

January 23, 2024

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

The following constitutes the order of the Court.
Signed: January 22, 2024

A handwritten signature in black ink, which appears to read "William J. Lafferty, III".

William J. Lafferty, III
U.S. Bankruptcy Judge

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

**ORDER REFERRING PARTIES TO
MEDIATION, APPOINTING
MEDIATORS, AND GRANTING
RELATED RELIEF**

Hearing Held

Date: January 17, 2024

Time: 9:30 a.m.

Location: 1300 Clay St, Ctrm 220/Zoom,
Oakland, CA 94612

Upon the *Joint Motion for Entry of Order Referring Parties to Mediation, Appointing Mediators and Granting Related Relief* [Dkt. No. 705] (the “**Motion**”) filed by (i) the Roman Catholic Bishop of Oakland, a California corporation sole, and the debtor and debtor in possession (the “**Debtor**”) in the above-captioned chapter 11 bankruptcy case (the “**Chapter 11 Case**”) and (ii) the Official Committee of Unsecured Creditors (the “**Committee**,” and together with the Debtor, the “**Movants**”) for entry of an order requiring mediation (the “**Mediation**”) of the Mediation Matters (defined below) and appointing mediators; and upon *Pacific’s Objection*



1 to Joint Motion for Entry of Order Referring Parties to Mediation and Granting Related Relief
2 [Dkt No. 748] (the “**Pacific Objection**”) and to the joinders to the Pacific Objection filed by (i)
3 Continental Casualty Company [Dkt. No. 751] and (ii) Travelers Casualty & Surety Company
4 f/k/a Aetna Casualty & Surety Company [Docket No. 755] (collectively with the Pacific
5 Objection, the “**Objection**”); and the Court having reviewed and considered the Motion, the
6 reply to the Objection filed by the Movants [Dkt. No. 761], and the Objection, and the
7 statements of counsel at the hearing held on the Motion on January 9 and 17, 2024; and the
8 Court finding that it has jurisdiction over this matter, that venue in this Court is proper, and that
9 notice of the Motion thereon was reasonable and sufficient under the circumstances; and the
10 Court further finding that the relief requested in the Motion is in the best interests of the Debtor,
11 its estate and its creditors; and after due deliberation and good cause appearing,

12 **IT IS HEREBY ORDERED** as follows:

13 1) The Motion is GRANTED as set forth and modified below.

14 2) The Court authorizes and appoints Hon. Christopher Sontchi (Ret.) (“**Judge**
15 **Sontchi**”) and Jeff Krivis (“**Mr. Krivis**” and together with Judge Sontchi, the “**Committee**
16 **Mediators**”) for the purpose of mediating the Committee Mediation Matters (defined below).
17 The Court authorizes and appoints Hon. Randall Newsome (Ret.) (“**Judge Newsome**”) and
18 Timothy Gallagher (“**Mr. Gallagher**” and together with Judge Newsome, the “**Insurance**
19 **Mediators**”) for the purpose of mediating the Insurance Mediation Matters (defined below).
20 The Committee Mediators and Insurance Mediators are collectively referred to herein as the
21 “**Mediators.**”

22 3) The Mediators, as court appointed mediators, shall be immune from claims arising
23 out of acts or omissions incident to the Mediators’ services rendered in connection with the
24 Mediation to the maximum extent permitted by law.

25 4) The Mediators shall apply for the payment of their fees and the reimbursement of
26 their expenses in conformity with the Bankruptcy Code, Bankruptcy Rules, Local Rules and
27 orders of this Court, provided that the Insurers (as defined below) shall pay fifty percent (50%)
28 of the fees and expenses of the Insurance Mediators when and as due according to the

1 authorization obtained pursuant to the Bankruptcy Code, Bankruptcy Rules, Local Rules and
2 orders of this Court.

3 5) The participants in the mediation (the “**Mediation Parties**” and each a “**Mediation**
4 **Party**”), through their respective counsel, are:

- 5 A. the Debtor;
- 6 B. the Committee; and,
- 7 C. The Debtor’s insurers named as defendants in adversary proceedings *The*
8 *Roman Catholic Bishop of Oakland v. Pacific Indemnity et al.*, Adv. Case
9 No. 23-04028 and *The Roman Catholic Bishop of Oakland v. American*
10 *Home Assurance Co. et al.*, Adv. Case No. 23-04037 (such adversary
11 proceedings, the “**Adversary Proceedings**” and such insurer defendants,
12 the “**Insurers**”).

