

1 Alison V. Lippa (SBN: 160807)
alippa@nicolaidesllp.com
2 NICOLAIDES FINK THORPE
3 MICHAELIDES SULLIVAN LLP
101 Montgomery Street, Suite 2300
4 San Francisco, CA 94104
Telephone: (415) 745-3770
5 Facsimile: (415) 745-3771

6 Amy P. Klie (*Pro Hac Vice Pending*)
aklie@nicolaidesllp.com
7 NICOLAIDES FINK THORPE
8 MICHAELIDES SULLIVAN LLP
10 S. Wacker Dr., Suite 2100
9 Chicago, Illinois 60606
Telephone: (312) 585-1400

10 *Attorneys for Defendants*
11 *AMERICAN HOME ASSURANCE CO.*

12
13 **UNITED STATES BANKRUPTCY COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 In re:
17 THE ROMAN CATHOLIC BISHOP OF
18 OAKLAND, a California corporation sole,
19 Debtor.

20 THE ROMAN CATHOLIC BISHOP OF
21 OAKLAND,
22 Plaintiff,

23 v.
24 AMERICAN HOME ASSURANCE CO., a
25 New York corporation; LEXINGTON
26 INSURANCE CO., a Delaware corporation
27 Defendants.

CHAPTER 11
Case No. 23-40523 WJL
Adversary Case No. 23-04037
**AMERICAN HOME ASSURANCE
COMPANY'S MOTION TO QUASH THE
OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' SUBPOENA
FOR RULE 2004 EXAMINATION OR IN
THE ALTERNATIVE FOR A
PROTECTIVE ORDER;
MEMORANDUM OF LAW IN SUPPORT
THEREOF**

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

1 **INTRODUCTION**

2 The reserves and Claim File discovery requested by the Official Committee of Unsecured
3 Creditors' ("Committee") in its Subpoena for Rule 2004 Examination ("Subpoena") has little or
4 no relevance to its stated goal of understanding the Roman Catholic Bishop of Oakland's
5 ("Debtor") insurance coverage for purposes of mediation, and is unduly burdensome. While
6 allowing the Committee to proceed with a subset of its original requests, the Court expressly
7 held that Insurers' rights to object to the Subpoenas as permitted under Rule 45 of the Federal
8 Rules of Civil Procedure, are fully preserved, including, without limitation: (a) any and all
9 applicable evidentiary privileges and (b) proper scope of discovery.

10 Under Rule 45, a subpoena must be quashed if it imposes an undue burden. An
11 evaluation of the undue burden requires a court to weigh the burden to the subpoenaed party
12 against the value of the information to the serving party, including assessment of the requested
13 documents' relevance. The Committee's demands for reserves information and the "entire"
14 contents of the American Home Assurance Company ("American Home" or "AHAC") Claim
15 File have little, if any, relevance to the Committee's stated purpose for its Rule 2004
16 Examination. Because it incorporates, among other things, various statutory and regulatory
17 requirements, as well as internal cost assessments, reserves information is widely regarded as
18 irrelevant for purposes of assessing how an insurer might value a given claim, and it is likewise
19 irrelevant here. On the other hand, the burden of producing reserves materials, which are well
20 recognized as work product and commercially sensitive, is substantial – far outweighing the
21 Committee's minimal (if any) interest in its discovery. Similarly, while the Committee already
22 has copies of the insurance policies and coverage position letters related to the Underlying
23 Lawsuits – which are the only materials it reasonably needs to evaluate the Debtor's available
24 insurance – it seeks production of the entire contents of American Home's Claims Files. Absent
25 allegations of bad faith, such discovery is routinely rejected on relevancy grounds. The
26 Committee speciously asserts it seeks the Claim Files because they "may show evidence of
27 potential bad faith." Alternatively, the Committee notes that the Claim Files likely "include
28 assessments of potential coverage defenses." Absent exhaustion of underlying insurance, which

1 the Diocese does not allege, AHAC has no coverage obligation. As such, there is no potential
2 bad faith to investigate – and the Committee’s effort to demonstrate relevancy on this basis fails.
3 Further, the Committee’s own stated interests in the Claims Files highlight the improper and
4 burdensome nature of its request – responding to the Subpoena would require production of
5 documents that are directly related to American Home’s position in the separately pending
6 coverage litigation. Under the circumstances, the Subpoena imposes an undue burden on
7 American Home, and must be quashed.

8 **BACKGROUND**

9 On May 8, 2023, the Debtor filed a voluntary chapter 11 petition for relief under Title 11
10 of the Bankruptcy Code (“Bankruptcy Case”). The primary purpose of the Bankruptcy Case is
11 to address hundreds of claims alleging sexual abuse lawsuits brought pursuant to AB 218 of the
12 California Child Victims Act (“Underlying Lawsuits”).

13 In June 2023, the Debtor commenced the adversary proceeding *The Roman Catholic*
14 *Bishop of Oakland v. Pacific Indem. et al.*, Case No. 23-04028 (“Coverage Action No. 23-
15 04028”) against multiple insurers identified as having issued primary, umbrella, or excess
16 liability insurance between the 1960s and 1980s, under which RCBO asserts a right to defense
17 and indemnity for the Underlying Lawsuits (“Coverage Action No. 23-04028”). In August 2023,
18 the Debtor filed a separate adversary proceeding – Case No. 23-04037 against American Home
19 (“American Home Coverage Action”), asserting claims for declaratory relief and breach of
20 contract with respect to coverage for the Underlying Lawsuits under excess liability policy no.
21 CE 35-60094, issued by American Home for the policy period October 26, 1971 to October 26,
22 1974 (“AHAC Excess Policy”). The Committee moved to intervene in Coverage Action No.
23 23-04028, but has not sought to intervene in the American Home Coverage Action. Since the
24 Committee did not seek derivatively to pursue Coverage Action No. 23-04028 or the American
25 Home Coverage Action on behalf of the Debtor, only the Debtor has standing to pursue its claims
26 for insurance.

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1 On October 5, 2023, the Committee filed an Ex Parte Application for Federal Rule of
2 Bankruptcy Procedure 2004 Examination of Insurers (“Application”),¹ seeking to obtain various
3 documents from the insurers in Coverage Case No. Case No. 23-04028 and American Home
4 (collectively, the “Insurers”). In support, the Committee asserted: “[I]f and when the Debtor
5 elects to include the Insurers in such discussions when that process ultimately commences), they
6 must be willing to share information about their assets, obligations, and ability to pay out on
7 account of the Insurance Policies issued to the Debtor and/or its affiliates.”² At the time the
8 Application was filed, the Committee’s proposed subpoenas to the Insurers included a total of
9 36 document demands, encompassing various topics relating to both the Underlying Lawsuits as
10 well as any other sexual abuse claims against the Diocese.

