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

UNITED STATE DISTRICT BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

LMI'S MOTION FOR STAY PENDING APPEAL OF ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EX PARTE APPLICATION FOR FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 EXAMINATION OF INSURERS

Date: March 27, 2024
Time: 10:30 A.M.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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

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Certain Underwriters at Lloyd's, London, subscribing severally and not jointly Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market Insurers" or "LMI"), hereby respectfully move this Court ("Motion") pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") for an entry of an order staying the Bankruptcy Court's Order ("2004 Order")[1] Granting the Official Committee of Unsecured Creditors' ("Committee") Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers pending LMI's appeal. In support of this Motion, LMI respectfully represent as follows.

I. PRELIMINARY STATEMENT

On October 5, 2023, the Committee filed its "2004 Application"[2] seeking, *inter alia*, production of reserve information ("Reserve Information") and underwriting files ("Underwriting Files")[3], from LMI. On November 14, 2023, the Court issued an "Oral Ruling"[4] regarding the 2004 Application. On December 15, 2023, LMI filed its "Motion to Reconsider".[5]

Prior to the hearing on the Motion to Reconsider, on January 18, 2024, the Court issued its 2004 Order. Following the hearing on the Motion to Reconsider, on February 14, 2024, this Court issued its "Reconsideration Order".[6]

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[1] The "2004 Order" is the Court's *Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*, at Dkt. No. 796.

[2] The "2004 Application" is the Committee's *Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers,* filed October 5, 2023, at Dkt. No. 502.

[3] *Id.P*

[4] The "Oral Ruling" is the Court's bench ruling at the November 14, 2023 hearing on the 2004 Application.

[5] The "Motion to Reconsider" is LMI's *Motion to Clarify or, in the Alternative, Amend, Alter, or Reconsider the Court's Oral Ruling on the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*, filed on December 15, 2023, at Dkt. No. 697.

[6] The "Reconsideration Order" is the Court's *Order Denying the Motion to Clarify or, in the Alternative, Amend, Alter, or Reconsider, the Court's Oral Ruling on the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*, at Dkt. No. 875.

On January 22, 2024, LMI received a subpoena from the Committee that included a variety of demands for the production of documents. Included in those requests were the following:

> 6. All Underwriting Files Relating to Your Insurance Policies concerning any Abuse Claims tendered by or on behalf of RCBO to You.
>
> 7. Documents sufficient to show Your current reserves for each of the Abuse Claims tendered by or on behalf of RCBO to You.
>
> 8. All Documents and Communications that relate to Your setting, calculating, analysis, adjustment, investigation, evaluation of, and decision-making process with respect to, Your reserves identified in response to Request No. 7, above, including the working papers and actuarial reports, if any, relating to the establishment of those reserves. ("Overbroad Demands").

LMI have appealed, and moved for leave to appeal ("Motion for Leave"), the 2004 Order to the United States District Court, Northern District of California because of its approval of the Overbroad Demands.[7] Thus, LMI respectfully request a stay of the 2004 Order, as applicable solely to the Overbroad Demands, pending a ruling on the Motion for Leave and any appellate review. In determining whether to issue a stay pending appeal, the Ninth Circuit are directed to apply a four-factor test.[8]

Here, all the factors favor granting the Motion.

- First, the appeal raises a serious question regarding relevancy with respect to Federal Rule of Civil Procedure 2004, and LMI have a strong likelihood of succeeding on the merits of the appeal.
- Second, LMI will suffer irreparable harm should the Court not stay the 2004 Order because if LMI are forced to immediately comply with the 2004 Order, the appeal will be rendered moot.
- Third, the Debtor, Committee, and other parties will not be harmed by a stay pending appeal.
- Fourth, public interest weighs in favor of granting a stay.

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[7] Dkt. Nos. 905, 906.

[8] *Leiva-Perez v. Holder*, 640 F.3d 962 (9th Cir. 2011) ("(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.") (citing *Nken v. Holder,* 556 U.S. 418 (2009).

Accordingly, LMI respectfully request that the Court enter an order staying the 2004 Order so LMI may proceed with the appeal.

II. FACTUAL BACKGROUND

A. LMI Policies

LMI subscribed, severally and not for the other, as their interests may appear, certain insurance policies. On those policies (a) the Roman Catholic Archbishop of San Francisco is a Named Assured and certain Diocese-related entities were also Assureds, effective for periods from March 12, 1962, to October 25, 1963, and (b) the Roman Catholic Bishop of Oakland is a Named Assured and certain Diocese-related entities were also Assureds, effective for periods from October 25, 1963, to October 25, 1966 (collectively, "LMI Policies").

B. Bankruptcy

On May 8, 2023, the Debtor filed a voluntary chapter 11 petition for relief under Title 11 of the Bankruptcy Code.[9]

On June 22, 2023, the Debtor commenced an insurance coverage adversary proceeding against LMI, among other insurers ("Coverage Action").[10] On June 30, 2023, the Committee moved to intervene in the Coverage Action, but it did not file a complaint in intervention, hence it is neither a plaintiff nor a defendant in the Coverage Action.[11] The Committee also did not seek derivative standing to pursue the Coverage Action on behalf of the Debtor. Thus, only the Debtor has standing to pursue its claims for insurance.

On October 5, 2023, the Committee filed the 2004 Application, seeking, among others, the production of documents related to LMI's claim reserve and underwriting information pursuant to

[9] Dkt. No. 1.

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

[11] *See also id.*, Dkt. No. 15.

