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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.

THE ROMAN CATHOLIC BISHOP OF
OAKLAND,

PLAINTIFF,

V.

PACIFIC INDEMNITY, a Delaware
corporation; INSURANCE COMPANY OF
AMERICA, a Delaware corporation; AETNA
INSURANCE COMPANY, a Delaware
corporation; TRAVELERS INSURANCE
COMPANY, a Delaware corporation;
CERTAIN UNDERWRITERS AT LLOYD'S
OF LONDON SUBSCRIBING TO
SYNDICATES 2623 (AFB) AND 623 (AFB),
a foreign organization; INSURANCE
COMPANY OF NORTH AMERICA, a
Delaware corporation; ACE LIMITED, a
foreign organization; UNITED STATES FIRE
INSURANCE, a Delaware corporation;
EMPLOYERS REINSURANCE, a Delaware

Chapter 11

Case No: 23-40523 WJL

Adversary Case No.: 23-04028 WJL

**DEBTOR'S OPPOSITION TO MOTION OF
DEFENDANT CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION TO DISMISS
THIRD AMENDED ADVERSARIAL
COMPLAINT UNDER FEDERAL RULES
OF CIVIL PROCEDURE, RULE 12(B)(6),
OR ALTERNATIVELY FOR A MORE
DEFINITE STATEMENT UNDER
FEDERAL RULE OF CIVIL PROCEDURE,
RULE 12(E)**

Judge: Hon. William J. Lafferty

Date: March 19, 2024

Time: 10:30 a.m.

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

1 corporation; CNA INSURANCE COMPANY,
2 a Delaware corporation; PACIFIC
3 EMPLOYERS INSURANCE, a Delaware
4 corporation; WESTCHESTER FIRE
5 INSURANCE COMPANY, a Pennsylvania
6 corporation; and the CALIFORNIA
7 INSURANCE GUARANTEE ASSOCIATION,
8 a state entity,

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10 DEFENDANTS.
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1 The Roman Catholic Bishop of Oakland (“RCBO” or “Debtor”), Plaintiff in the above-captioned
2 adversary proceeding (the “Adversary Proceeding”), and the debtor and debtor in possession in the
3 underlying Chapter 11 bankruptcy case (the “Chapter 11 Case”), hereby submits this opposition to
4 *Notice of Motion and Motion of Defendant California Insurance Guarantee Association to Dismiss*
5 *Third Amended Adversarial Complaint Under Federal Rules of Civil Procedure, Rule 12(b)(6) or*
6 *Alternatively for a More Definite Statement Under Federal Rule of Civil Procedure, Rule 12(e)* [Docket
7 No. 171], filed on January 26, 2024 (the “Motion”) by Defendant California Insurance Guarantee
8 Association (“CIGA”).

9 **I.**

10 **INTRODUCTION**

11 RCBO currently faces over 400 claims related to alleged sexual abuse by RCBO personnel
12 stretching back to the 1960s. In an effort to fairly compensate the victims bringing these abuse claims,
13 RCBO turned to its insurers, seeking coverage under primary, excess, and umbrella liability insurance
14 policies that RCBO has maintained since that time. RCBO also turned to CIGA, seeking statutorily
15 provided payment for claims covered by an insolvent insurer’s policies. Despite RCBO’s diligent,
16 ongoing process of tendering defense and indemnity of claims as they were filed, both the defendant
17 insurers named in this Adversary Proceeding and CIGA have failed to provide the coverage and
18 payments they are obligated to provide, and at times have failed to respond to the tendered claims at all,
19 forcing RCBO to file the instant Adversary Proceeding to recoup insurance proceeds.

20 California Insurance Guarantee Association (“CIGA”) now brings a second motion to dismiss
21 RCBO’s Third Amended Complaint (“TAC”). RCBO is astonished that, in the current case posture,
22 CIGA would bring another motion to dismiss. At the hearing on CIGA’s first motion to dismiss (on
23 RCBO’s Amended Complaint), the Court granted the motion in part, but granted leave for RCBO to
24 amend its Complaint and laid out the specific steps it wanted to see RCBO take in amending its
25 Complaint to satisfy the applicable pleading standard. RCBO has followed the Court’s instructions
26 closely and fully. Despite this, CIGA still takes another cynical bite at the apple, ignoring that in
27 amending its Complaint, RCBO has satisfied the Court’s prior directives.

28 Despite RCBO complying with the Court’s directives, CIGA reiterates the same arguments for

1 dismissing RCBO's TAC as it made it in its first motion to dismiss. Further, CIGA continues to bury its
2 head in the sand and pretend that it has insufficient knowledge of the claims at issue to be able to
3 respond. This is as ridiculous as it is false. CIGA seeks to have RCBO prove its entire case at the
4 pleading stage. That is not required by the federal rules, and RCBO has already followed the Court's
5 guidance on what would be necessary to properly amend the complaint and proceed to discovery.
6 CIGA's motion is an exercise in delay and a complete waste of time and Debtor's resources, and should
7 be denied.

8 II.

9 BACKGROUND FACTS

10 On May 8, 2023 (the "Petition Date"), RCBO filed a voluntary petition for Chapter 11
11 bankruptcy relief under the Bankruptcy Code. RCBO continues to operate its ministry and manage its
12 properties as a debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No
13 trustee or examiner has been appointed in the Chapter 11 Case.

14 RCBO is a corporation sole organized under the laws of the State of California. RCBO conducts
15 its civil affairs under the laws of the State of California and the United States of America and in
16 accordance with the Code of Canon Law, the ecclesiastical law of the Roman Catholic Church.
17 Additional information regarding the Debtor, its mission, ministries, and operations, and the events and
18 circumstances preceding the Petition Date, is set forth in the Declaration of Charles Moore, Managing
19 Director of Alvarez & Marsal North America, LLC, Proposed Restructuring Advisor to the Roman
20 Catholic Bishop of Oakland, in Support of Chapter 11 Petition and First Day Pleadings (the "First Day
21 Declaration") [Docket No. 19 to the Bankruptcy Case], which is incorporated herein by reference.

22 As set forth in the First Day Declaration, RCBO filed the Bankruptcy Case to ensure that
23 survivors of alleged childhood sexual abuse by priests or other employees of RCBO would be fairly and
24 justly compensated. The underlying sexual abuse cases (the "Suits") have been consolidated in *In re*
25 *Northern California Clergy Cases*, JCCP 5108.

26 As alleged in RCBO's TAC, Commercial Union/Armour Insurance Company ("Commercial
27 Union/Armour") issued written insurance policies covering the underlying sexual abuse claims which
28

1 occurred between October 25, 1970 and December 1, 1975. TAC ¶ 9. The TAC identifies those written
2 insurance policies by policy number and their respective policy periods. *Id.* Commercial Union/Armour
3 recognized that sexual abuse claims during that period were covered under its written policies, and
4 accepted the defense of some of the underlying cases before it became insolvent. *Id.* ¶¶ 9, 59.

5 Commercial Union/Armour was ordered liquidated on March 21, 2021, as part of Bedivere
6 Insurance Company (“Bedivere”), the then-existing corporate entity responsible for the relevant
7 obligations of Commercial Union/Armour Insurance Company. RCBO submitted 24 proofs of claim¹ in
8 the Bedivere liquidation proceedings on December 27, 2021, which were received by Bedivere in
9 advance of the December 31, 2021 deadline for filing such claims. Docket Nos. 136-1 to 136-24 (proofs
10 of claims dated December 27, 2021 and identifying December 31, 2021 as the submission deadline);
11 Docket No. 136-25 (confirmation that the proofs of claims were received by Bedivere on December 29,
12 2021). In a letter dated January 3, 2023, Bedivere acknowledged receipt of the proof-of-claim forms
13 and informed RCBO that its claim to the Bedivere estate “has been assigned to an Evaluator.” Docket
14 No. 136-26. Two days later, on January 5, 2023, Defendant CIGA sent RCBO a letter advising that
15 RCBO’s claims had been presented to CIGA “for review and further handling in accordance with
16 California Insurance Code Section 1063 et seq.” and assigned to Claims Adjuster Daniel Sab. Docket
17 No. 136-27.