11 On November 1, 2023, the Insurers, including American Home, objected to the
12 Application, arguing that the discovery sought exceeded the limits of what is permissible under
13 Rule 2004.³

14 At a November 14, 2023 hearing, the Bankruptcy Court orally granted the Application
15 with respect to a limited subset of the Committee’s prior requests as related to the Underlying
16 Lawsuits, specifically – current claims files, reserve working papers, reserves information, and
17 underwriting. In particular, the Bankruptcy Court advised: “I’m inclined to entertain the request
18 with respect to the current claims files, the reserve working papers, and the underwriting
19 information, if any, with respect to these cases.”⁴ The Bankruptcy Court further ordered parties
20 to meet and confer on the precise wording of each of those three categories.⁵ On December 7,
21 2023, counsel for the parties met and conferred to address the form and order of the subpoena.

22 On January 18, 2024, the Bankruptcy Court entered an order, granting the Application
23 with respect to revised version of the subpoena (“Subpoena”), which the Committee

24 ¹ Dkt. No. 502.

25 ² Dkt. No. 502 at 2:17-21.

26 ³ Dkt. No. 571.

27 ⁴ See Klie Dec. Ex. 7 Nov. 14, 2023 Hearing Transcript (Dkt. 616 at 175 6:8)

28 ⁵ *Id.* at 175:14-25 (The Court further ordered 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.”)

1 subsequently served on American Home.⁶ In granting the Application, the Bankruptcy Court
2 preserved the Insurer’s right to object to the Subpoena, including, without limitation, (a) any and
3 all applicable evidentiary privileges and (b) proper scope of discovery.⁷

4 **LEGAL STANDARD**

5 Federal Rule of Civil Procedure 45(d)(3) governs the quashing or modifying of
6 subpoenas. Under Rule 45, upon a timely motion, the court must quash or modify a subpoena
7 that subjects a person to undue burden. Fed. R. Civ. P. 45(d)(3)(A) (emphasis added).
8 Fed.R.Civ.P. 45(d)(3)(A)(i)-(iv). The court may quash a subpoena that requires the disclosure
9 of trade secret or other confidential research, development, or commercial information.
10 Fed.R.Civ.P. 45(d)(B)(i).

11 Rule 45 directs that the party “responsible for issuing and serving a subpoena...take
12 reasonable steps to avoid imposing undue burden or expense on a person subject to the
13 subpoena.” Fed. R. Civ. Pro. 45(d)(1). It is generally accepted that Rule 45 “affords nonparties
14 special protection against the time and expense of complying with subpoenas.” *Exxon Shipping*
15 *Co. v. U.S. Dep’t of Interior*, 34 FDA 774, 779 (9th Cir. 1994). *See also In re NCAA Student-*
16 *Athlete Name & Likeness Licensing Litig.*, No. 09-CV-01967 CW NC, 2012 WL 4846522, at *2
17 (N.D. Cal. Aug. 7, 2012) (citing *United States v. C.B.S., Inc.*, 666 F.2d 364, 371–72 (9th Cir. 1982)
18 (“The Ninth Circuit has long held that nonparties subject to discovery requests deserve extra
19 protections from the courts.”)).

20 The court has broad discretion in determining whether discovery is burdensome and
21 oppressive. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). The court may
22 also make any order which justice requires to protect a party or person from undue burden,
23 oppression or expense. *United States v. Columbia Broadcasting System, Inc.*, 666 F.2d 364, 369
24 (9th Cir.), cert. denied 457 U.S. 1118, 102 S.Ct. 2929, 73 L.Ed.2d 1329 (1982).

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28 ⁶ See Subpoena for Rule 2004 Examination served on American Home and affidavit of service, Exhs. 1 and 3,
respectively, to Declaration of Amy P. Klie (“Klie Decl.”).

⁷ Dkt. 796.

1 **ARGUMENT**

2 **A. The Committee Seeks Discovery that is Not Relevant to a Permissible**
3 **Purpose Under Rule 2004 and Disproportionately Burdensome to AHAC**

4 Under Rule 45, subpoena requests that subject a person to undue burden must be quashed.
5 While lack of relevance is not among the enumerated bases for quashing a subpoena under Rule
6 45 “it is generally accepted that the scope of discovery allowed under Rule 45 is limited by the
7 relevancy requirement of the federal discovery rules.” *Jordan v. Commissioner, Mississippi*
8 *Dept. of Corrections*, 947 F.3d 1322, 1329 (11th Cir. 2020). Thus, “an evaluation of the undue
9 burden requires a court to weigh the burden to the subpoenaed party against the value of the
10 information to the serving party...” which includes assessment of the requested documents’
11 relevance. *Moon v. SCP Pool Corp.* 232 F.R.D. 633, 637 (C.D. Cal. 2005) (citing *Goodyear*
12 *Tire & Rubber Co. v. Kirk’s Tire & Auto Servicenter*, 211 F.R.D. 658, 662 (D. Kan. 2003). It is
13 within the court’s “broad discretion...to grant a motion to quash discovery where the documents
14 sought “were properly deemed not relevant...” *Goolsby v. Raney*, 483 F. App’x 326, 329 (9th
15 [Cir. 2012](#)) (*J&J Sports Productions, Inc. v. La Poblanita LLP, Case No. 18-5712 RJB, 2019*
16 [WL 1989657, at *3 \(W.D. WA May 6, 2019\)](#) (granting motion to quash subpoena, where “[t]here
17 is no showing that the additional records would be relevant.”)⁸

18 **1. The Committee’s Reserves Discovery is Not Relevant**

19 The Subpoena seeks documents “sufficient to show...current reserves for each of the
20 Abuse Claims tendered by or on behalf of RCBO,” and “[c]ommunications that relate to
21 [AHAC’s] setting, calculating, analysis, adjustment, investigation, evaluation of, and decision-
22 making process with respect to, [AHAC’s] reserves...including the working papers and actuarial
23 reports, if any, relating to the establishment of those reserves.”⁹ In support of its Application,
24 the Committee asserts that requests for reserves information and related documents are relevant
25 because “...how the insurer has valued the claims becomes extremely relevant to the value of
26 insurance.”¹⁰ The Committee also baselessly contends that documents pertaining to reserves are

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28 ⁹ Subpoena Request Nos. 7 and 8.

¹⁰ Reply in Support of Ex Parte Application for Rule 2004 Examination (“Reply”), Dkt. # 583 at 6:14-17.