FRBP 2004.[12] On November 1, 2023, LMI, among others, objected to the 2004 Application, arguing that the discovery sought exceeded the limits of permissible discovery pursuant to FRBP 2004.[13]

On November 14, 2023, the Bankruptcy Court held a lengthy hearing on the 2004 Application. After oral argument, the Bankruptcy Court stated the following: "I am inclined to entertain the request with respect to the current claim files, the reserve working papers, and the underwriting information, if any, with respect to these cases."[14] The Court observed that the document requests were "analogous to getting the claims from their perspective…"[15] The Court orally granted the 2004 Application and further ordered the parties to "sit down…and just make sure everybody is agreeing on what the wording is because this is a moving target. …But I think *we need a little precision on what you mean by claims files, the reserve working files, and the underwriting information*. … give me some language…so that we're talking about the same thing."[16] At the hearing's conclusion, the Court again asked the parties to "put your heads together about appropriate wording for the three categories I suggested with respect to this case, I think could be produced, I think I can – I'll be happy to see your handiwork. And I'll approve that, okay, subject to that being worked out."[17]

Counsel for the parties met and conferred on December 7, 2023, to settle the form of order and subpoena.[18]

On December 15, 2023, LMI filed the Motion to Reconsider.[19] The Motion to Reconsider sought to clarify that the 2004 Order did not require LMI to produce irrelevant or privileged

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[12] Dkt. No. 502.

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

[14] *See id.*, Transcript of Dkt. No. 616, at 175:6-8. A true and correct copy of the transcript is attached as Exhibit A to the Motion to Reconsider, Dkt. No. 697.

[15] *Id.* at 175: 21-22.

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

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

[18] Dkt. No. 697 at 10.

[19] *Id.*

information and alternatively, then it requested that the Court reconsider the 2004 Order pursuant to Rules 59(e) and 60(b).[20] On January 17, 2024, the Committee filed its *Objection to LMI's Motion to Reconsider the Court's Ruling on the Committee's Rule 2004 Application*.[21] On January 18, 2024, the Court entered an *Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* ("2004 Order").[22] The 2004 Order preserved objections based on privileges but was silent as to the issue of relevancy.[23] The 2004 Order ordered the following:

> 2. The Insurers shall furnish all documents requested in subpoenas in a form substantially as those attached hereto as Exhibits 1 through 11 (the "Subpoenas"), and shall produce same to the Committee's counsel and the Debtor's counsel within forty-five (45) days of entry of this Order. ….
>
> 4. The Insurers' rights to object to the Subpoenas as permitted under Rule 45 of the Federal Rules of Civil Procedure, incorporated into this bankruptcy case by Rule 9016 of the Federal Rules of Bankruptcy Procedure, are fully preserved, including, without limitation (a) any and all applicable evidentiary privileges and (b) proper scope of discovery.[24]

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

On February 7, 2024, the Court held a hearing on the Motion to Reconsider, stating that it would review the issue of relevancy and take the Motion to Reconsider under submission.[25]

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[20] *Id.*

[21] Dkt. No. 788.

[22] Dkt. No. 796.

[23] *Id.*

[24] *Id.*

[25] Dkt. No. 846.

On February 12, 2024, the Court orally denied the Motion to Reconsider.[26] The Court stated that there is a "difference between a 2004 exam, which is meant to get information about the debtor's assets, liabilities, financial condition, and the matters necessary to administer the case and do what you need to do in the course of a bankruptcy case, and litigation issues, which are going to be dealt with differently" in the Coverage Action.[27] The Court further stated that the insurance reserve and underwriting information was

> fair game for a [sic] discovery because in my view, they were in some ways the mirror image of the claim information. The claim information is one side of the ledger. What the insurance companies are doing about it is the other side of the ledger. So that was my thinking in making that ruling, and I thought it was quite clear.[28]…
>
> So I think we need to be sensitive to possibly doing things a little bit differently. And it was my theory that having the insurance companies provide this information was going to help that process and was going to get everybody into the mediation with the optimum amount of information. On the debtor to committee side, that's the claim information produced to the insurers. From the insurers, that is a snapshot of where they are with their evaluations. And in my view, those are simply mirror images of each other.…
>
> So that was my ruling. I stand by it. I continue to think for those reasons that there was relevancy established, at least for the limited purposes of a 2004 exam, which again, I'm contrasting with litigation theories. Okay. Litigation is a whole other story, and you're going to get into that in the AP. That is different. So for all those reasons, I'm going to deny the motion for clarification and/or for reconsideration.[29]

On February 14, 2024, the Court issued its Reconsideration Order.[30]

On February 14, 2024, the Committee demanded LMI revise their Responses and Objections as a result of the Clarification Order. In response, on February 20, 2024, LMI advised the Committee that they would be seeking an appeal and a stay pending the appeal. On February 28, 2024, LMI filed

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[26] Dkt. No. 855.

[27] *See id.*, Transcript of Dkt. No. 855 at 12:4-11. A true and correct copy of the transcript is attached as **Exhibit A** to the Declaration of Betty Luu.

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

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

[30] Dkt. No. 875.

a Notice of Appeal and Motion for Leave to Appeal with the United States District Court, Northern District of California.[31]

III. LEGAL ARGUMENT

A party appealing an order of the bankruptcy court may move the court to issue a stay of its order or otherwise suspend proceedings in the case during the pendency of the appeal to protect the rights of all parties in interest.[32]

This Court has broad discretion to grant a stay to "promote economy of time and effort for itself, for counsel, and for litigants."[33] This includes the discretion to stay a case pending interlocutory appeal.[34]

A stay pending appeal is an exercise of judicial discretion, the issuance of which is dependent on the circumstances of the particular case.[35] When deciding whether to issue a stay under Bankruptcy Rule 8007, courts consider the following:

- the movant has demonstrated a strong showing that it is likely to succeed on the merits;
- the movant will suffer irreparable injury absent a stay;
- other parties will suffer injury if a stay is issued; and
- the public interest is affected.[36]

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[31] Dkt. Nos. 905, 906.

[32] Fed. R. Bankr. P. 8007(a) and (e).

[33] *Filtrol Corp. v. Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972) (quotations and citations omitted).

