURT: All right. This is Diocese of Camden. It's case 20-21257.

This -- this relates to discovery disputes between the insurers and the Tort Committee. Those discovery disputes arise out of the Debtor's motion to settle -- motion to approve a settlement with insurers.

The Tort Committee has stated that it will be objecting to that settlement and has sent discovery demands to the Debtor, other Catholic entities, and insurers.

The parties have submitted, I believe mostly on the docket, but I think a couple only to chambers, letters related to those discovery disputes.

The parties have also submitted opposing proposed scheduling orders relating to discovery deadlines and filing of certain -- certain pleadings.

The Court ordered, as I said, first, for the parties to meet and confer related to the discovery issues and that meet and confer, as I understand it, led to the Committee, as well as the Debtor and the other Catholic entities, to reach an agreement related to discovery, but not as to scheduling.

The Committee and the insurers were not able to resolve their issues. The Committee and the insurers -- and the insurers submitted joint letters, but did send several

letters to the Court related to these disputes and presented argument related to the disputes at a weekly status conference, as well as at the Court's omnibus hearing -- hearing date that was February 9th. I'm considering those letters effectively as competing motions for a protective order or to compel production.

Based upon -- based upon the Committee's letter of February 7th there appear to be approximately nine areas of dispute, some of which overlap.

So going through those items from the Committee's letter, first, the Committee seeks information related to the IVCP settlements.

The insurers state that they did not participate in the IVCP program and, therefore, have no information responsive to those requests. If that is the case, the insurers can state as much in any discovery responses and the issue should be resolved.

Second, the Committee requests information related to the negotiations that were held, as well as the drafting of the settlement document, between the Debtor and the insurers. The Committee argues that this information is relevant and not privileged.

The insurers argue that the mediation privilege, FRE 408, and several other privileges, apply. I agree with both parties to an extent.

Initially, when reviewing this issue I looked at the mediation order that I entered in this case, which is Docket Number 640. The mediation order does not include any specific language related to mediation privilege, nor does it expressly or explicitly incorporate Local Rule 9019-2 which discusses mediation of adversary proceedings.

However, paragraph two of the mediation -- mediation order does provide that the mediator was appointed for the purpose -- I'm sorry, was appointed "for the purpose of globally mediating any and all issues arising in the bankruptcy case and associated adversary proceedings." And that's paragraph two from the mediation order.

Since many of the issues being mediated are directly related to pending adversary proceedings, including, as I understand it, the settlement between the Debtor and the insurers, I conclude that Local Rule 9019-2 does apply to the mediation that was held. Local Rule 9019-2 provides that any mediation communication, written or verbal, is not subject to discovery or admissible in a court proceeding. That's 9019-2(m).

Furthermore, except for an inapplicable exception, Local Rule 9019-2 also prohibits a party or participant in a mediation from disclosing to any entity or person who is not a participant in the mediation any verbal or written communications concerning the mediation, including any

document, report or other writing presented or used solely in connection with the mediation. Again, that is -- and that is unless all of the participants at the mediation and the mediator agree. That's 9019-2(k).

It's my understanding that the Committee participated in few, if any, of the mediation sessions that related to the insurers. Therefore, for the purposes of considering the local rule I conclude that the Committee was not a participant in those sessions.

Moreover, there's nothing here to suggest or has been presented to me that suggests that the mediator, Judge Linares, has consented to release of any information as required by the rule.

In In Re Tribune Company, which is at 2011 West Law 386827, Bankruptcy decision, District of Delaware, 2011, the Court considered similar issues related to multi-party mediation.

In Tribune the Court noted the strong policy in support of a mediation privilege because it encourages party -- parties and counsel to have frank discussions and to "lay their cards on the table so that a neutral assessment of relative strengths and weaknesses of their opposing positions could be made." And that's Tribune Company at page eight and it's quoting Sheldone versus Pennsylvania Turnpike Commission, 104 F. Supp. 2nd, 511, Western District of Pennsylvania, in

2000.

The Court in Tribune further noted that without such privilege parties may not agree to mediate and even if they did parties would be encouraged to be cautious and "tight lipped" which would greatly limit the effectiveness of mediation and cut against the public policy of encouraging settlements. That's from Tribune, again, quoting the Sheldone opinion.

In Sandoz versus United Therapeutic, which is 2021 West Law 5122069, District of New Jersey opinion, 2021, Judge Linares stated that the general rule is that documents prepared for and presented to a mediator are confidential and protected from disclosure.

Part of the Sandoz decision incorporated the District Court's Local Rule 301-(e)(5) which states no statements made or documents prepared for mediation shall be disclosed in any subsequent proceeding or construed as an -- as an admission.

Furthermore, documents prepared after the mediation may still be privileged if they were prepared for or in furtherance of the mediation, provided they have a clear nexus to the mediation which includes drafts of settlement proposals agreed upon at the mediation. That's from Sandoz at page three.

The parameters from Sandoz are appropriate in this

case, so I'm going to allow discovery of any discussions or documents exchanged that were not part of the mediation or do not have a clear nexus to the mediation.

In addition, I'm going to allow the Committee discovery related to the general information of the -- of the mediation such as days in which the mediation sessions occurred, the length of those sessions, and who attended those sessions.

The Committee further argues that it should be entitled to drafts of the settlement agreement and relies on the Tribune case noting that the drafts should be discoverable at least until the Debtor and insurers agree to material terms.

However, I find the decision in Sandoz to be more applicable, so the Committee will not be entitled to discover the drafts of the settlement agreements. And that was discussed in Sandoz at page three.

The Committee's third and fourth points are similar. The Committee seeks information related to the insurer's analysis of the proposed settlement and their evaluation of abuse claims.

The Committee argues that documents stating the -- stating the insurers resolve the abuse claims well below the reserve set for such claims will confirm that the Debtor is settling with the insurers for well below the policy's actual

and reasonable value.

The insurers, on the other hand, argue that the requested documents are not relevant -- relevant to the Court's analysis of the Martin factors.

I agree with the insurers. Any documents reflecting the insurer's analysis of the proposed settlement and valuation of claims is not relevant. The insurers opinions of their litigation risks or how they should set reserves for potential claims has no bearing on the factors I will consider in a Martin analysis.

Moreover, it appears from the Committee's letter that the insurers will adopt the Debtor's valuation of abuse claims. If that's -- if that's the case it resolves the issue in and of itself.

Next the Committee asks for information related to claim slotting and defenses insurers may assert.

It appears that the London market insurers have already agreed to provide this information and I do believe this information may be relevant to one or more of the Martin factors, so this information will be discoverable and should be provided subject to any other privileges that the insurers may assert.

The Committee seeks information related to other sex abuse claims, presumably from other cases that have arisen in the last 30 years. The Committee argues that this information

is relevant to the treatment and valuation of prior abuse claims and the Debtor's knowledge of the same.

The insurers object arguing the information is not relevant. I see no relevance to the claims being paid from separate cases in separate states where the payments were made under separate policies over a period of 30 years.

And I do not see how this will have any bearing on the Martin factors in this particular case and, therefore, will not require the insurers to produce this information.

The final three categories of requests relate to underwriting the insurer's reserves, potential reinsurance and claims investigation. These categories are all similar in the sense that the Committee is asking the Court to open a door to the insurance -- the insurer's business decisions.

As I previously mentioned, the insurer's opinions on litigation risks and how they set their reserves are decisions that will not impact a Martin analysis on whether this is a deal -- a deal that the Debtor should enter into.

Similarly, an insurer's decision to obtain reinsurance, their underwriting decisions, and their claims investigation are all based on similar judgments.

The Third Circuit in Mirarchi versus Seneca Specialty, which is at 564 F. App'x 652, faced a similar issue. There the appellant challenged the District Court's ruling that an insurer's loss reserve estimates were

irrelevant to the current claims and thus not discoverable.

The Third Circuit adopted the District Court's rational finding that a loss reserve is an insurer's own estimate of the amount which the insurer could be required to pay in a given claim. That's from the Mirarchi decision at 655. Both Courts deem the insurer's own opinion of their loss reserves irrelevant to the claim itself.

The final three categories of the Committee's discovery requests are there -- are similar to the requests made in Mirarchi and I do not see how the insurer's business judgment is relevant to a 9019 -- to this 9019 settlement. For those reasons, I will not require production of the underwriting of the insurer's reserves, potential reinsurance.

Lastly, everything that I deem discoverable in this decision is subject to objections of the insurers related to attorney/client work product or other privileges. If the insurers have already provided the requested materials that I'm ordering be provided they may state as much and identify when and where that information was produced.