1 “likely to include...information on how the current sexual abuse claims may impact the Insurers’
2 solvency...”¹¹

3 Contrary to the Committee’s assertions, because reserves reflect and incorporate various
4 statutory and regulatory requirements, they are widely regarded as irrelevant for purposes of
5 assessing how an insurer might value a given claim. *In re Couch*, 80 B.R. 512, 517 (S.D. Cal.
6 1987) (rejecting motion to compel discovery of reserves information due to lack of relevance).
7 In this regard, one bankruptcy court observed: “The legislature and Insurance Commissioner
8 establish reserve policy. For this reason alone, ***a reserve cannot accurately or fairly be equated***
9 ***with an admission of liability or the value of any particular claim.***” *Id.* (emphasis added). *See*
10 *also Independent Petrochemical Corp. v. Aetna Cas. & Sur. Co.*, 117 F.R.D. 283, 288 (D.D.C.
11 1986) (denying motion to compel; finding reserves information to be of “very tenuous relevance,
12 if any relevance at all” in coverage action); *Catholic Mut. Relief Soc’y v. Superior Court*, 42
13 Cal.4th 358, 373 (2007) (noting that insurer’s reinsurance information “would not be of any
14 relevance to plaintiffs in the vast majority of cases.”); *Mirarchi v. Seneca Spec. Ins. Co.*, 564
15 Fed. Appx. 652, 655 (3d Cir. 2014) (observing that insurer’s reserves are not “an evaluation of
16 coverage based upon a thorough factual and legal consideration” and therefore, irrelevant and
17 not discoverable); *TIG Ins. Co. v. Tyco Int’l Ltd.*, 2010 WL 4683594, *2 (M.D. Pa. Nov. 12,
18 2010) (denying motion to compel production of reserve information and reinsurance
19 information).

20 At the same time, multiple compelling bases – including public policy objectives, and
21 protection of commercially sensitive documents, often subject to the work-product doctrine and
22 attorney-client privilege – strongly favor protecting reserves information from disclosure to third
23 parties. *See, e.g., Gold Fields Am. v. Aetna Cas. & Sur.*, No. 19879/89, 1994 N.Y. Misc. LEXIS
24 709 (Sup. Ct. New York Cty. Feb. 24, 1994) (denying discovery and noting public policy
25 concerns that “there is an important public interest in the establishment of sound reserves by
26 insurance companies,” “[i]t would be un-healthy if the setting of a particular reserve would be
27

28 ¹¹ *Id.* At 6:23-7:2.

1 allowed to be presented.”). *See also Nicholas v. Bituminous Cas. Corp.*, 235 F.R.D. 325, 329–
2 30 (N.D.W. Va. 2006) (finding reserves to be protected under work product doctrine).

3 Given that reserves information is not akin to an insurer’s probable or potential liability,
4 and is, indeed, widely regarded as being of little to no relevance to entities outside the insurance
5 industry or regulators, the Committee’s interest in obtaining responses to Subpoena Request Nos.
6 7 and 8, is woefully low at best.¹² Also, while the Committee suggests that reserves information
7 may be relevant for purposes of assessing an insurer’s solvency, it has not asserted that there is
8 any basis for questioning AHAC’s solvency. *Cf. The Roma Catholic Diocese of Rockville*
9 *Centre, New York*, Case No. 20-12345-MG (Bankr. S.D.N.Y. Sept. 27, 2023) (permitting
10 discovery, under Rule 2004 subpoena, of reserves information for single insurer based on
11 insurer’s undisputed “precarious financial condition.”)

12 On the other hand, where, as here, requested documents or testimony contain a non-
13 party’s confidential or protected information, the balance of interests directs that the Subpoena
14 must be quashed. *See, e.g., AngioScore, Inc. v. TriReme Med., Inc.*, No. 12- CV-03393-YGR,
15 2014 WL 6706898, at *2 (N.D. Cal. Nov. 25, 2014) (denying motion to compel; concluding that
16 document requests sought “likely confidential information unrelated to the subject matter of this
17 litigation and thus pose an undue burden on [the] non-party”). Accordingly, AHAC respectfully
18 requests that the Subpoena be quashed on this basis.

19 **2. The Committee’s Claim File Discovery is Not Relevant to Any**
20 **Permissible Purpose, and is Impermissibly Related to the AHAC**
21 **Coverage Action**

22 Request No. 5 of the Subpoena seeks production of “[t]he entire contents of [the
23 Insurers’] Claim Files Relating to any Abuse Claims tendered by or on behalf of RCBO to [the
24 Insurers].”. Absent allegations of bad faith against the insurer, courts widely reject discovery of
25 claim files on relevancy grounds. *See, e.g., James 3 Corp. v. Truck Ins. Exch.*, 111 Cal. Rptr. 2d
26 181, 193 (Cal. App. 6th Dist. 2001), *as modified* (Aug. 23, 2001) (insured not entitled to
27 discovery of claim files because it did not bring bad faith claim); *Salzbach v. Hartford Ins. Co.*

28 ¹² Ex. 1 to Klie Decl.

1 *of the Midwest*, No. 8:12-CV-01645-T-MAP, 2013 WL 12098763, at *4 (M.D. Fla. Apr. 19,
2 2013) (surveying cases and holding “claims files and documents related to claims handling
3 procedures are irrelevant in a breach of contract action”); *Thorne v. MemberSelect Ins. Co.*, No.
4 2:09-CV-87-JEM, 2016 WL 10674026, at *1 (N.D. Ind. June 7, 2016) (finding claim files to be
5 irrelevant in breach of contract action after bad faith claims dismissed).

6 In an apparent effort to bolster the relevancy of its Claim File request, the Committee’s
7 Application asserts that review of Claim Files may “show evidence of potential bad faith and
8 statutory claims against the Insurer.”¹³ This argument is, however, inapplicable to AHAC as
9 matter of law. Under California law, an insured cannot maintain a bad faith claim if it does not
10 establish the insurer owed coverage in the first instance. *See 1777 Lafayette Partners v. Golden*
11 *Gate Ins. Co.*, No. C-10-01863 RMW, 2011 WL 1630089, at *7 (N.D. Cal. Apr. 29, 2011) (“If
12 there is no coverage, there cannot be any bad faith as a matter of law.”); *Cherewick v. State Farm*
13 *Fire and Cas.*, 578 F. Supp. 3d 1136, 1173 (S.D. Cal. 2022) (“[I]f there is no coverage, there can
14 be no bad faith in refusing coverage.”) An excess insurer's obligations begin “only once a certain
15 level of loss or liability is reached, or once underlying limits are exhausted.” *See generally Vizio,*
16 *Inc. v. Arch Ins. Co., et al.*, No. 220CV06864ODWASX, 2022 WL 2818743, at *3 (C.D. Cal.
17 July 19, 2022) (“An excess insurer's obligations are not triggered prior to exhaustion even when
18 there is a possibility the claim might require the excess coverage.”) The Diocese, which is the
19 only party with standing to assert a claim for coverage, has made no such allegations with respect
20 to the AHAC Policy.¹⁴ Thus, there is no potential bad faith by AHAC for the Committee to
21 explore. Under the circumstances, the Committee’s “bad faith” rationale fails to provide any
22 support for the relevance of its Claim File request.

