

LOWENSTEIN SANDLER LLP

JEFFREY D. PROL (Admitted Pro Hac Vice)

jprol@lowenstein.com

BRENT WEISENBERG (Admitted Pro Hac Vice)

bweisenberg@lowenstein.com

One Lowenstein Drive
Roseland, New Jersey 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-2400

KELLER BENVENUTTI KIM LLP

TOBIAS S. KELLER (Cal. Bar No. 151445)

tkeller@kbkllp.com

JANE KIM (Cal. Bar No. 298192)

jkim@kbkllp.com

GABRIELLE L. ALBERT (Cal. Bar No. 190895)

galbert@kbkllp.com

425 Market St., 26th Floor
San Francisco, California 94105
Telephone: (415) 496-6723
Facsimile: (650) 636-9251

*Counsel for the Official Committee of
Unsecured Creditors*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re:

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

Debtor.

Case No. 23-40523 WJL

Chapter 11

**THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS' (I) REPLY IN
RESPONSE TO DEBTOR'S OBJECTION TO
APPLICATION FOR ORDER
AUTHORIZING THE RETENTION OF
STOUT RISIUS ROSS, LLC AS REAL
ESTATE CONSULTANT AND EXPERT
WITNESS AND (II) REQUEST FOR AN
EMERGENCY HEARING ON THE STOUT
APPLICATION**

[Related Dkt. Nos. 1887, 1898]

Judge: Hon. William J. Lafferty

1 The Official Committee of Unsecured Creditors (the “**Committee**”) of The Roman
2 Catholic Bishop of Oakland (the “**Debtor**”) (i) files this reply (this “**Reply**”) to the Debtor’s
3 limited objection [Dkt. No. 1898] (the “**Objection**”) to the application for an order authorizing the
4 retention of Stout Risius Ross, LLC (“**Stout**”) as real estate consultant and expert witness [Dkt.
5 No. 1887] (the “**Stout Application**”) in connection with the contested confirmation of the
6 *Debtor’s Third Amended Plan of Reorganization* (the “**Plan**”) and (ii) requests an emergency
7 hearing on the Stout Application given the impending plan confirmation deadlines.¹

8 **I.**

9 **PRELIMINARY STATEMENT**

10 The Debtor’s Objection mischaracterizes the purpose, and scope, of the Committee’s
11 retention of Douglas Wilson Companies (“**DWC**”) to convince this Court that Stout’s proposed
12 services are redundant. But the DWC Application (defined below) establishes that:

- 13 (i) DWC was *not* retained as a valuation expert; DWC was retained as a real estate
14 advisor;
15 (ii) DWC was retained to provide a valuation *estimate*;
16 (iii) DWC was retained solely to facilitate mediation; and
17 (iv) DWC’s reports specify that they are not to be relied on by any person in any way.

18 *See Second Amended Application for Entry of an Order Authorizing Retention of Douglas Wilson*
19 *Companies as Real Estate Consultant to the Official Committee of Unsecured Creditors* [Dkt. No.
20 1293] (the “**DWC Application**”).

21 To enable and expedite a consensual resolution of this case, DWC was retained on August
22 5, 2024, to estimate the value of the Debtor’s real estate enterprise before the September 11th
23 mediation sessions (a period of 37 days).² Due to the time limitations and concerns over costs,

24 ¹ Capitalized terms not defined herein have the meaning ascribed to them in the Stout
25 Application.

26 ² Under the Order Authorizing Retention of Douglas Wilson Companies as Real Estate
27 Consultant to the Official Committee of Unsecured Creditors (the “**DWC Retention**
28 **Order**”), DWC was required to provide the Committee with a (i) draft report by October
4, 2024 (60 days after the Effective Date) and (ii) final report by November 3, 2024 (90
days after the Effective Date). In order to facilitate a more prompt resolution of the parties’

1 DWC's estimate was never designed or intended to be used for litigation purposes. Rather, DWC's
2 estimate was used as part of a last gasp effort to help the parties reach a negotiated agreement
3 without the need for litigation.³ The Debtor knew this. Its sudden state of oblivion is thus hard to
4 credit.