[34] *See Wishnev v. Nw. Mut. Life Ins. Co.*, 2016 WL 9223857, at *2 (N.D. Cal. Mar. 28, 2016); *see also Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983); *Hunt v. Check Recovery Sys., Inc.*, 2008 WL 2468473, at *4 (N.D. Cal. June 17, 2008) ("frequently issue stays in an action when a there is a matter pending interlocutory appeal."); *Canela v. Costco Wholesale Corporation*, 2018 WL 3008532, at *4 (N.D. Cal. June 15, 2018) (granting stay pending interlocutory appeal and noting that, "[i]f the parties were required to continue trial preparation . . . much of the efficiency and benefit of an interlocutory appeal would be lost"); *Gray v. Golden Gate Nat. Recreational Area*, 2011 WL 6934433, at *3 (N.D. Cal. Dec. 29, 2011) (granting motion to stay all proceedings pending interlocutory appeal, based on Hilton factors).

[35] *See Nken,* 556 U.S. at 433.

[36] *Nken,* 556 U.S. at 434*; Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

In the Ninth Circuit, courts must apply a sliding scale in determining a proper balancing of interests on a motion for stay pending appeal.[37] Under this approach, the court balances the factors so that a stronger showing of one factor may offset a weaker showing of another.[38]

Because each of these four factors weigh in favor of a stay, the Court should stay the 2004 Order pending resolution of LMI's appeal.

A. LMI's Appeal Raises a Serious Legal Question and Has a Likelihood of Success on the Merits

The appeal raises serious legal issues that could rationally be resolved in favor of LMI, thereby satisfying the first factor for granting a stay.

For the first factor, LMI must "articulate the minimum quantum of likely success necessary to justify a stay—be it a reasonable probability or fair prospect,…a substantial case on the merits,…or,…that serious legal questions are raised."[39] This factor does not require a showing that "it is more likely than not that they will win on the merits"[40] Nor, does it require "the trial court to change its mind or conclude that its determination on the merits was erroneous."[41] Rather, "the court must determine whether there is a strong likelihood that the issues presented on appeal could be rationally resolved in favor of the party seeking the stay."[42]

1. The Appeal Raises a Serious Legal Question

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[37] *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011); *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-1135 (9th Cir. 2011) (a stay is appropriate where serious questions going to the merits are raised and balance of hardship tips in movant's favor); *see also In re Swartout*, 554 B.R. 474, 476 (E.D. Cal. 2016) (Ninth Circuit adheres to sliding scale balancing of traditional four factors).

[38] *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011).

[39] *Leiva-Perez,* 640 F.3d 962, 967–68 (citations and internal quotations omitted).

[40] *Id.* at 965; *see also Hilton v. Braunskill*, 481 U.S. 770, 778 (1987) ("Where the State establishes that it has a strong likelihood of success on appeal, or where, failing that, it can nonetheless demonstrate a substantial case on the merits, continued custody is permissible if the second and fourth factors in the traditional stay analysis militate against release.").

[41] *United States v. $1,026,781.61 in Funds from Fla. Cap. Bank*, 2013 WL 781930, at *1 (C.D. Cal. Mar. 1, 2013) (citing *Fourteen Various Firearms*, 897 F. Supp. 271, 273 (E.D. Va. 1995)).

[42] *Id.*

Here, LMI's appeal raises a serious legal question as to whether the Reserve Files and Underwriting Files are relevant to the bankruptcy case. This is a serious legal question because, as outlined in Section III(A)(2), state and federal courts have adjudicated the very issue of whether such information is relevant and have held that it is irrelevant and does not go to a particular value of a claim, as alleged by the Committee. A stay would allow the resolution of an appeal in line with legal authority and further guide other diocesan cases in this district, California and around country.

2. LMI's Appeal Has a Strong Likelihood of Success

a. LMI's Motion for Leave to Appeal Has a Strong Likelihood of Success

An appellate court may review the 2004 Order if it grants leave to appeal pursuant to 28 U.S.C. § 158(a)(3).[43] Courts use the standard in 28 U.S.C. § 1292(b), which governs appellate review of interlocutory district court orders, to determine whether to grant leave to appeal interlocutory orders in bankruptcy courts.[44]

An appellate court may hear interlocutory orders when (1) the order involves a controlling question of law, (2) as to which there is substantial ground for difference of opinion, and (3) an immediate appeal from the order may materially advance the ultimate termination of litigation.[45]

LMI's leave to appeal has a strong likelihood of success because the issue of whether the scope of FRBP 2004 includes LMI's reserve or underwriting information is a controlling question of law, as to which there is a substantial ground for difference of opinion, and immediate appeal of the 2004 Order would materially advance termination of litigation.

(1) The Issue On Appeal Raises a Controlling Question of Law

A controlling question of law means that resolution of the issue on appeal could materially

[43] *See also* Rule 8002, 8004(a)(2)(b).

[44] *Synthesis Indus. Holdings I, LLC v. U.S. Bank Nat'l Ass'n*, No. 2:19-CV-1431 JCM, 2021 WL 2406895, at *2 (D. Nev. June 11, 2021).

[45] *PricewaterhouseCoopers LLP v. PG&E Fire Victim Tr.*, No. 21-CV-07118-HSG, 2022 WL 307940, at *3 (N.D. Cal. Feb. 2, 2022).

affect the outcome of litigation.[46] The Ninth Circuit, like sister circuits, recognizes that In contrast, mixed questions of law and fact generally are not considered controlling questions of law. "Whether the district court failed to articulate the appropriate standard of conduct for pilots under the federal aviation regulations" is a controlling question of law compared to whether the same district court erred in applying that standard to the facts of the case to determine negligence, which is a mixed question of law and fact.[47]

The vast majority of cases hold that an insurer's reserve information is irrelevant.[48] "Reserves are accounting entries which an insurance company regularly uses to set aside sufficient funds in the event of policyholder liability….Reserves do not represent an admission or evaluation of liability and are irrelevant to the issues between insurer and insured."[49]

Underwriting information is also irrelevant.[50] Any discussions concerning the *policy negotiations sixty (60) years ago* are now subsumed in the written insurance policies themselves. In any event, that information does not fall within the limits of FRBP 2004(b).