23 The Committee also maintains that the Claim Files are needed because they contain
24 “assessments of potential coverage defenses, and the likelihood of success of those purported
25 coverage defenses.” Contrary to the Committee’s assertions, assessments of AHAC’s coverage
26 defense are plainly related to the issues that will be litigated in the AHAC Coverage Action. To

27 ¹³ See Dkt. # 583 at p. 9.

28 ¹⁴ See American Home’s Motion to Dismiss the First Amended Complaint, American Home Coverage Action, Dkt.
17.

1 the extent the Committee seeks non-public, privileged portions of the Claims Files for this
2 purpose, the Subpoena is unquestionably improper, and compliance would clearly impose an
3 undue burden on AHAC. *See, e.g., In re Enron Corp.*, 281 B.R. 836 (2002) (rejecting Rule 2004
4 examination request where information sought from non-party board officers appeared targeted
5 for use in outside litigation).

6 Indeed, even in cases where there is an effort to thread the needle by constructing a Rule
7 2004 subpoena that does not specifically address issues in a separately pending proceeding
8 lawsuit, which the Committee has not done here, courts have found the discovery to be improper.
9 For example, *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 29–30 (Bankr. N.D.N.Y. 1996), a
10 bankruptcy court denied a trustee’s application to subpoena examinees who were named as
11 parties in an adversary proceeding involving certain transactions with the debtor. After
12 observing that the case involved a “financial superweb,” the court concluded that it would be
13 difficult, if not impossible, to differentiate whether and to what extent information obtained from
14 a Rule 2004 examination would not be related to the adversary proceeding. *Id.* The court
15 rejected the Rule 2004 subpoena on this basis. *Id.*

16 Here, the Committee has failed to articulate a relevant and permissible basis for seeking
17 production of the “entire” contents of the Claim Files as set out in Request No. 5, and the
18 Subpoena should be quashed or modified on this basis.¹⁵

19 **B. The Committee’s Requests for Documents it Already Has in its Possess is**
20 **Unduly Burdensome, and Intended to Harass.**

21 The only materials the Committee may have reason to review in order fulfill its stated
22 purpose of “fully understand[ing]” the “nature and extent” of RCBO’s insurance coverage are
23 the AHAC Policy and copies of AHAC’s position letters to RCBO. Significantly, a review of
24

25 ¹⁵ In correspondence pertaining to this motion, the Committee acknowledged that documents for which AHAC
26 asserts a privilege, including documents subject to the attorney-client privilege, the attorney work-product doctrine,
27 settlement and mediation privilege, joint defense, common interest, or any other judicially recognized protection or
28 privilege, or any information for which production may violate any constitutional, statutory or common law privacy
interest of American Home or any third party, may be withheld and logged in a privilege log. Accordingly, this
motion does not seek to quash the subpoena on the grounds that it seeks privileged information, including from the
Claims Files. However, AHAC reserves the right to seek a protective order specific to these protection concerns
should the need arise.

1 Monthly Fee Statements filed with the Bankruptcy Court reveals that the Debtor has already
2 provided the Committee with copies of insurance policies and the insurers' coverage position
3 letters.¹⁶ As such, the Committee already has the only materials it needs to evaluate RCBO's
4 coverage. On the other hand, AHAC estimates that, based on materials it has received in
5 connection with the Underlying Lawsuits it has opened roughly 200 Claim Files, each of which
6 must be independently accessed and reviewed in order to produce copies of the very same
7 coverage position letters the Committee has already obtained from the Debtor. The expense in
8 terms of administrative and attorney time is significant while the production adds nothing to this
9 case. Given the disproportionality of the request, the Subpoena should be quashed on this
10 additional basis.

11 **C. Alternatively, a Protective Order is Warranted**

12 Rule 2004 similarly requires a court to “balance the competing interests of the parties,
13 weighing the relevance of and necessity of the information sought by examination.” *In re Mastro*,
14 585 B.R. 587, 597 (B.A.P. 9th Cir. 2018). *See also In re Farris-Ellison*, 2015 WL 5306600, *3
15 (Bankr. C.D. Cal. Sep. 10, 2015) (“a Rule 2004 examination must be both ‘relevant and
16 reasonable’”). “That documents meet the requirement of relevance does not alone demonstrate
17 that there is good cause for requiring their production.” *In re Art & Architecture Books of the*
18 *21st Century*, 2019 WL 9243053, *6 (Bankr. C.D. Cal. Dec. 6, 2019), quoting *In re SunEdison*,
19 *Inc.*, 562 B.R. 243, 250 (Bankr. S.D.N.Y. 2017). Instead, Rule 2004 examinations must be both
20 “relevant and reasonable.” *Id.*

21 As an alternative to its request to quash or modify the Subpoena, AHAC accordingly
22 requests the entry of a protective order barring the production of documents requested in
23 Subpoena for the reasons set out above.

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25 _____
26 ¹⁶ *See, e.g.*, Dkt. No. 306 at 44, First Statement of Monthly Fees of Lowenstein Sandler LLP for May 30, 2023
27 through June 30, 2023 (“Review Debtor insurance policy production”); Dkt. No. 404-1 at 2, First Statement of
28 Monthly Fees and Expenses of Burns Bair LLP for July 14, 2023 through July 31, 2023, Exhibit A (“Continued
detailed review and analysis of recently received Diocesan insurance document production”); Dkt. No. 456 at 64,
Third Statement of Monthly Fees and Expenses of Foley & Lardner LLP for August 1, 2023 through August 31,
2023 (“Analyze insurer responses to tender letters for letters requiring substantive responses, such as denials of
coverage or requests for further information”).

1 **CONCLUSION**

2 For all of the foregoing reasons, AHAC respectfully requests that the Subpoena be
3 quashed or modified, or that a protective order be entered protecting AHAC from the unduly
4 burdensome response required by the Subpoena, and for such other and further relief as the
5 District Court may deem just and proper.

6 Dated March 4, 2024

NICOLAIDES FINK THORPE
MICHAELIDES SULLIVAN LLP

7
8 By: /s/ Amy P. Kliee

Amy P. Klie
Alison V. Lippa
Attorney for Defendants
AMERICAN HOME ASSURANCE CO.

