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September 8, 2025

VIA ECF ONLY

United States Bankruptcy Court
Northern District of California
Attn: The Honorable William J. Lafferty
1300 Clay Street, Suite 300
Oakland, CA 94612

**Re: In re The Roman Catholic Bishop of Oakland, Case No. 23-40523 (WJL),
Status Report in Advance of September 9, 2025 Status Conference**

Judge Lafferty:

We write on behalf of the Official Committee of Unsecured Creditors (the “**Committee**”) in advance of the September 9, 2025 Status Conference requested by The Roman Catholic Bishop of Oakland (the “**Debtor**”). See August 13, 2025 Hr’g Tr. at 10;5–9 [Dkt. No. 2232], attached as **Exhibit A**.

At the August 13th hearing, counsel to the Debtor announced that it “anticipate[d] the debtor will be taking action, within the next two weeks, which we believe should more than break the current logjam.” *Id.* at 10;3–5. Debtor’s counsel also requested that the Court schedule a Status Conference for September 9th.

On August 25, 2025, Debtor’s counsel made a revised settlement proposal to the Committee. The Committee has since responded to the Debtor’s proposal with a counter-offer, which it submitted to the Court appointed mediators in the hopes that subsequent negotiations will be made within mediation. Indeed, on September 4th, the parties were invited back to mediation by Judge Sontchi. We trust that the Debtor, who stated on August 13th that “I think that my client is willing to do almost anything anyone thinks is a good idea to try to settle this case and bring a global resolution” will return to mediation. See August 13, 2025 Hr’g Tr. at 11;9–12.

The Debtor’s August 25th proposal was not submitted through the mediators, nor does the Debtor indicate that the offer is subject to mediation privilege. The Committee does not know what the Debtor intends to present to the Court at the September 9th status conference. But the Committee expects that the Debtor will show restraint tomorrow when it provides an update to this Court. **First**, any further proposals or settlement discussions should be made through the mediators; not in open court. **Second**, the Committee expects the Debtor to abide by the mediation privilege and Rule 408. To that end, the Committee objects to the Debtor filing its settlement proposal on the docket, discussing its proposal or the Committee’s response in open court. The sanctity of mediation and settlement discussions are granted protection for a reason: to promote

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frank conversations among the parties. If the Committee cannot be assured that its words and actions in mediation will not be used against it, there is little hope that a negotiated resolution can be reached.

As this court knows, the Committee has diametrically different views about its and the Debtor's conduct and what led to this impasse. *See* July 16, 2025 Hr'g Tr. at 19–35 [Dkt. No. 2158], attached as **Exhibit B**. But at the August 13th hearing, the Court commented:

So I'm not trying to take the rhetoric out of anybody's statements or the passion out of anybody's statements. But at this point, I think it would be helpful to just focus a little bit more on what we can do to try to come to a different reality here than go over what we think has happened in the past that's been unfortunate

August 13, 2025 Hr'g Tr. at 26;15–20. The Committee will, of course, follow the Court's instructions. It expects the Debtor to do the same.

We thank Your Honor for the tremendous effort you have put into this case and look forward to seeing you at the September 9th hearing.

Sincerely,

/s/Jeffrey D. Prol
Jeffrey D. Prol

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Exhibit A

1 UNITED STATES BANKRUPTCY COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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4 In Re:) Case No. 23-40523
5) Chapter 11
6 THE ROMAN CATHOLIC BISHOP OF)
OAKLAND) Oakland, California
7) Wednesday August 13, 2025
Debtor.) 2:31 PM
_____))
STATUS CONFERENCE

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

11 APPEARANCES:

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13 ALSO PRESENT

CHRISTOPHER S. SONTCHI, mediator
(Via Zoom)

18 Court Recorder:

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United States Bankruptcy Court
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21 Transcriber:

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

The Roman Catholic Bishop Of Oakland

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1 OAKLAND, CALIFORNIA, WEDNESDAY, AUGUST 13, 2025, 2:31 PM

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3 (Call to order of the Court.)

4 MR. MOSES: Shane Moses for the debtor.

5 THE COURT: Good afternoon.

6 MR. PROL: Good afternoon, Your Honor. Jeff Prol and
7 Brent Weisenberg, from Lowenstein Sandler, and Tim Burns from
8 Burns --

9 THE COURT: I was going to say Tim Burns.

10 MR. PROL: -- Tim Burns from Burns Bair, and Gabrielle
11 Albert from Keller Benvenutti Kim, for the committee.

12 THE COURT: Thank you very much. Okay.

13 We have some Zoom folks. Okay.

14 MS. UETZ: Good afternoon, Your Honor. Ann Marie
15 Uetz, of Foley & Lardner, for the debtor.

16 THE COURT: Okay. Good afternoon.

17 MR. MANNS: Good afternoon, Your Honor. Ryan Manns,
18 Norton Rose Fulbright, on behalf of the nondebtors RCC, RCWC,
19 OPF, and Adventus.

20 THE COURT: Okay. Nice to see you again. Okay.

21 MS. DANIELS: Good afternoon. Justine Daniels for the
22 Pacific insurers.

23 THE COURT: Okay.

24 MR. SONTCHI: Good afternoon, Your Honor. Christopher
25 Sontchi, the mediator.

The Roman Catholic Bishop Of Oakland

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1 THE COURT: Okay. Nice to see you.

2 MR. SONTCHI: Thank you.

3 MR. JACOBS: Good afternoon, Your Honor. Todd Jacobs
4 for Westport. And I'm here with my co-counsel, Blaise Curet.

5 THE COURT: Okay.

6 MR. CURET: Good afternoon.

7 THE COURT: Nice to see you.

8 MR. JACOBS: You as well.

9 THE COURT: Mr. Lee?

10 MR. LEE: Your Honor, Matt Lee, of Foley & Lardner,
11 appearing for the debtor.

12 THE COURT: Okay. Is that everybody?

13 THE CLERK: All parties with their hand raised have
14 now been admitted, Your Honor.

15 THE COURT: Okay. I left on Friday with a homework
16 assignment of my own. So why don't I give you guys a report?

17 THE CLERK: Your Honor, one of the parties is
18 rejoining, Mr. Plevin.

19 THE COURT: Oh, okay.

20 MR. PLEVIN: Sorry for being late, Your Honor. Mark
21 Plevin on behalf of Continental Casualty Company.

22 THE COURT: Okay. I was just saying I left the
23 hearing on Friday with a promise and, sort of, a homework
24 assignment, and I was just going to give you guys an update on
25 that, and then two other things that have popped up in the

1 meantime. And then I'm delighted to hear from all of you.

2 And I did see the committee's letter of a day ago, or
3 perhaps two days ago, on the docket, so I'm happy to hear
4 further developments or reactions to that as well.

5 I told you that, although I was apprehensive of the
6 prospect of acting as any sort of a mediator in this matter --
7 and I went over, probably at excruciating length on Friday,
8 why I believe that was problematic -- I did promise to reach
9 out to Judge Warren, and I did do that. And we talked, for an
10 extended period of time, about his experience in the Rochester
11 case. And he was very candid with me about the pluses and the
12 minuses of all that and his sense of what role his
13 participation played in the eventual outcomes in the case. And
14 I was very happy to hear that.

15 I will say, though, without getting into any further
16 details about what we talked about that, on balance, what he
17 told me did not change my mind that it would not be a terribly
18 good idea for me to act in some sort of mediator fashion in
19 this case.

20 Now, before Friday, one of the requests that -- or
21 suggestions that I think Mr. Jacobs had made, and perhaps
22 others had joined it, was that I perhaps reach out to one or
23 more of the mediators and get a sense from them of where things
24 were. I didn't need to do that.

25 Mr. -- I'm sorry. Retired Judge Sontchi reached out

1 to my chambers a couple of days ago and asked if he could chat
2 with me yesterday. And he called and we did chat yesterday. I
3 was very happy to hear from him. He did not tell me anything
4 confidential about any of the mediation sessions, or positions
5 people are taking, or who's been naughty or nice, or anything
6 along those lines.

7 He gave me a more meta view of where things are, in
8 his view. And rather than trying to tell you, less eloquently
9 than he did on the phone yesterday, what he said, I invited him
10 to join us today and to tell you himself what he said and what
11 we talked about. So I would defer, for a few moments now, to
12 retire Judge Sontchi and ask him to just give us a synopsis of
13 our conversation yesterday.

14 MR. SONTCHI: Thank you, Your Honor. It's a pleasure
15 to be in front of you virtually and very good to see many of
16 the people I've worked with closely in this case and other
17 cases.

18 THE COURT: Um-hum.

19 MR. SONTCHI: Well, the first thing I would say -- and
20 I ended this actually at our conversation -- is that nobody's
21 naughty and nobody's nice.

22 THE COURT: Right.

23 MR. SONTCHI: So there are no good boys and there are
24 no bad girls in these cases. Everyone is doing their best to
25 pursue the economic interests of their clients.

1 THE COURT: Right.

2 MR. SONTCHI: I truly believe that. The other thing
3 is that I did express to you on how I had caused a pause in the
4 mediation in December because I felt the parties needed to
5 pursue litigation. And I haven't followed the case overly
6 closely, but I have followed the case, and it seems to me that
7 they have done quite a bit. They've worked very hard. It's
8 been tough going. And I feel that it's an appropriate time to
9 recommence mediation really as soon as possible. And I'm very
10 much willing to do that to the best of my ability. And that's
11 pretty much what we talked about.

12 THE COURT: Agreed. Okay. Thank you very much. And
13 thank you again for reaching out to me. It was really nice
14 chatting with you.

15 Why don't I -- I don't have anybody, necessarily, to
16 pass the baton at this point. I would defer to any of the
17 counsel who have thoughts about any further developments, if
18 there have been any. I don't know if the committee's letter
19 generated a response from the debtor about mediations, or other
20 issues, or other thinking about -- I know scheduling would come
21 up at a conference like this ordinarily.