13 6) The following matters are hereby referred to mediation between the Committee and
14 Debtor (the “**Committee Mediation Matters**”), all of which are within this Court’s jurisdiction
15 over the administration of this chapter 11 case:

- 16 i. Assessment of sexual abuse claims and the Debtor’s potential legal
17 liability for the sexual abuse claims;
 - 18 ii. The negotiation of material financial, injunctive, and other provisions of a
19 plan of reorganization;
 - 20 iii. The resolution of disputes related to the formation of a trust and the
21 process for allowance of and distributions to holders of abuse claims;
 - 22 iv. The resolution of disputes related to the process to resolve claims
23 asserted by or against a church and certain other non-Debtor Catholic
24 entities within the Diocese;
 - 25 v. The resolution of any other issue necessary to reach agreement on the
26 terms of a confirmable plan of reorganization; and,
 - 27 vi. Such other issues as may arise.
- 28

1 7) The following matters are hereby referred to mediation between the Debtor, the
2 Committee, and the Insurers (the “**Insurance Mediation Matters**”), all of which are within this
3 Court’s jurisdiction over the administration of this Chapter 11 case:

- 4 i. Assessment of sexual abuse claims;
- 5 ii. The claims and defenses asserted by the parties in the Adversary
6 Proceedings, including issues related to indemnity, defense, and
7 insurance coverage of sexual abuse claims and the obligations of the
8 Debtors and parishes;
- 9 iii. The negotiation of material financial, injunctive, and other provisions of a
10 plan of reorganization, as directly affects the Insurers;
- 11 iv. The resolution of any other issue necessary to reach agreement on the
12 terms of a confirmable plan of reorganization; and,
- 13 v. Such other issues as may arise.

14 8) At any time following entry of this Order, one or more of the Mediation Parties
15 may, individually or jointly, propose in writing that the Mediators address one or more
16 particular Mediation Issues (each such proposal, a “**Mediation Proposal**”) so long as such
17 Mediation Party or Parties submits the Mediation Proposal by email to all of the Mediators and
18 all of the Parties and describes, with specificity, the Mediation Issue(s) that are the subject of
19 the Mediation Proposal. Upon receipt of a Mediation Proposal, the Mediators shall confer and
20 determine, in their discretion, the allocation of responsibility amongst themselves with respect
21 to the Mediation Issue(s) that are the subject of the Mediation Proposal. Notwithstanding
22 anything to the contrary in this Order, and for the avoidance of doubt, no Mediation Party shall
23 be required to participate in the mediation of any Mediation Issue(s).

24 9) The Mediators shall consult with the Mediation Parties on the matters concerning
25 the Mediation, including, without limitation: (a) the structure and timing of Mediation
26 procedures, including, without limitation, the attendance of specific Mediation Parties at
27 particular Mediation sessions; and (b) the timing, general content, and manner of any
28 submissions to the Mediators. Notwithstanding any provision of this order, nothing shall

1 prevent the Mediators from considering modifications to the subjects to be included in the
2 Committee Mediation Matters and the Insurance Mediation Matters, as set forth in paragraphs 7
3 and 8 of this Order.

4 10) The results of the Mediation are non-binding and are without prejudice to any
5 Mediation Party's rights, claims, or defenses, including with respect to any of the Mediation
6 Matters, all of which are expressly preserved.

7 11) The Mediation shall take place on such date(s) and location(s) (either in-person or
8 via electronic means), as the Mediators reasonably determine, which may include joint and
9 private meetings between the Mediators and Mediation Parties during the course of the
10 Mediation, including joint and separate meetings with any of the parties to the Committee
11 Mediation Matters and the Insurance Mediation Matters.

12 12) The Mediators shall have the authority to require a representative, with complete
13 authority to negotiate and settle all disputed issues and amounts, of each of the Mediation
14 Parties to personally attend the Mediation meeting(s) either in person or via video conference.

15 13) The Mediators shall have authority to control all procedural aspects of the
16 Mediation(s), including when the Mediation Parties will meet jointly and/or separately with the
17 Mediator(s), and whether meetings shall be by telephone, video conference, or in person. The
18 Mediators may require Mediation Parties to sign a mediation agreement as may be reasonably
19 required to promote the Mediation, except that any such supplemental agreement shall be
20 consistent with and subject in all respects to the terms of this Order. The Mediators may report
21 to the Court any willful failure to attend or participate in good faith in the mediation process or
22 mediation conference. Such failure may result in the imposition of sanctions by the Court.