18 As CIGA admits in its Motion and acknowledged in its January 5, 2023 letter, once Commercial
19 Union/Armour became insolvent, CIGA assumed responsibilities to pay and discharge covered claims
20 that RCBO had timely submitted during the Bedivere liquidation proceedings. *See* TAC ¶¶ 9, 36, 40,
21 56–62; Mot. Mem. P. & A. at 6, 9 (acknowledging that CIGA’s statutory obligations and involvement
22 were triggered by Bedivere’s liquidation in March 2021); Docket No. 136-27 (acknowledging that
23 RCBO’s claims were submitted to CIGA for further handling and assigned a claims adjuster). CIGA
24 has not provided payment for any of the claims covered under the applicable Commercial
25 Union/Armour policies (TAC ¶¶ 9, 40, 43, 46), and contests in its Motion that it has an obligation to do
26

27 ¹ These 24 proofs of claim constituted all the claims RCBO knew of under the Commercial Union/Armour Insurance
28 Company time period at the time of filing.

1 so. As a result of CIGA's position and failure to make payments, Debtor has been and continues to be
2 harmed because it "has not been provided with the benefits of the insurance it purchased" and has
3 incurred significant fees and costs in defending the Suits without the benefit of its promised coverage.
4 TAC ¶¶ 32, 44, 62.

5 On November 8, 2023, the Court heard argument on CIGA's first attempt at this motion, which
6 sought to dismiss RCBO's Amended Complaint. Although the Court granted the motion in part, RCBO
7 was granted leave to amend and provided with guidance as to exactly what was required to sufficiently
8 amend the complaint in the eyes of the Court. As to RCBO's declaratory relief claim, the Court stated,
9 that RCBO need to "state more comprehensively what would be the predicates for setting forth the
10 extent and the character of the dispute between the plaintiff and the defendant . . . be fairly particularized
11 about what those duties were and why they haven't been met and why there is a controversy . . . and put
12 a little meat on the bones with respect to" the declaratory judgment claim. Nov. 8, 2023 Hr'g Tr. at
13 25:7-11, 26:6-13 (attached as Exhibit 1). As to RCBO's breach claim, the Court stated that claim
14 merely needed to be "recharacterize[d]" and "restated more properly to make relevant allegations with
15 respect to the insurance guaranty entity that is here, which is not an insurance company per se." *Id.* at
16 24:24-25:2, 26:10-12.

17 RCBO followed the Court's directives to a tee in the TAC filed on January 12, 2024.² In the
18 TAC, RCBO fleshed out both of its claims against CIGA and restated its breach claim by, among other
19 things:

- 20 1. Reiterating its prior allegations that CIGA owed statutory obligations pursuant to Article
21 14.2 of the California Insurance Code regarding claims falling within insolvent
22 Commercial Union/Armour's policies identified by policy number and policy period
(TAC ¶ 9);
- 23 2. Enumerating the claims that fell within Commercial Union/Armour's specifically
24 identified policies and providing for each such claim the claimant number, proof of claim
25 number, case number, years of alleged abuse at issue, the date of tender to Commercial
26 Union/Armour, and the dates of tender and responses from any other applicable insurer
(TAC ¶ 9 & Ex. A);

27 ² RCBO's Second Amended Complaint and TAC, both filed after the Court's ruling, are identical with respect to the claims
28 against CIGA.

3. Alleging that CIGA owes RCBO statutory obligations under Article 14.2 of the California Insurance Code to provide “defense and indemnity,” “pay in full the expenditures made by RCBO,” and “provide available sums in response to” the claims for which RCBO has “submitted a timely proof of claim to CIGA” and therefore qualify as “covered claim[s] under the statute” (TAC ¶¶ 9, 36, 40, 46, 60);
4. Alleging that RCBO has in fact “submitted a timely proof of claim to CIGA regarding the applicable Suits”—which RCBO has previously filed in this suit, *see* Docket Nos. 136-1 through 136-24—but that “CIGA has failed to meet its statutory obligations to provide available sums in response to the Suits” (TAC ¶ 40);
5. Alleging that there is accordingly an “active controversy” regarding “the scope of the statutory obligations assumed by CIGA, and the rights and obligations of the parties with respect to the Suits” (TAC ¶ 45), and that RCBO is “entitled to a judgment declaring that CIGA is statutorily obligated to provide funds to RCBO in response to the claims made in the Suits to which it must respond” (TAC ¶ 46), which were identified mere paragraphs earlier as those claims that were timely submitted to CIGA (TAC ¶ 40); and
6. Restating the prior breach of contract claim against CIGA as a breach of statutory duty claim with respect to the claims that were “timely submitted” in the Commercial Union/Armour liquidation proceedings and thus “qualify as covered claims under the statute” (TAC ¶¶ 40, 56–62).

In the course of this litigation, RCBO has also provided to CIGA: (1) copies of the timely filed proof of claims; (2) the materials in RCBO’s possession relating to the applicable suits; and (3) copies of the insurance policies at issue in the lawsuit, including but not limited to the Commercial Union/Armour insurance policies relevant to CIGA’s statutory duties regarding the applicable suits.

On January 26, 2024, CIGA filed this Motion to dismiss the Adversary Proceeding under Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, for an order for a more definite statement under Rule 12(e), reiterating the same arguments it made in its first motion.

III.

LEGAL STANDARD

A. Rule 12(b)(6)

To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege “only enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The rules “[do] not impose a probability requirement at the pleading stage; [they] simply call[] for enough fact to raise a reasonable expectation that discovery will reveal evidence” to support the allegations. *Starr v. Baca*, 652 F.3d 1202, 1217 (9th Cir. 2011) (quoting *Twombly*, 550 U.S. at 556).

Determining whether a complaint has sufficiently pled a claim to relief “is a ‘context-specific task that requires the reviewing court to draw on its judicial experience and common sense.’” *Heidingsfelder v. Ameriprise Auto & Home Ins.*, 2020 WL 5702111, at *2 (N.D. Cal. Sept. 24, 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). In conducting this inquiry, the court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

A motion to dismiss “is not the appropriate procedural vehicle to test the merits” of a complaint or the claims asserted therein. *Pruco Life Ins. Co. v. Cal. Energy Dev., Inc.*, 2020 WL 7226184, at *1 (S.D. Cal. Dec. 8, 2020) (citation omitted). Instead, “on a motion to dismiss the Court’s review is limited to determining whether the factual allegations in the complaint state a plausible claim for relief.” *Id.*

B. Rule 12(e)

Motions for a more definite statement under Rule 12(e) are “viewed with disfavor and are rarely granted.” *U.S. E.E.O.C. v. Alia Corp.*, 842 F. Supp. 2d 1243, 1250 (E.D. Cal. 2012) (quoting *Sagan v. Apple Comp., Inc.*, 874 F. Supp. 1072, 1077 (C.D. Cal. 1994)). “The purpose of Rule 12(e) is to provide relief from a pleading that is unintelligible, not one that is merely lacking in detail.” *Id.* Motions for a more definite statement are proper only where the complaint is “so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself.” *Neveu v. City of Fresno*, 392 F. Supp. 2d 1159, 1169 (E.D. Cal. 2005) (citation omitted). A motion for a more definite statement “should be denied” where, as here, the complaint “is specific enough to appraise the responding party of the substance of the claim being asserted or where the detail sought is otherwise obtainable through discovery.” *Alia Corp.*, 842 F. Supp. 2d at 1250; *accord, e.g., In re Argo Commc’n Corp.*, 134 B.R. 776, 798 (Bankr. S.D.N.Y. 1991); *Vaden v. Lantz*, 459 F. Supp. 2d 149, 151 (D. Conn. 2006); *Alessi v. Monroe Cnty.*, 2008 WL 398509, at *1 (W.D.N.Y. Feb. 12, 2008).

IV.