22 So why don't I invite the debtor first, just because
23 they're the debtor, to tell me anything that they think I
24 should know or give me any updates? And if that's Ms. Uetz,
25 great. If it's Mr. -- you guys tell me who ought to take the

1 lead on that. Okay. Okay. Ms. Uetz?

2 MS. UETZ: Thank you, Your Honor.

3 THE COURT: Yeah.

4 MS. UETZ: It is I.

5 THE COURT: Okay.

6 MS. UETZ: Thank you. And good to see everybody.

7 THE COURT: Yep.

8 MS. UETZ: Your Honor, I do have a few comments. One
9 is, with respect to the committee's statement in its letter to
10 you, that it met and conferred with counsel for the debtor over
11 the weekend regarding returning to mediation and exchanging
12 settlement offers -- and I'm quoting from the letter -- and
13 that it anticipates returning to mediation and the exchange of
14 settlement offers, and finally, that it anticipates that
15 settlement discussions between the debtor and the committee
16 will resume in earnest -- I will only say that a phone call
17 that occurred Saturday, between Mr. Weisenberg and Mr. Moore
18 and Mr. Lee, the only thing the debtor will say about that
19 phone conversation, Your Honor, is that recollections may vary.

20 But beyond this, and without regard to that phone
21 call, I want to update the Court and all of the stakeholders
22 here that my team has been working with our client and
23 reassessing its position in this Chapter 11 case, including
24 mostly with respect to settlement. We have been spending
25 almost all of our effort on that in recent weeks, dare I say,

1 the last month, including as it relates to settlement with both
2 the committee and with the insurers.

3 I want to let this Court know that I anticipate the
4 debtor will be taking action, within the next two weeks, which
5 we believe should more than break the current logjam. And it's
6 my intention today, in fact, to request a status conference of
7 this Court during the week of September 8th by which time I
8 expect some conduct will have occurred between the parties with
9 respect to settlement. And I can more fully advise the Court,
10 about at least the debtor's position, at that time.

11 This is sort of without regard to what we're hearing
12 now today from Your Honor having talked with Judge Sontchi. So
13 this has been something that's been going on and underway. And
14 indeed it was my intention, when we had the last status
15 conference, to be able to give you an even more fulsome report
16 today. But it's just taken a little bit more time.

17 I would hope that what I am saying right now comes as
18 welcome news for all of the stakeholders in this case, not the
19 least of which are the sexual abuse survivors who have filed
20 claims in this case. I mean very seriously when I say that I
21 believe that what the debtor will be, I'll say, proposing, if
22 it doesn't break the logjam, Your Honor, I don't know -- we
23 don't know what will.

24 Separately from that, on the subject of mediation, and
25 even timing for this case that Your Honor has even mentioned

1 in, I think, the last status conference, the potential for a
2 drop dead date, the potential for a dismissal, again -- and I'm
3 not trying to tease anybody here, Your Honor. I'm coming to
4 you with the most information I can from our status currently
5 with our client. I really think that, by that first week of
6 September, things will be a little more clear in that regard.

7 I also think that, by that first week of September,
8 things will be a little more clear, certainly for me and my
9 client, with respect to the prospect of continued mediation. I
10 will tell you that today, as I'm standing here, I think that my
11 client is willing to do almost anything anyone thinks is a good
12 idea to try to settle this case and bring a global resolution.
13 We're absolutely committed and willing to consider it. And I
14 think our actions to date hopefully support the credibility of
15 that statement I'm making.

16 However, I'll be honest, as I always am, if we are to
17 return to mediation, I think that it will require, first, some
18 conversation among counsel, lead counsel, myself and Mr. Prol,
19 as well as the potential mediators who would participate in
20 that.

21 The fact is that, unfortunately -- and I agree with
22 Judge Sontchi, there are no good guys and there are no bad
23 guys. I think that's a song, and I'm failing to recall who it
24 is, so someone will probably text me that song. It might be
25 the Eagles. But for whatever reason, twelve months of

1 mediation, from the debtor's perspective, it failed. And
2 something would need to change, hopefully, for a mediation to
3 be successful. And I'm just going to leave it at that --

4 THE COURT: Okay.

5 MS. UETZ: -- for today, Your Honor, on the record.
6 So the net of my statement is we are moving at pace anyway, and
7 I really will expect to have much more to report to this Court
8 if the Court would indulge us with a further status conference
9 that week of September 8th. That's one thing.

10 The second thing is, my team, my client, everyone
11 associated with the debtor in this case, is absolutely willing
12 to consider anything to try to bring a global resolution. And
13 I just think that further talk about that, and what a mediation
14 might look like, and who might participate, and how, is
15 something that we probably should take offline and maybe report
16 back further to you. And beyond that, Your Honor, I'm happy to
17 answer any questions, and I'll stand down.

18 THE COURT: Okay. Thank you. Before I ask fairly
19 obvious questions, I would probably rather hear from the
20 committee and other constituents, their reaction and their
21 thoughts about timing, given that they've suggested that we go
22 back and do a little mediating.

23 So Mr. Prol, you want to come up and give me your
24 thoughts?

25 MR. PROL: Thank you, Your Honor. For the record,

1 Jeff Prol, Lowenstein Sandler, for the committee.

2 Your Honor, I want to start by apologizing by not
3 being party to the conference on Friday. We had thought that
4 that status conference was related solely to the adversary
5 proceeding to talk about scheduling. And that had, for the
6 most part, been worked out. And so --

7 THE COURT: Okay.

8 MR. PROL: -- Mr. Kaplan led that effort while Mr.
9 Weisenberg and I were on a conference call with the
10 committee --

11 THE COURT: Okay.

12 MR. PROL: -- in fact, addressing many of the same
13 issues that you --

14 THE COURT: Well, I hope I didn't sandbag you there.
15 I mean --

16 MR. PROL: No, no.

17 THE COURT: -- I thought it was helpful to talk more
18 broadly.

19 MR. PROL: Yeah.

20 THE COURT: And I'm sure, I'm sure we missed your
21 wonderful input, but we have it now.

22 MR. PROL: Okay. I appreciate that, Your Honor.

23 THE COURT: Okay.

24 MR. PROL: So turning to the issues at hand, we stand
25 here today in a position that I think we more or less predicted

1 when mediation broke down. The debtor came forward with a
2 program or a path that it proposed to pursue. We proposed an
3 alternative path which the debtor took great umbrage to. And
4 we predicted that the plan that the debtor had filed was
5 patently unconfirmable, and that it would be a colossal waste
6 of resources and time, and that ultimately we would be in a
7 position where we would need to do a hard reset. And that's
8 where we are today, thankfully.

9 We're glad the debtors decided to pause that. We're
10 glad to hear that the debtor is working on a proposal that may
11 change the landscape here. And we look forward to receiving
12 that.

13 We're also mindful of comments that Your Honor made
14 earlier on that, at some point, it would be the committee's
15 opportunity to be the protagonist. And so we, too, have been
16 working with our client and working on another alternative path
17 forward. And we're happy to discuss that with the debtor and
18 Foley in the coming weeks.

19 But we do believe, Your Honor, that it is time to get
20 back to the bargaining table. We've been working with our
21 client on a proposal, and it may well be that we'll have the
22 opportunity to exchange those, whether it's in front of
23 mediators, or otherwise. We look forward to doing that as
24 promptly as possible.

25 There was a lot of talk at the conference on Friday

1 about the complexity of the case and what led to it being
2 bogged down. And I just wanted to address a couple of those
3 points quickly.

4 THE COURT: Remembering that I was a little bit
5 skeptical about the complexity of the case.

6 MR. PROL: Well --

7 THE COURT: That was my --

8 MR. PROL: -- I agree, Your Honor.

9 THE COURT: Okay.

10 MR. PROL: -- which is why my opening comment on that
11 is, I guess, in the abstract, bankruptcy does appear to be
12 relatively simple, yeah.

13 THE COURT: Well, again, and I'm not trying to suggest
14 that these cases aren't complex. I guess the question was
15 whether this was uniquely complex in some way. And there was
16 some opinions about that, that perhaps it wasn't, or if it was,
17 I wasn't sure why that would be the case. That was the only
18 context, okay? So --

19 MR. PROL: I understand.

20 THE COURT: Yeah. Okay.

21 MR. PROL: And I often quote the Purdue decision, to
22 Mr. Weisenberg's regret. And the Purdue court seemed to say
23 that bankruptcy is relatively simple: an honest debtor gets a
24 discharge with all its assets on the table. But the devil's in
25 the details there.

1 And I think the first detail that makes this case
2 different is the nature of the creditor constituency. We do
3 not represent voluntary creditors. These are not credit
4 managers, business owners, or salespeople, or folks that are
5 trying to collect a debt that arose out of the supplying of
6 materials or services, where it's just a bookkeeping entry in
7 terms of what we're going to recover in order to keep our
8 business going.

9 Our clients are involuntary creditors who suffered the
10 most humiliating damages, physical damages, emotional damages
11 that could possibly be known to man. And the special
12 relationship between our clients and the debtor, at the time
13 that that abuse occurred, just further exacerbates the
14 situation. Individuals who came to the church, who was
15 supposed to protect them, provide for their spiritual nurture
16 and welfare, okay, failed to do so.

17 And then we spent decades with the church denying that
18 the abuse occurred and looking to avoid responsibility and
19 liability for that. Now it finds itself in bankruptcy court
20 attempting to protect assets in order to fulfill its mission.
21 And we understand that, okay?

22 But recently we met with a bishop in another diocese
23 who I think has it right, Your Honor. He said to the survivors
24 in this case, we have always gotten it wrong. We do need to
25 protect our mission. But you, survivors, you are the church's

1 primary mission. We have failed you. And it's our
2 responsibility to reconcile the church to you. He didn't say
3 reconcile you to the church; he said the church to you, because
4 the church has failed you. And it's the church's obligation to
5 change, to prevent abuse from happening in the future, and to
6 utilize our assets to compensate you and reconcile with you.