Another issue that was between the parties, as I noted at the outset of this decision, is in regards to the scheduling of the hearing for this -- for the settlement motion.

I've reviewed and considered the parties' proposals. I've also reviewed my calendar and I'm going to set the

following deadlines. I reached the decision on these deadlines recognizing that some of the proposed deadlines that were in the parties' letters have passed. I also realize that some of these deadlines are short, but I understand that much of this discovery has already been provided.

And I note that the Debtor's and Committee's experts have both been in place and had access to many, if not all, of these important documents, for months.

Nevertheless, I encourage the parties to work together to resolve scheduling issues related to the discovery deadlines and I will consider an extension of the deadlines if cause is shown.

The following dates will be the discovery deadlines.

February 25th will be the deadline for any responses to the motion, that is either in favor of the motion or objecting to it.

March 4th will be deadline for fact discovery to conclude.

March 9th, the Committee may serve its expert report with documents that it considered or relied upon to the extent those documents haven't been provided.

March 16th, the Debtor or the insurers may present any expert reports they -- they choose to or may use, along with all documents considered or relied upon to the extent they have not been provided.

March 23rd, expert discovery will conclude.

Any discovery disputes should first be addressed by a meet and confer between the parties.

Then, if related to production of documents or responses to interrogatory, by filing of the appropriate pleadings and sending a courtesy copy of such pleadings to the chamber's email address.

If they're disputes related to scheduling the parties may submit letters. I will schedule a hearing, if I need one, as my schedule permits, but -- but will do so as quickly as possible.

March 30th, the parties shall submit their trial briefs, motions in limine, motions to preclude or any other pretrial type motions.

The parties are also to exchange exhibits. And I'm going to direct the parties to prepare a joint list of -- a joint list of exhibits and to highlight open objections to any of the exhibits where there are such objections.

April 4th at 5:00 p.m., the Debtor shall submit the exhibits to the chamber's email address and any responses -- any responses to motions in limine, or to preclude, or any other pretrial motions, those responses must be filed as well on April 4th.

I'm going to begin the evidentiary hearing on April 6th at 10:00 a.m.

I have set aside my calendar for April 6th through April 8th, but note I am not supposed to, and do not intend to, conduct an entire mini trial related to the settlement.

Finally, I am aware of the letter that Mr. Prol filed earlier this morning raising potential issues related to proper service of the motion and due process.

I'm going to ask any party that wants to file a response you may do so no later than February 22nd at noon and I will consider the due process issues at the hearing on February 23rd.

If I find that there are issues with due process the schedule that I just outlined will have to be adjusted to provide for adequate notice to all parties.

(Proceedings concluded at 2:44 p.m.)

* * *

C E R T I F I C A T I O N

I, Joan Pace, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter heard on February 18, 2022 from 2:28 p.m. to 2:44 p.m.

/s/Joan Pace February 28, 2022

JOAN PACE

DIANA DOMAN TRANSCRIBING, LLC

Exhibit I

FOLEY & LARDNER LLP
Jeffrey R. Blease (CA Bar. No. 134933)
Tel: (617) 226-3155; jblease@foley.com
Thomas F. Carlucci (CA Bar No. 135767)
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555 California Street, Suite 1700
San Francisco, CA 94104-1520

Counsel for the Debtor
and Debtor in Possession

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No. 23-40523 WJL Chapter 11 **NOTICE OF CORE SERVICE LIST AS OF FEBRUARY 8, 2024** Judge: Hon. William J. Lafferty

Pursuant to paragraph 5 of the *Final Order Authorizing and Approving Special Noticing and Confidentiality Procedures,* entered on July 25, 2023 [Docket No. 292], attached hereto as **Exhibit 1** is the updated Core Service List for the above-referenced case as of February 8, 2024.

///

DATED: February 8, 2024

FOLEY & LARDNER LLP
Jeffrey R. Blease
Thomas F. Carlucci
Shane J. Moses
Emil P. Khatchatourian
Ann Marie Uetz
Matthew D. Lee

/s/ Shane J. Moses
SHANE J. MOSES

Counsel for The Debtor
And Debtor in Possession

EXHIBIT 1

Core Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip	Phone	Fax	Email
Counsel to the RCC	Allen, Glaessner, Hazelwood and Werth, LLP	Peter Glaessner	180 Montgomery Street, Suite 1200		San Francisco	CA	94104		415-813-2045	pglaessner@aghwlaw.com
Counsel for Salesian Society and Franciscan Friars California, Inc.	Binder & Malter LLP	Robert G. Harris	2775 Park Avenue		Santa Clara	CA	95050	408-295-1700	408-295-1531	Rob@BinderMalter.com
Counsel for the Official Committee of Unsecured Creditors	Burns Bair LLP	Timothy W. Burns and Jesse J. Bair	10 E. Doty Street, Suite 600		Madison	WI	53703-3392	608-286-2302		tburns@burnsbair.com; jbair@burnsbair.com
Office of the California Attorney General	California Attorney General	Attn Bankruptcy Department	1300 I St., Ste. 1740		Sacramento	CA	95814-2919	916-445-9555		
Counsel to Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland	Clyde & Co US LLP	Catalina J. Sugayan	30 S Wacker Dr Suite 2600		Chicago	IL	60606	312-635-6917		Catalina.Sugayan@clydeco.us
Counsel to Westport Insurance Corporation, f/k/a Employers Reinsurance Corporation	Craig & Winkelman LLP	Attn Robin D. Craig	2001 Addison Street, Suite 300		Berkeley	CA	94704	510-549-3330		rcraig@craig-winkelman.com
Counsel to Continental Casualty Company	Crowell & Moring LLP	Mark D. Plevin	Three Embarcadero Center, 26th Fl		San Francisco	CA	94111	415-986-2800	415-986-2827	mplevin@crowell.com
Counsel to Continental Casualty Company	Crowell & Moring LLP	Miranda H. Turner, Jordan A. Hess	1001 Pennsylvania Ave, N.W.		Washington	DC	20004	202-624-2500	202-628-5116	mturner@crowell.com; Jhess@crowell.com
Interested Party	Davey L. Turner		215 N. San Joaquin St.		Stockton	CA	95202			dturner@drivonlaw.com
Counsel to Travelers Indemnity Company	Dentons US LLP	Patrick C. Maxcy and John Grossbart	233 South Wacker Drive, Suite 5900		Chicago	IL	60606	312-876-8000	312-876-7934	patrick.maxcy@dentons.com; john.grossbart@dentons.com
Counsel to Travelers Indemnity Company	Dentons US LLP		1999 Harrison Street, Suite 1300		Oakland	CA	94612	415-882-5000	415-882-0300	
Counsel to Certain Underwriters at Lloyd's of London Subscribing to Slip Nos. CU 1001, K66034, K78138 and CU 3061	Duane Morris LLP	Jeff D. Kahane, Andrew Mina, Russell W. Roten, Nathan Reinhardt and Betty Luu	865 S. Figueroa Street, Suite 3100		Los Angeles	CA	90017-5450	213- 689-7400	213-689-7401	JKahane@duanemorris.com; AMina@duanemorris.com; RWRoten@duanemorris.com; NReinhardt@duanemorris.com; BLuu@duanemorris.com
Interested Party	Elizabeth Otis		2089 Meppen Dr.		Idaho Falls	ID	83401			emotis2000@gmail.com
Counsel for the Debtor and Debtor in Possession	Foley & Lardner LLP	Jeffrey R. Blease, Thomas F. Carlucci, Shane J. Moses, Ann Marie Uetz, Matthew D. Lee , Emil Khatchatourian	555 California Street, Suite 1700		San Francisco	CA	94104-1520	415-434-4484	415-434-4507	jblease@foley.com; tcarlucci@foley.com; smoses@foley.com; auetz@foley.com; mdlee@foley.com; ekhatchatourian@foley.com
Counsel for Salesians Society	Jackson Lewis	Leila Nourani, Esq.	725 South Figueroa Street, Suite 2500		Los Angeles	CA	90017	213-630-8218		Leila.Nourani@jacksonlewis.com
Interested Party	James Mulvaney		4724 Mira Vista Dr		Castro Valley	CA	94546			ohmyeye@pacbell.net
Interested Party	Jeffrey Jackson		627 Crane Ave		Foster City	CA	94404-1310			JLJackson53@gmail.com
Counsel to the Unsecured Creditors' Committee	Keller Benvenutti Kim LLP	Tobias S. Keller, Jane Kim, Gabrielle L. Albert	650 California St, Suite 1900		San Francisco	CA	94108	415-496-6723		tkeller@kbkllp.com; jkim@kbkllp.com; galbert@kbkllp.com
Claims and Noticing Agent	Kurtzman Carson Consultants LLC	Andres Estrada	222 N Pacific Coast Highway Suite 300		El Segundo	CA	90245	310-823-9000		RCBOInfo@kccllc.com
Interested Party	Lee and Associates - San Francisco	David Klein	242 California Street		San Francisco	CA	94011			dklein@lee-associates.com
Interested Party	Lisa Horn Chainey		5866 McBryde Ave		Richmond	CA	94805			lisachainey@sbcglobal.net
Counsel to the Unsecured Creditors' Committee	Lowenstein Sandler LLP	Jeffrey Cohen, Jeffrey D. Prol, Lynda A. Bennett, Michael A. Kaplan, Eric Jesse, Brent Weisenberg, Colleen M. Restel	One Lowenstein Drive		Roseland	NJ	07068	973-597-2500	973-597-2400	jcohen@lowenstein.com; jprol@lowenstein.com; lbennett@lowenstein.com; mkaplan@lowenstein.com; ejesse@lowenstein.com; bweisenberg@lowenstein.com; crestel@lowenstein.com
Counsel to the Roman Catholic Bishop of Fresno	McCormick, Barstow, Sheppard, Wayte & Carruth LLP	Hagop T. Bedoyan	7647 North Fresno Street		Fresno	CA	93720	559-433-1300		hagop.bedoyan@mccormickbarstow.com
Counsel to Roman Catholic Cemeteries of the Diocese of Oakland	Norton Rose Fulbright US LLP	Rebecca Winthrop and Scott Kortmeyer	555 South Flower Street, 41st Floor		Los Angeles	CA	90071	213-892-9200; 213-892-9494		rebecca.winthrop@nortonrosefulbright.com; scott.kortmeyer@nortonrosefulbright.com
Counsel to Roman Catholic Cemeteries of the Diocese of Oakland	Norton Rose Fulbright US LLP	Ryan E. Manns	2200 Ross Ave, Ste. 3600		Dallas	TX	75201-7932	241-855-8000; 241-855-8200		ryan.manns@nortonrosefulbright.com
Office of the United States Trustee for Region 17	Office of The United States Trustee	Greg Powell, Jason Blumberg	450 Golden Gate Avenue, 5th Floor	Suite #05-0153	San Francisco	CA	94102	415-705-3333	415-705-3379	Greg.Powell@usdoj.gov; jason.blumberg@usdoj.gov
Counsel to Tracy Hope Davis	Office of the United States Trustee for Region 17	Office of The United States Trustee	Attn Jason Blumberg and Trevor R. Fehr	501 I Street, Suite 7-500	Sacramento	CA	95814			Jason.blumberg@usdoj.gov; Trevor.Fehr@usdoj.gov
Counsel to Tracy Hope Davis	Office of the United States Trustee for Region 17	Office of The United States Trustee	Attn Phillip J. Shine	280 South First Street, Rm. 268	San Jose	CA	95113			phillip.shine@usdoj.gov
Counsel to Westport Insurance Corporation, f/k/a Employers Reinsurance Corporation	Parker, Hudson, Rainer & Dobbs LLP	Attn Harris B. Winsberg, Matthew M. Weiss, Matthew G. Roberts, R. David Gallo	303 Peachtree St NE, Suite 3600		Atlanta	GA	30308	404-523-5300	404-522-8409	hwinsberg@phrd.com; mweiss@phrd.com; mroberts@phrd.com; dgallo@phrd.com
Counsel to Westport Insurance Corporation, f/k/a Employers Reinsurance Corporation	Parker, Hudson, Rainer & Dobbs LLP	Attn Todd Jacobs and John E. Bucheit	Two N. Riverside Plaza, Suite 1850		Chicago	IL	60606	312-477-3306 - Todd; 312-477-3305 - John		tjacobs@phrd.com; jbucheit@phrd.com
Interested Party	Ransome Company		1933 Williams Street		San Leandro	CA	94577			mfeissa@ransomeco.com
Interested Party	Romanucci & Blandin Law	Valerie Letko	321 N. Clark St. Ste. 900		Chicago	IL	60610			