23 14) Participation by the Mediation Parties in the Mediation will not prejudice their
24 rights with respect to any disputed issue in the Chapter 11 Case, and all such rights, to the extent
25 they existed prior to this Order, are preserved and may be exercised consistent with any order of
26 the Court. This includes, without limitation, the Mediation Parties' rights (if any) to (a) seek a
27 judicial determination from this Court with respect to any issue that may arise during the
28 Mediation requiring judicial resolution; (b) contest the jurisdiction of the Bankruptcy Court; (c)

1 contest the entry of final orders or judgments by the Bankruptcy Court; (d) withdraw the
2 reference; or (e) demand arbitration or a trial by jury.

3 15) After the Mediation concludes, the Mediators will report to chambers staff whether
4 the Mediation resulted in a settlement.

5 16) The provisions of Local Rule 9047-1 pertaining to the “Confidentiality” of the
6 Bankruptcy Dispute Resolution Program shall govern the Mediation; provided, however, that if
7 a Mediation Party puts at issue any good faith finding concerning the Mediation in any
8 subsequent action concerning insurance coverage, the parties’ right to seek discovery, if any, is
9 preserved. However, nothing in this paragraph shall limit communications between the
10 Mediators during the Mediation. Further, nothing in this paragraph makes a document or other
11 information confidential that was received or developed by a Mediation Party without an
12 obligation of confidentiality that related to the Mediation.

13 17) The Mediation Parties shall cooperate in pre-mediation discovery. In the event that
14 a discovery dispute arises that cannot be resolved by negotiation among the Mediation Parties
15 involved, a motion may be brought before this Court to resolve the dispute. The Court may hold
16 hearings on short notice on any discovery dispute. The Court expects the Mediation Parties to
17 obtain such information as they may deem reasonable to participate meaningfully in the
18 Mediation.

19 18) Notwithstanding any provision of this Order to the contrary, (a) nothing contained
20 in this Order shall authorize any Mediation Party to produce documents or information that are
21 subject to attorney-client privilege, attorney work product, or any other legally recognized
22 privilege; and (b) the Debtor shall not as part of the Mediation or otherwise provide the
23 Committee or its counsel with any materials created or used in the defense and resolution of
24 abuse claims that may be subject to an attorney client privilege, attorney work product privilege,
25 common interest privilege (subject to the provisions of paragraph 20 below), or other rule of
26 privilege or confidentiality, unless the Debtor first shares those materials with the Insurers and
27 the Insurers consent to the disclosure of those materials.

1 19) If any of the parties subject to this Order believe that they share a “common
2 interest” privilege with respect to any information or communications subject to this Order,
3 before any such privilege may be invoked, such parties shall memorialize the terms of their
4 agreement concerning the existence and scope of such privilege in a written agreement to be
5 executed by all parties asserting a right to invoke the privilege and to be lodged with the Court.
6 If the parties decide to ask the Court to approve their agreement regarding a common interest
7 privilege, and to the enforce such agreement if so approved, the Court will consider a motion to
8 obtain such relief on notice to the other participants in the Mediation who are not parties to the
9 agreement.

10 20) Notwithstanding any provision of this Order to the contrary, no Mediation Party
11 may disclose to any other Mediation Party, either in connection with the Mediation or any pre-
12 mediation discovery, any information or documents which are protected by common interest
13 privilege, without the prior written consent of all parties sharing in such common interest
14 privilege.

15 21) Nothing in this Order shall relieve any of the Mediation Parties or any other party
16 in interest from complying with applicable requirements of the Bankruptcy Code and Federal
17 Rules of Bankruptcy Procedure, such as requirements for obtaining court approval of any
18 compromises of controversies, stipulated stay relief or adequate protection, or sales of property
19 outside the ordinary course of business.

20 22) Any of the Mediation Parties may at any time file a motion with the Court to
21 withdraw from, suspend, and/or terminate the Mediation for cause.

22 23) Neither this Order nor any of its terms shall be construed as a stay or prohibition of
23 any proceedings or issues in this Chapter 11 Case.

24 24) The Court retains discretion to modify this Order and retains exclusive jurisdiction
25 to hear and determine all matters arising from the implementation or interpretation of this
26 Order.

27 ****END OF ORDER****
28

COURT SERVICE LIST

All ECF Recipients