ARGUMENT

A. CIGA Is on Sufficient Notice of the Claims Against It

1 In its Motion, CIGA seeks to dismiss the TAC under Rule 12(b)(6), or obtain a more definite
2 statement under Rule 12(e), because it claims additional detail is “needed to clarify exactly how Plaintiff
3 seeks to hold CIGA responsible to it as to each of the 198 Underlying Actions” identified in paragraph 9
4 of the TAC rather than only the 24 claims filed prior to Bevidere’s liquidation. *See* Mot. Mem. P. & A.
5 at 18. While CIGA is responsive to the 198 claims identified in paragraph 9 of the TAC because those
6 claims are covered by insolvent Commercial Union/Armour’s insurance policies (TAC ¶ 9), as stated in
7 the TAC, RCBO seeks a declaratory judgment and breach of statutory duty damages only as to the Suits
8 relating to the 24 claims that RCBO timely submitted to CIGA prior to the Bevidere liquidation date
9 (*see* TAC ¶¶ 40, 60–61).

10 CIGA is well aware of the existence and contents of those 24 claims. Over a year ago, CIGA
11 acknowledged by letter that it had received those claims and assigned a claims adjuster to evaluate them.
12 Docket No. 136-27. RCBO also filed those claims previously in this action in opposing CIGA’s first
13 motion to dismiss (Docket Nos. 136-1 through 136-24), and CIGA concedes throughout its current
14 Motion that it is in possession of those claims and understands that RCBO is seeking both a declaratory
15 judgment that CIGA is obligated to pay them and damages for CIGA’s breach of its statutory duty in
16 failing to do so. *See, e.g.*, Mot. Mem. P. & A. at 3, 16, 18. Further, as noted above, RCBO has already
17 produced to CIGA both the materials relating to the applicable Suits and the applicable insurance
18 policies, enabling CIGA to evaluate its statutory obligations with respect to those suits and providing far
19 more information than the “short and plain statement” of RCBO’s claims required by Rule 8.

20 CIGA cannot reasonably dispute that it is on sufficient notice of the 24 claims for which RCBO
21 is seeking a declaratory judgment and breach of statutory duty damages, and thus is able to respond to
22 the TAC. CIGA’s motion for a more definite statement should therefore be denied. To the extent CIGA
23 seeks further details regarding those claims and its obligations to pay them, those facts should be fleshed
24 out through discovery. RCBO is not required to prove its entire case at the pleading stage. *See, e.g.*,
25 *Alia Corp.*, 842 F. Supp. 2d at 1258 (denying Rule 12(e) motion because the complaint was “specific
26 enough to fairly apprise [the defendant] of the basis of [the plaintiff’s] claims” and “the proper tool for
27 obtaining [more detail] is discovery, not a motion for a more definite statement”); *Martinez v. Navy*

1 *League of the U.S.*, 2014 U.S. Dist. LEXIS 17976, at *8–9 (C.D. Cal. Feb. 12, 2014) (denying Rule
2 12(e) motion that “would only prolong this case further”); *cf. In re Diocese of Buffalo, N.Y.*, 616 B.R.
3 10, 13–14 (Bankr. W.D.N.Y. 2020) (denying a Rule 12(e) motion regarding a complaint raising similar
4 claims, but with far less detail, because it determined the complaint was “adequately clear”).

5 **B. The TAC Sufficiently Pleads Declaratory Judgment and Breach of Statutory Duty**
6 **Claims Against CIGA**

7 In addition to putting CIGA on sufficient notice of the claims against it, the TAC also states
8 plausible claims for both declaratory judgment and damages for breach of CIGA’s statutory duties.
9 While CIGA is not itself an insurer, it is statutorily required to “pay and discharge covered claims and,
10 in connection therewith, pay for or furnish loss adjustment services and defenses of claimants when
11 required by [the insolvent insurer’s] policy provisions.” Cal. Ins. Code § 1063.2(a). CIGA breaches its
12 statutory duties where, as here, it “improperly denies coverage or refuses to defend an insured on a
13 ‘covered claim’ arising under an insolvent insurer’s policy.” *Isaacson v. CIGA*, 44 Cal.3d 775, 792
14 (1988).

15 In its Motion, CIGA does not dispute that a declaratory judgment action is a proper avenue for
16 litigating the obvious dispute between the parties regarding the scope of CIGA’s obligations or that an
17 “actual controversy” exists regarding those obligations—the only element required to state a claim for a
18 declaratory judgment action. 28 U.S.C. § 2201; Cal. Code. Civ. P. § 1060.³ Nor does CIGA dispute
19 that Commercial Union/Armour’s insolvency triggered CIGA’s involvement and obligations and yet
20 CIGA has failed to provide payment for the 24 claims submitted by RCBO. Instead, CIGA merely
21 rehashes its prior arguments—ignoring the amendments RCBO made in the TAC in compliance with the
22 Court’s directives—that the claims against it must be dismissed because the allegations in the TAC (1)
23

24 ³ It is well established that a declaratory judgment action is a proper and common method for resolving disputes as to CIGA’s
25 obligations to pay insurance claims. *See, e.g.,* Cal. Code. Civ. P. § 1060 (providing that a party may seek “a declaration of
26 rights or duties . . . before there has been any breach of the obligation”); *CIGA v. Azar*, 940 F.3d 1061 (9th Cir. 2019) (merit-
27 based appeal in declaratory relief action brought by CIGA regarding its payment obligations); *CIGA v. San Diego Cnty. Sch.*
28 *Risk Mgmt. Joint Powers Auth.*, 41 Cal. App. 5th 640 (2019) (same); *City of Laguna Beach v. CIGA*, 182 Cal. App. 4th 711,
715 (2010) (summary judgment appeal in declaratory judgment suit brought against CIGA regarding CIGA’s payment
obligations); *Baxter Healthcare Corp. v. CIGA*, 85 Cal. App. 4th 306 (2000) (same).

are “not sufficient to show Plaintiffs claims qualify as ‘covered claims’” and (2) fail to allege that “there is no other insurance available to cover any particular claim.” *See generally* Mot. Mem. P. & A. at 11–18. Neither assertion is accurate, nor does CIGA provide a basis for dismissal of RCBO’s TAC.

1. The TAC Sufficiently Pleads the Existence of Covered Claims

The TAC sufficiently pleads the existence of “covered claims” for which CIGA has a statutory obligation to pay, discharge, and provide defense and indemnity under California Insurance Code Section § 1063.2(a) in place of insolvent insurer Commercial Union/Armour. *See* TAC ¶¶ 9, 36, 40, 59–61 & Ex. A. The obligations of Commercial Union/Armour qualify as “covered claims” if they meet the following requirements:

(A) Imposed by law and within the coverage of an insurance policy of the insolvent insurer.

(B) Which were unpaid by the insolvent insurer.

(C) Which are presented as a claim to the liquidator in the state of domicile of the insolvent insurer or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings.

(D) Which were incurred before the date coverage under the policy terminated and before, on, or within 30 days after the date the liquidator was appointed.

(E) For which the assets of the insolvent insurer are insufficient to discharge in full.

....

(G) In the case of other classes of insurance if the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state.

....

Cal. Ins. Code. § 1063.1(c)(1).

Despite the hyperbolic language in its motion claiming the TAC is “devoid” of any reference to these requirements, CIGA does not appear to actually argue that requirements (B), (D), (E), or (G) are inadequately pled.⁴ Instead, CIGA argues only that the TAC insufficiently pleads that the claims were within the scope of Commercial Unions’ policies and that they were timely (requirements (A) and (C),

⁴ Each of these requirements were adequately pled. The TAC alleges that RCBO “is a California corporation sole with its principal place of business in Oakland, California” seeking to enforce insurance obligations relating to complaints about its conduct while in California, which satisfies requirement (G). *See* TAC ¶ 6; *see also* First Day Declaration. The TAC further alleges that Commercial Union/Armour “has become insolvent but had acknowledged potential coverage for the Suits tendered to it by RCBO” and that coverage has not been provided for the claims, satisfying requirements (B) and (E). *See* TAC ¶¶ 9, 40, 59. Finally, the TAC provides the applicable dates of Commercial Union/Armour’s policies, the dates of the alleged abuse underlying the claims, and the dates the claims were tendered to Commercial Union/Armour, and confirms that “RCBO timely presented the claims to the liquidator prior to the date coverage under the policy terminated” and also “submitted timely proof of claim to CIGA,” sufficiently pleading requirement (D). TAC ¶¶ 9, 40, 60–61 & Ex. A.

respectively). *See generally* Mot. Mem. P. & A. 11–18. Both requirements were adequately pled in compliance with Rule 8 and the specific directives of the Court.