Core Service List

Description	CreditorName	CreditorNoticeName	Address1	Address2	City	State	Zip	Phone	Fax	Email
Interested Party	Shalom Center, Inc.		PO Box 1148		Splendora	TX	77372			dkidd@shalomcenterinc.org
Counsel to Westport Insurance Corporation, f/k/a Employers Reinsurance Corporation	Sinnott, Puebla, Campagne & Curet, APLC	Attn Blaise S. Curet	2000 Powell Street, Suite 830		Emeryville	CA	94608	415-352-6200	415-352-6224	bcuret@spcclaw.com
Counsel to Emma Macias	Sternberg Law Group	Joshua L Sternberg	8605 Santa Monica Blvd., Suite #81823		West Hollywood	CA	90069-4109	310-270-4343		js@sternberglawgroup.com
Interested Party	Suizi Lin, Richard Simons		6589 Bellhurst Lane		Castro Valley	CA	94552			rick@fjslaw.com; slin@fjslaw.com
Debtor	The Roman Catholic Bishop of Oakland	Paul Bongiovanni	2121 Harrison Street, Suite 100		Oakland	CA	94612	510-893-4711	510-893-0945	PBongiovanni@oakdiocese.org
Interested Party	Thomas Duong Binh-Minh		3300 Narvaez Ave SPC 50		San Jose	CA	95136			tomasminh51@gmail.com
Interested Party	Waters, Kraus & Paul	Susan Ulrich, Esq.	11601 Wilshire Boulevard, Suite 1900		Los Angeles	CA	90025			sulrich@waterskraus.com

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, a California corporation sole, Debtor.	Case No.: _____ United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m. **REQUEST FOR ORAL ARGUMENT**

LMI'S[1] BRIEF IN SUPPORT OF MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[2]

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

[2] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland in the United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

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Certain Underwriters at Lloyd's, London, subscribing severally and not jointly Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market Insurers" or "LMI"), respectfully move this Court ("Motion") to modify the subpoena ("Subpoena") issued to it by Official Committee of Unsecured Creditors' ("Committee") appointed in the chapter 11 case filed by The Roman Catholic Bishop of Oakland, which is pending in the United States Bankruptcy Court, Northern District of California ("Bankruptcy Court") . In support of this Motion, LMI respectfully state as follows:

I. PRELIMINARY STATEMENT

LMI move, pursuant to Federal Rule of Civil Procedure 45, for an order quashing and/or modifying the Subpoena issued by the Committee. The Subpoena seeks improper discovery of information protected by the attorney client privilege, work product doctrine, litigation privilege, trade secret confidential communication privilege, and subjects LMI to undue burden. Accordingly, the Court should grant the Motion.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. The Bankruptcy Case

On May 8, 2023, The Roman Catholic Bishop of Oakland ("Debtor") filed a voluntary chapter 11 petition ("Bankruptcy Case") for relief under Title 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of

California ("Bankruptcy Court")[3] because following the enactment of recent legislation[4], Debtor "has neither the financial means or practical ability to litigate all of the abuse claims [("Abuse Claims")] in state court…[and] will pursue a plan of reorganization that will fairly and equitably compensate abuse survivors.."[5] "As of May 4, 2023, there were approximately 332 separate, active lawsuits or mediation demands pending against the Debtor filed by plaintiffs alleging sexual abuse by clergy or others associated with the Debtor."[6]

On May 23, 2023, the Office of the United States Trustee for the Northern District of California appointed unsecured creditors to be members of the Committee.[7] On June 27, 2023, the Committee sought the Bankruptcy Court's

[3] Bankruptcy Case at Dkt. No. 1.

[4] Effective January 1, 2020, California amended Cal. Code Civ. Proc. § 340.1. The amended Section 340.1 provides that, subject to additional requirements, the limitations period for actions for recovery of damages suffered as a result of childhood sexual assault shall be the later of twenty-two years from the age of 18, or five years from when the plaintiff discovers or reasonably should have discovered that the injuries occurring after the age of majority were caused by the childhood sexual assault.[4]

[5] Bankruptcy Case at Dkt. No. 192.

[6] *Id.*

[7] *Id.* at Dkt. No. 58.

approval to retain Lowenstein Sandler LLP as legal counsel.[8] The Bankruptcy Court approved the Committee's application authorizing retention of Lowenstein Sandler LLP as the Committee's legal counsel.[9] Upon information and belief, Lowenstein Sandler is headquartered in Roseland, New Jersey.