Whether LMI's reserve and underwriting information is relevant to the debtor's assets or liabilities or the administration of the estate is a controlling question of law that materially affects

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[46] *In re Cement Antitrust Litig. (MDL No. 296)*, 673 F.2d 1020, 1026 (9th Cir. 1981).

[47] *See, e.g., Steering Comm. v. United States*, 6 F.3d 572, 575 (9th Cir. 1993).

[48] *In re Couch*, 80 B.R. 512 (S.D. Cal. 1987) ("a reserve cannot accurately or fairly be equated with an admission of liability or the value of any particular claim."); *Indep. Petrochemical Corp. v. Aetna Cas. & Sur. Co.,* 117 F.R.D. 283, 288 (D.D.C. 1986) ("Federal courts find reserve information 'of very tenuous relevance, if any relevance at all…essentially reflect[ing] an assessment of the value of a claim taking into consideration the likelihood of an adverse judgment and that such estimates of potential liability do not normally entail an evaluation of coverage based upon a thorough factual and legal consideration when routinely made as a claim analysis."); (Reserve information was irrelevant because "such data would merely suggest what [the plaintiff] can already demonstrate ..., namely, that the cost of defending the ... claims increased over time.").

[49] *Hoechst Celanese Corp. v. Nat'l Union Fire ins. Co. of Pittsburgh*, 623 A.2d 1099, 1109-1110 (Del. Super. 1991) ("Reserves are accounting entries which an insurance company regularly uses to set aside sufficient funds in the event of policyholder liability….Reserves do not represent an admission or evaluation of liability and are irrelevant to the issues between insurer and insured."); *Fid. & Deposit Co. of Maryland v. McCulloch,* 168 F.R.D. 516, 525 (E.D.Pa. 1996) (Reserve information was irrelevant because "such data would merely suggest what [the plaintiff] can already demonstrate ..., namely, that the cost of defending the ... claims increased over time.").

[50] *See, e.g., Westfield Ins. Co. v. Icon Legacy Custom Modular Homes*, 321 F.R.D. 107, 119 (M.D. Pa. 2017).

the outcome of the 2004 Application. The Court's relevancy determination is a necessary basis for the 2004 Order and any such determination requires little to no factual analysis because Reserve Information does not represent an evaluation of liability, and is irrelevant to the Debtor's assets and liabilities. Thus, the first requirement is satisfied.

(2) Substantial Grounds for Difference of Opinion Exist

Substantial grounds for difference of opinion exist, "where the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented."[51]

As mentioned above, a majority view in several other circuits is that reserve information is irrelevant in cases that do not allege bad faith.[52] Indeed, the U.S. District Court for the Southern District of California reversed a bankruptcy court's discovery order, holding that the trustee was not entitled to discovery of an insurer's loss reserves.[53] In contrast, *The Roman Catholic Diocese of Rockville Centre, New York*[54] and the 2004 Order represent a minority view, and *Rockville Centre* is distinguishable on its facts. Thus, a substantial ground exists to argue for a difference of opinion between the majority and minority views to satisfy this requirement.

(3) The Appeal Materially Advances Termination of Litigation

The final criterion is whether "an immediate appeal from the order may materially advance the ultimate termination of the litigation."[55] Courts within the Ninth Circuit have held that resolution of a question materially advances the termination of litigation if it "facilitate[s] disposition of the action by getting a final decision on a controlling legal issue sooner, rather than later [in order to] save the courts and the litigants unnecessary trouble and expense."[56] However, to advance litigation

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[51] *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010).

[52] *See, e.g., Petrochemical*, 117 F.R.D. at 288; *Hoechst*, 623 A.2d at 1109-1110; *McCulloch,* 168 F.R.D. at 525.

[53] *Couch*, 80 B.R. 512.

[54] No. 20-12345 (Bankr. S.D.N.Y. Sept. 27, 2023).

[55] 28 U.S.C. § 1292(b).

[56] *See United States v. Adam Bros. Farming, Inc.*, 369 F.Supp.2d 1180, 1182 (C.D. Cal. 2004).

materially, it is sufficient to remove a set of claims against defendants in the lawsuit; it need not remove all of the claims.[57] A case may meet an interlocutory appeal's purpose of saving "trouble and expense," if appellate briefing on a relatively narrow legal issue should cost far less than litigating all the facts related to that issue in the district court.[58]

Reversing the 2004 Order would terminate the 2004 Application, thereby avoiding protracted and expensive litigation in adjudicating any subsequent FRBP 2004 subpoena. Thus, the third requirement is satisfied.

b. The Merits of LMI's Appeal Has a Strong Likelihood of Success

(1) The Requests Information is Not Within the Scope of FRBP 2004(b)

There are four areas where discovery is permissible under FRBP 2004(b):

(1) "the acts, conduct, or *property …of the debtor*";

(2) "the liabilities and financial condition *of the debtor*";

(3) "any matter which may affect the *administration of the debtor's estate*"; and

(4) "*the debtor's* right to a discharge."[59]

A cursory reading of the permitted areas of discovery shows, clearly, why the discovery sought against LMI is improper.

Area (1) is "the acts, conduct, or *property…of the debtor*."[60] The Reserve Information and Underwriting Files sought is that of LMI, not that of the Debtor.

Area (2) is "the liabilities and financial condition *of the debtor*."[61] LMI's Reserve Information and Underwriting Files does not have anything to do with the liabilities and financial condition of the Debtor.

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[57] *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681, 688 (9th Cir. 2011).

[58] *Finder v. Leprino Foods Co.*, No. 113CV02059AWIBAM, 2016 WL 4095833, at *5 (E.D. Cal. Aug. 1, 2016).

[59] FRBP 2004(b) (emphasis added).

[60] *Id.*

[61] *Id.*

Area (3) is "any matter which may affect the *administration of the debtor's estate*."[62] LMI's Reserve Information and Underwriting Files have no bearing whatsoever on the administration of the Debtor's bankruptcy estate.