7 And that's really where we need to refocus the efforts
8 on this mediation or the settlement that we're attempting to
9 negotiate here. This diocese is asset rich. The complicating
10 factor -- another complicating factor in this case is that a
11 lot of the wealth here is tied up in real estate and the
12 question of whether or not the bankruptcy court can force the
13 sale or the monetization of real estate and the conflict
14 between the Bankruptcy Code and the First Amendment. And,
15 frankly, some of the critical issues that have kept us from
16 moving forward and making progress in the bankruptcy are the
17 size of the bankruptcy estate, whether it includes real estate,
18 whether it includes the restricted assets.

19 And I just wanted to make one comment because Your
20 Honor made a comment in the transcript. And I think Your Honor
21 said it before. A concern that the restricted assets concerns
22 a wealthy individual creating a trust for the benefit of the
23 church and the committee looking to somehow break that trust.
24 And that's not exactly --

25 THE COURT: Can I give you my sense of what I was

1 trying to say?

2 MR. PROL: Sure.

3 THE COURT: It was only that I was aware that, putting
4 aside what real estate might or might not be sold, that there
5 was some forty million dollars' worth of assets that were
6 alleged -- in the debtor's mind, subject to restrictions
7 that -- what I didn't say then was the nature of those
8 restrictions wasn't necessarily articulated with respect to
9 each particular asset.

10 So in my mind, I envisioned it as it could be a
11 spectrum. On one end of the spectrum could be somebody who
12 created a trust and told the church, I'm creating this trust,
13 and the purpose of it is to make sure the money goes here. At
14 the other end of the spectrum is somebody who thinks, in the
15 back of their mind, as they're putting five dollars into the
16 basket, I hope they spend it on this. And in between those
17 two, there's a million possibilities that we haven't identified
18 yet. That was my only point, is that it's --

19 MR. PROL: Okay. Correct.

20 THE COURT: -- of course it's a spectrum, right?

21 MR. PROL: Right.

22 THE COURT: That was all, yeah.

23 MR. PROL: I would say -- and this will become more
24 apparent as the restricted assets adversary moves forward --

25 THE COURT: Yeah.

1 MR. PROL: -- if need be.

2 THE COURT: Sure.

3 MR. PROL: The latter example that Your Honor gave, I
4 think, is the lion's share of what we're talking about.

5 THE COURT: Well, we'll find out.

6 MR. PROL: It's --

7 THE COURT: We'll find out.

8 MR. PROL: It's when the church passes the plate on
9 Sunday afternoon, and then the church takes the position that
10 these assets are restricted.

11 THE COURT: Well, we'll find out.

12 MR. PROL: Or --

13 THE COURT: Yeah. Okay.

14 MR. PROL: Or the Bishop's appeal.

15 THE COURT: Yeah. I was only suggesting that it's --
16 like everything else, when you start putting numbers on things,
17 there are places on a spectrum where matters fall, and then
18 you're more or less likely to get an outcome --

19 MR. PROL: Yes.

20 THE COURT: -- because of that. That's all. Okay?

21 MR. PROL: I think another important aspect of the
22 case that makes it somewhat more difficult is the existence of
23 the insurance and the ability to monetize the insurance. I
24 think, in other cases, including the cases in California, the
25 debtors are now working with the committees to monetize

1 insurance, consenting to stay relief, pursuing debt relief
2 actions, and aggressively pursuing the monetization of what is
3 one of the larger assets in the case.

4 Here, the debtor has taken a different tactic,
5 notwithstanding pleas from our side to aggressively pursue the
6 debt relief action; I think that's been more or less stayed
7 other than for discovery. And the debtor has reached a
8 settlement -- Your Honor commented on that at the status
9 conference on Friday -- for the insurance assets to be assigned
10 to a trust.

11 We believe that that assignment is highly prejudicial
12 to survivors for at least two reasons, and we briefed them in
13 connection with the disclosure statement hearing. And the
14 assignment, as it stands today, according to the insurers,
15 impairs the ability to bring bad-faith claims, in the event
16 that the insurance carriers do not act in good faith in
17 defending the litigation, okay?

18 And it also forces plaintiffs to make a choice. If a
19 plan is confirmed, plaintiffs have a choice. They can either
20 accept the dividend proposed from the assets contributed by the
21 by the debtor, or it can choose to litigate against the
22 insurance carriers and get the recovery from the insurance.

23 The problem with that structure, Your Honor, is years
24 down the line, when this plays itself out, there's a concern
25 that the plaintiffs are going to choose the easy route and

1 choose the cash distribution rather than years of continued
2 litigation. That's not a choice that they have to make in
3 state court.

4 And while we're supportive of a plan that provides for
5 an assignment, that assignment has to be insurance neutral.
6 Whatever rights exist under the policies before the bankruptcy
7 was filed must continue to exist after the plan is confirmed.
8 So it's a completely --

9 THE COURT: Shall I tell the California Supreme Court
10 the right answer to that one? What should I do?

11 MR. PROL: I don't think you need to tell the Supreme
12 Court --

13 THE COURT: You know what I mean. I mean, it's a
14 state law issue that came up in the course of conversations.
15 And I may have lots of interesting theories about it, but I'm
16 not sure what I do about it. And I'm not trying to make fun.
17 I just -- we had a lot of conversations about, is this a
18 disclosure statement issue? And it was, to some extent. But
19 is it an issue I'm going to I'm going to resolve a
20 confirmation? Absolutely not.

21 MR. PROL: No. But there is a way, Your Honor, that
22 the plan could be drafted to ensure that that result is not
23 a --

24 THE COURT: Well, that certainly -- I mean, I
25 anticipated you'd have an idea about that. I get that, okay?

1 MR. PROL: To get down to the issues that Your Honor
2 addressed as potential means for moving the case along the
3 blunt cudgel, I think, that you said you had.

4 THE COURT: Yeah.

5 MR. PROL: There are a couple of options, I think,
6 that you had indicated, setting a drop dead date. Your Honor,
7 given the debtor's comments today, and the fact that we're also
8 working towards a plan, we think that would be premature. And
9 we suggest that Your Honor put that on hold until a future
10 status conference and let's see. The debtors asked for a
11 status conference September 8th. We believe that that issue
12 could be pushed down the road.

13 THE COURT: Yeah.

14 MR. PROL: And we'll see what happens in the next
15 couple of weeks.

16 Dismissal of the bankruptcy case, Your Honor. We
17 don't believe that that would be necessarily an appropriate or
18 effective remedy for either side. That would simply draw out
19 the proceedings further. We go back into state court --

20 THE COURT: No, I know; that's the point. I know.

21 MR. PROL: There's litigation there for a period of
22 time.

23 THE COURT: Yeah.

24 MR. PROL: And ultimately, the debtor's going to wind
25 up exactly where it is today, and we'll wind up back here

1 before Your Honor in six months, a year, two years, whatever
2 the time frame is.

3 THE COURT: Yeah.

4 MR. PROL: And that's just further delay --

5 THE COURT: Okay.

6 MR. PROL: -- and not an effective remedy. And
7 finally, Your Honor suggested the idea of further amending the
8 Knudsen order. That order, as you heard this morning, and are
9 well aware of, has already been amended --

10 THE COURT: Right.

11 MR. PROL: -- in an effort to try to solve the issue
12 that the debtor identified. Putting further pressure on
13 counsel with regard to fees we don't think would be
14 constructive. It's not counsel that are necessarily driving
15 these issues. We are advisors and we're messengers. It's the
16 clients that make decisions. And to introduce controversy and
17 issues with regard to fees, I think, disrespects the client and
18 the client's decision-making process.

19 And it also creates friction between counsel and their
20 client. It makes it very, very difficult to go back to the
21 client and say, well, the judge has said no more fees, or
22 restrictions on the amount of payment of fees until you get to
23 a deal. Doesn't the client then look at us and say, gee,
24 you're really pressuring us to a settlement because you're more
25 worried about yourself than you are about us? I think it just

1 introduces a level of uncertainty and a look that I don't think
2 is good for the judicial process.

3 I also wanted to address, Your Honor -- and I think
4 you've kind of resolved this in terms of your views of serving
5 as mediator. We did file a letter opposing that, and I just
6 wanted to explain that for a minute.

7 THE COURT: You don't need to.

8 MR. PROL: Okay.

9 THE COURT: Okay. Yeah. No problem. Okay.

10 MR. PROL: Thanks.

11 THE COURT: Appreciate it.

12 MR. PROL: Your Honor, Mr. Burns might also want to
13 address some of the insurance.

14 THE COURT: Okay. Why don't I let Ms. Uetz go first?
15 Thank you. She's got her hand up.

16 Go ahead, Ms. Uetz.

17 MS. UETZ: Sorry. I was having trouble with my
18 fingers, Your Honor.

19 THE COURT: Okay.

20 MS. UETZ: Your Honor, just a couple of points that I
21 have to respond to because of the attack on my Bishop client
22 here, and quoting from other cases, and the like. Again, Your
23 Honor, we spent a year in mediation, and nothing Mr. Prol just
24 said explains why, for ten months, the committee hasn't made a
25 proposal. It doesn't explain why we met -- I think it was six

1 times -- and made proposals on child sexual protection
2 protocols, consulting with experts, looking at other dioceses,
3 and didn't get a turn of the document from the committee.

4 THE COURT: Okay.

5 MS. UETZ: None of what he said explains that. And I
6 just have to say that.

7 THE COURT: I appreciate it. Okay. Can I --

8 MS. UETZ: The one -- sorry.

9 THE COURT: No, you go ahead. You finish. Then I
10 want to make sort of a general statement here about the way
11 this hearing is devolving.

