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

In re:

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

Debtor.

Case No. 23-40523 WJL
Chapter 11

**MOTION OF OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO
ENFORCE THE RULE 2004 ORDER
AND COMPEL COMPLIANCE WITH
SUBPOENAS**

Judge: Hon. William J. Lafferty

Date: April 17, 2024

Time: 10:30 a.m. Pacific Time

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

Objection Deadline: April 3, 2024



1 The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman
2 Catholic Bishop of Oakland (the “**Debtor**”) files this motion (this “**Motion**”) seeking entry of an
3 order (i) enforcing the 2004 Order (defined below), (ii) compelling American Home Assurance
4 Company (“**American Home**”); Travelers Casualty & Surety Company, formerly known as Aetna
5 Casualty & Surety Company (“**Travelers**”); United States Fire Insurance Company (“**U.S. Fire**”);
6 Westport Insurance Corporation, formerly known as Employers Reinsurance Corporation
7 (“**Westport**”); Continental Casualty Company (“**Continental**”); and Certain Underwriters at
8 Lloyd’s, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued
9 to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to
10 the Roman Catholic Bishop of Oakland (“**LMI**”) (collectively, the “**Delinquent Insurers**”) to
11 comply with the Subpoenas (defined below) issued by the Committee, and (iii) awarding the
12 Committee costs and fees in connection with enforcing the 2004 Order and seeking compliance
13 with the Subpoenas. In support of this Motion, the Committee states as follows:

14 **PRELIMINARY STATEMENT**¹

15 1. Despite having notice of the Committee’s Requests since October 5, 2023, the
16 Court’s ruling on the Requests since November 14, 2023, and attending multiple hearings where
17 the Court has reiterated and confirmed its Rule 2004 Ruling, the Delinquent Insurers continue to
18 withhold documents responsive to the Requests and a privilege log for the Committee to analyze
19 documents and information withheld.

20 2. Defying the Court’s prior rulings, the Delinquent Insurers each have produced very
21 few documents (or in some instances no documents at all), have not produced privilege logs, and
22 have refused to produce any documents responsive to certain Requests.

23 3. The Delinquent Insurers’ paltry responses to the Subpoenas, and therefore the
24 Committee’s need to continue pursuit of the discovery it is entitled, has created unnecessary
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27 ¹ Capitalized terms not defined in this Preliminary Statement shall have the meanings set forth
28 herein.

1 expense to the estate, a delay in the progress of this case, and, ultimately, a delay in the recovery
2 for survivors.

3 4. As a result, the Committee requests that the Court grant the Motion, enforce the
4 2004 Order, compel production of documents and a privilege log in compliance with the
5 Subpoenas, and award the Committee the costs and expenses incurred in its continued efforts to
6 obtain the discovery requested.

7 **JURISDICTION AND VENUE**

8 5. This Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334.
9 This is a core proceeding under 28 U.S.C. § 157(b), the *Order Referring Bankruptcy Cases and*
10 *Proceedings to Bankruptcy Judges*, General Order No. 24 (N.D. Cal.), and Rule 5011-1(a) of the
11 Local Rules of the United States Bankruptcy Court for the Northern District of California. Venue
12 for this matter is proper in this district under 28 U.S.C. §§ 1408 and 1409.

13 6. The legal bases for the relief requested herein includes 11 U.S.C. § 105, Federal
14 Rule of Civil Procedure 37, and Federal Rules of Bankruptcy Procedure 2004 and 7037.

15 **RELEVANT BACKGROUND**

16 **A. General Case Background**

17 7. On May 8, 2023 (the "**Petition Date**"), the Debtor filed a voluntary petition for
18 chapter 11 bankruptcy relief under the Bankruptcy Code. The Debtor continues to operate its
19 ministry and manage its properties as a debtor in possession under Sections 1107(a) and 1108 of
20 the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case.