First, the TAC identifies Commercial Union/Armour’s applicable insurance policies by policy number and applicable period, then specifically enumerates the claims that fell within the coverage of those policies. TAC ¶ 9. For each enumerated claim, Exhibit A to the TAC provides the claimant number, proof of claim number, case number, years of alleged abuse at issue, the date of tender to Commercial Union/Armour, and the dates of tender and responses from any other applicable insurer. TAC Ex. A. The TAC further pleads that Commercial Union/Armour “acknowledged potential coverage for the Suits tendered to it by RCBO” and had “accepted the defense” of some of the underlying cases before it became insolvent (TAC ¶¶ 9, 59), which makes it plausible that the claims were in fact both adequately tendered to Commercial Union/Armour (*contra* Mot. Mem. P. & A. at 13–14) and within the coverage of Commercial Union/Armour’s policies.⁵ The TAC thus plausibly alleges that the enumerated claims were covered by Commercial Union/Armour’s policies and also provides CIGA with the ability to cross reference the applicable Commercial Union/Armour policies—which CIGA has in its possession—with the details identified or knowable about the enumerated claims based on the information provided in the proof of claims and TAC Exhibit A.

Second, the TAC also sufficiently alleges that the applicable claims within Commercial Union/Armour’s policies were timely submitted to CIGA under requirement (C). The TAC provides the dates that the claims were tendered to Commercial Union/Armour and explicitly alleges that RCBO “timely presented the claims to the [Commercial Union/Armour] liquidator” and “submitted timely proof of claim to CIGA.” TAC ¶¶ 40, 60 & Ex. A. In its Motion, CIGA concedes, as it must, that it is

⁵ CIGA at times suggests that the TAC is insufficient because it does not specifically enumerate which claims Commercial Union/Armour were defending prior to their insolvency or which claims were already in litigation at the time of tender. *See* Mot. Mem. P. & A. at 5, 12, 17. Those suggestions are red herrings. As CIGA appears to admit, it is required to “pay and discharge covered claims and, in connection therewith, pay for or furnish loss adjustment services and defenses of claimants *when required by policy provisions*” regardless of the policy holder’s coverage decisions or the status of the suit underlying the claim at the time the claim was tendered. Cal. Ins. Code § 1063.2(a) (emphasis added); Cal. Ins. Code § 1063.1(c)(1) (not requiring that a suit underlying a claim be “in litigation” for the claim to qualify as a “covered claim”); *Isaacson*, 44 Cal.3d at 791 (holding that the “the scope of [CIGA’s] obligation to pay and defend claims is defined in terms of the underlying insurance policy provisions”); *see* Mot. Mem. P. & A. at 12 (citing § 1063.2 and arguing that Commercial Union’s decisions to defend claims “have no bearing on CIGA’s statutory obligations”).

1 aware and on notice of the 24 claims that were timely submitted to it under California Insurance Code
2 § 1063.1(c)(1)(C) and for which RCBO seeks a declaratory judgment and breach of statutory duty
3 damages. *See, e.g.*, Mot. Mem. P. & A. at 17. Indeed, CIGA previously acknowledged their receipt and
4 assigned a claims adjustor over a year ago. Docket No. 136-27.

5 To the extent CIGA is arguing that the TAC merely lacks sufficient detail as to those 24 claims,
6 its Motion should be denied because, as demonstrated, the TAC plausibly alleges the existence of
7 “covered claims,” RCBO has already provided CIGA with sufficient discovery for CIGA to confirm for
8 itself whether the claims are within Commercial Union/Armour’s policies and were timely submitted,
9 and any additional detail sought by CIGA is better and more properly fleshed out through discovery.
10 *See, e.g., Alia Corp.*, 842 F. Supp. 2d at 1258 (denying Rule 12(e) motion because the complaint was
11 “specific enough to fairly apprise [the defendant] of the basis of [the plaintiff’s] claims” and “the proper
12 tool for obtaining [more detail] is discovery, not a motion for a more definite statement”); *Martinez*,
13 2014 U.S. Dist. LEXIS 17976, at *8–9 (denying Rule 12(e) motion that “would only prolong this case
14 further”); *In re Diocese of Buffalo, N.Y.*, 616 B.R. at 13–14 (holding that a complaint pleading the same
15 general set of facts and claims in less detail was “adequately clear”).

16 Moreover, to the extent CIGA is arguing that it has no payment obligations because RCBO’s
17 claims allegedly do not qualify as “covered claims,” those fact-specific arguments merely confirm an
18 adequate basis for RCBO’s claims against CIGA because they concede the existence of an “actual
19 controversy” and that CIGA has not paid, defended, indemnified, or discharged those claims as RCBO
20 alleges it was statutorily required to do. In any event, that argument goes to the merits of RCBO’s
21 claims, not whether the claims were sufficiently pled, and thus are inappropriate for resolution at the
22 motion to dismiss stage. *See, e.g., Pruco Life Ins.*, 2020 WL 7226184, at *1 (a motion to dismiss “is not
23 the appropriate procedural vehicle to test the merits” of a complaint or the claims asserted therein); *cf.*
24 *Ludgate Ins. Co. v. Lockheed Martin Corp.*, 82 Cal. App. 4th 592, 606 (2000) (rejecting argument that a
25 complaint seeking a declaratory judgment of excess insurance coverage should be dismissed where
26 primary insurance had not been exhausted because exhaustion “is merely an issue of proof and
27 entitlement to recovery, not of pleading” and the coverage dispute qualified as an “actual controversy”);
28

1 *Fremont Reorganizing Corp. v. Fed. Ins. Co.*, 2010 WL 444718, at *2–5 (C.D. Cal. Feb. 1, 2010)
2 (applying *Ludgate* to a breach of contract claim).

3 **2. The TAC Sufficiently Pleads Lack of Other Insurance**

4 CIGA’s argument that there can be no claims against it because there is other insurance available
5 is similarly unavailing. As alleged in RCBO’s TAC and further evidenced by the motions to dismiss
6 filed by certain primary and excess insurers, no other insurance has been provided for the applicable
7 Suits – particularly during the time period of coverage occupied by insolvent Commercial
8 Union/Armour’s policies. *See generally* TAC (alleging that insurers have not satisfied their coverage
9 obligations); Docket Nos. 115 & 117 (RCBO’s oppositions to primary and excess insurers’ first motions
10 to dismiss); Docket Nos. 173 & 175 (pending motions to dismiss by certain primary and excess
11 insurers). As a result, there is undeniably an active controversy regarding the existence of other
12 insurance and thus a related active controversy as to the scope of CIGA’s statutory obligations for the
13 applicable claims. *Cf. Ludgate*, 82 Cal. App. 4th at 606; *Fremont*, 2010 WL 444718, at *3–5; *Denny’s*
14 *Inc. v. Chicago Ins. Co.*, 234 Cal. App. 3d 1786, 1789–90 (1991) (involving rulings on the merits of an
15 insured’s declaratory relief action to determine whether CIGA or excess insurers had an obligation to
16 provide coverage in the place of an insolvent underlying insurer); *see also* Docket No. 117 at 13–18
17 (collecting cases supporting RCBO’s argument that the Amended Complaint stated a valid claim for a
18 declaratory judgment regarding payment obligations of entities alleged to have obligations to provide
19 payment when no other primary insurance is available). If the Court ultimately agrees with the primary
20 and excess insurers’ current positions that no coverage or defense is owed regarding the relevant claims,
21 then the Court will have found that there was no other insurance available and thus that CIGA breached
22 its statutory duties for the relevant covered claims. Notably, although CIGA raised this same argument
23 in its first motion to dismiss, the Court did not reference the argument in dismissing the prior operative
24 complaint and did not identify the absence of other insurance as an element that needed to be more
25 adequately pled by RCBO. Then, as now, RCBO has sufficiently pled the absence of other available
26 insurance given the context of this dispute.