12 MS. UETZ: And that was my two, Your Honor, so I'm
13 just going to stop.

14 THE COURT: Okay.

15 MS. UETZ: I didn't know that we were going to be
16 arguing about insurance assignments and --

17 THE COURT: Yeah, okay.

18 MS. UETZ: -- and litigation --

19 THE COURT: Yeah.

20 MS. UETZ: -- and all of that.

21 THE COURT: Okay.

22 MS. UETZ: I gave you an answer to your question to
23 me.

24 THE COURT: Yep. Yep. Yep.

25 MS. UETZ: And so I will leave it at that.

1 THE COURT: Okay. Let me make a comment here. And I
2 say this with enormous respect for, not only the lawyers in the
3 room, but the importance to them of the things they say, which
4 is that we're at a point now where we are -- to use a technical
5 bankruptcy term -- stuck.

6 And what I had suggested before was maybe there's ways
7 to get us unstuck. The way to make -- I'm worried that the way
8 to make sure we stay stuck is either we continue to argue about
9 things that right now are paused -- and they're paused for a
10 reason. They're paused because they haven't been leading us to
11 a place that is likely to get us to either a negotiated
12 resolution here or a expeditious determination of the issues
13 that you may ask me to determine whether I'm going to confirm a
14 plan or not.

15 So I'm not trying to take the rhetoric out of
16 anybody's statements or the passion out of anybody's
17 statements. But at this point, I think it would be helpful to
18 just focus a little bit more on what we can do to try to come
19 to a different reality here than go over what we think has
20 happened in the past that's been unfortunate. And I have no
21 doubt that each of you has good reasons to believe what you
22 believe about that. This is not about me second guessing any
23 of you. It's about the utility of where we go.

24 And at some point, I mean, what I tried to say last
25 week, at some point, you folks have all identified interesting

1 issues, and you've given me the beginnings of good arguments
2 that would be a lot of fun for me if we end up confirming this
3 case through a contested trial for me to figure out and write
4 about and all that. But many, if not all these issues I know
5 come up in other cases. And when the cases get resolved, they
6 get resolved around them, which is not to say that you should
7 shirk hard issues, but that at some point we have to all make
8 the decision we want to do this in a bankruptcy or we don't.
9 And it's really just that simple. And that has risks and
10 benefits for both sides.

11 So let me just say that and leave it at that. I'm
12 just hopeful that, as we go forward here, if it was important
13 for people to say things to remind me why they feel the way
14 they do, and why there was purpose behind their statements, I
15 respect that enormously. I think we want to move forward a
16 little bit differently.

17 And my question, really to everybody now is,
18 logistically, what's the best way to do that? I don't know
19 if -- I mean, I'm not getting the sense from Ms. Uetz that,
20 until she's prepared to make more public either -- well, to
21 tell you folks or make more public what their new model is, I
22 don't know that it's very likely to be helpful that you get
23 into a mediation. But if somebody believes that's not the
24 case, I'm all ears. Okay? The only question here is how do we
25 get this -- if we can get to something everybody can't be

1 thrilled with but can live with, okay, how do we do that?

2 So let me pause for a moment and see if anybody else
3 wants to address an aspect of that. And I'm not trying to cut
4 off Mr. Burns, but I do want to pursue this question. Anybody
5 else have a thought about the go-forward process?

6 MS. UETZ: Excuse me, Your Honor, only because you
7 mentioned me and my position, I would just like to -- it's not
8 even clarifying. You got it right. I think that, from the
9 debtor's perspective, the three weeks we're seeking should be
10 fruitful.

11 THE COURT: Okay.

12 MS. UETZ: It doesn't mean in three weeks we might not
13 come back and say now's the time to do something which includes
14 some kind of mediation. So I just wanted to say that. Thank
15 you.

16 THE COURT: Okay. I appreciate it.

17 Okay. Anybody else want to be heard about that
18 subject before I talk to Mr. Burns?

19 MR. SCHIAVONI: Your Honor, Tan Schiavoni for Century
20 and Pacific.

21 We would like to meet and I'd be inclined, if that
22 would be -- if they'd like that. But we'd like to meet with
23 Ms. Uetz and either the Bishop or his counsel. He has a very
24 business-savvy counsel. And I think I would just suggest to
25 Ann Marie that we'd like to meet --

1 THE COURT: I know you don't mean it. We do use last
2 names here out of respect.

3 MR. SCHIAVONI: Yes, I'm sorry.

4 THE COURT: No, no, I know.

5 MR. SCHIAVONI: It was inadvertent.

6 THE COURT: I know, and it's reflective of, I'm sure,
7 a long and mutually beneficial relationship. So thank you. Go
8 ahead.

9 MR. SCHIAVONI: I have a sister with the same name. I
10 think that's --

11 THE COURT: There you go. Okay.

12 MR. SCHIAVONI: So if we could meet, actually, while
13 they're still open minded and thinking about things, I think
14 that would even be better.

15 THE COURT: Well, maybe it will. Okay.

16 MR. SCHIAVONI: And we'd like to play a role.

17 THE COURT: Okay.

18 MR. SCHIAVONI: And I will say, Judge, the Bishop is a
19 quite thoughtful man, for what that's worth.

20 THE COURT: Okay.

21 MR. SCHIAVONI: Thank you.

22 THE COURT: Thank you very much. Okay.

23 Anybody else want to be heard before I let Mr. Burns
24 come grab the lectern here?

25 No? Okay. Mr. Burns, come grab the lectern.

1 MR. BURNS: Thank you, Your Honor. I actually didn't
2 want to be heard on anything other than the question the Court
3 just asked.

4 THE COURT: Okay. Go ahead.

5 MR. BURNS: And so I hopefully want to bring a
6 positive note to this.

7 THE COURT: Okay.

8 MR. BURNS: And the positive note is this. The
9 ingredients are starting to be in place for mediation to be
10 fruitful. This Court has granted stay relief, which is very
11 important for my clients, in their view, in terms of driving
12 this forward.

13 The debtor's plan has been rejected overwhelmingly by
14 survivors. And we have three world-class mediators, which are
15 Judge Newsome, Judge Sontchi, and Tim Gallagher, with these
16 additional parts put in to allow the parties a chance to
17 mediate more successfully.

18 There may be still more ingredients that are needed
19 before we get to a successful mediation. But I think this
20 process is actually playing out like it should play out. The
21 Court has listened to the arguments of the parties. Each side
22 has gotten to confront the arguments of each other. And we've
23 started having things in place to make mediation more
24 successful. I'm thrilled that Judge Sontchi and the other
25 mediators are going to be involved. And so just, in my

1 comments, I wanted to say, on that hopeful note, that maybe
2 we're starting to be at a place where mediation will be more
3 fruitful.

4 THE COURT: Okay. Appreciate it.

5 Okay. Anybody else want to be heard?

6 By the way, before we conclude, I've got a
7 housekeeping matter that is similar to the one that came up at
8 the 10:30 calendar. But I want to raise it in the context of
9 this case as well, okay?

10 Anybody else want to be heard before we consider what
11 we do, if anything, between now and the week of September 8th?

12 Anybody? Mr. Sontchi, anything -- sorry -- Judge
13 Sontchi, anything on your mind?

14 MR. SONTCHI: Judge, well, first of all, it's always
15 Mr. Sontchi. You're the only judge in the courtroom.

16 But listen, I've been listening to everybody, and I
17 would just say that all sides have reason to have some grudges
18 and resentments against the other side.

19 THE COURT: No doubt.

20 MR. SONTCHI: And it's a hard task. Mediation is a
21 hard task. And I'm very aware of everyone's feelings on this.
22 I am certainly willing to help. It sounds like it might make
23 sense not to do anything before September 8th when you have a
24 next status conference.

25 THE COURT: Okay.

1 MR. SONTCHI: I'm happy to act now, Your Honor, happy
2 to act later, really at your discretion.

3 THE COURT: I appreciate it. Okay. Thank you very
4 much.

5 MR. SONTCHI: Thank you.

6 THE COURT: Thank you.

7 Anybody else want to be heard before we start talking
8 about the week of the 8th?

9 Was there a particular -- I'm sure I have a regular
10 old law and motion calendar on the 10th, but this session, I'm
11 guessing, really should -- unless you -- until we figure out
12 how long it's going to be, I'm inclined to give you guys at
13 least the possibility of half a day which means we wouldn't put
14 this on a Wednesday morning. So are there scheduling issues
15 that suggest that one day is particularly good?

16 And Mr. Singh, I'm guessing we have our 13 calendar
17 that week?

18 THE CLERK: Yes, Your Honor.

19 THE COURT: That's a Thursday afternoon. And we've
20 got Wednesday morning. Is there anything else that we've
21 already dedicated?

22 THE CLERK: The 8th, we actually had a reserve date
23 for the RCBO matter at 9 a.m.

24 THE COURT: We have the 8th. Okay.

25 THE CLERK: And then we have a 1 p.m. Ruparvar B. Oyei

1 (phonetic), and I believe that's --

2 THE COURT: I'm sorry?

3 THE CLERK: Ruparvar B. Oyei.

4 THE COURT: Oh, yeah, yeah, yeah.

5 THE CLERK: And I believe we vacated that.

6 THE COURT: Okay. All right.

7 THE CLERK: The 9th is available, Your Honor. The
8 12th is available.

9 THE COURT: I think the 8th might be off, because I
10 think somebody is filing a motion for summary judgment in
11 Ruparvar.

12 THE CLERK: Yes, sir. The 9th is available, and the
13 12th is also available.

14 THE COURT: All right. So do you want to talk among
15 yourselves about the best day? I can give you lots of options.
16 Or do you want to set it now? I'll leave it to you.