1 Alison V. Lipa (SBN: 160807)
alippa@nicolaidesllp.com
2 NICOLAIDES FINK THORPE
MICHAELIDES SULLIVAN LLP
3 101 Montgomery Street, Suite 2300
4 San Francisco, CA 94104
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MICHAELIDES SULLIVAN LLP
8 10 S. Wacker Dr., Suite 2100
9 Chicago, Illinois 60606
Telephone: (312) 585-1400

10
11 *Attorneys for Defendant*
American Home Assurance Co.

12
13 **UNITED STATES BANKRUPTCY COURT**
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16 In re:
17 THE ROMAN CATHOLIC BISHOP OF
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20 THE ROMAN CATHOLIC BISHOP OF
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CHAPTER 11
Case No. 23-40523 WJL
Adversary Case No. 23-04037

**DECLARATION OF AMY P. KLIE IN
SUPPORT OF AMERICAN HOME
ASSURANCE COMPANY'S MOTION TO
QUASH THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS'
SUBPOENA FOR RULE 2004
EXAMINATION OR IN THE
ALTERNATIVE FOR A PROTECTIVE
ORDER**

1 I, Amy P. Klie, declare as follows:

2 1. I am a partner at Nicolaides Fink Thorpe Michaelides Sullivan LLP, counsel of
3 record for Defendant American Home Assurance Company (“AHAC”) in the above-captioned
4 matter. I make this declaration in support of AHAC’s Motion to Quash the Official Committee
5 of Unsecured Creditor’s (“Committee”) Subpoena for Rule 2004 Examination (“Subpoena”) in
6 this case. I have personal knowledge of the matters stated herein and if called as a witness
7 would so testify.

8 2. On January 18, 2024, the Court granted the Committee’s motion for entry of an
9 order pursuant to Federal Rule of Bankruptcy Procedure 2004 and Bankruptcy Local Rule for
10 the Northern District of California 2004-1 (“Order”) [Dkt. 796].

11 3. On January 19, 2024, the Committee’s counsel, Colleen Restel of Lowenstein
12 Sandler LLP, emailed me a copy of the Subpoena and asking us to “advise whether you will
13 accept service of the subpoenas on behalf of American Home Assurance Company and
14 Lexington Insurance Company. Absent your consent, we will proceed with formal service of
15 the subpoenas on Monday of next week.” Attached as **Exhibit 1** is a true and correct copy of
16 Ms. Restel’s January 19, 2024 email and the attached subpoena to AHAC.

17 4. On January 23, 2024, the Debtor the Roman Catholic Bishop of Oakland filed
18 a Notice of Dismissal of Lexington Insurance Company (“Lexington”) without prejudice from
19 the Adversary Case No. 23-04037 WJL. [Dkt. 16]. As a result, on February 20, 2024, I
20 requested that the Committee agree to withdraw the Subpoena as to Lexington, which issued an
21 excess policy for the 2007-08 policy period. I also notified Ms. Restel that I did not yet have
22 authority to accept service of the Subpoena on AHAC.

23 5. In response, on February 22, 2024, Ms. Restel agreed that the Committee
24 would withdraw the Subpoena as to Lexington. In addition, Ms. Restel informed me that on
25 January 31, 2024, the Committee caused to be served on AHAC a Subpoena for Rule 2004
26 Examination. Attached as **Exhibit 2** is a true and correct copy of the email chain between
27 myself and Ms. Restel containing our communications of February 20 and February 22, 2024.
28

1 6. Ms. Restel provided me with an affidavit of service, stating that service was
2 made on AHAC by a process server, Sheldon Lee, at 143 Dove Street, Albany, New York on
3 January 31, 2024. Attached as **Exhibit 3** is a true and correct copy of the Affidavit of Service,
4 dated January 31, 2024.

5 7. On March 1, 2024, I telephoned Ms. Restel at her office to meet and confer
6 with her regarding AHAC's proposed Motion to Quash and the request that the Committee
7 agree to limit the categories of documents requested from AHAC.

8 8. In response, on March 1, 2024, Ms. Restel sent me an email message,
9 informing me that she was traveling and asking that I put my questions in an email for her
10 consideration. Attached as **Exhibit 4** is a true and correct copy of Ms. Restel's email to me
11 dated March 1, 2024.

12 9. The same day, on March 1, 2024, I responded in writing to Ms. Restel's email.
13 In my response, I informed Ms. Restel of the bases for AHAC's proposed Motion to Quash, and
14 requested that the Committee agree to limit the scope of documents requested from AHAC in
15 order to alleviate confidentiality, privilege, and undue burden concerns with the documents
16 requested ("meet and confer email"). Attached as **Exhibit 5** is a true and correct copy of my
17 email dated March 1, 2024 in response to Ms. Restel's request that AHAC meet and confer with
18 the Committee in writing.

19 10. On March 2, 2024, Ms. Restel responded to my meet and confer email. Ms.
20 Restel's response acknowledged that "any documents withheld on [privilege grounds] can be
21 logged in a line-by-line privilege log explaining the basis for the privilege," which appears to
22 address certain of AHAC's concerns regarding privilege based on the scope of the Subpoena
23 requests as drafted. However, Ms. Restel's email indicated that the Committee disagreed with
24 AHAC's view that grounds exist for viewing the scope of the subpoena differently based on
25 AHAC's status as a higher-layer excess carrier, and her email did not sufficiently address
26 AHAC's concerns regarding confidentiality and undue burden. Attached as **Exhibit 6** is a true
27 and correct copy of Ms. Restel's March 2, 2024 email in response to the meet and confer email.
28

Exhibit 1

Alison V. Lippa

From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Friday, January 19, 2024 9:31 AM
To: Alison V. Lippa; Amy P. Klie
Cc: RCBO; tburns; jbair; Gabrielle Albert; Uetz, Ann Marie; Ridley, Eileen R.; Lee, Matt
Subject: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company
Attachments: RCBO - American Home Assurance Company Subpoena 1.19.24.pdf; RCBO - Lexington Insurance Company Subpoena 1.19.24.pdf

EXTERNAL EMAIL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Counsel,

Pursuant to the *Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* [Dkt. 796], entered on January 18, 2024, please find the attached subpoenas.

Please advise whether you will accept service of the subpoenas on behalf of American Home Assurance Company and Lexington Insurance Company. Absent your consent, we will proceed with formal service of the subpoenas on Monday of next week.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



This message contains confidential information, intended only for the person(s) named above, which may also be privileged. Any use, distribution, copying or disclosure by any other person is strictly prohibited. In such case, you should delete this message and kindly notify the sender via reply e-mail. Please advise immediately if you or your employer does not consent to Internet e-mail for messages of this kind.