On June 22, 2023, the Debtor commenced an insurance coverage adversary proceeding against LMI, among other insurers, seeking declaratory relief related to the insurers' alleged failure to affirm coverage for defendant of the Debtor's state court actions.[10] On June 30, 2023, the Committee moved to intervene in the Coverage Action. The Bankruptcy Court approved the Committee's intervention, on September 7, 2023. However, the Committee did not file a complaint in intervention, hence it is neither a plaintiff nor a defendant in the Coverage Action, and the Bankruptcy Court did not allow the Committee to take discovery in the Coverage Action.[11] The Committee also did not seek derivative standing to pursue the Coverage Action on behalf of the Debtor. Thus, only the Debtor has standing to pursue its claims for insurance.

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[8] *Id.* at Dkt. No. 173.

[9] *Id.* at Dkt. No. 205.

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

[11] *Id.* at Dkt. No. 15.

B. LMI Policies

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

C. The Subpoena

On October 5, 2023, the Committee filed an *Ex Parte Application for Federal Rule of Civil Procedure 2004 Examination of Insurers* ("2004 Application"), seeking, among other things, the production of documents related to LMI's insurance reserves and underwriting information pursuant to FRBP 2004.[12] On November 1, 2023, LMI, among others, objected to the 2004 Application, arguing that the discovery sought exceeded the limits of permissible discovery pursuant to FRBP 2004.[13]

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[12] Bankruptcy Case at Dkt. No. 502.

[13] *Id.* at Dkt. No. 571.

On November 14, 2023, the Bankruptcy Court held a lengthy hearing on the 2004 Application. After oral argument, the Bankruptcy Court stated the following: "I am inclined to entertain the request with respect to the current claim files, the reserve working papers, and the underwriting information, if any, with respect to these cases."[14] The Bankruptcy Court orally granted the 2004 Application and ordered the parties to:

> "sit down…and just make sure everybody is agreeing on what the wording is because this is a moving target. …But I think *we need a little precision on what you mean by claims files, the reserve working files, and the underwriting information*. … give me some language…so that we're talking about the same thing."[15]

At the hearing's conclusion, the Bankruptcy Court again asked the parties to "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."[16]

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[14] *See id.* at Transcript of Dkt. No. 616, at 175:6-8. A true and correct copy of the transcript is attached hereto as **Exhibit A** to the Declaration of Russell W. Roten ("Roten Decl.").

[15] *Id.* at 175:14-25 (emphasis added).

[16] *Id.* at 177:10-14.

Counsel for the parties met and conferred on December 7, 2023, to settle the form of order and subpoena.[17]

On December 15, 2023, LMI a Motion to Clarify or, in the Alternative, Amend, Alter, or Reconsider the Court's Oral Ruling on the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers ("Motion to Reconsider").[18] The Motion to Reconsider sought clarification of the Bankruptcy Court's oral bench ruling at the November 14, 2023 hearing, and in the alternative, reconsideration of the Bankruptcy Court's ruling on the 2004 Application.[19] On January 17, 2024, the Committee filed its Objection to LMI's Motion to Reconsider the Court's Ruling on the Committee's Rule 2004 Application.[20] On January 18, 2024, the Bankruptcy Court entered an Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers ("2004 Order").[21] The 2004 Order ordered the following:

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[17] Bankruptcy Case at Dkt. No. 697 at 10.

[18] *Id*. at Dkt. No. 697.

[19] *Id.*

[20] *Id*. at Dkt. No. 788.

[21] *Id*. at Dkt. No. 796.

> 2.The Insurers shall furnish all documents requested in subpoenas in a form substantially as those attached hereto as Exhibits 1 through 11 (the "Subpoenas"), and shall produce same to the Committee's counsel and the Debtor's counsel within forty-five (45) days of entry of this Order. ….
>
> 4. The Insurers' rights to object to the Subpoenas as permitted under Rule 45 of the Federal Rules of Civil Procedure, incorporated into this bankruptcy case by Rule 9016 of the Federal Rules of Bankruptcy Procedure, are fully preserved, including, without limitation (a) any and all applicable evidentiary privileges and (b) proper scope of discovery.[22]

On January 22, 2024, the Committee issued the Subpoena to LMI. The Subpoena requires the production of documents at "One Lowenstein Drive Roseland, New Jersey 07068" on "March 4, 2024 at 5:00 PM (ET)", and includes a variety of demands for the production.[23] Included in the document requests are the following:

> 5. The entire contents of Your Claim Files Relating to any Abuse Claims tendered by or on behalf of RCBO to You. ("Claim Files")
>
> 6. All Underwriting Files Relating to Your Insurance Policies concerning any Abuse Claims tendered by or on behalf of RCBO to You. ("Underwriting Files")
>
> 7. Documents sufficient to show Your current reserves for each of the Abuse Claims tendered by or on behalf of RCBO to You. ("Reserve Information")

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[22] *Id.*, at 2.

[23] A true and correct copy of the Subpoena is attached as **Exhibit B** to the Roten Decl.

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

On February 5, 2024, LMI served their *Responses and Objections to the Subpoena for Rule 2004 Examination* ("Responses and Objections').[24] In the Responses and Objections, LMI reserved their objections to several requests pending the hearing on the Motion to Reconsider and any subsequent appeal.

On February 7, 2024, the Bankruptcy Court held a hearing on the Motion to Reconsider.[25] After argument, the Bankruptcy Court indicated it would take the matter under submission.[26]

On February 12, 2024, at a hearing to discuss pending Motions to Withdraw the Reference filed with respect to the Coverage Action, the Bankruptcy Court stated that it would be denying the Motion to Reconsider.[27] It stated that there is a "difference between a 2004 exam, which is meant to get information about the

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[24] A true and correct copy of the Responses and Objections is attached hereto as **Exhibit C** to the Roten Decl.

[25] Bankruptcy Case at Dkt. No. 846.

[26] *Id.*

[27] Bankruptcy Case at Dkt. No. 855.

debtor's assets, liabilities, financial condition, and the matters necessary to administer the case and do what you need to do in the course of a bankruptcy case, and litigation issues, which are going to be dealt with differently" in the Coverage Action.[28] The Bankruptcy Court further stated that the insurance reserve and underwriting information were relevant

> discovery because in my view, they were in some ways the mirror image of the claim information. The claim information is one side of the ledger. What the insurance companies are doing about it is the other side of the ledger. So that was my thinking in making that ruling, and I thought it was quite clear.[29]…
>
> So I think we need to be sensitive to possibly doing things a little bit differently. And it was my theory that having the insurance companies provide this information was going to help that process and was going to get everybody into the mediation with the optimum amount of information. On the debtor to committee side, that's the claim information produced to the insurers. From the insurers, that is a snapshot of where they are with their evaluations. And in my view, those are simply mirror images of each other.…
>
> So that was my ruling. I stand by it. I continue to think for those reasons that there was relevancy established, at least for the limited purposes of a 2004 exam, which again, I'm contrasting with litigation theories. Okay. Litigation is a whole other story, and you're going to get into that in the AP. That is different. So for all those reasons, I'm going to deny the motion for clarification and/or for reconsideration.[30]

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[28] *See* Transcript of Dkt. No. 855 at 12:4-11. A true and correct copy of the transcript is attached here as **Exhibit D** to the Roten Decl.

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

[30] *Id.* at 13:1-7.

On February 14, 2024, the Bankruptcy Court issued its "Reconsideration Order."[31] That same date, the Committee demanded LMI revise their Responses and Objections as a result of the Reconsideration Order.[32] In response, on February 20, 2024, LMI advised the Committee that they would be moving to quash, or, in the alternative, for a protective order as to the Overbroad Demands, and would be seeking leave to appeal the Reconsideration Order, and a stay pending the appeal.[33] LMI requested an opportunity to meet and confer.[34]

On February 21, 2024, the Committee indicated that they were unavailable to meet and confer and believed a meet and confer to be unnecessary, but nevertheless would provide dates the following week.[35]

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

[32] A true and correct copy of the Committee's February 14, 2024 letter is attached hereto as **Exhibit E** to the Roten Decl.

[33] A true and correct copy of LMI's February 20, 2024 letter is attached hereto as **Exhibit F** to the Roten Decl.

[34] *Id.*

[35] A true and correct copy of the Committee's February 21, 2024 e-mail is attached hereto as **Exhibit G** to the Roten Decl.