27 * * *

1 As demonstrated, RCBO has adequately pled declaratory judgment and breach of statutory duty
2 claims against CIGA, and CIGA should remain a defendant in this Adversary Proceeding along with the
3 insurance defendants to resolve the insurance-related disputes for the Suits efficiently in a single
4 proceeding. *See* Cal. Ins. Code § 1063.2(b)(1) (providing that CIGA “shall be a party in interest in all
5 proceedings involving a covered claim,” such as this adversary proceeding); *c.f., e.g., Denny’s*, 234 Cal.
6 App. 3d at 1789–90 (involving rulings on the merits of a dispute as to whether CIGA or excess insurers
7 had an obligation to pay insured’s claims). As explained in RCBO’s opposition to the first motion to
8 dismiss brought by certain excess insurers, “a comprehensive” judgment regarding insurers’ and CIGA’s
9 respective obligations for the Suits underlying the Chapter 11 Case is “necessary to achieve a successful
10 reorganization.” Docket No. 117 at 17–18 (quoting *In re Longview Power, LLC*, 516 BR 282, 292–93
11 (Bankr. D. Del. 2014), and *In re U.S. Lines, Inc.*, 197 F.3d 631, 638–39 (2d Cir. 1999), among other
12 cases).

13 V.

14 CONCLUSION

15 For all the foregoing reasons, and the other filings and record of the Adversary Proceeding
16 before the Court, RCBO respectfully requests that the Court deny CIGA’s Motion to Dismiss Third
17 Amended Adversarial Complaint Under Federal Rules of Civil Procedure, Rule 12(b)(6) or
18 Alternatively for a More Definite Statement Under Federal Rule of Civil Procedure, Rule 12(e).

1 DATED: MARCH 5, 2023

FOLEY & LARDNER LLP

Eileen R. Ridley

Ann Marie Uetz

Thomas F. Carlucci

Matthew D. Lee

6 /s/ Eileen R. Ridley

EILEEN R. RIDLEY

COUNSEL FOR THE DEBTOR

THE ROMAN CATHOLIC BISHOP OF
OAKLAND

EXHIBIT 1

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
) Wednesday, November 8, 2023
Debtor.) 10:30 AM

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

1. MOTION TO DISMISS PARTY
FILED BY CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION (DOC.
106)

2. MOTION REQUEST FOR
JUDICIAL NOTICE FILED BY
CALIFORNIA INSURANCE
GUARANTEE ASSOCIATION (DOC.
107)

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

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25 transcript provided by transcription service.

The Roman Catholic Bishop Of Oakland

4

1 OAKLAND, CALIFORNIA, WEDNESDAY, NOVEMBER 8, 2023, 3:37 PM

2 -oOo-

3 (Call to order of the Court.)

4 THE CLERK: That leaves line item number 5 --

5 THE COURT: Yep.

6 THE CLERK: -- for the Roman Catholic Bishop of
7 Oakland, et al. v. --

8 THE COURT: Yep. Yep, yep, yep. Yeah.

9 THE CLERK: -- Pacific Indemnity, et al. --

10 THE COURT: Okay.

11 THE CLERK: -- case number 23-04028, and I'm moving
12 the parties over now, Your Honor.

13 THE COURT: Okay.

14 (Pause.)

15 THE CLERK: And we have all the parties, Your Honor.

16 THE COURT: Okay. Let's go ahead and get appearances.
17 Let's start in the courtroom, please.

18 MS. RIDLEY: Good morning, Your Honor. Eileen Ridley,
19 Foley & Lardner, on behalf of the debtor in the adversary
20 proceeding. I'd like to introduce my very new colleague, Jack
21 Doty (phonetic). He's not technically working on the case, but
22 we thought it would be good to see a court in action while he's
23 just joined us.

24 THE COURT: Okay. I'll look forward to seeing your
25 name at fee app. Okay.

1 All right. On the screen, we have a number of
2 parties -- a number of counsel, I should say, not necessarily a
3 number of parties. Go ahead.

4 MR. HALL: Good morning, Your Honor. Frederick Hall,
5 on behalf of the defendant the California Insurance Guaranty
6 Association.

7 THE COURT: Okay.

8 MS. UETZ: Hi, Your Honor. It's Ann Marie Uetz of
9 Foley for the debtor. Rest assured, that name will not be on
10 the fee application.

11 THE COURT: I couldn't resist. And don't take it the
12 wrong way. It's lovely to see you. Are you from ND Cal or --

13 MR. DOTY: San Diego, actually.

14 THE COURT: Okay. Well, welcome to the Northern
15 District. Okay.

16 MR. DOTY: Thank you.

17 THE COURT: Yeah, you're welcome.

18 MS. UETZ: Thanks, Your Honor.

19 THE COURT: Okay. Other appearances.

20 MS. ALBERT: Good morning. Good morning, Your Honor.
21 Gabrielle Albert, Keller Benvenutti Kim, on behalf of the
22 unsecured creditors committee. And with me today --

23 THE COURT: Okay.

24 MS. ALBERT: -- is Brent Weisenberg from Lowenstein
25 Sandler.

The Roman Catholic Bishop Of Oakland

6

1 THE COURT: Okay. Very good.

2 MR. WEISENBERG: Good afternoon, Your Honor. Thank
3 you for allowing me to appear by Zoom.

4 THE COURT: Okay.

5 MR. BAIR: Your Honor, and --

6 MS. RIDLEY: I'll let Jesse go ahead.

7 Mr. Bair, go ahead.

8 MR. BAIR: Good Honor, Your (sic) afternoon. Jesse
9 Bair from Burns Bair, special insurance counsel for the
10 committee. And I, too, appreciate being able to participate by
11 Zoom today. Thank you.

12 THE COURT: Okay. Others.

13 MS. SUGAYAN: I guess it's still morning there, Your
14 Honor. This is Cathy Sugayan from Clyde & Co. Chicago. I'm
15 here on behalf of the defendants in the adversary Certain
16 Underwriters at Lloyd's, subscribing to slip numbers CU101,
17 K66034, K78138, and CU3061. And for the future, I'll just
18 refer to us as certain underwriters.

19 THE COURT: Okay.

20 MR. CURET: Good morning, Your Honor.

21 THE COURT: All right.

22 MR. CURET: Blaise Curet on behalf of Westport
23 Insurance Corporation.

24 THE COURT: Okay. I had thought that I would give you
25 my views about the matter that was argued two or three weeks

The Roman Catholic Bishop Of Oakland

7

1 ago, but I don't see some of the counsel who I would have
2 expected to see. So I can hold -- are we going to be gathering
3 on the 14th? I think we've reserved that that day for you
4 folks, and I thought there were one or two things on. So --

5 MS. RIDLEY: There are, Your Honor. And they're --

6 THE COURT: Okay. Would it be better to have the more
7 fulsome crowd on the 14th?

8 MS. RIDLEY: It would seem only fair. Can we?

9 THE COURT: I think so. I mean, I'm not looking --
10 without removing all dramatic irony, it will be -- there'll be
11 some things to discuss. Can I leave it at that?

12 MS. RIDLEY: Yeah.

13 THE COURT: And how we go forward. Okay.

14 MS. RIDLEY: I will tell you, and I will follow the
15 seventy-two hour --

16 THE COURT: Yeah. Okay.

17 MS. RIDLEY: -- requirement. I have to be in New
18 York, but I will be --

19 THE COURT: Okay.

20 MS. RIDLEY: -- remotely appearing.

21 THE COURT: Okay.

22 MS. RIDLEY: So I will not be able to be here --

23 THE COURT: Okay.

24 MS. RIDLEY: -- physically.

25 THE COURT: Okay. I will, just without going into the

1 detail -- I would if we had all the other participants here --
2 I am still looking at this the way I think I was trying to
3 telegraph that I was the other day, which is that sort of a
4 functional/rhetorical sense of, well, what what's the purpose
5 of a complaint here. And my disposition of this will try to
6 take account both of the fact that part of the -- part of the
7 reason for a complaint here is just to, for lack of a better
8 way, memorialize and give us a vehicle for dealing with some
9 issues that we all know are there. And that's one level.
10 That's one strata on which this occurs.