17 MS. UETZ: Your Honor, if I may --

18 THE COURT: Yeah.

19 MS. UETZ: -- get the ball rolling.

20 THE COURT: Sure.

21 MS. UETZ: This may be doable. And I will tell you I
22 will be there in person.

23 THE COURT: Okay.

24 MS. UETZ: And I would, respectfully, ask the same of
25 my counter lead counsel.

1 THE COURT: Okay.

2 MS. UETZ: Tuesday, the 9th, morning or afternoon
3 docket, would be fantastic.

4 THE COURT: Okay. We have open --

5 MS. UETZ: And the 12th is, personally, not an option
6 for me, but --

7 THE COURT: All right. Okay. Is the 9th available
8 for folks?

9 MR. PROL: The 9th works for Lowenstein, Your Honor.

10 THE COURT: Okay. Anybody else who expects they will
11 participate?

12 Anybody have a problem with the 9th?

13 No. We're all good on the 9th?

14 Was it set now for a different date?

15 MR. MOSES: Is that morning or afternoon, Your Honor?
16 Sorry to --

17 THE COURT: No, we'll figure it out. I'm looking for
18 input from you guys.

19 I'm sorry. Is the reconsideration motion set for a
20 hearing now?

21 Okay. I don't have a problem with that. And I'm
22 going to have some questions about that, that maybe we'll just
23 get into now, okay, so I'm not confused. But advancing it a
24 day doesn't seem like a problem to me.

25 Anybody on the debtor side, or otherwise, have a

1 problem with changing the date for the motion for
2 reconsideration from the 10th to the 9th? Nobody?

3 MS. UETZ: I don't expect we do, Your Honor.

4 THE COURT: Okay.

5 MS. UETZ: Mr. Goodman handles that calendar. But
6 we're a big firm. We'll have somebody there.

7 THE COURT: Sounds good to me. Okay. Great.

8 MS. UETZ: It won't be me.

9 THE COURT: Well --

10 MS. UETZ: I'll be there for another purpose.

11 THE COURT: Okay. You'll be ceding the lectern
12 momentarily. Okay.

13 MS. UETZ: Absolutely.

14 THE COURT: All right. Well, do people prefer morning
15 or afternoon? I'm indifferent.

16 MS. UETZ: I have no preference, Your Honor.

17 THE COURT: What's better?

18 MS. UETZ: So I defer to others if they do.

19 THE COURT: All right.

20 MR. JACOBS: Your Honor?

21 MR. PROL: We prefer the morning, Your Honor, if
22 that's available.

23 THE COURT: I'm sorry?

24 MR. PROL: We prefer the morning, if that's okay.

25 THE COURT: Okay. Mr. Jacobs, how about you? You're

1 in a different time zone, right?

2 MR. JACOBS: Yeah, I'm hoping to be there live, Your
3 Honor.

4 THE COURT: Okay.

5 MR. JACOBS: I was going to say I'd prefer the
6 afternoon, but I'll make whichever works.

7 THE COURT: All right.

8 MR. JACOBS: Whatever's most convenient.

9 THE COURT: Well, how about 10 o'clock that morning?
10 Okay?

11 MR. PROL: Fine, Your Honor.

12 THE COURT: All right. Great.

13 Ms. Albert, can you come on up for a sec? Am I
14 correct -- well, correct me if I'm wrong. Is there
15 simultaneously a notice of appeal and a motion for
16 reconsideration?

17 MS. ALBERT: That is correct, Your Honor.

18 THE COURT: Okay. So do you want to remind me where,
19 in the jurisdictional piece, the motion for reconsideration
20 falls? Is it indicative-ruling-like or something else?

21 MS. ALBERT: Frankly, I don't know off the top of my
22 head, Your Honor.

23 THE COURT: Okay.

24 MS. ALBERT: I believe it was our intention to proceed
25 with the motion to reconsider first --

1 THE COURT: Okay.

2 MS. ALBERT: -- prior to proceeding with the appeal.

3 THE COURT: And where's the appeal? It's at the
4 district court?

5 MS. ALBERT: It is at the district court.

6 THE COURT: In front of Judge Corley?

7 MS. ALBERT: It's in front of Judge Corley.

8 THE COURT: Okay. You want to give me --

9 MR. LEE: Your Honor?

10 THE COURT: Yeah. Come on. Just make sure you're
11 talking into the microphone.

12 MR. LEE: I apologize. I don't know the specific
13 rule.

14 THE COURT: Okay.

15 MR. LEE: I can find it for you. But obviously,
16 before filing the motion to reconsider, along with the
17 appeal --

18 THE COURT: Yeah.

19 MR. LEE: -- we made certain that that was
20 procedurally proper. And so if you'd just give us a few
21 minutes, we'll point out, in the Bankruptcy Rules, where that's
22 permitted.

23 THE COURT: Is it 8003? I mean, that's an indicative
24 ruling. I mean, you're asking for an indicative ruling, which
25 would sort of -- I mean, that would at least pause what the

1 district court's going to do, right? Or they can pause at that
2 point, right? Okay. I mean, I go through this, wearing my
3 other hat, three or four times a year. So that's what I
4 thought this was. All right. I think I get it.

5 Is the debtor raising any jurisdictional issues here
6 along the lines of, gee, it's on appeal, we're not so sure of
7 what the function of this reconsideration is, or do you know
8 yet?

9 MS. UETZ: Your Honor, I'll be honest, I didn't know
10 this was going to be a status on that issue. And I don't have
11 my appellate lawyer --

12 THE COURT: Okay. Well, I'm just asking so --

13 MS. UETZ: -- on that issue.

14 THE COURT: -- so that we don't waste a bunch of time
15 on the 9th or the 10th. If the debtor wants to raise a
16 jurisdictional argument, where this can't go forward. I'd
17 rather know it sooner rather than later, but --

18 MS. UETZ: Noted, Your Honor. I --

19 THE COURT: That's okay.

20 MS. UETZ: -- literally have -- I can't say.

21 THE COURT: All right. Okay. Well, I had in the back
22 of my head this is something 8003-ish, and I get that. And
23 until somebody tells me differently, the briefing will
24 complete, and we'll talk to you guys about it on the 9th, okay?
25 All right.

1 Anything else before I do my housekeeping matter?

2 No? Okay. Those of you who were here this morning,
3 and it was many of you, heard me choke up a little bit as I say
4 goodbye to my wonderful, wonderful law clerk, Bailey Bryant,
5 who is turning a big page in her life and going on to a job at
6 the City Attorney's office at the City and County of San
7 Francisco, which is going to give her all kinds of new
8 opportunities, and growth potential, and all the things that
9 young lawyers love.

10 It has been my pleasure and my honor and my joy to
11 work with her for a year. And I know all of you who have
12 encountered her, in any aspect of this case, or otherwise,
13 would join me in just offering superlatives to the job she has
14 done, both advising me, in all the ways that you don't get to
15 see me pacing around back there and wondering how come I can't
16 find true north on everything, to the logistics of how we just
17 make this system work. She has been a superb alter ego for me,
18 and I will miss her more than I can say. But that's what
19 happens with law clerks. They go on to bigger and better
20 things, so I'm delighted for her. I'm sad for me.

21 But I just wanted to, first of all, recognize her,
22 because her contributions, in connection with a case like this,
23 are just particularly important. You can all imagine the level
24 of care, and the concern, and the thought process that a judge
25 brings to bear every time I'm lucky enough to see you folks.

1 I mean, you raise wonderful issues. I respect the job
2 you are doing, under difficult circumstances, enormously, and I
3 constantly hope I'm up to it. And if I ever have been up to
4 it, I can turn the Ms. Bryant who has helped me with those
5 tasks.

6 The second half of this, as many of you know who were
7 here, is I have hired a wonderful law clerk, who is currently
8 working at a local firm, the Binder Malter firm, which
9 represents the debtor in Franciscan Friars. And I know the
10 committee counsel -- this committee counsel is present in that
11 case too. And I don't know if there's any other overlaps.

12 But I will just disclose now what I disclosed this
13 morning. In connection with that offer, Ms. Meera
14 Balasubramanian, who is going to be my new clerk, as of roughly
15 September 15th or September 22, disclosed to me that, of
16 course, she has worked on Franciscan Friars. Frankly, even if
17 she hadn't, because of the size of the case and the relatively
18 small size of the firm, she was going to be screened from that
19 case, and she will be from that case.

20 She's in the process of developing for me a more
21 complete list of matters, on which both she has worked and the
22 firm has worked, so that the people whom I consult about ethics
23 matters and I can come up with all the right protocols to make
24 sure that we can manage chambers, effectively and ethically,
25 and not give anybody the impression or any reason to think that

1 we are doing anything other than calling balls and strikes, as
2 you guys say, as they should be called, without fear or favor.

3 So that will be an ongoing task. It is not my
4 conclusion that Ms. Balasubramanian's representation of a
5 debtor in another diocese case is, in any sense, either
6 disqualifying for her or for me. She's taken, I think, other
7 positions in connection with the San Francisco case where I
8 think her firm represents some interested parties, not the
9 debtor.

10 And my sense -- and I'm giving everybody a heads up
11 about this so that, if anybody feels differently, you can know
12 what I know when I know it, and you can act effectively to
13 preserve any issues or any questions you may want to present to
14 me. But my instinct is that Ms. Balasubramanian will certainly
15 be screened from anything on which she has worked, principally
16 including Franciscan Friars.

17 And as of 9 o'clock Monday morning, she suspended any
18 efforts she has been doing on anything involving any of my
19 cases. So there will be further disclosures because the web is
20 broader than what I'm talking about here. And I know you all
21 know that. And I'm looking at people who I know were law
22 clerks for judges, and you're well aware of the need to be
23 careful about these things. And we're being very careful about
24 it.

25 But the first step of care is telling everybody what

1 they need to know. So now you know what I know. Okay? So
2 unless anybody has a comment about that right now, I'm prepared
3 to just leave it at this is a disclosure issue, and I leave it
4 to you to react as you believe your client's interests and
5 ethical obligations suggest you should.