On February 28, 2024, LMI filed a Notice of Appeal and Motion for Leave to Appeal (collectively, "Appeal") with the United States District Court, Northern District of California.[36] On the same day, LMI moved for a stay pending the Appeal in the Bankruptcy Court.[37] As of the filing of this Motion, the Committee has not responded with any proposed dates to meet and confer.

III. LEGAL ARGUMENT

A. LMI Properly Moved the Court in the District Where Compliance Is Required

The Court is the proper Court to decide this Motion.[38]

Federal Rule of Civil Procedure 45(d)(3)(A) and 45(d)(3)(B) requires the party moving to quash a subpoena to move before "the court for the district where compliance is required…" This also applies in subpoenas issued pursuant to FRBP 2004.[39]

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[36] Bankruptcy Case at Dkt. Nos. 905, 906.

[37] *Id.,* Dkt. No. 907.

[38] LMI believe the issues raised herein are properly before the District of New Jersey, however, in an abundance of caution, they have concurrently filed a Motion for Protective Order in the Bankruptcy Case.

[39] *In re SBN Fog Cap II LLC*, 562 B.R. 771 (Colorado court lacked jurisdiction over subpoenas issued pursuant to FRBP 2004 requiring compliance outside Colorado); *Uniloc USA, Inc. v. Apple Inc.*, 2020 WL 6262349, at * 2 (N.D. Cal. Oct. 23, 2020) (holding that motion to compel subpoena requiring production of documents in San Francisco was properly before the Northern District of California even where respondent argued that it could not be compelled to produce documents in

Because the Subpoena requires compliance in Roseland, New Jersey, the United States District Court for the District of New Jersey is the district where compliance is required, thus this Court is the proper Court to decide this Motion.

B. LMI Timely Filed the Motion

LMI timely moved the Court to modify the Subpoena prior to the return date of the Subpoena.

"It is well settled that, to be timely, a motion to quash a subpoena must be made prior to the return date of the subpoena."[40] "The rule does not define 'timely, but '[i]t is well settled that, to be timely, a motion to quash a subpoena must be made *prior to the return date* of the subpoena.'"[41]

San Francisco); *Pizana v. Basic Research, LLC*, 2022 WL 1693317 (E.D. Cal. May 26, 2022) (holding that location listed on subpoena controlled for purposes of establishing jurisdiction over Rule 45 motion)

[40] *Est. of Ungar v. Palestinian Auth.*, 451 F. Supp. 2d 607, 610 (S.D.N.Y. 2006).

[41] *In re Williams*, No. BR 17-25034-ABA, 2021 WL 1912401, at *7–8 (Bankr. D.N.J. May 12, 2021) (finding a motion to quash filed on the same day as the return date of the subpoena timely) (citing *Sines v. Kessler*, 325 F.R.D. 563, 567 (E.D. La. 2018) (quoting *Estate of Ungar v. Palestinian Auth.*, 451 F. Supp. 2d 607, 610 (S.D.N.Y. 2006) (emphasis added by the *Sines* court))); *see Innomed Labs, LLC v. Alza Corp.*, 211 F.R.D. 237, 240 (S.D.N.Y. 2002) ("Although Rule 45(c)(3)(A)(iv) requires that the motion to quash be timely without defining what 'timely' is, it is reasonable to assume that the motion to quash should be brought before the noticed date of the scheduled deposition."); *9 Moore's Federal Practice - Civil § 45.50* (2021) ("Because Rule 45 does not provide any specific time period for bringing a motion to quash or modify, courts have required that the motion be made before the date specified by the subpoena for compliance.").

Thus, the Motion is timely because LMI filed it on March 4, 2024, before the time for compliance under the Subpoena.

C. The Subpoena Demands Information Beyond the Permissible Bounds of Federal Rule of Civil Procedure 45

Because the Subpoena seeks information protected by the attorney-client privilege, work-product doctrine, and trade secret and confidential communications privilege, and subjects LMI to undue burden, the Subpoena should be quashed.

Federal Rule of Civil Procedure 45(d)(3)(A), incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 9016, provides that the Court "***must*** quash or modify a subpoena that: (iii) ***requires disclosure of privileged or other protected matter, if no exception or waiver applies***; or (iv) ***subjects a person to undue burden***." (emphasis added). "A nonparty moving to quash a subpoena, in essence, is the same as moving for a protective order that such discovery not be allowed. Therefore, this court is required to apply the balancing standards—relevance, need, confidentiality and harm. And even if the information sought is relevant, discovery is not allowed where no need is shown, or where compliance is unduly burdensome, or where the potential harm caused by production outweighs the benefit."[42]

[42] *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 206 F.R.D. 525, 529 (D. Del. 2002) (citing *Micro Motion Inc. v. Kane Steel Co., Inc.,* 894 F.2d 1318, 1323 (Fed.Cir.1990); *see also In re EthiCare Advisors, Inc.*, No. CV 20-1886 (WJM), 2020 WL 4670914, at *3 (D.N.J. Aug. 12, 2020) (same).

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

Those seeking to examine witnesses or records pursuant to FRBP 2004 are subject to applicable evidentiary privileges, including the attorney client privilege and work product doctrine.[43] As explained below, the requests in the Subpoena seek confidential information that LMI cannot be compelled to produce.

a. **The attorney client privilege**

Rule 26(b), incorporated by FRBP 7026, protects confidential communications between attorneys and their clients. "[C]ommunications made in confidence by clients to their lawyers for the purpose of obtaining legal advice" is protected by the attorney-client privilege.[44] The purpose of the privilege is to encourage "full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice."[45] As a general matter, "[a] party is not entitled to discovery of

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

[44] *Am. Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 745 (Fed.Cir.1987).

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

information protected by the attorney-client privilege."[46] The party opposing the privilege must show that "the information was not confidential or that it falls within an exception."[47]

b. **The work product privilege**

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

While the work product doctrine originated in the context of an adversary proceeding, it does not necessarily require the existence of an adversarial action.[48] The attorney work product privilege is "distinct from and broader than the attorney-

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

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

[48] *Fin. Corp. of America*, 119 B.R. at 738.

client privilege."[49] Unlike the attorney-client privilege, the work product privilege protects documentation prepared by the attorney in anticipation of litigation.[50]

The following elements must be met in order for the work product privilege to apply: (1) the materials must be documents or tangible things; (2) the materials must be prepared in anticipation of litigation or for trial; (3) materials must be prepared by or for a party's representative; and (4) if the material is opinion work product, the material must contain the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.[51] Work product may also consist of intangible things such as the thoughts and recollections of counsel.[52]

A party may not obtain information subject to the work product doctrine unless it can show "it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means."[53] Even if the party seeking disclosure of information protected by the work

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[49] *U.S. v. Nobles*, 422 U.S. 225, 238 (1975).

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

[51] *In re McDowell*, 483 B.R. 471, 493 (Bankr. S.D. Tex. 2012).

[52] *Hickman v. Taylor*, 329 U.S. 495, 511(1947).

[53] Fed. R. Civ. P. 26(b)(3)(A).

product doctrine makes such a showing, the court "must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation."[54] Opinion work product that reflects opinions, mental impressions, or legal theories of an attorney are nondiscoverable absent extraordinary circumstances.[55]

In *Barge v. State Farm Mut. Ins. Co.*, 2016 WL 6601643 (W.D. Wash. Nov. 8, 2016), an insured sought discovery of its insurer's unredacted claim files, including reserves and evaluation amounts.[56] The court found that the claim files and related reserve information was "based on opinions and evaluation of [the insurer] personnel after [the insurer] reasonably contemplated litigation in this case" and the insured failed to demonstrate a compelling need for the information.[57]

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[54] Fed. R. Civ. P. 26(b)(3)(B).

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

[56] *Barge,* 2016 WL 6601643, at *4.

[57] *Id.* at 6; *see also Rhone-Poulenc Rorrer Inc. v. Home Indem. Co.*, 139 F.R.D. 606, 614 ("Where the reserves have been established based on legal input, the results and supporting papers most likely will be work-product and may also reflect attorney-client privilege communications" magistrate judge refused ***all*** discovery into the reserves because "the aggregate and average figures are derived from and necessarily embody the protected material. They could not be formulated without the attorney's initial evaluations of specific legal claims. Thus it is impossible to protect the mental impressions underlying the specific case reserves without also

c. **Litigation privilege**

The litigation privilege bars discovery of all attorney client communications and attorney work product developed once litigation has commenced.[58]

2. **The Reserve Information Is Privileged**

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

Courts have rejected the production of Reserve Information because of its invasion of traditional privileges.[59] The insured in *Shreib* sought discovery of

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protecting the aggregate figures."); *Certain Underwriters at Lloyd's London v. Fidelity and Casualty Ins. Co. of New York*, 1998 WL 142409 (N.D. Ill. 1998) (refusing to order production of reserve recommendations based on attorney work product and attorney-client privileges finding that "[w]e conclude that reserve recommendations, in this case, do reveal attorney mental impressions, thoughts, and conclusions since the reserve figures were calculated only after an attorney acting in his legal capacity carefully determined the merits and value of the underlying case.").