21 8. On May 23, 2023, the Office of the United States Trustee for Region 17 appointed
22 the Committee.

23 **B. Confidentiality Order**

24 9. On August 4, 2023, the Court entered the *Order Approving Revised Confidentiality*
25 *Agreement and Stipulated Protected Order* [Dkt. 331] (the "**Original Confidentiality Order**").
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1 10. On October 11, 2023, certain Insurers² filed the *Moving Insurers' Motion for*
2 *Court's Approval of Confidentiality and Protective Order* [Dkt. 523] (the "**Confidentiality**
3 **Motion**"). Through the Confidentiality Motion, the Insurers sought the Court's approval of a
4 confidentiality order in a different form and with different protections than that in the Original
5 Confidentiality Order.

6 11. On January 30, 2024, after objections and a hearing relating to the Confidentiality
7 Motion, the Court entered the *Confidentiality and Protective Order* [Dkt. 832] (the
8 "**Confidentiality Order**"), which governs the "production, review, disclosure, and handling" of
9 any material designated as confidential or highly confidential in the Chapter 11 Case and related
10 adversary proceeding. [Dkt. 832 at 1.]

11 **C. Litigation Relating to the Rule 2004 Motion**

12 12. On October 5, 2023, the Committee filed *The Official Committee of Unsecured*
13 *Creditors Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of*
14 *Insurers* [Dkt. 502] (the "**Rule 2004 Motion**").³

15 13. On October 11, 2023, Westport, Pacific Indemnity Company ("**Pacific**
16 **Indemnity**"), and Pacific Employers Insurance Company ("**Pacific Employers**"), filed the
17 *Insurers' (I) Preliminary Statement & Response to Committee's 2004 Motion and (II) Request for*
18 *Court to Abstain Entry of an Order in Connection Therewith Pending Further Discussion* [Dkt.
19 521] (the "**Insurer Preliminary Objection**"). On October 12, 2023, LMI joined in the Insurer
20 Preliminary Objection [Dkt. 528].

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

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26 ² "**Insurers**" herein means, collectively, the Delinquent Insurers, the Pacific Insurers (defined
below), and Lexington Insurance Company.

27 ³ Capitalized terms not defined herein shall have the meanings set forth in the Rule 2004 Motion.
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1 15. On October 12, 2023, the Debtor filed a response [Dkt. 532] in support of the Rule
2 Rule 2004 Motion and requested that any order granting the Rule 2004 Motion “require all responsive,
3 non-privileged documents produced to the Committee be contemporaneously produced to the
4 Debtor.” [Dkt. 532 at 2.]

5 16. On November 1, 2023, the Insurers collectively filed one brief in objection to the
6 Rule 2004 Motion—the *Insurers’ Objection to Committee’s Rule 2004 Motion Seeking Discovery*
7 *from Debtor’s Insurers* [Dkt. 571] (the “**Insurer Objection**”).

8 17. On November 7, 2023, the Committee filed a reply in further support of the Rule
9 2004 Motion. [Dkt. 583.]

10 18. On November 10, 2023, certain of the Insurers filed a sur-reply in further support
11 of the Insurer Objection. [Dkt. 604.]

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

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

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

22 22. Following the Hearing and Rule 2004 Ruling, the Committee narrowed the requests
23 in the subpoenas attached to the Rule 2004 Motion (the “**Requests**”) in accordance with the Rule
24 2004 Ruling.

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

3 24. On December 15, 2023, LMI filed the *Motion to Clarify or, in the Alternative,*
4 *Amend, Alter, or Reconsider the Court’s Oral Ruling on the Official Committee of Unsecured*
5 *Creditors’ Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of*
6 *Insurers* [Dkt. 697] (the “**Motion to Reconsider**”), seeking to relitigate the Rule 2004 Ruling.

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

11 26. On January 18, 2024, the Court entered the *Order Granting the Official Committee*
12 *of Unsecured Creditors’ Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004*
13 *Examination of Insurers* [Dkt. 796] (“**2004 Order**”).