Area (4) is "*the debtor's* right to a discharge."[63] The Reserve Information and Underwriting Files has nothing to do with the Debtor's right to a discharge.

Matters that have no relationship to the debtor's assets or liabilities or the administration of the bankruptcy estate are not proper subjects of a FRBP 2004 examination.[64] The Ninth Circuit Bankruptcy Panel has cautioned that FRBP 2004 "is not without limits" and cannot "stray into matters which are not relevant to the basic inquiry."[65] The purpose of the rule is "to *show the condition of the estate* and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved."[66]

While the scope of discovery under FRBP 2004 is broad, it "should only be used for the legitimate purpose of obtaining information relating to 'the acts, conduct, or property or to the liabilities and financial condition of the debtor or to any matter which may affect the administration of the debtor's right to a discharge.'"[67]

In particular, it is not to be used to obtain discovery that should otherwise be obtained in litigation between the parties, whether it be in federal court or state court[68]; however, the Court

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[62] *Id.*

[63] *Id.*

[64] *In re Fin. Corp. of America*, 119 B.R. 728, 733 (Bankr. C.D. Cal. 1990) (citing *Johns–Manville Corp.,* 42 B.R. 362 (D.C. S.D.N.Y.1984)).

[65] *In re Mastro*, 585 B.R. 587, 597 (B.A.P. 9th Cir. 2018); *see also In re Farris-Ellison*, No. 2:11-BK-33861-RK, 2015 WL 5306600, at *3 (Bankr. C.D. Cal. Sept. 10, 2015) ("[A] Rule 2004 examination must be both 'relevant and reasonable.'").

[66] *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (quoting *Cameron v. U.S.*, 231 U.S. 710, 717 (1914) (emphasis added).

[67] *Id.* at 514.

[68] *See, e.g., In re Enron Corp.*, 281 B.R. 836, 841-42 (Bankr. S.D.N.Y. 2002); *Snyder v. Soc'y Bank*, 181 B.R. 40, 41 (Bankr. S.D. Tex. 1994).

decided there is no reason to take any discovery in the pending Coverage Action.[69] If there is no reason to take discovery in the Coverage Action, then it is impermissible in the bankruptcy.

Rule 2004 is not to be used as means of evading the limitations provided for discovery in litigation or contested matters. As the leading case in this area, *Enron*, explained, "[b]ased on Rule 2004's substantive differences, courts have expressed concern that Rule 2004 examinations not be used as a tactic to circumvent the safeguards of the Federal Rules of Civil Procedure."[70]

In a recent decision, *In re the Diocese of Buffalo, N.Y.*,[71] the committee moved for authority to issue subpoenas to various parties, including several insurers. The subpoenas at issue sought a wide breadth of information related to insurance coverage.[72] Although recognizing that FRBP 2004 is broad, the court stated that the "inquiry, however, must have relevance…relat[ing] only to the acts, conduct or property or to the liabilities and financial condition of the debtor," and "must demonstrate good cause. …and remain reasonable in its scope."[73] The court, in denying the committee's request, found that there was no good cause[74] and the request was unreasonable in scope.[75]

(a) Reserve Information is Irrelevant

Information regarding reserves is irrelevant to the bankruptcy case and the Coverage Action.

Courts routinely rule that reserve information is irrelevant. "A common misconception is that an insurer's loss reserves are the same as settlement authority. They are not. The main purpose of a loss reserve is to comply with statutory requirements and to reflect, as accurately as possible, the

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[69] *See Roman Catholic Bishop of Oakland*, 23-40523, Dkt. No. 15 (Bankr. N.D. Cal. June 22, 2023).

[70] *Enron Corp.*, 281 B.R. at 841.

[71] 2023 WL 8212832 (Bankr. W.D.N.Y. Nov. 14, 2023).

[72] *Id.* at *1.

[73] *Id.*

[74] A showing of good cause requires both a demonstration of need for information and some reason to believe that the respondent might possess that information. *Buffalo,* 2023 WL 8212832 at *1.

[75] *Id.* (The "proposed examination extends far beyond that subject. …[w]e see no obvious purpose for such an investigation at this time. …this [c]ourt has already established the process for identifying claims…").

insured's *potential* liability. It does not automatically authorize a settlement figure."[76] Hence, federal courts find reserve information "of very tenuous relevance, if any relevance at all…essentially reflect[ing] an assessment of the value of a claim taking into consideration the likelihood of an adverse judgment and that such estimates of potential liability do not normally entail an evaluation of coverage based upon a thorough factual and legal consideration when routinely made as a claim analysis."[77]

The 2004 Order is one of two cases where a bankruptcy judge in a diocesan case held that reserve information was relevant pursuant to Rule 2004, in which the related coverage action does not allege bad faith claims against an insurer. Yet, the other case, *Rockville Centre*, is distinguishable. In that case, a committee of unsecured creditors issued a Rule 2004 subpoena to Arrowood Indemnity Company ("Arrowood"). Delaware's commissioner of insurance previously placed the company under supervision for liquidation pursuant to statutory authority, demonstrating that Arrowood was in a "very precarious financial condition."[78] The *Rockville Centre* court authorized the Rule 2004 subpoena to assess Arrowood's financial condition, because whether Arrowood could pay sexual

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

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

[78] *See In re The Roman Catholic Diocese of Rockville Centre, New York*, No. 2012345 (MG), Dkt. No. 2518 at 1 (Bankr. S.D.N.Y. Sept. 27, 2023).

abuse claims against its insured related to the debtor's liabilities and administration of the estate pursuant to Rule 2004.[79]

Further, another diocesan case that considered the issue, rejected production. In the context of a pending motion under Federal Rule of Bankruptcy Procedure 9019, in *In re Diocese of Camden, New Jersey*, Case No. 20-21257-JNP (Bankr. D.N.J.), the bankruptcy court rejected the committee's assertion that requests for information about insurers' reserves and reinsurance related to abuse claims against the diocese. The bankruptcy court found that loss reserves were irrelevant to an insured's claim, even in a bad faith litigation.[80] Similarly, in other mass tort cases, bankruptcy courts have similarly considered and denied requests for reserve information.[81]