11 But another is to the extent that it is a complaint
12 and it necessarily calls forth a response, does it need to be
13 adjusted in a way that might better provoke a response. And I
14 think the answer to the second question is is a version of yes,
15 but how we sort of get there, I think, is the point of the
16 conversation I'll look forward to having when I see all of you.
17 Okay.

18 MS. RIDLEY: I believe I --

19 THE COURT: Make sense?

20 MS. RIDLEY: -- understand, and --

21 THE COURT: Yeah.

22 MS. RIDLEY: -- it makes sense.

23 THE COURT: I doubt I'm shocking anybody. Okay. And
24 by the way, I don't mean to -- I could do this at every
25 hearing, and I probably shouldn't. But I'm aware that

1 obviously versions of this kind of litigation are at play in
2 various dioceses cases, and it seems as if they are performing
3 different functions in different cases. They're certainly
4 getting different responses in different cases. So I try to
5 not so much make a decision based on that, but it does help me
6 educate myself about some context. But otherwise, I always
7 think the Court is better served if it has. So let me just
8 leave it at that. I won't read anything more into that.

9 Okay. Then can we otherwise go forward today with the
10 motion that is on? Okay. All right. Well, let me continue
11 with the jurisdictional discussion that I had had with other
12 counsel earlier on and turn to the moving party here. There
13 were some suggestions at least in the initial pleading that
14 there might be either a jurisdictional or a judicial power
15 question here with respect to your client's view --

16 MR. HALL: Yes, Your Honor.

17 THE COURT: -- of this litigation?

18 MR. HALL: Certainly, we were just --

19 THE COURT: Well, let me just ask you, is there a
20 jurisdictional issue, or is there a judicial power issue?

21 MR. HALL: Your Honor, there is, I think, both. Our
22 issue, certainly at this point, we were just putting forth that
23 we won't consent to the Court's hearing or make final
24 determinations --

25 THE COURT: Well --

1 UNIDENTIFIED SPEAKER: -- to this matter because we
2 believe it's a noncore matter.

3 THE COURT: Well, let me stop you there. One, that's
4 not jurisdictional, right? We can all agree on that?

5 MR. HALL: That's correct. It's judicial power.

6 THE COURT: Correct? Okay. So the difference between
7 jurisdiction and judicial power is difference between here and
8 here and determined, right? If I have no jurisdiction, I don't
9 do anything. We all go home, right? Okay.

10 MR. HALL: Correct.

11 THE COURT: All right. But if I arguably lack
12 judicial power, then at different times, I may or may not do
13 certain things that would resolve matters in front of me,
14 right?

15 MR. HALL: Correct.

16 THE COURT: Okay. And the place where the rubber
17 really meets the road on that constitutionally is where I might
18 be deciding disputed questions of fact, correct?

19 MR. HALL: Correct.

20 THE COURT: Okay. So are we kind of backing into the
21 position that for 12(b)(6) purposes, we don't have to beat this
22 to death today; is that fair?

23 MR. HALL: Yes, that's correct, Your Honor.

24 THE COURT: Okay. So if the complaint survives your
25 robust argument today, we will take as we go what I do and what

1 my role is in all this, right?

2 MR. HALL: Yes.

3 THE COURT: Okay. Got it. All right. You may
4 proceed.

5 MR. HALL: Okay. Your Honor, of course, the
6 California Insurance Guaranty Association is a statutory entity
7 that has very limited powers as to the claims that it can, in
8 fact, honor. And that, the problem with the complaint that we
9 had in this case was that the complaint is drafted clearly to
10 address or to assert claims against private insurers. The
11 California Insurance Guaranty Association is a statutory
12 entity, and the thing that the complaint lacked is any basis
13 that there was, in fact, a what is called a covered claim under
14 the CIGA statute that would raise any obligations on the part
15 of the California Insurance Guaranty Association.

16 In the opposition that was filed by the debtor, we see
17 that what the debtor has admitted is that the second cause of
18 action for breach of contract clearly is not appropriate as to
19 CIGA. And so the motion to dismiss must be granted as to the
20 second cause of action.

21 THE COURT: Well, let me stop you there. They
22 certainly suggest that there is a way to restate that in a way
23 that they believe would be legally relevant to CIGA. Do you
24 agree with that?

25 MR. HALL: Yes, Your Honor. They are --

1 THE COURT: Okay.

2 MR. HALL: -- proposing to amend the complaint to
3 assert --

4 THE COURT: Yeah.

5 MR. HALL: -- a different cause of action, which is --

6 THE COURT: And one that would take account of your
7 argument, which I think they agree is reasonably well taken, up
8 to a point, at least, that that this needs to be presented
9 differently with respect to CIGA.

10 MR. HALL: Correct. That's right.

11 THE COURT: Okay. So everybody respects that. So all
12 right. So that's a given. So go ahead.

13 MR. HALL: Okay. As to the remaining cause of action
14 for declaratory relief, what we have now is essentially, as I
15 pointed out in our motion, there is no allegations that the
16 claim was timely in this case as required under the California
17 Insurance Code Section 1063.1. And in response, the debtor has
18 put forth a series of what we call proofs of claim, which are
19 the form that is filed with the liquidator to establish a
20 particular claim in the liquidation proceeding of the insolvent
21 carrier.

22 The problem we have is that these proofs of claim that
23 were attached as exhibits to the opposition do not actually
24 refer to the claims that are the subject of the adversary
25 complaint. They are actually claims for attorney's fees, and

1 that's all they are. The forms that are filed are not very
2 long forms. They're forms that are used by the liquidator.
3 They don't ask for a lot of information, but they do ask for a
4 statement of what the claim is about. They asked for
5 information about the claim. They asked for whether there's a
6 lawsuit involved in the claim and the particulars of any
7 lawsuit that involved that claim.

8 And if we look at those claims, and there are twenty-
9 four proofs of claim, all of them, the claim forms are all
10 essentially the same. They refer to essentially a debt of
11 attorney's fees, and they attach nothing other than attorney
12 fee bills, one-page bills with no real description and just an
13 amount. And the total of all the bills that are attached to
14 each of the proof of claims is what is noted in the proof of
15 claim as the amount of the claim. So the claim is clearly for
16 the attorney bills. The description is the same in all the
17 proofs of claim, and it does not refer to any clergy abuse
18 claims as are alleged in the complaint.

19 THE COURT: Can I ask you a question?

20 MR. HALL: Sure.

21 THE COURT: You know these claims better than I do.
22 Let me ask if this is analogous to a proof of claim in the
23 bankruptcy context, which may freely be amended as long as the
24 facts are set forth with some particularity and the basis of
25 the claim is also set forth, as in the amount, it sounds kind

1 of odd to say that's sort of the least of our worries, if you
2 will. To what extent is that the rule in the insurance world
3 or not?

4 MR. HALL: Your Honor, the proof of claim in the
5 liquidation proceeding is governed by the law of the
6 liquidation domiciliary state, so in this case, Pennsylvania.
7 So and the problem is here, normally a proof of claim cannot be
8 "amended". It can be supplemented at different times to
9 provide additional information as to the progress of the claim
10 and so forth. But here, the problem that I see is that in all
11 these proofs of claim, there is no real mention of any claim
12 related to these clergy abuse claims. They are only -- the
13 statements in the proof of claim form do not refer to any claim
14 for liability, for clergy behavior, or actions. There's
15 nothing like that in the proof of claim form at all.

16 And in fact, the proof of claim form itself asks if
17 there was any lawsuit involved in the claim. And it denies
18 that and in fact leaves the rest of the proof of claim blank
19 because it says there, it says, no, there is no lawsuit filed
20 relating to this claim. Obviously, if this proof of claim or
21 these proof of claims were intended to provide a or to present
22 as claims the clergy abuse claims, which are all subject to
23 various lawsuits, the answer to that question on the proof
24 claim form would have been yes. And the information that
25 requested on the proof of claim form would have been filled out

1 as to the particular lawsuit.