6 MR. WEISENBERG: Your Honor, Brant Weisenberg, on
7 behalf of the committee.

8 First, we wish the best of luck to Ms. Bailey --

9 THE COURT: That's wonderful.

10 MR. WEISENBERG: -- and thank her for all of her hard
11 work on this case and all your others.

12 THE COURT: You bet.

13 MR. WEISENBERG: Second, we had promised you an answer
14 to your question. It's Rule 8002(b).

15 THE COURT: Okay. Then I got the number wrong. But
16 it's indicative-ruling-ish? Okay. I got it.

17 MR. WEISENBERG: And jurisdiction, Your Honor.

18 THE COURT: I got it. Okay. Very good.

19 Okay. Is anybody letting Judge Corley know that I
20 will be playing this role? No, not yet?

21 MS. UETZ: Your Honor, we have a -- excuse me. I'm
22 sorry. We --

23 THE COURT: Yeah. Yeah. No, I'm looking forward to
24 an answer.

25 MS. UETZ: We have a status before Judge Corley -- I'm

1 going from memory. It might be August 20th.

2 THE COURT: Okay.

3 MS. UETZ: I would expect this will be raised --

4 THE COURT: Great.

5 MS. UETZ: -- with other issues at that status as
6 well.

7 THE COURT: Okay. Okay. I mean, it is normally the
8 appellate court's joy to find out that the lower court may be
9 doing something that simplifies things. That's ordinarily good
10 news to a DJ or a BAP, I believe. Okay?

11 All right. Anything else for the good of the order
12 today?

13 MS. UETZ: Not from the debtor, Your Honor. Thank
14 you.

15 THE COURT: All right. Thanks to all of you. I'm
16 encouraged. I know that a lot of what was said today may have
17 come across as, you know, we're still frustrated. And I don't
18 begrudge anybody their frustrations in a case like this. I'm
19 encouraged. I'm looking forward to hearing from Ms. Uetz. I'm
20 looking forward to getting people's reactions to the
21 developments that she's going to be telling you about.

22 And you guys, if in your judgment that's a
23 conversation and a dialogue that ought to be taking place, to
24 some degree, before you come back and see me, I leave that to
25 your wisdom.

The Roman Catholic Bishop Of Oakland

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1 And I will look forward to seeing all of you on the
2 9th. And unless there's anything else, we're adjourned. All
3 good?

4 MS. UETZ: Thank you.

5 THE COURT: Okay. Thank you. Thank you very much.
6 Nice to see everybody. Okay. Thank you.

7 MR. PROL: Thank you.

8 THE COURT: Thank you.

9 (Whereupon these proceedings were concluded at 3:24 PM)

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

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



/s/ SHARONA SHAPIRO, CET-492

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Date: August 17, 2025

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Exhibit B

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re:) Case No. 23-40523
) Chapter 11
THE ROMAN CATHOLIC BISHOP OF)
OAKLAND) Oakland, California
) Wednesday, July 16, 2025
Debtor.) 1:00 PM

1. MOTION FOR RELIEF FROM
STAY FILED BY OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS OF THE ROMAN
CATHOLIC BISHOP OF OAKLAND
(DOC 2093)

2. MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS OF THE ROMAN
CATHOLIC BISHOP OF OAKLAND
FOR AN ORDER ENFORCING THE
INTERIM COMPENSATION ORDER,
FILED BY OFFICIAL COMMITTEE
OF UNSECURED CREDITORS OF THE
ROMAN CATHOLIC BISHOP OF
OAKLAND (DOC 2132) - ORDER
SHORTENING TIME SIGNED
7/14/25

3. DEBTOR'S THIRD MOTION FOR
ORDER APPROVING INSURANCE
PREMIUM FINANCE AND SECURITY
AGREEMENT AND GRANTING POST-
PETITION SECURITY INTEREST,
FILED BY THE ROMAN CATHOLIC
BISHOP OF OAKLAND (DOC 2123)
- ORDER SHORTENING TIME
SIGNED 7/14/25

ADV#: 24-04051
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF THE
ROMAN CATHOLIC BISHOP OF
OAKLAND v. THE ROMAN CATHOLIC
BISHOP OF OAKLAND, ET AL.

STATUS CONFERENCE

ADV#: 24-04053
THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS OF THE
ROMAN CATHOLIC BISHOP OF
OAKLAND v. THE ROMAN CATHOLIC
BISHOP OF OAKLAND, ET AL.

STATUS CONFERENCE

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

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The Roman Catholic Bishop Of Oakland

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OAKLAND, CALIFORNIA, WEDNESDAY, JULY 16, 2025, 1:03 PM

-oOo-

(Call to order of the Court.)

THE CLERK: The Roman Catholic Bishop of Oakland, case number 23-40523. Transferring over parties now, Your Honor.

THE COURT: Okay. We can start in the courtroom with appearances.

MS. UETZ: Good afternoon, Your Honor. Ann Marie Uetz for the debtor.

THE COURT: Okay. Good afternoon.

MR. MOSES: Good afternoon, Your Honor. Shane Moses, of Foley & Lardner, for the debtor as well.

THE COURT: Okay. Thank you. Good afternoon.

MS. ALBERT: Good afternoon, Your Honor. Gabrielle Albert, Keller Benvenutti Kim, on behalf of the committee.

THE COURT: Okay. Thank you very much.

MS. ALBERT: With me this afternoon are Brent Weisenberg and Jeffrey Prol from Lowenstein Sandler.

THE COURT: Okay. Nice to see everybody.

Okay. Anybody else in the courtroom expecting to speak today?

MS. DANIELS: Justine Daniels, O'Melveny & Myers, Pacific insurers.

THE COURT: Okay. I hope we got that. Come on up. It'd be nice to get your appearance, actually, into the

The Roman Catholic Bishop Of Oakland

7

1 microphone. That'd be great.

2 MS. DANIELS: Apologies, Your Honor.

3 THE COURT: No, it's okay.

4 MS. DANIELS: Justine Daniels, O'Melveny & Myers,
5 Pacific insurers.

6 THE COURT: We want the Supreme Court to know you were
7 here, okay?

8 MS. DANIELS: Oh, they will.

9 MR. KAHANE: Good afternoon, Your Honor. Jeff Kahane,
10 of Skarzynski Marick & Black, on behalf of the London Market
11 insurers.

12 THE COURT: Nice to see you.

13 Okay. Everybody else? Okay. On the screen, let's
14 take appearances. Why don't we start with all the committee
15 folks?

16 MR. KAPLAN: Good afternoon --

17 MR. BURNS: Good afternoon, Your Honor --

18 MR. KAPLAN: Go ahead, Tim. Sorry.

19 THE COURT: Mr. Burns?

20 MR. BURNS: Tim Burns for the committee, Your Honor.

21 THE COURT: Okay.

22 MR. KAPLAN: Good afternoon, Your Honor. Michael
23 Kaplan, from Lowenstein Sandler, on behalf of the committee.

24 THE COURT: Okay. Anybody else for the committee?

25 Okay. Any debtor counsel?

1 MS. UETZ: Yes, Your Honor.

2 THE COURT: Okay. All right. So why don't we take
3 insurers' counsel, please?

4 MR. JACOBS: Good afternoon, Your Honor. Todd Jacobs
5 for Westport Insurance Corporation. I'm here with Blaise
6 Curet. Nice to see you again.

7 THE COURT: Nice to see you again. Thank you very
8 much.

9 Okay. And then we have some other folks who represent
10 other parties in various adversary proceedings. So let me get
11 appearances from them as well.

12 MS. TURNER: Good afternoon, Your Honor. Good
13 afternoon, Your Honor. Miranda Turner for Continental
14 Insurance Company.

15 THE COURT: Okay. Thank you.

16 MR. MANNS: Good afternoon, Your Honor. Ryan Manns,
17 Norton Rose Fulbright US, on behalf of RCWC, RCC, OPF, and
18 Adventus.

19 THE COURT: Okay. Good afternoon.

20 And the U.S. Trustee?

21 MR. BLUMBERG: Good afternoon, Your Honor. Jason
22 Blumberg for the U.S. Trustee.

23 THE COURT: Okay. Anybody else indicating an
24 appearance? No?

25 THE CLERK: All parties with their hand raised have

1 now been admitted.

2 THE COURT: Okay. Why don't we -- whoever wants to
3 suggest an order of proceeding, come on up and give me your
4 thoughts. There's a lot that's theoretically out there for
5 discussion.

6 MS. UETZ: Yes, Your Honor. If I may, I want to just
7 set the context and go through what is before the Court.

8 THE COURT: Sure.

9 MS. UETZ: I think it will be helpful for context --

10 THE COURT: Okay.

11 MS. UETZ: -- for today. And I promise to take fewer
12 than five minutes.

13 THE COURT: Okay. And I'll let the committee -- if
14 you want to counter context, feel free, okay? Okay.

15 MS. UETZ: Thanks, Your Honor.

16 THE COURT: Um-hum.

17 MS. UETZ: Your Honor, good afternoon. And if it
18 please the Court --

19 THE COURT: You begin with a sigh. That's
20 unfortunate. Okay.

21 MS. UETZ: Yeah. I have to say, my first sentence
22 that I wanted to say to the Court is that I come to the Court
23 with some regret --

24 THE COURT: Okay.

25 MS. UETZ: -- to provide this status. But the debtor

1 believes that this is essential for the Court to hear today --

2 THE COURT: Okay.

3 MS. UETZ: -- as it considers the various motions
4 which are on the docket for today --

5 THE COURT: Right.

6 MS. UETZ: -- and things that it will be hearing in
7 the near term. And I will go through so that we have some
8 order of what is pending.

9 Your Honor, this is as crucial a time as any, to date,
10 in this case. You can tell because I have notes in front of
11 me, and usually I don't. It's crunch time, as they say. And
12 the debtor is mightily trying to avoid administrative
13 insolvency and get to a positive resolution of this Chapter 11
14 case for all stakeholders.