Similar law exists in the Ninth Circuit.[82]

In *In re Couch*, 80 B.R. 512, a bankruptcy trustee appealed a bankruptcy court's discovery order in an action brought against an insurance agent's professional liability insurer for failure to pay benefits. The bankruptcy trustee sought discovery relating to an insurer's policies and procedures for setting loss reserves.[83] On appeal, the insurer argued that "discovery order compelling disclosure of information regarding their policies and procedures for setting loss reserves, including specific

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[79] *Id.*

[80] *See* Transcript at 11:10-12:13. A true and correct copy of the transcript is attached as Exhibit B to the Motion to Reconsider, Dkt. No. 697.

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

[82] *Am. Bankers Ins. Co. of Fla. v. Nat'l Fire Ins. Co. of Hartford*, 488 F. Supp. 3d 892, 903, n. 5 (N.D. Cal. 2020) ("…insurers loss reserve cannot be accurately equated with an admission of liability of the value of a particular claim.") (internal quotes and citations omitted); *Sekera v. Allstate Ins. Co.*, 2017 WL 6550425, at *10, n. 4 (C.D. Cal. Sept. 19, 2017), *aff'd*, 763 F. App'x 629 (9th Cir. 2019) ("the main purpose of the loss reserve is to comply with statutory requirements and to reflect, as accurately as possible, the insured's *potential* liability. It does not automatically authorize a settlement at that figure. Therefore, an insurer's loss reserve cannot be accurately equated with an admission of liability or the value of any particular claim.") (internal quotes and citations omitted).

[83] *Id.* at 514.

information regarding any loss reserves in the underlying litigation leading to a third party, is an abuse of discretion. They aver that the discovery order is unfair, contrary to all existing authority and undermines the important public policies underlying California reserve requirements. Further, they state that the trustee has mistakenly characterized a loss reserve as an insurer's estimation of probable or potential liability."[84] In reversing the bankruptcy court's order, the district court agreed with the insurer and held that "a reserve cannot accurately or fairly be equated with an admission of liability or the value of any particular claim."[85]

LMI's Reserve Information, which is formulated pursuant to English law, and is the product of proprietary internal processes, is similarly irrelevant. LMI's reserves are not determinative of LMI's interpretation of the language of the policies LMI subscribed. LMI's reserves also are not admissions or evaluations of liability, are irrelevant to the coverage issues raised by the Debtor, and plainly are irrelevant to any bankruptcy issues in this case.

Thus, the Committee's contention that "Insurers have a statutory duty to create reasonable reserves for these claims. They look back at the history of their settlement of the claims and resolution of the claims to create these reserve working papers. And that goes to the reasonable value of these claims" is wholly without merit.[86]

(b) Underwriting Files Are Irrelevant

The Committee does not dispute that they should ask the Debtor's agent, which is the broker for the LMI Policies, for information about the underwriting, which the broker obtained forty (40) to sixty (60) years ago. The Court agreed.[87] Moreover, there has been no showing that information about underwriting, which occurred over sixty (60) years ago, is even remotely related to any matter whatsoever that is at issue now, including, without limitation, the scope of the Debtor's assets, its liabilities, or the administration of the estate, which are the parameters that define the limits of any

[84] *Id.* at 516.

[85] *Id.* at 517.

[86] Transcript of Dkt. No. 616 at 103:10-14.

[87] Transcript of Dkt. No. 616 at 175:4-5 ("I'm not inclined to require the production of anything having to do with the earlier periods as long as thirty years ago.")

Rule 2004 examination.[88] Any discussions concerning *policy negotiations sixty years ago* now are subsumed in the written insurance policies themselves.

For all of these reasons, the LMI have strong grounds to overturn the 2004 Order.

B. LMI Will Suffer Irreparable Harm if a Stay Is Not Granted

Should the stay not be granted, LMI will suffer irreparable injury because requiring LMI to produce Reserve Information and Underwriting Files cannot be adequately remedied by a later court decision reversing the 2004 Order.

Irreparable injury need not be certain for a movant to prevail on this factor. A movant must only "'demonstrate that irreparable injury is likely [not merely possible] in the absence of [a] stay.'"[89] "Irreparable harm is an injury that cannot be redressed by a legal or equitable remedy following a trial."[90] Relevant here, "[w]here the denial of a stay pending appeal risks mooting any appeal of significant claims of error, the irreparable harm requirement is satisfied."[91]

LMI face irreparable harm if a stay is not entered.[92] First, although LMI dispute that their appeal would be rendered moot by enforcement of the 2004 Order, the mere risk that the appeal can be mooted supports a finding of irreparable harm to LMI. If the Court denies a stay, the Committee will likely move to dismiss LMI's appeal as moot. Second, declining to stay the 2004 Order would require the disclosure of irrelevant information to the Committee and any disclosure of irrelevant information cannot be adequately remedied by a later court decision. Lastly, diocesan bankruptcy

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[88] *See, e.g., Westfield Ins. Co.,* 321 F.R.D. 107 at 119.

[89] *In re Revel AC, Inc.*, 802 F.3d at 569 (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)).

[90] *In re Tribune Co.*, 477 B.R. 465, 476 (Bankr. D. Del. 2012); *see also Brenntag Int'l Chems. Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999) (irreparable harm exists "where, but for the grant of the equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied").

[91] *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 347 (S.D.N.Y. 2007); *see also Salhotra v. Simpson Strong-Tie Co., Inc.*, 2022 WL 1091799, at *2 (N.D. Cal. Apr. 12, 2022); *Gray v. Golden Gate Nat. Recreational Area*, No. C 08-00722 EDL, 2011 WL 6934433, at *3 (N.D. Cal. Dec. 29, 2011).