[58] *Lafate v. Vanguard Group, Inc.*, 2014 WL 5023406, *7 (E.D. Pa. 2014); *Mon Cheri Bridals, LLC v. Cloudfare, Inc.*, 2021 WL 1222492 (N.D. Cal. Apr. 1, 2021). "There is no requirement that a privilege log be created for privileged documents generated after the filing of the complaint." *Pennsylvania State University v. Keystone Alternatives LLC*, 2021 WL 1737751, *3 (M.D. Pa. 2021) (citing *Grider v. Keystone Health Plan Central, Inc.*, 580 F.3d 119, 139 n.22 (3d Cir. 2009).

[59] *Shreib v. Am. Fam. Mut. Ins. Co.*, 304 F.R.D. 282 (W.D. Wash. 2014); *Barge,* 2016 WL 6601643 (precluding discovery of reserve documents where documents at issue "can be fairly said to have been prepared or obtained because of the prospect of litigation."); *Zurich Am. Ins. Co. v. Keating Bldg. Corp.*, No. CV 04-1490 (JBS), 2006 WL 8457156, at *6 (D.N.J. Dec. 29, 2006) ("'[w]here the reserves have been established based on legal input, the results and supporting papers most likely will be work-product and may also reflect attorney-client privilege communications.'")

reserve information to gain insight into how the insurer valued her claim.[60] In denying the insured's request, the court found that that the "loss reserve information exchanged between American Family and its attorney regarding impending litigation is protected by the attorney-client privilege."[61]

Any Reserve Information would be based on advice from the LMI attorneys and in anticipation[62] of litigation as the Debtor's Coverage Action predated any claim tenders by it to LMI.[63]

The Committee has not established a compelling need to force LMI to disclose any privileged information. The Committee's special insurance counsel wrongly asserted that reserve information looks "back at the history of their settlement" and

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(quoting *Rhone-Poulenc Rorer, Inc. v. Home Indemnity Co.*, 139 F.R.D. 609, 614 (E.D. Pa. 1991).

[60] *Shreib*, 304 F.R.D. at 283.

[61] *Id.* at 287.

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

[63] Coverage Action at Dkt. No. 163.

"goes to the reasonable value of these claims."[64] Particularly here, where there were no claim tenders to LMI at the time the 2004 discovery was requested; in fact, the Proofs of Claim have yet to be provided to LMI and there have been no settlement negotiations.

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

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

3. **Claims Files Are Privileged**

The Committee seeks Claims Files related to Abuse Claims tendered by the Debtor.[65] As discussed above, the Debtor has not tendered any claims to LMI.[66]

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[64] **Exhibit A** to Roten Decl., Transcript of Dkt. No. 616, at 135:11-14

[65] *See* **Exhibit B** to Roten Decl.

[66] The Debtor circulated an email on October 20, 2023 to LMI and other insurers with a link to over 300 Complaints filed against the Diocese and other entities. Although LMI expressly advised that the provision of Complaints sent by link were not tenders, out of an abundance of caution, LMI sent preliminary coverage positions for the Complaints.

Thus, there are no Claims Files responsive to any tenders by the Debtor now. In the future, Claims Files may include confidential communications between LMI and their counsel and thus would be protected by the attorney-client privilege. Further, the contents may include drafted documents or information necessarily developed in anticipation of litigation and would thereby be protected under the work-product doctrine.

The Committee's vague statement that "…insurers are required to keep claims file. …[a]nd in the claims file, there will be information on how they value the case and what their coverage defenses are and things like that" is a rather honest recognition by the Committee that such files are privileged and non-discoverable.[67]

Thus, to the extent the Claims Files contain information protected by the above-referenced privilege, the Court must modify the subpoena barring discovery of Claims Files.

[67] *Id.* at 135:5-8.

4. **The Subpoena Unduly Burdens LMI**

Courts **must** quash or modify a subpoena that "subjects a person to undue burden."[68] "An undue burden exists when the subpoena is 'unreasonable or oppressive.'"[69] "There is no strict definition of unreasonable or oppressive…"[70]

To assess whether a subpoena presents an undue burden, courts balance several factors: (1) relevance; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by it; (5) the particularity with which the documents are described; (6) the burden imposed; and (7) the subpoena recipient's status as a nonparty[71] to the litigation.[72] "Ultimately, the

[68] Fed. R. Civ. P. 26(d)(3)(A)(iv).

[69] *In re Lazaridis*, 865 F. Supp. 2d 521, 524 (D.N.J. 2011) (quoting *Schmulovich v. 1161 Rt. 9 LLC,* 2007 WL 2362598 at *4 (D.N.J.2007)).

[70] *Id.*

[71] The factor relating to the recipient's status as a non-party is neutral because LMI is a party in interest.

[72] *Biotechnology Value Fund, L.P. v. Celera Corp.*, 2014 WL 4272732, at *2 (D.N.J. Aug. 28, 2014) (citing *In re EthiCare Advisors, Inc.*, No. CV 20-1886 (WJM), 2020 WL 4670914, at *3 (D.N.J. Aug. 12, 2020)); *see also Colonial BancGroup, Inc. v. PricewaterhouseCoopers LLP*, 110 F. Supp. 3d 37, 42 (D.D.C. 2015) (district courts should consider a number of factors including the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues.) (citations omitted).

test for "undue burden" is a balancing test that pits the need of the party for the information sought against the interests of the subpoenaed witness in resisting compliance."[73]

a. **The Subpoena demands irrelevant information**

(1) Reserve Information Is Irrelevant

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

Courts routinely rule that reserve information is irrelevant. "A common misconception is that an insurer's loss reserves are the same as settlement authority. They are not. The main purpose of a loss reserve is to comply with statutory requirements and to reflect, as accurately as possible, the insured's *potential* liability. It does not automatically authorize a settlement figure."[74] Hence, federal courts find reserve information "of very tenuous relevance, if any relevance at all…essentially reflect[ing] an assessment of the value of a claim taking into consideration the likelihood of an adverse judgment and that such estimates of potential liability do

[73] 9 Moore's Federal Practice - Civil § 45.32 (2024)

[74] *Lipton v. Superior Ct.*, 48 Cal. App. 4th 1599, 1613 (1996) (original emphasis).

not normally entail an evaluation of coverage based upon a thorough factual and legal consideration when routinely made as a claim analysis."[75]

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

In the context of a pending motion under Federal Rule of Bankruptcy Procedure 9019, in *In re Diocese of Camden, New Jersey*, Case No. 20-21257-JNP (Bankr. D.N.J.), the Bankruptcy Court for this District rejected the committee's assertion that requests for information about insurers' reserves and reinsurance related to abuse claims against the diocese. The bankruptcy court found that loss reserves were irrelevant to an insured's claim, even in bad faith litigation.[76] Similarly, in other mass tort cases, bankruptcy courts have considered and denied requests for reserve information.[77]

In *In re Couch*, 80 B.R. 512 (S.D. Cal. 1987), a bankruptcy trustee appealed a bankruptcy court's discovery order in an action brought against an insurance agent's professional liability insurer for failure to pay benefits. The bankruptcy

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of liability or the value of any particular claim.") (internal quotes and citations omitted).

[76] *See* Transcript at 11:10-12:13. A true and correct copy of the transcript is attached hereto as **Exhibit H** to the Roten Decl.

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

trustee sought discovery relating to an insurer's policies and procedures for setting loss reserves.[78] On appeal, the insurer argued that a

> "discovery order compelling disclosure of information regarding their policies and procedures for setting loss reserves, including specific information regarding any loss reserves in the underlying litigation leading to a third party, is an abuse of discretion. They aver that the discovery order is unfair, contrary to all existing authority and undermines the important public policies underlying California reserve requirements. Further, they state that the trustee has mistakenly characterized a loss reserve as an insurer's estimation of probable or potential liability."[79]

In reversing the bankruptcy court's order, the district court agreed with the insurer and held that "a reserve cannot accurately or fairly be equated with an admission of liability or the value of any particular claim."[80]

The Committee's contention that "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" is wholly without merit.[81] LMI's Reserve Information is the product of proprietary internal processes, is similarly irrelevant. LMI's reserves are not determinative of LMI's interpretation

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[78] *Id.* at 514.