15 If the debtor becomes administratively insolvent,
16 there can be no conversion of this case, no trustee will be
17 appointed to fill Bishop Barber's role, we don't think, and
18 this Chapter 11 case will most surely be dismissed absent a
19 settlement. That would be a terrible but necessary outcome for
20 both the debtor and the abuse survivors, but it would be
21 likely, given the lack of consensus.

22 It might even be a terrible outcome for the insurers
23 who themselves bear great responsibility for where we are
24 today. Although time and money always seem to be on their
25 side, they know they will have to pay at some point -- we

1 believe this -- and all but one has yet to put a firm offer of
2 money on the table.

3 But worse than what I am describing would be this case
4 pending for four or five years or more. It would burn up
5 assets of the estate, in order to pay professionals, instead of
6 using those assets to pay abuse survivors, still with no
7 resolution.

8 Your Honor, the following matters are before the
9 Court. The debtor's plan is set for a contested confirmation
10 hearing, a trial beginning the last week of August, and expert
11 depositions are scheduled for the next several weeks. The
12 debtor has answered the committee's adversary proceeding
13 concerning restricted assets, the pared down adversary
14 proceeding. And that matter, I believe, is set for a status or
15 a scheduling conference today. And we await this Court's
16 decision on the motion to dismiss the other adversary
17 proceeding.

18 THE COURT: Um-hum.

19 MS. UETZ: The committee has renewed its motion to
20 lift the automatic stay previously denied by this Court. The
21 debtor and the committee are now challenging each other's
22 professional fees, usually the surest sign in a case that
23 things are beginning to come to a head.

24 The committee has also objected to the debtor paying
25 the same quarterly fee it has paid, which houses its

1 administrative offices, its employees, and is used for other
2 purposes. And we will address that motion at the appropriate
3 time.

4 THE COURT: Pause for a second. That was not
5 technically set for hearing today. But you guys want to --

6 MS. UETZ: Excuse me.

7 THE COURT: Do you want to start resolving it today?

8 MS. UETZ: I meant only -- and I should have corrected
9 myself -- to list the various matters for context presently --

10 THE COURT: Yeah.

11 MS. UETZ: -- with the Court.

12 THE COURT: Well, I mean, if you, at some point --

13 MS. UETZ: We have filed our opposition to it.

14 THE COURT: Yeah.

15 MS. UETZ: And so if it please the Court --

16 THE COURT: Well, I --

17 MS. UETZ: -- we will be happy to.

18 THE COURT: I'll inquire of both sides what they want
19 to do about that.

20 MS. UETZ: Thank you.

21 THE COURT: Okay.

22 MS. UETZ: And Your Honor, now this morning, after I
23 had discussions with Mr. Prol yesterday and today, the debtor
24 has filed a motion seeking to extend the confirmation schedule.
25 And having failed to reach agreement with Mr. Prol, for even a

1 short two-to-three-week extension of time to try to work some
2 things out, the debtor will seek a hearing on that motion as
3 soon as possible.

4 Your Honor, against this backdrop, where are we on a
5 possible settlement? The committee has not made a single
6 authorized demand or offer of settlement in more than ten
7 months, and the committee refuses to engage in any negotiations
8 with the insurers.

9 Most recently, I asked Mr. Prol to meet with me about
10 settlement in person, and he agreed to do so. And we were
11 scheduled to meet last Friday afternoon in Detroit, just the
12 two of us. And Mr. Prol canceled that meeting, less than
13 twelve hours after the debtor objected to his firm's fees, and
14 refused to meet with me.

15 Notwithstanding this, a ray of hope, Your Honor, is
16 that Mr. Prol and I continue to talk. But we seem to be going
17 in circles. And candidly, it's not clear to the debtor where
18 his client's heads are in those talks.

19 Meanwhile, the debtor, having reached an agreement
20 with the insurers on the subject of an assignment, continues to
21 negotiate and try to negotiate with the insurers, with the help
22 of Mr. Gallagher, to try to get cash settlements. These
23 discussions have gone --

24 THE COURT: Mr. Gallagher is the mediator, right?

25 MS. UETZ: Yes.

1 THE COURT: Got it. Okay.

2 MS. UETZ: These discussions have gone on for months
3 with some of the insurers. Mr. Gallagher has had countless
4 meetings with the debtor, individual insurers, the entire
5 group. Your Honor, the insurers are not without blame here
6 either. Only one has put a firm offer of any money on the
7 table.

8 The debtor's conclusion is that the current status of
9 prospects for a global settlement -- and I should have
10 mentioned; I may have -- the committee won't talk to the
11 insurers. The committee wants certain language for an
12 assignment. They won't talk about numbers. So how are we to
13 have that conversation?

14 This leads the debtor to conclude that right now the
15 prospects for either a global settlement between all the
16 parties, or even a settlement between the debtor and the
17 committee on a dollar amount -- which would still be
18 complicated because we'd still have the insurance issue -- is
19 really near zero.

20 It is not overstating the facts here, Your Honor, to
21 say it is impossible for my team, for my client to negotiate
22 with this committee. And I say this committee in this case.
23 I'm not saying, Mr. Prol. I am saying this committee, because
24 it only says no. It will not authorize a settlement demand.
25 It insists that the debtor repeatedly increase its contribution

1 which we have done multiple times over the course of the last
2 year.

3 The committee opposes a plan which would have paid
4 more money, on average, from church entities to abuse
5 survivors, than just about any case in the world. The
6 committee who, it appears, is directing its professionals to
7 take actions to drive this debtor to the brink of
8 administrative insolvency, forcing the debtor now to liquidate
9 assets to pay professionals which had been planned for
10 contribution to the plan.

11 And Your Honor, I mean this. The debtor truly
12 believes this committee wants to actually bankrupt the debtor
13 for good. By this I mean the debtor believes the committee
14 does not want a settlement at any number, at any number with
15 the debtor or at any number with the insurers, and is instead
16 using this bankruptcy case to attempt to close as many churches
17 as possible and dismantle -- and I'm choosing that word
18 purposely -- dismantle the Diocese so it can no longer serve
19 its mission. It appears no amount of money will ever be
20 enough.

21 So in light of all this, Your Honor, the debtor must
22 seek additional time, if it seeks to confirm its plan, so it
23 can sell real estate to pay admin expenses and get its plan
24 confirmed. The debtor still believes its plan is fair and
25 equitable. This committee is trying to drive the debtor into

1 withdrawing its plan, all the while telling this Court it seeks
2 a global settlement and filing motions previously denied by
3 this Court.

4 Your Honor, the committee talks a lot about leverage.
5 And sometimes when they bring motions before Your Honor, they
6 talk about leverage. Rather than the substance of the motion
7 and the legal merits of the motion, they talk about leverage.
8 Your Honor, thus far, you have rejected everything the
9 committee has thrown at the debtor.

10 The Court denied all of the committee's derivative
11 standing motions. The committee didn't budge. The Court
12 denied the first version of the lift stay motion. The
13 committee didn't budge. The Court granted the debtor's motion
14 to approve its disclosure statement. And yes, at the last
15 minute, that was withdrawn by the committee's objection.

16 THE COURT: Is this a kind of a quiet recusal motion
17 to me or --

18 MS. UETZ: No, Your Honor.

19 THE COURT: I'm sorry. I'm trying to make a joke.

20 MS. UETZ: And I'm almost done, Your Honor.

21 THE COURT: No, it's okay.

22 MS. UETZ: But it's important for this context --

23 THE COURT: No, I appreciate it.

24 MS. UETZ: -- to be stated.

25 THE COURT: I appreciate it.

1 MS. UETZ: The committee didn't budge after the
2 disclosure statement; it doubled double down. The Court
3 dismissed both of the committee's adversary proceedings, albeit
4 without prejudice, and so far has only allowed one of them to
5 go forward, maybe the second one, I don't know. The committee
6 hasn't budged.

7 And no matter how you rule on the lift stay motion
8 today, the committee won't budge. If you grant it, they're
9 going to wait for state court trials. If you deny it, that's
10 just another denial of one of the tactics by the committee.

11 Your Honor, my point is that this committee has been
12 afforded every possible opportunity to explore its theories in
13 this case. And that may be the nature of adversaries in civil
14 litigation. It may well be the nature of adversaries in
15 bankruptcy. But in this case, it has been at great cost to the
16 estate, burning up assets that could otherwise be used to pay
17 claims.

18 And now, at this time, as you will hear when we
19 address the committee's emergency motion to pay the fees of the
20 Loewenstein firm, it has brought the estate to the cusp of
21 administrative insolvency. And even with that, we can't get a
22 modest extension to talk about some time for what the end game
23 in this case is. And thus, we will be forced to seek emergency
24 approval of the motion for the extension, because, of course,
25 what else would this committee do than direct its professionals

1 to oppose the debtor's efforts to keep this case alive long
2 enough to get to a positive outcome for all of the
3 stakeholders?

4 If the committee's refusal to agree to any kind of
5 extension right now doesn't prove the committee is trying to
6 drive this debtor out of this court, I don't know what does.
7 Your Honor, at what point is the committee told enough is
8 enough, engage in good-faith negotiations, and go make a deal.

9 You have said to me, I think twice, definitely once,
10 that this debtor may just not be a good candidate for
11 confirmation of a Chapter 11 plan. But the committee hasn't
12 been told that it needs to engage in good-faith negotiations or
13 risk a cramdown. Unless the committee receives that message,
14 Your Honor, no amount of test cases, no amount of discovery, no
15 amount of adversary proceedings is going to make any bit of
16 difference in this case.

17 And Your Honor, it is in this context that these
18 various matters, lift stay, motion for extension, the adversary
19 proceedings scheduling order, the quarterly pay for bishops'
20 residence and the administrative offices, professional fee
21 objections, all of this, it is in this context that we want the
22 Court to consider those things.