[92] The various evidentiary privileges involved in reserving and underwriting, including the attorney-client privilege, attorney work product, trade secret privilege, and others, have been reserved and are not at issue on this appeal.

cases not unique to this Court. It is not uncommon, and in fact recommended by other judges in other courts that the parties seek guidance from earlier decisions in similar bankruptcy cases. Should this Court decline a stay, LMI will be forced to disclose irrelevant information prior to the resolution of LMI's appeal.

Thus, because LMI will suffer irreparable harm, this factor weighs in favor of granting a stay.

C. The Other Parties Will Not Suffer Injury

By contrast, the entry of an order staying the 2004 Order will not cause substantial injury to the Committee, Debtor, or other party to this proceeding.

The third factor for a stay pending appeal considers whether other parties will be substantially harmed by the stay.[93] A mere delay does not, in itself, constitute prejudice to other parties.[94] Rather, this factor is "generally concerned with undue loss or destruction of evidence stemming from a delay."[95]

None of the Debtor, Committee, or any other party will be substantially harmed by the stay, because there is no risk that the information, which LMI seek to protect that will be lost or destroyed during the pendency of the appeal. This information, as outlined in Section III(A)(2), is irrelevant to the resolution of the bankruptcy case, mediation, the coverage case, and the formulation of a proposed Chapter 11 plan.

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[93] *Leiva-Perez,* 640 F.3d 962, 964.

[94] *Johnson v. Serenity Transportation, Inc.*, 2018 WL 9782170, at *4 (N.D. Cal. Oct. 12, 2018) ("[A] brief stay pending disposition of the petition will not unduly delay these proceedings or harm the SCI Defendants."); *Salhotra v. Simpson Strong-Tie Co., Inc.*, 2022 WL 1091799, at *2 (N.D. Cal. Apr. 12, 2022) (citing *John*, 2018 WL 9782170); *Johnson v. Serenity Transportation, Inc.*, 2018 WL 9782170, at *4 (N.D. Cal. Oct. 12, 2018) (brief stay will not unduly delay proceedings).

[95] *Ontiveros v. Zamora*, 2013 WL 1785891, at *5 (E.D. Cal. Apr. 25, 2013); *Winig v. Cingular Wireless LLC,* 2006 WL 3201047, at *2 (N.D. Cal. Nov. 6, 2006) ("Court is not persuaded that plaintiff or the proposed class will suffer harm in connection with the preservation of evidence"); *Murphy v. DirecTV, Inc.*, 2008 WL 8608808, at *3 (C.D. Cal. July 1, 2008) ("Court recognizes that delaying the proceedings will likely impose some burden on Murphy and the prospective class members, any risk of lost evidence is entirely speculative at this point."); *see also Leiva-Perez,* 640 F.3d 962, 964.

Thus, while the denial of a stay will irreparably harm LMI, granting a stay would not substantially harm the Debtor, Committee, or any other party to this proceeding. This factor weighs in favor of grating a stay pending appeal.

D. Public Interest Weighs in Favor of a Stay

The public interest weighs in favor of granting a stay.

"This factor calls for the court . . . to consider and balance the goal of efficient case administration and the right to a meaningful review on appeal."[96] There is a strong public interest in preserving the integrity of the statutory right to appellate review.[97]

Here, the public interest weighs in granting a stay because the stay will substantially reduce the potential risk of the appeal being rendered moot, by requiring LMI to produce the underwriting and reserve information during the pendency of the appeal. It will also allow an appellate court to review and adjudicate the merits of the issues that not only impact LMI but may also have broader implications as to the rights of similarly situated insurers in other diocesan bankruptcies. Although LMI recognize that public interest does lie in efficient case administration, that interest will not be adversely affected by the issuance of a stay. The stay does not stop the Debtor's administration of its case from moving forward as the stay as no effect on the Debtor's ability to form a Chapter 11 plan.

Therefore, granting a stay and allowing the appeal to go forth is in the public's best interest, and at the very least, certainly does not adversely affect the public interest.

E. Should the Court Be Inclined to Deny the Motion, LMI Request the Court Grant an Interim Stay to Allow LMI to Seek a Stay with the District Court

Federal Rule of Bankruptcy Procedure 8005 allows for the filing of a Motion for Stay Pending Appeal with the District Court upon denial of such a motion by the Bankruptcy Court. In the event that this Court is inclined to deny this Motion, LMI respectfully request that this Court nevertheless grant an interim stay allowing LMI to seek a stay pending appeal from the appellate court.[98]

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[96] *In re Taub*, Case No. 08-44210, 2010 WL 3911360, at *9 (Bankr. E.D.N.Y. Oct. 1, 2010).

[97] *In re Adelphia Commc'ns Corp.*, 361 B.R. 337, 349–50 (S.D.N.Y. 2007).

[98] *In re Cent. Eur. Indus. Dev. Co. LLC*, 288 B.R. 572, 579 (Bankr. N.D. Cal. 2003) ("the court is mindful of the difficulty an aggrieved party has in convincing a judge who has ruled against it that

Specifically, LMI propose a stay for fourteen (14) days to allow LMI to file a Motion for Stay Pending Appeal with the District Court. If the Motion for Stay Pending Appeal is filed within such period, LMI respectfully request that the stay be extended only so long as necessary for the District Court to make a determination on such further Motion for Stay Pending Appeal.

IV. CONCLUSION

For the above and foregoing reasons, LMI request the Court stay the 2004 Order pending the appeal as outlined in the proposed order attached as **Exhibit A**. Alternatively, if the Court is inclined to deny the Motion, LMI respectfully request an interim stay to allow LMI to seek stay relief in the appellate court.