UNITED STATES BANKRUPTCY COURT

Northern District of California

Oakland Division

In re THE ROMAN CATHOLIC BISHOP OF OAKLAND,
Debtor

Case No. 23-40523 (WJL)

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: American Home Assurance Company

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

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

The examination will be recorded by this method: _____

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

See attached **Schedule A**.

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

Date: January 19, 2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Gabrielle L. Albert
Attorney's signature

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

Notice to the person who issues or requests this subpoena

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

PROOF OF SERVICE

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

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

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

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

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

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

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

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

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

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

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

(2) *Command to Produce Materials or Permit Inspection.*

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

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

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

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

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

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

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

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

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

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

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

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

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

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

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

(2) *Claiming Privilege or Protection.*

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

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

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

...

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

SCHEDULE A

DEFINITIONS

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

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

2. “All” includes the word “any,” and “any” includes the word “all.”

3. “And” includes the word “or,” and “or” includes the word “and.”

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

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

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

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

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

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

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

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

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

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

12. “Each” shall mean each, every, any, and all.

13. “Including” means including without limitation.

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

15. “Petition Date” means May 8, 2023.

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

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

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

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

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

INSTRUCTIONS

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

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

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

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

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

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

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

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

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

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

- a. Identify the type, title and subject matter of the Document;
- b. State the place, date, and manner of preparation of the Document;

- c. Identify all authors, addresses, and recipients of the Document, including information about such persons to assess the privilege asserted; and
- d. Identify the legal privilege(s) and the factual basis for the claim.

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

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

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

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

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

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

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

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

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

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

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

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

DOCUMENTS TO BE PRODUCED

1. Copies of all Your Insurance Policies issued to, or insuring, RCBO, including any endorsements or attachments to those policies.
2. All Secondary Evidence of Your Insurance Policies issued to, or insuring, RCBO, but only with respect to any of Your Insurance Policies that are missing or incomplete.
3. All coverage position letters, including reservations of rights or denials of coverage, that You or anyone acting on Your behalf sent to RCBO Concerning insurance coverage for any Abuse Claim tendered by or on behalf of RCBO to You.
4. Documents sufficient to show any exhaustion, erosion, or impairment of the limits of liability of each of Your Insurance Policies, such as loss runs, loss history reports, and/or claims reports.
5. The entire contents of Your Claim Files Relating to any Abuse Claims tendered by or on behalf of RCBO to You.
6. All Underwriting Files Relating to Your Insurance Policies concerning any Abuse Claims tendered by or on behalf of RCBO to You.
7. Documents sufficient to show Your current reserves for each of the Abuse Claims tendered by or on behalf of RCBO to You.
8. All Documents and Communications that relate to Your setting, calculating, analysis, adjustment, investigation, evaluation of, and decision-making process with respect to, Your reserves identified in response to Request No. 7, above, including the working papers and actuarial reports, if any, relating to the establishment of those reserves.

Exhibit 2

Alison V. Lippa

From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Thursday, February 22, 2024 4:19 AM
To: Amy P. Klie
Cc: Alison V. Lippa; RCBO; tburns; jbair
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company
Attachments: AOS American Home Assurance Company - served 1.31.24.pdf

EXTERNAL EMAIL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender's email address and know the content is safe.

Good morning, Amy,

The Committee will withdraw the Subpoena issued to Lexington at this time. However, the Committee reserves the right to seek the documents requested in the Subpoena at a later date based on the Court's order, or to seek production of any other documents.

With respect to American Home Assurance Company, please see the attached Affidavit of Service, showing service of the Subpoena on January 31 on a legal representative of the company.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



From: Amy P. Klie <aklie@nicolaidesllp.com>
Sent: Tuesday, February 20, 2024 4:23 PM
To: Restel, Colleen M. <crestel@lowenstein.com>
Cc: Alison V. Lippa <alippa@nicolaidesllp.com>
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Colleen,

I am still waiting to confirm whether we have approval to accept service of the subpoena, and we have not received word of formal service from our client. In the interim, would you please let us know whether, in light of the Diocese's dismissal of Lexington, which issued an excess policy for the 2007-08 policy period, the Committee would consider withdrawing its subpoena of Lexington?

Regards,

Amy

Amy P. Klie
aklie@nicolaidesllp.com



10 South Wacker Drive | 21st Floor | Chicago, IL 60606
D: 312.585.1422 | F: 312.585.1401
www.nicolaidesllp.com

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From: Restel, Colleen M. <crestel@lowenstein.com>

Sent: Friday, January 19, 2024 11:31 AM

To: Alison V. Lippa <alippa@nicolaidesllp.com>; Amy P. Klie <aklie@nicolaidesllp.com>

Cc: RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Gabrielle Albert <galbert@kbkllp.com>; Uetz, Ann Marie <AUetz@foley.com>; Ridley, Eileen R. <ERidley@foley.com>; Lee, Matt <MDLee@foley.com>

Subject: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Counsel,

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Please advise whether you will accept service of the subpoenas on behalf of American Home Assurance Company and Lexington Insurance Company. Absent your consent, we will proceed with formal service of the subpoenas on Monday of next week.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



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Exhibit 3

Plaintiff / Petitioner:

In Re: THE ROMAN CATHOLIC BISHOP OF OAKLAND

Defendant / Respondent:

AMERICAN HOME ASSURANCE COMPANY

AFFIDAVIT OF SERVICE

Index No:
23-40523 (WJL)

The undersigned being duly sworn, deposes and says; deponent is not a party herein, is over 18 years of age and resides at 143 Dove Street, Albany, New York 12202. That on Wed, Jan 31 2024 AT 03:25 PM AT 80 STATE STREET, ALBANY, NEW YORK 12207 deponent served the within SUBPOENA FOR RULE 2004 EXAMINATION on AMERICAN HOME ASSURANCE COMPANY C/O CSC CORP

- Individual: by delivering a true copy of each to said defendant, personally; deponent knew the person so served to be the person described as said defendant therein.
- Corporation: AMERICAN HOME ASSURANCE COMPANY a defendant, therein named, by delivering a true copy of each to Legal Representative personally, deponent knew said corporation so served to be the corporation described, and knew said individual to be Authorized to Accept thereof.
- Suitable Person: by delivering thereat, a true copy of each to _____ a person of suitable age and discretion.
- Affixing to Door: by affixing a true copy of each to the door thereof, deponent was unable with due diligence to find defendant, or a person of suitable age or discretion thereat, having called thereon; at _____
- Mailing: Deponent also enclosed a copy of same, in a postpaid sealed wrapper properly addressed to said defendant at defendant's last known residence, _____, and depositing said wrapper in a post office, official depository under the exclusive care and custody of the United States Post Office, department, with New York State. Mailed on _____.
- Secretary of State: a Defendant/Non-Party Witness, therein named, by delivering two true copies of each to personally, deponent knew said Secretary of State so served to be the Secretary of State described, and knew said individual to be thereof. At the time of service a \$40.00 fee was tendered.
- Military Service: I asked the person spoken to whether defendant was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Defendant wore ordinary civilian clothes and no military uniform. The source of my information and the ground of my belief are the conversations and observations above narrated. Upon information and belief I aver that the defendant is not in the military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Description:

Age: 40-45 Ethnicity: Caucasian Gender: Female Weight: 180-190
 Height: 6' Hair: Eyes: Relationship: Authorized to Accept
 Other: _____

Sheldon Lee

Sheldon Lee

I affirm this 06 day of FEBRUARY, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Exhibit 4

Alison V. Lippa

From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Friday, March 1, 2024 10:48 AM
To: Amy P. Klie
Cc: Alison V. Lippa; RCBO; tburns; jbair
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Amy,

I received your voicemail. I am traveling today, so it would be easier to discuss by email. If you have particular questions, please let us know and we will discuss and respond.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310
M: (973) 768-5161



From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Wednesday, February 28, 2024 8:18 PM
To: Amy P. Klie <aklie@nicolaidesllp.com>
Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Amy,

The Committee will not agree to an extension of the March 4 deadline.

Colleen

Exhibit 5

Alison V. Lippa

From: Amy P. Klie
Sent: Friday, March 1, 2024 6:47 PM
To: Restel, Colleen M.
Cc: Alison V. Lippa; RCBO; tburns; jbair
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Colleen,

Thanks for your email - I'm sorry to have missed you. We understand that you are traveling today and prefer to communicate via email. As such, pursuant to bankruptcy court and district court local rules, this email serves as American Home's meet and confer in advance of our proposed motion to quash the Committee's Subpoena for Rule 2004 Examination ("Subpoena"). In reaching out today, I was hoping we could speak in an effort to resolve some potential issues we identified with respect to the Subpoena. If it's possible to have a call Monday, we still think it would be a useful step toward possibly resolving issues and avoiding the need for a motion to quash.

As you know, I previously reached out to you with the request that the Committee agree to additional time for American Home's response to the Subpoena. While Committee denied that request, we'd like the opportunity to discuss how American Home may be in a different position than some of the other subpoenaed insurers from Adversary Case No. 23-04028 due to its status as a higher layer excess carrier, among other things. In response to your request, we summarize below the key issues we'd like to discuss concerning the Subpoena.

(1) Regarding the request for claim files, is it the Committee's position that claim files must be produced in their entirety, or will it agree that privileged material may be withheld and logged on a privilege log? In particular, American Home intends to withhold documents that are subject to the attorney-client privilege, the attorney work-product doctrine, settlement and mediation privilege, joint defense, common interest, or any other judicially recognized protection or privilege, and must withhold any information to the extent production may violate any constitutional, statutory or common law privacy interest of American Home or any third party. American Home may also move to quash based on the burden / proportionality of the claim file request.

(2) American Home intends to move to quash the Subpoena on grounds that the two requests for reserves are burdensome / not proportional as to American Home, and potentially seek production of records that are privileged or contain confidential business information or trade secrets. We'd like to discuss whether the Committee may reconsider these requests with respect to American Home.

(3) The request for underwriting, as drafted, potentially encompasses privileged, confidential, and proprietary information. American Home is not currently aware of any documents responsive to this request. To the extent any responsive documents are located, will the Committee agree that an assessment may be made at that time regarding privilege, etc.?

Please let me know if you are available to speak further about these issues.

Regards,

Amy

Amy P. Klie
aklie@nicolaidesllp.com
D: 312.585.1422

Exhibit 6

Alison V. Lippa

From: Restel, Colleen M. <crestel@lowenstein.com>
Sent: Saturday, March 2, 2024 8:08 AM
To: Amy P. Klie
Cc: Alison V. Lippa; RCBO; tburns; jbair
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Amy,

We disagree that American Home, as an excess carrier, is differently situated from the other insurers. We acknowledge that American Home is an excess insurer, but note that the excess is over approximately \$5 million in key coverage years. Given the magnitude of claims in this case, American Home is therefore fully exposed and should be obligated to respond to discovery in the same way as the other insurers.

We understand your remaining concerns are two-fold: (i) confidentiality and (ii) privilege.

With respect to confidentiality, the Court has entered a confidentiality order which was fully litigated – including by the insurers. Any arguments relating to privacy, business secrets, or any other alleged confidentiality concerns are addressed through the confidentiality order, and are not a basis for withholding the production of documents.

With respect to any allegation of privilege, as was previously discussed with the Court, any documents withheld on that basis can be logged in a line-by-line privilege log explaining the basis for the privilege. The Committee and/or Debtor will then have the opportunity to challenge the asserted privilege if they see fit.

For any Request which American Home asserts no responsive documents exist, the Committee requests a certification explaining the search that was conducted and that no responsive documents were located.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



From: Amy P. Klie <aklie@nicolaidesllp.com>

Sent: Friday, March 1, 2024 9:47 PM

To: Restel, Colleen M. <crestel@lowenstein.com>

Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>

Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Please let me know if you are available to speak further about these issues.

Regards,

Amy

Amy P. Klie
aklie@nicolaidesllp.com



10 South Wacker Drive | 21st Floor | Chicago, IL 60606

D: 312.585.1422 | F: 312.585.1401

www.nicolaidesllp.com

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From: Restel, Colleen M. <crestel@lowenstein.com>

Sent: Friday, March 1, 2024 12:48 PM

To: Amy P. Klie <aklie@nicolaidesllp.com>

Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>

Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Amy,

I received your voicemail. I am traveling today, so it would be easier to discuss by email. If you have particular questions, please let us know and we will discuss and respond.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



From: Restel, Colleen M. <crestel@lowenstein.com>

Sent: Wednesday, February 28, 2024 8:18 PM

To: Amy P. Klie <aklie@nicolaidesllp.com>

Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>

Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Amy,

The Committee will not agree to an extension of the March 4 deadline.

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

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M: (973) 768-5161



From: Amy P. Klie <aklie@nicolaidesllp.com>
Sent: Wednesday, February 28, 2024 4:11 PM
To: Restel, Colleen M. <crestel@lowenstein.com>
Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>
Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Colleen,

Thank you – we’ll consider the Lexington subpoena withdrawn subject to your reservation of rights. Would the Committee consider extending American Home’s time to respond until March 21?