5 Stout, on the other hand, is proposed to be retained as a real estate valuation expert which
6 may provide expert testimony at the upcoming Plan confirmation trial. Stout's expert testimony
7 will be predicated on (i) using a methodology which satisfies Federal Rule of Evidence 702's
8 requirements and (ii) Stout's professionals' expertise in valuing diocesan real estate. Stout's
9 testimony may be vital in establishing that the Debtor owns hundreds of millions of dollars of real
10 estate yet is not using any meaningful portion of its vast wealth to satisfy survivor claims. The
11 Debtor's argument that the Committee is dissatisfied with DWC's estimate and has instructed
12 Stout to provide a higher valuation is both an attack on the Committee's professionals' ethics and,
13 of course, patently untrue. The Debtor will have ample opportunity to test Stout's opinion and the
14 bases therefor during discovery.

15 The Debtor's argument that the Committee is looking to multiply costs and delay the Plan
16 confirmation trial is just wrong. At the hearing scheduled to consider the adequacy of the *Debtor's*
17 *Third Amended Disclosure Statement for Debtor's Third Amended Plan of Reorganization* (the
18 "**Disclosure Statement**"), the Committee agreed to withdraw its remaining objections to the
19 adequacy of the Disclosure Statement (while reserving all such objections for the Plan
20 confirmation hearing) in exchange for an agreement with the Debtor on certain discovery deadlines
21 and pre-trial processes leading up to Plan confirmation. Because the Debtor sought, and the
22 Committee ultimately agreed to, a truncated discovery schedule, the Debtor indicated that it would
23 not seek to delay the Committee's retention of experts. In fact, the Committee expressly identified

24
25 disputes, the Committee initially used some of DWC's preliminary opinions at the
26 September mediations sessions.

27 ³ Indeed, this was one of the reasons the Committee agreed to share DWC's reports with the
28 Debtor pursuant to the *Order Referring Parties to Mediation, Appointing Mediators, and*
Granting Related Relief [Dkt. No. 810] with all protections provided to documents
exchanged in mediation.

1 the need to retain Stout to value the Debtor's real estate and the Debtor did not raise any issues
2 regarding the scope of the retention. Having received the expedited discovery schedule it
3 requested, the Debtor should not now be permitted to run out the clock on the Committee or to
4 hamstring the Committee's efforts to prepare for trial.⁴

5 The Debtor's objection to Stout providing a valuation of non-Debtor real estate ignores the
6 fact that it is the Debtor who seeks to use those properties as part of its Plan funding. In its
7 Disclosure Statement, the Debtor acknowledges that certain unspecified non-Debtor real estate
8 will be sold to fund contributions to the Survivors' Trust or pledged as collateral for the RCC exit
9 loan. The Committee is entitled to, among other things, a fair valuation of all non-Debtor real
10 estate that the Debtor acknowledges will be contributed to fund the Plan in determining, among
11 other things, the feasibility of the Plan.

12 In light of the Objection, Stout is understandably concerned about dedicating extensive
13 resources to this project before knowing whether its retention has been authorized. The Committee
14 thus requests an emergency hearing on the Application as any delay may deny Stout sufficient
15 time to complete its report. In turn, the Committee would have no choice but to request an
16 adjournment of the Plan confirmation deadlines, a result the Committee does not want.

17 II.

18 THE PURPOSE AND METHODOLOGY OF STOUT'S 19 EXPERT WITNESS SERVICES IS WHOLLY 20 DISTINCT FROM THAT OF DWC

21 It was made clear in the DWC Application that DWC was not retained as a valuation expert.
22 DWC was retained to provide a valuation *estimate* for use in mediation. For that reason, the
23 Consulting Agreement (as defined in, and attached to, the DWC Application) expressly provides
24 that:

25 Client understands that the valuations, reports, and other
26 information to be provided by DWC (collectively,
27 "Documentation") *are provided for information purposes only* and
that Client and *other parties to which Client delivers such*

28 ⁴ The Committee reserves the right to request relief from the Scheduling Order if Stout
determines it no longer has sufficient time to timely complete its work.

1 ***Documentation, are not entitled to, nor should they, rely on such***
2 ***Documentation or the valuations, reports, or information***
3 ***contained therein.***

3 Consulting Agreement § 1.1 (emphasis added). The Consulting Agreement likewise expressly
4 provides that “DWC understands that the goal of scope of work is to ***estimate*** the value of all of
5 the real estate identified on Schedule A-1 attached hereto.” Consulting Agreement, Ex. A
6 (emphasis added).