14 27. The 2004 Order requires the Insurers to produce documents responsive to the
15 Requests within forty-five days of entry of the 2004 Order—by March 4, 2024.

16 28. On February 7, 2024, the Court held a hearing on the Motion to Reconsider.

17 29. On February 12, 2024, the Court denied the Motion to Reconsider. During the oral
18 ruling on the Motion to Reconsider, the Court reiterated that the Requests were relevant and “fair
19 game,” noting that the information sought in the Requests is “the mirror image of the claim
20 information,” which the Insurers obtained based on their claim that such information was
21 necessary to a productive mediation. [See *Declaration of Betty Luu in Support of LMI’s Motion*
22 *for Stay Pending Appeal of Order Granting the Official Committee of Unsecured Creditors’ Ex*
23 *Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* [Dkt.
24 907-1] Ex. A, at 13:1–3, 14:10–18.] The Court further emphasized the importance of exchanging
25 this information to assist in entering mediation with the “optimum amount of information.” [*Id.*
26 at 14:14.]

1 30. On February 14, 2024, the Court entered an order denying the Motion to Reconsider
2 [Dkt. 875] (the “**Reconsideration Order**”).

3 31. On February 28, 2024, LMI filed a *Notice of Appeal and Statement of Election* [Dkt.
4 905] (the “**Appeal**”), *Motion for Leave to Appeal* [Dkt. 906], and a motion seeking a stay pending
5 a resolution of the Appeal [Dkt. 907] (the “**Stay Motion**”).

6 32. A hearing on the Stay Motion is currently scheduled to be heard, simultaneously
7 with the Motion, and other discovery-related motions, on April 17, 2024.

8 **D. Insurers’ Responses to the Subpoenas**

9 33. Immediately following entry of the 2004 Order, and pursuant thereto, the
10 Committee served subpoenas (each a “**Subpoena**” and collectively, the “**Subpoenas**”) on each of
11 the following Insurers:

- 12 • American Home;
- 13 • Travelers;
- 14 • U.S. Fire;
- 15 • Westport;
- 16 • Continental;
- 17 • LMI;
- 18 • Lexington Insurance Company⁴
- 19 • Century Indemnity Company, as successor to CCI Insurance Company, as successor
20 to Insurance Company of North America (“**Century**”);
- 21 • Westchester Fire Insurance Company (“**Westchester**”);
- 22 • Pacific Employers; and
- 23 • Pacific Indemnity (together with Century, Westchester, and Pacific Employers, the
24 “**Pacific Insurers**”).

19 [See Dkt. 838.]

20 34. The Committee received responses and objections to the Subpoenas from LMI,
21 Westport, Continental, and the Pacific Insurers, each of which the Committee responded to. The
22 Committee also received email correspondence from American Home and Travelers with
23 questions relating to the Subpoenas issued those entities, which the Committee also responded to.

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27 ⁴ The Committee subsequently agreed to withdraw the Subpoena issued to Lexington Insurance
28 Company but preserved the right to seek the information sought in the Subpoena, and any other
information, at a later date.