Regards,

Amy

Amy P. Klie
aklie@nicolaidesllp.com



10 South Wacker Drive | 21st Floor | Chicago, IL 60606

D: 312.585.1422 | F: 312.585.1401

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From: Restel, Colleen M. <crestel@lowenstein.com>

Sent: Thursday, February 22, 2024 6:19 AM

To: Amy P. Klie <aklie@nicolaidesllp.com>

Cc: Alison V. Lippa <alippa@nicolaidesllp.com>; RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>

Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Good morning, Amy,

The Committee will withdraw the Subpoena issued to Lexington at this time. However, the Committee reserves the right to seek the documents requested in the Subpoena at a later date based on the Court's order, or to seek production of any other documents.

With respect to American Home Assurance Company, please see the attached Affidavit of Service, showing service of the Subpoena on January 31 on a legal representative of the company.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310
M: (973) 768-5161



From: Amy P. Klie <aklie@nicolaidesllp.com>

Sent: Tuesday, February 20, 2024 4:23 PM

To: Restel, Colleen M. <crestel@lowenstein.com>

Cc: Alison V. Lippa <alippa@nicolaidesllp.com>

Subject: RE: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

Colleen,

I am still waiting to confirm whether we have approval to accept service of the subpoena, and we have not received word of formal service from our client. In the interim, would you please let us know whether, in light of the Diocese's dismissal of Lexington, which issued an excess policy for the 2007-08 policy period, the Committee would consider withdrawing its subpoena of Lexington?

Regards,

Amy

Amy P. Klie

aklie@nicolaidesllp.com



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From: Restel, Colleen M. <crestel@lowenstein.com>

Sent: Friday, January 19, 2024 11:31 AM

To: Alison V. Lippa <alippa@nicolaidesllp.com>; Amy P. Klie <aklie@nicolaidesllp.com>

Cc: RCBO <RCBO@lowenstein.com>; tburns <tburns@burnsbair.com>; jbair <jbair@burnsbair.com>; Gabrielle Albert <galbert@kbkllp.com>; Uetz, Ann Marie <AUetz@foley.com>; Ridley, Eileen R. <ERidley@foley.com>; Lee, Matt <MDLee@foley.com>

Subject: In re Roman Catholic Bishop of Oakland, Case No. 23-40523; Subpoenas to American Home Assurance Company and Lexington Insurance Company

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Counsel,

Pursuant to the *Order Granting the Official Committee of Unsecured Creditors' Ex Parte Application for Federal Rule of Bankruptcy Procedure 2004 Examination of Insurers* [Dkt. 796], entered on January 18, 2024, please find the attached subpoenas.

Please advise whether you will accept service of the subpoenas on behalf of American Home Assurance Company and Lexington Insurance Company. Absent your consent, we will proceed with formal service of the subpoenas on Monday of next week.

Thank you,

Colleen

Colleen Restel
she, her, hers
Counsel
Lowenstein Sandler LLP

T: (973) 597-6310

M: (973) 768-5161



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Exhibit 7

1 And I think as to any other request, I think it's --
2 we're really getting into litigation positions that I think is
3 rarely a proper function for 2004. And I think there we are
4 getting a little bit closer to being concerned about the
5 committee's role in the AP where they basically said, listen,
6 we're not going to be generating discovery. I'm not holding
7 you to that exactly here, but I don't want to intrude on that
8 too much.

9 I do think that what we're talking about here is
10 acceptable for current purposes. And things are going to
11 change. As you get closer to a mediation or other issues
12 bubble up to the surface, I will hear this again. And I'll
13 listen to people as to why the world is different now and I
14 should do something else. And/or when you get to the
15 mediation, either the mediator is going to tell you you've got
16 to do X, Y, and Z, and you guys have been through that drill
17 enough to know or it sounds like Mr. Plevin or maybe they both
18 confirmed something that I suspected, which is the judge role
19 at that point is fairly minimal in terms of -- I mean, would I
20 take direction from the mediator? I'd certainly listen if
21 there were communication that, Judge, I think we need X, Y, and
22 Z and you can help with that. I think I'd be inclined to
23 listen to it. I don't know if that puts me in conflict with
24 Judge Silverstein. If it does, I'm probably going to be
25 worried. But there you go.

1 So I do think it's not that this can't be revisited,
2 but I think it's a fairly limited production now is what's
3 appropriate. And I don't want to hear about depositions now.
4 We'll see about depositions down the road. Okay? I'm not sure
5 that -- I don't think that they're going to be necessary
6 "clarify" anything that you're going to be getting. And to the
7 extent that they're depositions and the more traditional sense,
8 they really are litigation vehicles that I think were we're
9 just not there yet. So that's my ruling.

10 If you guys can put your heads together about
11 appropriate wording for the three categories I suggested with
12 respect to this case, I think could be produced, I think I
13 can -- I'll be happy to see your handiwork. And I'll approve
14 that, okay, subject to that being worked out. All right?

15 Anything else for the good of the order?

16 Oh, you guys, I'm thinking about the bar date order.
17 And I promise you that will be category 1, okay?

18 MR. KAPLAN: Thank you, Your Honor.

19 THE COURT: All right. Thank you very much.

20 MS. UETZ: Your Honor, excuse me. Sorry, sorry,
21 sorry.

22 THE COURT: Yeah, Yeah.

23 MS. UETZ: Just I know it's late, so I just want to
24 raise the subject of Alvarez responding to your questions and
25 see if we can't maybe set that for hearing or how you'd like to

1 proceed. Because I know we've -- Mr. Moore has been in the
2 hearing and is prepared to respond to you, but I recognize
3 it's -- so I really didn't -- next procedurally --

4 THE COURT: Yeah. I really need to get ready -- IU
5 need to get ready for something at 1:30.

6 MS. UETZ: Sure. May we set it with Ms. Vann perhaps
7 for a date or something?

8 THE COURT: Well, let me ask her a quick question,
9 okay?

10 S1: May we set it with Ms. Fand, perhaps for a date
11 or.

12 THE COURT: Let me just ask her a quick question.
13 Okay. Ms. Fand, how are we looking on the 22nd?

14 THE CLERK: We're pretty -- there's only three matters
15 so far set.

16 THE COURT: All right. I've got -- if anybody wants
17 to do the day before Thanksgiving, that's actually -- oddly
18 enough, that's a light calendar. If you would rather not do
19 it, then we can do it a little bit later. It's up to you
20 folks.

21 MS. UETZ: Your Honor, Mr. Moore is on. And I'll
22 defer to him. We will have someone from Foley here for that
23 hearing on that date --

24 THE COURT: All right, the 22nd.

25 MS. UETZ: -- if he can make it. And I know he's on