7 The DWC Application further confirmed the purpose for, and limits of, DWC’s retention
8 by providing:

- 9 • “DWC can provide valuable assistance to the Committee and
10 advance its goals in valuing the real estate owned by the Debtor,
11 which is unencumbered property ***that will play a critical role in***
12 ***ongoing mediation and plan negotiations with the Debtor.***” *Id.* ¶ 3
13 (emphasis added).
14 • “After careful and diligent inquiry into the qualifications and
15 connections of DWC, the Committee has selected DWC to serve as
16 real estate consultant to provide the Committee with an ***estimate*** of
17 the value of the Properties. ***Such estimate will allow settlement***
18 ***negotiations to continue in earnest among the Committee and the***
19 ***Debtor.***” DWC Application ¶ 12 (emphasis added).

16 To further the parties’ ability to find consensus, the Committee agreed that it would share DWC’s
17 reports with the Debtor. The DWC Retention Order directed:

18 Within five days of the Committee receiving (i) the draft report
19 DWC is obligated to provide the Committee within 60 days of the
20 Effective Date and (ii) the final report DWC is obligated to provide
21 the Committee within 90 days of the Effective Date, the Committee
22 shall provide counsel to the Debtor with a copy of each report
23 pursuant to the *Order Referring Parties to Mediation, Appointing*
24 *Mediators, and Granting Related Relief* with all protections
25 provided to documents exchanged in mediation.

23 DWC Retention Order ¶ 13. Had the Committee contemplated that DWC’s estimate was going to
24 be used in a contested Plan confirmation trial, it would not have agreed to provide the Debtor
25 information to which it was not entitled to at that stage of the case.⁵

26 ⁵ The Debtor argues that there is no evidence DWC is unwilling to provide expert testimony.
27 DWC has informed the Committee that it will not provide expert testimony at Plan
28 confirmation, nor can its report be relied on for any purpose (as set forth in the Consulting

1 The Stout Application seeks to retain Stout for the very litigation services that are expressly
2 excluded from DWC's services. Stout's retention is critical for the purpose of *establishing* (not
3 *estimating*) the value of the Debtor's real property and certain other real property used to fund the
4 Plan, in addition to responding to and providing expert testimony in connection with the contested
5 Plan confirmation process:

6 Stout's retention as a real estate consultant and expert witness is
7 necessary because the value of the Debtor's real estate will likely be
8 a fulcrum issue at the upcoming confirmation hearing. Stout's
9 retention will be instrumental to (i) respond to any experts retained
10 by the Debtor to opine on the value of the Debtor's real property
assets, or those of its affiliates, and/ or (ii) establish the fact that the
Debtor has extensive real estate assets which it is not using to pay
Survivors.

11 Stout Application at 4:13–19. Thus, Stout is not being engaged to “redo market valuations” of the
12 Debtor's real property, as asserted by the Objection.⁶

13 The Debtor cannot dictate how the Committee chooses to present its case at Plan
14 confirmation. Instead, because the Committee acts as a fiduciary, it may use experts of its choosing
15 under Bankruptcy Code section 1103(a) if those experts serve in the best interest of all creditors
16 represented. In fact, a creditors' committee not only has the power to employ agents to represent
17 or perform services for the committee, “it has the duty to determine what assistance it requires in
18 order to perform its duties, when such assistance is required, and to select those best qualified to
19 render such assistance.” *See Matter of Advisory Comm. of Major Funding Corp.*, 109 F.3d 219,
20 224 (5th Cir. 1997) (citations omitted).

21 Relatedly, the Debtor cannot, and should not, be permitted to govern who the Committee
22 uses based on cost. **First**, it is the Debtor which has chosen to seek cramdown; not the Committee.
23 While the Debtor often takes not so subtle jabs at the Committee's proposed procedural course for
24

25 Agreement). The Committee will provide a declaration to this effect if requested to by this
26 Court.

27 ⁶ The notion that the Committee seeks to have a “re-do” here because it is dissatisfied with
28 DWC's valuations is laughable and the Debtor knows it. The Debtor has seen DWC's
estimates, estimates that the Committee will readily use at trial if the Debtor is willing to
stipulate to those estimates serving as the value of its real estate enterprise.

1 this case, the Debtor's vision for this case has now been laid bare: cramdown the Plan over
2 Survivors' objections by, among other things, dictating which experts the Committee may use
3 while dispensing with the absolute priority rule and the hypothetical liquidation test. The Debtor's
4 vision runs contrary to the fundamental purpose of, and provisions implementing, the Bankruptcy
5 Code. *Second*, as set forth above, the notion that Stout's fees would be duplicative of DWC's is
6 undercut by the pleadings the Committee filed in support of its retention of DWC and the role
7 Stout will now play. *Third*, Stout's fees will be subject to the review of all parties in interest, the
8 Fee Examiner and this Court. There will thus be ample protection against any unreasonable fees.

