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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



Not Signed - See comments below.

William J. Lafferty, III

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

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:
THE ROMAN CATHOLIC BISHOP OF
OAKLAND,

Debtor.

Case No. 23-40523 WJL
Chapter 11

MEMORANDUM CONCERNING
CERTAIN ISSUES RAISED DURING
JANUARY 21, 2025 HEARING ON
APPROVAL OF DISCLOSURE
STATEMENT

On January 21, 2025, the Court conducted a continued hearing on the Roman Catholic Bishop of Oakland’s (“RCBO” or “Debtor”) motion to approve its Amended Disclosure Statement, etc. (the “Amended Disclosure Statement”) [Dkt. No. 1595]. In attendance were several counsel for the Debtor, who addressed issues pertinent to the approval of the Amended Disclosure Statement, as well as issues that the Debtor believes should be addressed solely in the context of confirmation of a plan of reorganization in this case, and issues related to the nature and scope of rights under the Debtor’s existing insurance policies that are to be made available to the members of Class 4 (“Abuse Claims”) who choose to pursue the “Litigation



1 Option” under the Amended Plan of Reorganization proposed by the Debtor [Dkt. No. 1594].
2 Also in attendance through counsel were the Official Committee of Unsecured Creditors (the
3 “Committee”) in this case, and counsel to various insurance companies (collectively, the
4 “Insurers”) who with the Debtor negotiated the terms of the Plan relating to the transfer of rights
5 under insurance policies, and who support approval of the Disclosure Statement and
6 confirmation of the Plan.

7 During the course of the January 21 hearing, there was substantial discussion between
8 and among the Debtor, the Committee and the Insurers concerning the effect of confirmation of
9 the Plan on the Class 4 Claimants’ rights to assert claims arising under applicable non-
10 bankruptcy law for actions by the Insurers that may be deemed to have been taken in bad faith,
11 during the course of post-Effective Date litigation.

12 As background, and very simply stated, under the Plan as filed, the Debtor will transfer
13 all of its rights under any and all pertinent insurance policies to Class 4 Claimants who wish to
14 pursue litigation to establish the amount of their claim and their right to recovery under
15 pertinent insurance policies. Such claimants will then pursue actions nominally against the
16 Debtor, but on the understanding that their compensation from the Debtor would be limited to
17 their pro rata share of the amounts contributed to the Survivors’ Trust by the Debtor, certain
18 affiliates of the Debtor, and Settling Insurers (if any), and confirmation of the Plan will
19 discharge the Debtor from any additional liability.

20 The Committee points out that the Plan and the Disclosure Statement each tout the value
21 of the Debtor’s rights under insurance policies, and each aver that the Debtor’s rights under
22 those policies will be available to the Class 4 Claimants under the Litigation Option. The
23 Committee also notes, however, language under the Plan and Disclosure Statement stating that
24 the recovery for those pursuing the Litigation Option will be capped at an amount that
25 apparently would not include the potential to pursue the relevant Insurers for alleged bad faith
26 conduct, such as a refusal to defend an action, or to indemnify and pay damages where
27 appropriate, or to respond appropriately to a reasonable settlement offer. The Debtor and the
28

1 Insurers stated that it was not their intent to so limit the Class 4 Claimants' rights *under the*
2 *Plan*, and the Insurers offered to work with the Committee on a language fix for this issue.

3 During the January 21 hearing, however, counsel for some of the Insurers took the
4 position that confirmation of the Plan will necessarily terminate any rights to assert bad faith
5 claims against them, because confirmation will result in the discharge of the Debtor and,
6 therefore, the removal of any potential liability *of the Debtor* for payment of the claims at issue
7 under the Litigation Option. No other counsel for the Insurers disagreed with that position
8 during the hearing.

9 Counsel for the Debtor indicated that it did not agree with the Insurers' position that
10 under applicable non-bankruptcy law future bad faith claims would be eliminated by
11 confirmation and the Debtor's discharge. However, the Plan and Disclosure Statement as
12 drafted do not address in any manner this issue or this apparent disagreement between the
13 Debtor and the Insurers concerning the effect of confirmation. As is perhaps typical in
14 situations in which the estate representative is disposing of an asset, the Debtor's position is
15 essentially, "We are giving claimants whatever rights we have under our insurance policies".
16 The Debtor is not opining in the Disclosure Statement or Plan as to what those rights are, nor
17 "repping and warranting" the extent of the rights being transferred, nor indemnifying and
18 holding harmless any Class 4 Claimants whose potential outside-of-bankruptcy rights to pursue
19 bad faith claims against the Insurers are potentially being eliminated merely via confirmation.

20 The Committee essentially agreed with the Debtor that under applicable non-bankruptcy
21 law, all rights under an insurance policy would be available to a claimant in litigation and
22 asserted that there is no reason to conclude that confirmation of a plan that discharged the
23 insured would change that result.