[79] *Id.* at 516.

[80] *Id.* at 517.

[81] **Exhibit A** to Roten Decl., Transcript of Dkt. No. 616 at 103:10-14.

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

(2) Underwriting Files Are Irrelevant

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

Edinburgh provides an "examination of the custom and practice of the unique insurance market at Lloyd's of London and the London insurance market generally."[82] Lloyd's is an association of members, including underwriters, who represent syndicates of underwriters located and based in England.[83] The underwriter members subscribe to cover all or part of a proposed placement of insurance at their own election.[84]

The recognized custom and usage of the London insurance market is that a potential insured must approach the market through an authorized London broker.[85]

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

[83] *Id.* at 144.

[84] *Id.*

[85] *Id.*

The London broker is the agent of the potential insured (in this case, the Debtor).[86] The London broker also serves as coordinator for all parts of the insurance, negotiation, placement, claims presentation, and sometimes payment.[87] The London broker is not employed by the London insurance market.

The London broker approaches the underwriters with possible insurance risks.[88] After negotiating with various underwriters and London market companies, the London broker obtains 100% subscription for the risk being placed, specifying terms and premium rates. Once confirmed, the London broker retains the placement slips, and prepares the policy, using the terms and conditions from the slip.[89]

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

b. **There is no legitimate need for the information**

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

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[86] *Id.*

[87] *Id.*

[88] *Id.* at 145.

[89] *Id.*

In measuring a party's need for evidence, courts look to a variety of factors, including the need to prepare an adequate defense or establish a claim, the availability of alternative evidence, the need to cross-examine expert witnesses, and the need for the underlying data.[90]

Balancing these factors, the Committee cannot demonstrate a need for the information. The Committee has not sought, and does not have standing to pursue the Coverage Action. Indeed, the Committee admitted they were seeking Reserve Information to determine how the claims "may impact the Insurers' solvency or prompt a need for reinsurance or other financial protection"[91]– which has nothing to do with the Debtor's assets or liabilities, or the Coverage Action. The Reserve Information does not relate to the valuation of claims.

In addition, the Committee's contention that the Underwriting Files "show the reinsurance backing of the policy. So whether these claims present any type of collectability, how quickly they can be paid type issue, all insurance company keep these files"[92] is similarly unavailing because reinsurance information would not be included in Underwriting Files and only involves the relationship between the reinsurer and the insurer, not the insured. Thus, whether or not there is reinsurance

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

[91] **Exhibit A** to Roten Decl., Transcript of Dkt. No. 616 at 135:10-13.

[92] **Exhibit A** to Roten Decl., Transcript of Dkt. No. 616 at 135:10-13.

is unrelated to the valuation of the Abuse Claims, and is similarly unrelated to the Debtor's assets and liabilities.

Simply put, even the Committee's contentions do not show a need for Underwriting files to support their alleged abuse claims or the Coverage Action.

c. The Subpoena is overly broad

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

Courts "may find that a subpoena presents an undue burden when the subpoena is facially overbroad."[93] Subpoenas are facially overbroad when the "[t]he requests are not particularized"; and "[t]he period covered by the requests is unlimited."[94] "Document requests are facially over[]broad [if] they are not limited to a specific time period."[95]

The Subpoena impermissibly instructs that "[t]hese Requests shall be deemed continuing in nature. In the event You become aware of or acquire additional

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[93] *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 450 (N.D. Tex. 2015) (citation omitted).

[94] *Id.* (internal quotes and citations omitted).

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

information Relating or referring to any of the following Requests, such additional information is to be promptly produced."[96] This instruction fails to impose any temporal limitation, seeks information over an unlimited time range, and is continuing in nature. Unlike Federal Rule of Civil Procedure 26(e), Federal Rule of Civil Procedure 45 imposes no such obligations.

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

Request Number 5 requests "[t]he entire contents of Your Claim Files Relating to any Abuse Claims tendered by or on behalf of RCBO to You". Claims Files are broadly defined as

> all files denominated as such and/or created and maintained for the purpose of collecting Documents, Communications, and other information that relate to a claim for insurance coverage by a policyholder. This definition includes, without limitation: (a) all Documents and Communications that relate to Your handling, analysis, adjustment, investigation, evaluation of, and decision-making process with respect to, any claim for insurance coverage; (b) all Documents and Communications that relate to Your possession, collection, receipt, and gathering of Documents and other information in connection with any claim for insurance coverage by a policyholder; and (c) all of Your internal and external Communications that relate to any claim for insurance coverage by a policyholder.[97]

[96] *See* **Exhibit B** to Roten Decl.

[97] *Id*.

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

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

> all files denominated as such and/or created and maintained for the purpose of collecting Documents and Communications that relate to Your possession, collection, receipt, or gathering of Documents and other information concerning or evidencing the underwriting, placement, purchase, sale, issuance, renewal, failure to renew, increase or decrease in coverage, cancellation, termination, drafting, execution, construction, meaning, or interpretation of, or payment of premiums for, Your Insurance Policies.[98]

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

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

> [a]ll Documents and Communications that relate to Your setting, calculating, analysis, adjustment, investigation, evaluation of, and

[98] *Id.*

> decision-making process with respect to, Your reserves identified in response to Request No. 7, above, including the working papers and actuarial reports, if any, relating to the establishment of those reserves.[99]

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

Thus, because the Subpoena is unduly burdensome, the Court should quash it.

D. The Subpoena Improperly Seeks Discovery of Information Protected by the Trade Secret Privilege

Federal Rule of Civil Procedure 45(d)(3)(B) permits the Court to "modify the subpoena if it requires: ***(i) disclosing a trade secret or other confidential research, development, or commercial information…***" (emphasis added).

Federal courts have long recognized a qualified evidentiary privilege for trade secrets and other confidential commercial information.[100] Rule 26(c) provides a qualified protection for trade secrets and confidential commercial information in the civil discovery context.[101] Moreover, the trade secret privilege, which protects

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[99] *Id.*

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

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

confidential commercial information, also applies to FRBP 2004 examinations.[102] In determining whether such information may be protected, federal courts apply a burden shifting approach –

> In light of the protection afforded to trade secrets by Rule 26(c) [ ], courts have attempted to reconcile the competing interests in trade secret discovery disputes. First, the party opposing discovery must show that the information is a "trade secret or other confidential research, development, or commercial information" under Rule 26(c) [ ] and that its disclosure would be harmful to the party's interest in the property. The burden then shifts to the party seeking discovery to show that the information is relevant to the subject matter of the lawsuit and is necessary to prepare the case for trial. [] If the party seeking discovery shows both relevance and need, the court must weigh the injury that disclosure might cause to the property against the moving party's need for the information. If the party seeking discovery fails to show both the relevance of the requested information and the need for the material in developing its case, there is no reason for the discovery request to be granted, and the trade secrets are not to be revealed.[103]

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

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[102] *In re Jewelers Shipping Ass'n,* 97 B.R. 149, 150 (Bankr. D.R.I. 1989) (denying examination that sought confidential commercial information).

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

IV. CONCLUSION

Based on the foregoing, LMI respectfully request the Court quash and/or modify the Subpoena.

Respectfully submitted,

Dated: March 4, 2024

DUANE MORRIS LLP

/s/ Sommer L. Ross

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and

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

Exhibit E

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND a California corporation sole, Debtor.	Case No.: 2:24-cv-01467-CCC-JSA United States Bankruptcy Court, Northern District of California Chapter 11 Case No. 23-40523 WJL Motion Date: April 1, 2024 9:30 a.m.

STIPULATION AND CONSENT ORDER TO TRANSFER ACTION AND LMI'S[1] MOTION TO QUASH AND/OR MODIFY THE SUBPOENA ISSUED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN CONNECTION WITH THE CHAPTER 11 CASE FILED BY THE ROMAN CATHOLIC BISHOP OF OAKLAND[2]

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

[2] LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors* is related to an underlying Chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor") in United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL ("Bankruptcy Case").

It is hereby stipulated ("Stipulation") by and between the undersigned counsel for LMI, in its capacity as movant, and the Official Committee of Unsecured Creditors ("Committee") appointed in the chapter 11 case filed by The Roman Catholic Bishop of Oakland ("Debtor"), in its capacity as respondent, as follows:

1. Pursuant to Federal Rule of Civil Procedure 45(f), LMI's *Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors Issued by the Committee in Connection with the Debtor's Chapter 11 Case* filed on March 4, 2024 thereby commencing the above-captioned action ("Motion to Quash") [ECF Nos. 1-4] shall be transferred to the United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL (the "Bankruptcy Court").