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35. To date,⁵ the Delinquent Insurers produced the following:
- American Home did not produce any documents or a privilege log.
 - Travelers produced 741 pages containing insurance policies, coverage letters, information regarding loss runs, and underwriting files. Travelers **did not produce** documents responsive to Request #2 (secondary evidence of insurance), Request #5 (claim files), Request #7 (reserves), or Request #8 (reserve calculations) and did not produce a privilege log detailing any redacted or withheld information or documents.
 - U.S. Fire produced one document, which it claims is the only responsive document in its possession, custody, or control and therefore did not produce a privilege log.
 - Westport produced 4,169 pages containing insurance policies, coverage letters, claim files, and underwriting files. Westport **did not produce** documents responsive to Request #2 (secondary evidence of insurance),⁶ Request #4 (loss runs), Request #6 (underwriting files), Request #7 (reserves), or Request #8 (reserve calculations) and did not produce a privilege log detailing any redacted or withheld information or documents.
 - Continental produced 1,781 pages containing only coverage notice letters (an incomplete response to Request #3). Continental **did not produce** documents responsive to Request #1 (insurance policies), Request #2 (secondary evidence), Request #4 (loss runs), Request #5 (claim files), Request #7 (reserves), or Request #8 (reserve calculations) and did not produce a privilege log detailing any redacted or withheld information or documents.
 - LMI produced 232 pages containing insurance policies and coverage letters. LMI **did not produce** documents responsive to Request #2 (secondary evidence), Request #4 (loss runs), Request #5 (claim files), Request #6 (underwriting files), Request #7 (reserves), or Request #8 (reserve calculations) and did not produce a privilege log detailing any redacted or withheld information or documents.

36. By comparison, the Pacific Insurers produced over 24,000 pages, along with both a categorical and line-by-line privilege log detailing any information or documents that were redacted or withheld.⁷

⁵ Certain Delinquent Insurers have represented that additional productions are forthcoming. However, the Insurers could have been collecting the documents based on the Rule 2004 Ruling for the past four months yet have not produced *any* documents responsive to certain requests. The continued delay is unwarranted.

⁶ Westport contends that it is presently unaware of any alleged missing or incomplete policies that Westport issues to or which would insure the Debtor.

⁷ The Committee is continuing to review the Pacific Insurers' production and privilege logs and reserves the right to bring any remaining issues to the Court, if necessary, if a consensual resolution cannot be reached with respect to any outstanding Requests or disputes regarding claims of privilege.

1 Requests, and have not provided a privilege log to permit the Committee to understand the scope
2 of information that exists.

3 45. The Delinquent Insurers refusal to comply with the Court's 2004 Order serves only
4 to delay the ultimate resolution of the Chapter 11 Case and the recovery by survivors of sexual
5 abuse and to incur costs to the estate along the way.

6 46. The Court should not permit the Delinquent Insurers to continue ignoring this
7 Court's orders (or those portions of this Court's orders) that they disagree with and should enter
8 an order enforcing its 2004 Order.

9 **B. The Court Should Enter an Order Compelling Compliance with the Subpoenas.**

10 47. Motions to compel discovery are governed by Federal Rule of Civil Procedure 37,
11 made applicable to bankruptcy cases pursuant to Federal Rule of Bankruptcy Procedure 7037. On
12 notice to other parties and all affected persons, a party may move for an order compelling
13 disclosure or discovery. Fed. R. Civ. P. 37(a)(1).

14 48. An evasive or incomplete disclosure, answer, or response "must be treated as a
15 failure to disclose, answer, or respond." Fed. R. Civ. P. 37(a)(4).

16 49. As the Delinquent Insurers' productions have been wholly inadequate, refusing to
17 produce any responsive documents with respect to several Requests despite a clear Court order to
18 do so, and because the Delinquent Insurers have not produced privilege logs describing any
19 documents or information withheld, the Court should enter an order compelling the Delinquent
20 Insurers to produce all documents responsive to the Requests along with a detailed privilege log
21 regarding any documents or information redacted or withheld.

22 **C. The Court Should Require the Delinquent Insurers to Reimburse the Committee for
23 the Costs and Fees Incurred.**

24 50. The Committee has been forced to expend resources litigating, time and again, the
25 Delinquent Insurers' objections, and now outright refusal, to produce documents responsive to the
26 Requests pursuant to the Court's 2004 Order.

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CERTIFICATION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 37

The Committee’s counsel met and conferred, or attempted to meet and confer, on multiple occasions with each of the Delinquent Insurers in connection with the Subpoenas prior to filing the Motion. The Committee’s attempts to reach a resolution in connection with the Subpoenas were unsuccessful.

Michael A. Kaplan
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