24 Counsel for the Committee urged the Court to deny approval of the Disclosure
25 Statement in light of the disagreement on this issue, for several reasons. First, the Committee
26 argued that to the extent that confirmation of the Plan would eliminate bad faith claims, it would
27 contravene applicable non-bankruptcy law. Obviously, that is far from clear, and subject to the
28 Court's concerns below concerning issuing an advisory opinion on the issue, it does appear

1 facially that this issue cannot be resolved via the Disclosure Statement and is more properly
2 dealt with at confirmation. Next, the Committee argues that the Court cannot approve a
3 Disclosure Statement in which the Debtor and the Insurers disagree about a fundamental issue
4 concerning the effect of confirmation, and the Committee states that the only reasonable
5 solution to this problem is to have the Debtor and the Insurers come to some agreement
6 concerning that issue. The Court agrees that the present uncertainty about the effect of
7 confirmation is quite problematic, as addressed below, but the Court is unaware of any
8 mechanism to force the Debtor and the Insurers to come to an agreement on this issue. Lastly,
9 the Committee suggests that the proposed Plan violates the prohibition on imposing a release of
10 non-debtor entities on non-consenting creditors. The Court disagrees; this is not an instance in
11 which a third-party entity is seeking a *release* of claims that may be asserted by the debtor's
12 creditors—such a release is a contractual matter, and may be agreed to or not depending on the
13 terms offered. In this instance it is the mere fact of confirmation of the Plan that, per the
14 Insurers, will necessarily have the effect of eliminating bad faith claims. Indeed, the result in
15 this case is arguably worse than that described by the Committee—the Insurers are offering the
16 Class 4 Claimants nothing in exchange for what may be the complete elimination of a state law
17 right.

18 The Court has concerns about the proper means to address this issue in this case.
19 Counsel for the Committee, the Insurers and the Debtor spent considerable time and attention
20 during the January 21 hearing arguing their views of applicable non-bankruptcy law, to little
21 effect, in the Court's view, in the posture of approval of a Disclosure Statement. Indeed,
22 counsel for the Debtor and the Insurers urged the Court to reserve disagreements about the
23 effect of confirmation of the Plan to the hearing on confirmation, to allow parties to take
24 discovery on factual issues and to articulate their legal positions on the issue.

25 The Court is concerned, however, that delaying consideration of this issue until
26 confirmation misses the essence of the problem, for two reasons:

27 First, as the Insurers point out, consideration of the potential disposition of bad faith
28 claims against them at this stage of this case is entirely speculative: by definition, the assertion

1 of a bad faith claim against an Insurer would have to be based on conduct occurring in the
2 course of litigation that will not even be commenced until considerably after the occurrence of
3 the Effective Date in this case; and it is premature to assume that any such conduct will occur.

4 That is likely correct, but delaying consideration of this issue until confirmation does
5 not solve the problem, because while consideration of the issue now may not be appropriate, it
6 is no more likely to be appropriate at confirmation. Stated differently, the Court is concerned
7 that consideration of the effect of Plan confirmation on a claim that may never be asserted, and
8 in any event will not be asserted for quite some time after the Effective Date in this case, and
9 will not affect the liability of the Debtor to the creditors of this estate, will not present a “case or
10 controversy” which this Court may adjudicate at plan confirmation. Rather, it appears to the
11 Court that a determination at plan confirmation in this case concerning such future claims would
12 be an advisory opinion, which the Court would have no jurisdiction to enter.

13 Second, it is not clear to the Court how this problem can effectively be addressed via
14 modifications to the Disclosure Statement. Stated slightly differently, could a Disclosure
15 Statement that said the following contain adequate information for purposes of assisting
16 claimants in how to vote on a Plan?

17 “The Debtor believes that it is transferring valuable rights under its policies of insurance
18 to the holders of Class 4 Claims. However, you should be aware that the Insurers take the
19 position that because confirmation of the Plan will result in a discharge of the Debtor and
20 eliminate any potential financial exposure that the Debtor may have if a claim is unpaid, the
21 mere fact of confirming the Plan, without more, will eliminate any right to assert a bad faith
22 claim against any Insurer. The Debtor and the Committee believe that the Insurers position is
23 not an accurate statement of the law, and that claims for conduct by Insurers that allegedly
24 violate obligations to act in good faith may be transferred to the claimants and would survive
25 confirmation of the Plan. However, the outcome of this dispute is not merely uncertain, it is
26 unlikely to be determinable by the Bankruptcy Court at confirmation, and likely cannot be
27 determined until such time that an Insurer has acted in bad faith, which may occur, if at all,
28 years after the occurrence of the Effective Date in this case.”

1 The Court will appreciate the parties arguments on the issues whether (1) in light of the
2 uncertainties inherent in the current structure of the Plan and the resulting disagreement
3 concerning the effect of confirmation, it would ever be appropriate to have creditors vote on
4 such a Plan, and (2) what language might appropriately apprise creditors of the risks that
5 confirmation of the Plan may eliminate valuable rights under applicable non-bankruptcy law.

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7 ****END OF MEMO****
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