2 If that was done, and then of course, subsequently,
3 the debtor wanted to supplement that proof of claim, file
4 additional information with the liquidator, provide additional
5 documents, it could do that. But here, you have a proof of
6 claim that relates solely to essentially legal bills. There
7 are no indication of any other type of claim that is being
8 asserted. And in the liquidation proceedings, there is a
9 deadline, a bar date. And if it's not filed by that bar date,
10 you cannot assert that claim later. You cannot supplement a
11 proof of claim so as to essentially present a different claim.

12 THE COURT: Okay. Well, let me give you a
13 hypothetical. Okay. And this is something -- this is very
14 relevant in the bankruptcy world. Somebody is aware of the
15 possibility of a claim under the regimen you're describing.
16 They file a claim for an amount unknown because it has not yet
17 been liquidated. Is that amendable?

18 MR. HALL: Yes. Not amendable, but it's what we call
19 a contingent and undetermined claim. And in that case, the
20 proof of claim would simply indicate that. It would indicate
21 the nature of the claim, indicate that it is unliquidated --

22 THE COURT: Uh-huh.

23 MR. HALL: -- and then --

24 THE COURT: Okay.

25 MR. HALL: -- provide any information relating to the

1 claim and sort of the status of the claim. And then, of
2 course, that could be supplemented as the claim progressed in
3 whatever court it was proceeding under.

4 THE COURT: Okay. Thank you. Okay. Are you pausing
5 for --

6 MR. HALL: Oh, I'm sorry, Your Honor. I didn't know
7 whether you were saying thank you to that's all you wanted to
8 hear from me.

9 THE COURT: Yeah. Yes.

10 MR. HALL: So in essence, the California Insurance
11 Guaranty Association's position is here, these claims, the
12 claims that are the subject of the adversarial complaint, have
13 not been timely presented to the liquidator, and therefore they
14 cannot qualify as covered claims under --

15 THE COURT: Well --

16 MR. HALL: -- (indiscernible).

17 THE COURT: -- let me ask kind of a silly pleading
18 question, but I think it gets to a lot of -- the tension here
19 between the merits and pleadings. Okay. What if this
20 complaint said we did all these things because we said so.
21 Thank you very much. And there were no detail at all, but they
22 said we've satisfied every aspect of this and it's A, B, C, and
23 D and we've done it.

24 From a pleading standpoint, that would be sufficient,
25 wouldn't it?

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1 MR. HALL: If they made those allegations, yes --

2 THE COURT: Okay.

3 MR. HALL: -- I would say we'd have to take --

4 THE COURT: All right.

5 MR. HALL: -- the allegations as stated.

6 THE COURT: Okay. All right. But you're saying that
7 the allegations not having been made, this is 12(b)(6) time.

8 MR. HALL: Correct. And --

9 THE COURT: Okay. Okay.

10 MR. HALL: -- our first position was that it wasn't
11 made, and therefore, at best, the complaint has to be amended
12 so that the appropriate allegations can be placed in the
13 complaint.

14 THE COURT: Um-hum.

15 MR. HALL: What happened was in opposition, the debtor
16 has in fact produced the actual proofs of claim, and now we can
17 see that they cannot allege what is not in the proofs of claim.

18 THE COURT: Um-hum. Okay. Well, okay, let me pause
19 for a moment, and let me turn to Ms. Ridley. Why don't you go
20 ahead and start. And I have some obvious questions, but --

21 MS. RIDLEY: I'm assuming. Yeah.

22 THE COURT: Yeah, go ahead.

23 MS. RIDLEY: Yeah.

24 THE COURT: I concentrate better. I appreciate it.

25 Thank you.

1 MS. RIDLEY: Candidly, so do I so --

2 THE COURT: Yeah.

3 MS. RIDLEY: I'm happy to address the breach of
4 contract, but I think we're in violent agreement that we
5 believe that that should be amended would be --

6 THE COURT: I agree.

7 MS. RIDLEY: -- more out of a duty under statute. So
8 I'll --

9 THE COURT: I agree. And I don't see why you
10 shouldn't have -- you have leave to do that, as far as I'm
11 concerned. Okay. I mean, look, there'll be other arguments
12 about why that's not wonderful either, but okay, that's fine.

13 MS. RIDLEY: I understand that. But getting to sort
14 of what I think is --

15 THE COURT: I think you're right.

16 MS. RIDLEY: -- the meat of the coconut --

17 THE COURT: I think you're right. Okay. Thank you.

18 MS. RIDLEY: Originally, the motion brought by CIGA
19 was that there was no -- there were no proofs of claim. There
20 was nothing submitted on time --

21 THE COURT: Yeah.

22 MS. RIDLEY: -- at all.

23 THE COURT: Yeah.

24 MS. RIDLEY: The reason we presented what we presented
25 is because in fact we did file and in fact had CIGA looked at

1 its own files, it would know we had filed --

2 THE COURT: Yeah.

3 MS. RIDLEY: -- and it would also acknowledge they had
4 assigned an adjuster --

5 THE COURT: Um-hum.

6 MS. RIDLEY: -- and the adjuster had contacted us --

7 THE COURT: Um-hum.

8 MS. RIDLEY: -- and had confirmed we had appropriately
9 filed and understood these were abuse claims. There are reason
10 there are defense fees was that was the only amount presently
11 known while the cases were continuing because the insurers that
12 were involved, Commercial Union/Armour, had accepted defense.
13 They had received the complaint and accepted defense.

14 THE COURT: Um-hum.

15 MS. RIDLEY: That's why there are attorney's fees
16 there.

17 THE COURT: Um-hum.

18 MS. RIDLEY: So they absolutely understood that these
19 were related to complaints. They absolutely understood these
20 had to do with abuse claims. And notwithstanding, in the
21 middle of having agreed to defend, they then went into
22 liquidation. We then submitted what fee bills were there at
23 that time, given the dates provided. We can allege all of
24 that.

25 And so our contention is not only have we timely

1 filed, CIGA knows that. Had it looked at its own files, it
2 actually acted and conducted itself knowing that we had
3 submitted appropriate claims, understanding the nature of the
4 underlying claims. If they would like to see that in a
5 pleading, we can put that in there without really much effort.

6 THE COURT: Um-hum. Okay. I mean, otherwise, we're
7 getting kind of close to Rule 56 stuff here.

8 MS. RIDLEY: A hundred percent.

9 THE COURT: I think, and I mean, and that's not the
10 critique anybody. If that's how this gets resolved, that's
11 fine.

12 May I pause for a moment and bring up a matter of --
13 well, let me put it to you this way. I don't know that my
14 bankruptcy judge colleagues around the country have necessarily
15 believe -- and this is a rare moment of modesty among the
16 federal bench. Okay. I don't know. I mean, you're making
17 wonderful arguments about things you guys understand and deal
18 with every day, Mr. Hall and yourself. I am not -- I mean,
19 it's not that it would be beyond me.

20 But is there a point at which some of these matters
21 are better litigated in a state court as opposed to the
22 bankruptcy court? And that's just an open question because I
23 think, and I'm not trying to be arch when I say it, part of
24 what's going on here is teeing things up so that if and when we
25 get to the happy day when we get to a mediation, there's at

1 least an ask and a get, which I suspect, if nothing else, is a
2 mechanism to have that proceed with some expedition. Okay.
3 Whether you've resolved anything or not, it's out there, there
4 are positions, and people can react to that. Okay.

5 So I don't know that that necessarily leads to
6 bankruptcy judges making wonderfully astute decisions about
7 insurance law that they don't deal with. And I say this -- I'm
8 not trying to be funny. I mean, you guys know this stuff. I
9 can learn it. But is there a sense that ultimately this should
10 be determined here? And maybe that's a partial answer to the
11 judicial power question.