Dated: February 28, 2024

By: */s/ Russell W. Roten*

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that party might well be able to convince another judge or panel of judges to rule the other way. Given the importance of this issue to Debtors and the unlikelihood of prejudice to Lehman, the court will give TKGE ten days to seek a further stay pending appeal.").

issued to the Roman Catholic Bishop of Oakland

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

DECLARATION OF BETTY LUU IN SUPPORT OF LMI'S MOTION FOR STAY PENDING APPEAL OF ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EX PARTE APPLICATION FOR FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 EXAMINATION OF INSURERS

Date: March 27, 2024
Time: 10:30 A.M.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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

DECLARATION OF BETTY LUU

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

1. I am an associate attorney at Duane Morris LLP who, serves as counsel for Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 issued to the Roman Catholic Archbishop of San Francisco, and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively "London Market Insurers" or "LMI").

2. I have personal knowledge of the facts contained in this declaration, which I submit in support of the LMI's *Motion for Stay Pending Appeal of the Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*, filed contemporaneously herewith on February 28, 2024.

3. Attached hereto as **Exhibit A** is a true and correct copy of the transcript for a hearing held by the Court on February 12, 2024.[1]

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

Executed this 28th day of February, 2024.

/s/ *Betty Luu*
Betty Luu

[1] *See* Dkt. No. 855.

Exhibit A

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re:	) Case No. 4:23-bk-40523
	) Chapter 13
THE ROMAN CATHOLIC BISHOP OF OAKLAND	)
	) Oakland, California
	) Monday, February 12, 2024
Debtor.	)10:00 AM
_____	)
	ADV#: 23-04028
	THE ROMAN CATHOLIC BISHOP OF OAKLAND, ET AL. v. PACIFIC INDEMNITY, ET AL.
	SCHEDULING CONFERENCE
	STATUS CONFERENCE
	STATUS CONFERENCE

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

APPEARANCES (All present by video or telephone):

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

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

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(Call to order of the Court.)

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

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

THE CLERK: No, not yet.

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

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

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

MR. BREALL: No.

THE COURT: I interrupted you. Go ahead.

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

THE COURT: Okay. Thank you.

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

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

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

MR. BURNS: Am I muted, Your Honor?

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

MR. BURNS: Okay.

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

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

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

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

MS. ALBERT: Oh, oh, good.

THE COURT: Thank you.

MS. ALBERT: Wonderful.

THE COURT: Okay.

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay. You bet. Okay.

All right. Other appearances, please.

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

THE COURT: Okay.

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

THE COURT: Okay. Anybody else?

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

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

MS. KLIE: -- for American home.

THE COURT: Okay. Thank you.

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

THE COURT: Okay. Thank you.

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

THE COURT: Okay. Thank you.

Is that it? Any other appearances? Anybody else?

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

We're going to get one more appearance.

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

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

And Mr. Schiavoni.

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

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

MR. SCHIAVONI: Thank you, Your Honor.

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

THE CLERK: One more, Your Honor.

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

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

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

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

THE CLERK: That's correct, Your Honor.

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

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

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

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

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

THE COURT: Yeah, I'm happy to.

MS. UETZ: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Anything else?

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

MS. UETZ: Correct, Your Honor.

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

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Um-hum.

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

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

THE COURT: Right. Okay.

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

THE COURT: Okay.

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

THE COURT: Um-hum.

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

transferred to the district court --

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay.

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

THE COURT: Okay.

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

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

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

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

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

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

MS. UETZ: At least for now?

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

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

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

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

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

THE COURT: Sure.

MS. UETZ: -- on this right now.

THE COURT: Okay. Anybody else?

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

THE COURT: Yeah. Uh-huh.

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

THE COURT: Sure.

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

THE COURT: Um-hum.

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

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

THE COURT: Sure.

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

THE COURT: Um-hum.

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

THE COURT: Sure. Sure.

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

THE COURT: Okay.

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

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

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

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

THE COURT: Um-hum.

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

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

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

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

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

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

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

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

THE COURT: Sure.

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

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

THE COURT: Yep. Yeah.

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

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

hear you when you file the motion. Okay.

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

THE COURT: You're welcome.

Anybody else?

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

THE COURT: Yeah.

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

THE COURT: Okay.

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

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

MS. UETZ: Thank you.

THE COURT: Okay. Anything else?

No? Okay.

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

MR. BREALL: Your Honor --

THE COURT: All right. Yes.

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

American Home case.

THE COURT: Um-hum.

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

THE COURT: Right.

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

THE COURT: Yep.

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

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

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

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

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

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

MS. KLIE: Your Honor, yeah --

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

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

anything but --

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

MR. BREALL: Correct.

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

MR. BREALL: Understood.

THE COURT: Okay. Thank you.

Anything else?

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

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

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

I N D E X

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

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

/s/ RIVER WOLFE, CDLT-265

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

Date: February 14, 2024

D

E

F

Exhibit A

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

UNITED STATE DISTRICT BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:

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

Debtor.

Bankruptcy Case No.: 23-40523 WJL

Hon. William J. Lafferty

Chapter 11

[PROPOSED] ORDER GRANTING LMI'S MOTION FOR STAY PENDING APPEAL OF ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EX PARTE APPLICATION FOR FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004 EXAMINATION OF INSURERS

Date: March 27, 2024
Time: 10:30 A.M.
Place: United States Bankruptcy Court
1300 Clay Street
Courtroom 220
Oakland, CA 94612

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

THIS MATTER having been brought before the Court upon the *Motion for Stay Pending Appeal of Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of* Insurers ("Motion"), of Certain Underwriters at Lloyd's, London, subscribing severally and not jointly to Slip Nos. CU 1001 and K 66034 and Nos. K 78138 and CU 3061 issued to the Roman Catholic Bishop of Oakland (collectively, "London Market Insurers" or "LMI"), and due notice having been properly provided; and the Court having considered the papers and arguments submitted by counsel; and the Court having overruled any objections to the Motion; and for good cause shown,

IT IS HEREBY ORDERED THAT:

1. The Motion is hereby GRANTED.

2. The *Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers*[1] is stayed pending the appeal to the United States District Court, Northern District of California.

3. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

END OF ORDER

[1] Dkt. No. 796.