2. The parties to this Stipulation expressly reserve all of their rights, claims and remedies under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, which are incorporated herein, and any other applicable law, and nothing herein shall be construed as a waiver of any such rights, claims or remedies.

3. The Court shall retain jurisdiction to perform all requirements to complete the transfer of the Motion to Quash to the Bankruptcy Court pursuant to this Order.

AGREED to and ACKNOWLEDGED this 8th day of March, 2024

DUANE MORRIS LLP By: */s/ Summer L. Ross* Sommer L. Ross, Esq. (NJ Bar No. 004112005) 1940 Route 70 East, Suite 100 Cherry Hill, NJ 08003-2171 Telephone: (856) 874-4200 E-mail: slross@duanemorris.com -and- Russell W. Roten (to be admitted pro hac vice) Jeff D. Kahane (to be admitted pro hac vice) Nathan Reinhardt (to be admitted pro hac vice) Betty Luu(to be admitted pro hac vice) 865 S. Figueroa Street, Suite 3100 Los Angeles, California 90017 Telephone: (213) 689-7400 Fax: (213) 689-7401 RWRoten@duanemorris.com JKahane@duanemorris.com NReinhardt@duanemorris.com BLuu@duanemorris.com *Counsel for Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland*	**LOWENSTEIN SANDLER LLP** **KELLER BENVENUTTI KIM LLP** By: */s/ Michael A. Kaplan* Jeffrey D. Prol, Esq. Michael A. Kaplan, Esq. Brent Weisenberg, Esq. Colleen M. Restel, Esq. One Lowenstein Drive Roseland, New Jersey 07068 - and – Tobias S. Keller, Esq. Jane Kim, Esq,. Gabrielle L. Albert, Esq. 425 Market Street, 26th Floor San Francisco, California 94105 *Counsel for the Official Committee of Unsecured Creditors* **BURNS BAIR LLP** Timothy W. Burns, Esq. Jesse J. Bair, Esq. 10 E. Doty Street, Suite 600 Madison, Wisconsin 53703 *Special Insurance Counsel for the Official Committee of Unsecured Creditors*

IT IS SO ORDERED THIS 12th DAY OF MARCH, 2024.

/s/ Jessica S. Allen

Exhibit F

CLOSED

U.S. District Court
District of New Jersey [LIVE] (Newark)
CIVIL DOCKET FOR CASE #: 2:24-cv-01467-CCC-JSA

CERTAIN UNDERWRITERS AT LLOYDS LONDON v OFFICIAL COMMITTEE OF UNSECURED CREDITORS
Assigned to: Judge Claire C. Cecchi
Referred to: Magistrate Judge Jessica S. Allen
Case in other court: US Bankrutpcy Court Northern District California, 23-40523
Cause: Motion to Quash

Date Filed: 03/04/2024
Date Terminated: 03/12/2024
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Petitioner

CERTAIN UNDERWRITERS AT LLOYDS LONDON
subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 i

represented by **SOMMER L. ROSS**
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ATTORNEY TO BE NOTICED

V.

Respondent

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

represented by **COLLEEN RESTEL**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/04/2024	1	MOTION to Quash/Compel/Enforce Subpoenas COMPLAINT against THE ROMAN CATHOLIC BISHOP OF OAKLAND, (Filing and Admin fee $ 405 receipt number ANJDC-15142243) with JURY DEMAND, filed by Certain Underwriters at Lloyds, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 i. (Attachments: # 1 Exhibit Proposed Order)(ROSS, SOMMER) Modified on 3/12/2024 (ps). (Entered: 03/04/2024)
03/04/2024	2	NOTICE by Certain Underwriters at Lloyds, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 i re 1 Motion to Quash/Compel/Enforce,,, Complaint,, (ROSS, SOMMER) (Entered: 03/04/2024)
03/04/2024	3	DECLARATION of Russell Roten re 1 Motion to Quash/Compel/Enforce,,, Complaint,, by Certain Underwriters at Lloyds, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 i. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I) (ROSS, SOMMER) (Entered: 03/04/2024)
03/04/2024	4	BRIEF in Support filed by Certain Underwriters at Lloyds, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 i re 1 Motion to Quash/Compel/Enforce,,, Complaint,, (ROSS, SOMMER) (Entered: 03/04/2024)
03/04/2024		Case Assigned to Judge Claire C. Cecchi and Magistrate Judge Jessica S. Allen. (ak,) (Entered: 03/06/2024)
03/06/2024		Set Deadlines as to 1 Motion to Quash/Compel/Enforce,,, Complaint,,. Motion set for 4/1/2024 before Magistrate Judge Jessica S. Allen. Unless otherwise directed by the Court, this motion will be decided on the papers and no appearances are required. Note that this is an automatically generated message from the Clerk`s Office and does not supersede any previous or subsequent orders from the Court. (ld,) (Entered: 03/06/2024)
03/06/2024	5	CERTIFICATE OF SERVICE by CERTAIN UNDERWRITERS AT LLOYDS LONDON re 2 Notice (Other), 1 Motion to Quash/Compel/Enforce,,, Complaint,, 3 Declaration, 4 Brief in Support of Motion, (ROSS, SOMMER) (Entered: 03/06/2024)
03/06/2024	6	Letter from Sommer L. Ross re 2 Notice (Other), 1 Motion to Quash/Compel/Enforce,,, Complaint,, 3 Declaration, 4 Brief in Support of Motion, 5 Certificate of Service. (ROSS, SOMMER) (Entered: 03/06/2024)
03/07/2024	7	NOTICE of Appearance by MICHAEL ANDREW KAPLAN on behalf of OFFICIAL COMMITTEE OF UNSECURED CREDITORS (KAPLAN, MICHAEL) (Entered: 03/07/2024)
03/07/2024	8	NOTICE of Appearance by COLLEEN RESTEL on behalf of OFFICIAL COMMITTEE OF UNSECURED CREDITORS (RESTEL, COLLEEN) (Entered: 03/07/2024)
03/08/2024	9	STIPULATION re 2 Notice (Other), 1 Motion to Quash/Compel/Enforce,,, Complaint,, 3 Declaration, 4 Brief in Support of Motion, *and Consent Order to Transfer Action and LMI's Motion to Quash and/or Modify the Subpoena Issued by the Official Committee of Unsecured Creditors in Connection with the Chapter 11 Case Filed by the Roman Catholic Bishop of Oakland* by CERTAIN UNDERWRITERS AT LLOYDS LONDON. (ROSS, SOMMER) (Entered: 03/08/2024)

03/08/2024	10	Letter re 9 Stipulation,. (ROSS, SOMMER) (Entered: 03/08/2024)
03/08/2024	11	CERTIFICATE OF SERVICE by CERTAIN UNDERWRITERS AT LLOYDS LONDON re 9 Stipulation, (ROSS, SOMMER) (Entered: 03/08/2024)
03/12/2024		Filing fee: $52.00, receipt number NEW49872. (ps) (Entered: 03/12/2024)
03/12/2024	12	STIPULATION AND CONSENT ORDER TO TRANSFER ACTION to the United States Bankruptcy Court, Northern District of California, Case No. 23-40523 WJL. Signed by Magistrate Judge Jessica S. Allen on 3/12/2024. (qa,) (Entered: 03/13/2024)
03/12/2024		***Civil Case Terminated. (qa,) (Entered: 03/13/2024)
03/13/2024		Case extracted via ECF to Northern District of California to be forwarded to U.S. Bankruptcy Court for the Northern District of California. (mfr) (Entered: 03/13/2024)
03/14/2024	13	Application for Refund of Fees from Sommer L. Ross re 1 Motion to Quash/Compel/Enforce,, Complaint, (finance notified).. (Attachments: # 1 Exhibit A, # 2 Text of Proposed Order)(ROSS, SOMMER) (Entered: 03/14/2024)
03/15/2024	14	Order to Refund Fees (Finance notified). Signed by Melissa Connolly, Management Analyst on 03/15/2024. (mls) (Entered: 03/15/2024)

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Transaction Receipt

03/20/2024 16:41:02

PACER Login:	duanemorris	**Client Code:**	99999-00091
Description:	Docket Report	**Search Criteria:**	2:24-cv-01467-CCC-JSA Start date: 1/1/1980 End date: 3/20/2024
Billable Pages:	3	**Cost:**	0.30