12 MS. RIDLEY: I think it might actually be. And my
13 contention would be, yes, it should be decided here because the
14 fact of the bankruptcy is a key context with regard to this --

15 THE COURT: Yeah. Uh-huh.

16 MS. RIDLEY: -- particular asset, which happens to be
17 insurance.

18 THE COURT: Okay. Well, I mean, I'm raising it
19 because I think it's a question that's been dealt with in
20 different ways in different courts. And I don't know that
21 I'm -- I mean, I'm certainly open to arguments as to what might
22 be related to at best and what I do about that.

23 MS. RIDLEY: And I imagine you would be. But for
24 example --

25 THE COURT: Yeah.

1 MS. RIDLEY: -- with the Diocese of Buffalo, that's
2 one of the things the court grappled with.

3 THE COURT: Yeah. Yeah. Well, and other insurers
4 have certainly reserved the right to move to withdraw the
5 reference, which will not be my call. I mean, if someone wants
6 to withdraw the reference, they tell the -- I mean, I'm allowed
7 under our Local Rules to weigh in on that. And there are times
8 when I have a lot to say about that, and there are times when I
9 don't. So I mean, if we get to that point, Mr. Hall can raise
10 it. And ultimately, the district court will tell us one way or
11 the other that it's just better there for all purposes.

12 MS. RIDLEY: Understood. And --

13 THE COURT: Yeah.

14 MS. RIDLEY: -- while we can have academic discussions
15 with regard to insurance --

16 THE COURT: Yeah.

17 MS. RIDLEY: -- I think the reality, though, is
18 insurance is a practical tool for entities. And --

19 THE COURT: Yeah.

20 MS. RIDLEY: -- knowing the context, particularly for
21 example, in bankruptcy --

22 THE COURT: Uh-huh.

23 MS. RIDLEY: -- I think is very important.

24 THE COURT: Yeah. Yeah. Well, then take it as a rare
25 moment of judicial modesty. Okay.

1 MS. RIDLEY: Okay.

2 THE COURT: All right. Thank you.

3 All right. Anything else, Mr. Hall?

4 MR. HALL: Yes, Your Honor. I just wanted to say that
5 I actually differ with Ms. Ridley about the comment the Court
6 just made. I think that this is particularly an issue that
7 should be resolved by the state courts because --

8 THE COURT: Okay.

9 MR. HALL: -- CIGA is a statutory --

10 THE COURT: Okay. Yeah.

11 MR. HALL: -- entity existing solely under state law.

12 THE COURT: Okay.

13 MR. HALL: And although the debtor is --

14 THE COURT: Well --

15 MR. HALL: -- in bankruptcy, that is the only real
16 connection here to --

17 THE COURT: -- we take that as a fairly relevant one,
18 as connections go. Okay.

19 MR. HALL: I understand.

20 THE COURT: It kind of animates what I do most of the
21 day, but there you go. There you go.

22 MR. HALL: Absolutely.

23 THE COURT: All right. Well, look, and I don't know
24 what the vehicle would be. I mean, I don't know if there's a
25 way to get this to a district court and have the district court

1 consider whether it should abstain -- I mean, that's maybe not
2 even the right word. But I mean, was there an action pending
3 in state court between these parties with respect to the
4 coverage issues when the case was filed?

5 MR. HALL: Not with the --

6 MS. RIDLEY: No.

7 MR. HALL: -- the California Insurance Guarantee
8 Association.

9 THE COURT: Okay. So abstention is not -- from my
10 limited perspective basis, abstention is not the doctrine we
11 would look at.

12 MS. RIDLEY: I think that's correct.

13 THE COURT: Okay. All right. I got it. All right.
14 But certainly hearing Mr. Hall that he believes this might be
15 better done in state court, and I don't have an opinion about
16 that. It was more, am I going to hear that, because I think
17 it's not a crazy position, believe me. Okay.

18 All right. Anything else?

19 MS. RIDLEY: Not from me, Your Honor. Thank you.

20 THE COURT: All right. Mr. Hall.

21 MR. HALL: Not from me, Your Honor.

22 THE COURT: All right. Okay. I think I'm going to
23 grant the motion to the extent that there is an agreement that
24 the second cause of action needs to be restated more properly
25 to make relevant allegations with respect to the insurance

1 guaranty entity that is here, which is not an insurance company
2 per se. So I think that makes absolute sense. And I think
3 that -- and this is not to say that you won't have another
4 wonderful 12(b)(6) motion if you see something in that amended
5 pleading that you think is inappropriate, Mr. Hall. But I
6 think I'd let the debtor take a whack at that. Okay.

7 So with respect to the first cause of action, I am
8 similarly inclined to allow the debtor to amend to state more
9 comprehensively what would be the predicates for setting forth
10 the extent and the character of the dispute between the
11 plaintiff and the defendant here. And I think this is getting
12 somewhat into the facts in a way that arguably 12(b)(6)
13 wouldn't necessarily have to take us. It's probably going to
14 be much more efficient if we do that because at that point we
15 can have a much more particularized response if there's going
16 to be an answer. If there's another legal issue here to be
17 determined, Mr. Hall can raise it and I can decide it.

18 But I think the closer we get to something that that
19 is actually an ask and a get, for lack of a better way of
20 putting it, the more sense this is going to make. And what I
21 had said before, Mr. Hall, and I think this presents
22 differently because your client is not an insurance company.
23 It's a little bit different. But I think there's still a sense
24 in which this litigation is two things. I mean, one of it is
25 sort of a big discovery tool. Where are we with different

1 assets and aspects of this. And that might have been done
2 through 2004 exams here.

3 But to the extent you would want to turn that into the
4 debtor asking that something be done or alleging that something
5 needed to be done that wasn't done, obviously a complaint is
6 the vehicle, but then the debtor needs to be fairly
7 particularized about what those duties were and why they
8 haven't been met and why there is a controversy. So I think
9 it's appropriate. I'm going to grant your motion, but with the
10 understanding that I'm looking to the debtor to give us -- to
11 sort of recharacterize things on the second claim and for lack
12 of a better word, put a little meat on the bones with respect
13 to the first one, and then we'll see where we are.

14 Do you have a sense of how long you want to take to do
15 that, Ms. Ridley?

16 MS. RIDLEY: If I could have two weeks.

17 THE COURT: Any problem with giving them two weeks to
18 amend, Mr. Hall?

19 MR. HALL: No, Your Honor.

20 THE COURT: Okay. Let's do that. And then I forget
21 if there's necessarily a time that is suggested for Mr. Hall's
22 response that's other than the normal twenty-eight days.

23 MS. RIDLEY: There isn't. The one thing I would note.
24 Maybe if we were to amend the complaint and depending what the
25 Court informs us of on the 14th --

1 THE COURT: Yeah.

2 MS. RIDLEY: -- maybe it might be two weeks from the
3 14th because it's one complaint, and I can do it all in one --

4 THE COURT: That makes some sense, and there's going
5 to be some overlap, let's put it that way. Okay.

6 MS. RIDLEY: Okay. So I'm just if it's two weeks from
7 the 14th, that way I can make it a whole package.

8 THE COURT: Let's do that. Okay.

9 MS. RIDLEY: Okay.

10 THE COURT: All right. Thank you all for your very
11 good arguments. I really appreciate it. I mean, I really mean
12 it when I say it with you folks. I learn something every time
13 I see you. I mean, there is always something that I have never
14 seen before. And I'm very, very grateful for your good
15 arguments and the spirit with which you bring them to the
16 Court.

17 MS. RIDLEY: Well, I would say I appreciate a judicial
18 officer who is interested in insurance. Not always the case.

19 THE COURT: I'm interested in many things about which
20 I know not nearly enough so that's a good (indiscernible) for
21 me to be interested. Okay.

22 All right. Anything else for today?

23 MR. HALL: No, Your Honor.

24 MS. RIDLEY: No. Thank you, Your Honor.

25 THE COURT: All right.

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28

1 MR. HALL: Thank you, Your Honor.

2 THE COURT: All right. Thank you very much. I'll see
3 everybody next week, and we'll talk about the other motions to
4 dismiss. Okay. All right.

5 (Whereupon these proceedings were concluded at 4:06 PM)

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| RULINGS: | PAGE | LINE |
| CIGA's motion to dismiss party is granted | 24 | 22 |

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: November 17, 2023

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