9
10 **III.**
11 **THE COMMITTEE SEEKS TO**
12 **RETAIN STOUT TO VALUE REAL ASSETS**
13 **BEING USED TO FUND THE PLAN**

14 While the Debtor argues that Stout should not be retained to value assets owned by non-
15 debtors, the Debtor's Plan is being funded through the mortgage or sale of non-debtor property.
16 *See* Disclosure Statement, p. 3:

- 17 • Adventus will liquidate one residential home and contribute the proceeds to the Reorganized Debtor.
- 18 • Furrer Properties, Inc. will liquidate the three parcels of property on which Cooper's Mortuary operates and which includes a four-unit apartment building (three total parcels of real estate) and contribute the proceeds to the Reorganized Debtor.
- 19 • If necessary to use as a source of collateral for the RCC loan, RCBO will use other real estate currently being used in support of the Debtor's ministry.

20
21
22 The Committee is therefore entitled to value these (and potentially other) real property assets to
23 make sure any pledge of them to secure the RCC loan is reasonable and any sale of the properties
24 is sufficient to fund the Plan. Without such evidence, the Committee will be unable to determine,
25 among other things, whether the Plan is feasible.

26 In addition, rather than pursuing collection of \$41.9 million owed to the Debtor by non-
27 Debtor affiliate Catholic Cathedral Corporation of the East Bay (the "**Cathedral Corporation**"),
28 the Debtor proposes that its claim against the Cathedral Corporation be satisfied by the Debtor

1 taking ownership of the Cathedral Center (as defined in the Disclosure Statement). *See* Disclosure
2 Statement Art. IV ¶ F.5 (“The Plan contemplates a settlement of CCCEB’s outstanding obligations
3 on the CCCEB Note through a settlement . . . through which the Debtor will receive fee simple
4 title to the Cathedral Center, together with all improvements thereon and all tangible personal
5 property owned by CCCEB and located on or used in connection with the operation of the
6 Cathedral Center, in full and complete satisfaction of all obligations under the CCCEB Note.”).

7 The Debtor makes no reference to a formal expert opinion valuing the Cathedral Center
8 that would justify the forgiveness of a nearly \$42 million claim against the Cathedral Corporation.
9 Accordingly, the Committee should be permitted to value the Cathedral Center to determine
10 whether the proposed compromise satisfies the standards of Bankruptcy Rule 9019 and the more
11 stringent scrutiny required of affiliate transactions.

12 **IV.**

13 **REQUEST FOR EMERGENCY HEARING**

14 **ON STOUT APPLICATION**

15 The deadline for parties to disclose affirmative experts (including experts’ names and
16 topics) is May 19, 2025, while the deadline for affirmative expert reports is June 23, 2025. *See*
17 *Order Setting Certain Dates and Deadlines in Connection with Confirmation of the Debtor’s Third*
18 *Amended Plan of Reorganization* [Dkt. No. 1893] (“**Scheduling Order**”). To comply with these
19 deadlines, the Committee needs Stout retained and providing services immediately. Stout began
20 its work but now that the Debtor seeks to dramatically alter its scope of services, Stout is
21 understandably concerned about investing extensive amount of time and effort when its retention
22 may be curtailed. Accordingly, the Committee requests an immediate hearing on the Stout
23 Application to eliminate the cloud that hovers above it. Without an immediate ruling, and
24 assuming Stout is permitted to provide services consistent with the Stout Application, the
25 Committee is concerned that Stout will no longer be able to comply with the deadlines set forth in
26 the Scheduling Order.

27 ///

28 ///

1 **WHEREFORE**, the Committee requests that the Court schedule an emergency hearing on
2 the Stout Application, deny the Objection, grant the Stout Application, and grant any other relief
3 that the Court may deem just and appropriate.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 22, 2025

**LOWENSTEIN SANDLER LLP
KELLER BENVENUTTI KIM LLP**

By: /s/ Jeffrey D. Prol
Jeffrey D. Prol
Brent Weisenberg

- and -

Tobias S. Keller
Gabrielle L. Albert

*Counsel for the Official Committee of
Unsecured Creditors*