23 Your Honor, simply put, although the debtor is asking
24 for a bit more time right now, the end is nigh. And there's no
25 other way to say it. And the debtor deeply appreciates the

1 Court's consideration of this big picture as it decides all of
2 these issues.

3 THE COURT: Okay. Thank you very much. And that
4 states the debtor's position. And no one else on the debtor's
5 side has anything to add, I'm guessing? Okay. Thank you.

6 All right. Let me let the committee decontextualize,
7 or recontextualize, however you want to put it. Okay.

8 MR. WEISENBERG: Thank you, Your Honor. Brent
9 Weisenberg of Lowenstein Sandler.

10 Your Honor, the committee is incredulous about what it
11 just heard. The fact that our constituency, survivors of
12 sexual abuse, who were abused because this entity failed to
13 protect them, is somehow the bad guy, that is beyond the pale.
14 The survivors have a right to enforce and protect their rights.
15 They have done so in good faith throughout this case. The
16 notion that we've stood still and haven't tried to negotiate or
17 settle is just not true, period, hard stop. It is just not
18 true, Your Honor. I'm going to talk a little bit about that.

19 THE COURT: Yeah.

20 MR. WEISENBERG: But --

21 THE COURT: I'm going to have a very big question for
22 both of you when we get done with this contextual, not
23 something you're going to be able to answer when I ask you, but
24 I want to get it out there so it doesn't stun everyone at the
25 end of the hearing, okay? So I'm sorry to interrupt you. You

1 go ahead.

2 By the way, I think this is incredibly important for
3 both of you, okay? I'm gratified we're starting in this way,
4 as difficult as I know it is, okay? So have at it.

5 MR. WEISENBERG: Your Honor, it should come as no
6 surprise that these survivors, who have been lied to for years,
7 who believe they're being lied to now, don't readily accept the
8 debtor's representations about what their assets are. They
9 just don't. And in fact, we were very much looking forward to
10 a trial where we can establish for Your Honor what we've always
11 believed. This is a billion-dollar enterprise, with a "b".
12 And so the amount being proposed to survivors is insulting.
13 It's our job to prove that to Your Honor, and we want the
14 ability to prove it.

15 We came before Your Honor, and we begged the debtor to
16 go a different path, because we told the debtor, if we go down
17 this path, this is what we're afraid of. Survivors will
18 overwhelmingly reject the plan. And if you continue, and
19 ultimately your plan is not confirmed, we will be at a dead
20 end. Please don't do that. There's a better way. Allow us to
21 lift the automatic stay. And in that way, we can understand
22 what are the value of these cases. Allow us to litigate what
23 is and is not property of the estate. The plan writes itself
24 after that. We wouldn't be left in a dead end. And you know
25 what we were told? No; we're doing it our way.

1 Now, the debtor doesn't like where they are, and
2 they're blaming it on us. We begged them, please, we know
3 where this is headed. And yet now we're wearing the black hat.
4 It really stupefies me, Your Honor.

5 Let's go back to November 2023, so that's about eight
6 months ago. We had urged the debtor to take that --

7 THE COURT: 2024?

8 MR. WEISENBERG: No, 20 -- Yeah, sorry, Your Honor,
9 2024. Thank you.

10 THE COURT: Um-hum.

11 MR. WEISENBERG: We urged the debtor to take that
12 approach. And you know what we received in response? Mockery.
13 Even in the debtor's disclosure statement, it mocks us for
14 having an alternative vision of how this case should work. On
15 this road that we've spent with the debtor, running towards a
16 dead end, yes, it's true, we've spent millions and millions of
17 dollars. Money should have been paid directly to the
18 survivors. We didn't ask for this.

19 But I can tell you this, Your Honor, we are not going
20 to stand idly by and allow a plan to get confirmed over
21 survivors' objection. It has never happened to date, and we
22 are going to do everything in our power to make sure it doesn't
23 happen here. We feel strongly about the facts. We feel
24 strongly about the law. We feel very strongly about the
25 equity.

1 And so when a debtor is moving forward, saying, I've
2 decided what's fair and equitable for you, and you're going to
3 like it, you better believe we will do everything in our power.
4 There's is no document we won't look at. There's no one we
5 won't depose. There is nothing we will stop at to make sure
6 this doesn't happen. Yes, that costs a lot of money. We
7 didn't want to spend it.

8 The debtor goes back to the tired trope of the
9 committee is trying to run out the clock and the fees are too
10 much. I don't think I've seen a pleading, in the last ten,
11 that hasn't mentioned my firm's fees being stupefyingly high.
12 That's a trope, Your Honor. You only see half the story.

13 Do you know what the total fees are, to date, between
14 the two lead firms? Foley is at 13.6 million; Lowenstein is at
15 9.8. So all of these allegations that we're out-billing Foley
16 and the debtor's counsel, and that's abnormal, it's just not
17 true. But even if it is, we're not backing down on the fact
18 that we will do everything in our power to protect survivors.
19 The harm they incurred is horrific, and we are not going to
20 allow them to have to accept an amount that we don't believe is
21 fair and equitable. And that's based on the totality of the
22 debtor's assets.

23 Let me just say this, Your Honor. I'm shocked that
24 there would be some speculation on why the meeting between Mr.
25 and Mr. Prol and Mr. -- or excuse me -- Ms. Uetz was canceled.

1 Ms. Uetz tells only half the story. But we're going to honor
2 the sanctity of settlement discussions. But suffice it to say
3 there's a lot more to that story.

4 But it's shocking to me that debtor's counsel would
5 stand up here and just share with this Court settlement
6 discussions and actions that are supposed to be privileged,
7 that are intended to be privileged, to allow the parties to
8 engage with one another without fear that whatever they do or
9 don't do is going to be dragged before the Court.

10 Stated simply, Your Honor, this is revictimization. I
11 understand and appreciate you may think that sounds like
12 hyperbole. It's not. Ten survivors have died thus far during
13 this case. Now the debtor wants at least four more months, at
14 least, because it says, on November 15th, it's going to have a
15 status conference to determine which way to go. That's not
16 good for survivors. They will continue to pass away. Evidence
17 will continue to disappear.

18 And so it might not surprise you, Your Honor, we are
19 100 percent against adjourning this plan confirmation trial
20 that the debtor asked for, that the debtor insisted we do on
21 lightning quick speed. And we got on board. We didn't think
22 it was the right thing to do, but we've worked around the clock
23 to make sure we are ready on August 25th to have this issue
24 resolved.

25 The irony of asking for this adjournment is it's

1 actually going to cost more money if we restart these plan
2 confirmation proceedings. Plan feasibility is going to have to
3 be redone. There's going to be new projections. We're going
4 to have to have the opportunity to review them. We're going to
5 need the opportunity to re-depose whoever the debtor's witness
6 is regarding feasibility. Certain witnesses are going to need
7 to be re-deposed, depending on where we are in three or four
8 months.

9 That's time and money. All the while, the debtor
10 complains it's administratively insolvent. Not the first time
11 we've heard that, Your Honor. We stood here, in November of
12 2024, and the debtor said, we can't survive; this case is going
13 to come to an end. And you know what happened? All of a
14 sudden, one of the debtor affiliates paid four-and-a-half
15 million dollars, on a forty-million-dollar note that it hadn't
16 made a payment before. The money just appeared, and four-and-
17 a-half million dollars came into the estate.

18 Yet now, at the same time, the debtor is complaining
19 that they are administratively insolvent, they can't afford
20 this case. They're paying 700,000 dollars to an affiliate,
21 without a contract, without any evidence whatsoever that they
22 owe that money.

23 We respect and appreciate that the Diocese has a
24 mission. It does a lot of good for a lot of people. The
25 assertion that we are trying to burn this down is just not

1 true, period, hard stop. It does a tremendous amount of good.
2 And also it has a fiduciary duty to its estate and its
3 creditors not to allow 700,000 dollars to walk out the door
4 without any proof whatsoever that it's actually due.

5 Seven-and-a-half million dollars during this case has
6 been paid to that entity. That entity owes the estate 40.5
7 million dollars. Yet now the debtor cries we're
8 administratively insolvent. Well, why did they give seven-and-
9 a-half million dollars to an affiliate that owes us forty
10 million dollars? Why wasn't that pursued? We've been begging
11 for that.

12 Your Honor, the debtor has had its shot. I think Your
13 Honor said it best. At some point, there's a time when this
14 committee should be given the right to play the protagonist.
15 We've tried it the debtor's way, and they drove us to a dead
16 end.

17 And so while the debtor may poo-poo the lift stay
18 motion, the debtor may poo-poo some of the other motions that
19 we filed, we see it entirely differently. The lift stay is
20 going to happen regardless of where this case ends. If the
21 case is dismissed, we got a jump start on those cases
22 beginning. If the case is not dismissed, and miraculously, the
23 debtor crammed down a plan on us, the plan provides for the
24 litigation option. The litigation option allows state court
25 actions to proceed. So let's get the show on the road. Every

1 time we say not now, it's just more time wasted. So it's not a
2 matter of if; it's a matter of when those cases get started.


3 The other ironic piece of this, Your Honor, is we have
4 said numerous times, to the debtor, you are in bankruptcy.
5 This is not just a balance sheet restructuring; it should be
6 used as an operational restructuring. If you have concluded
7 you have too many parishes, or your business needs
8 streamlining, use the tools of the Bankruptcy Code to slim that
9 down. Sell excess real property.

10 If you believe you need to close parishes -- we're not
11 telling them to close parishes. That's one of their favorite
12 tropes, that we're telling them they need to close things. No,
13 we are not telling them to close a thing. But if they
14 determine they need to, to recognize the fact that the world
15 has changed, that they don't have as many people coming to mass
16 anymore, this was the opportunity to try to operationally
17 restructure the debtor. And you know what would have been
18 achieved? Tens of millions of dollars.

19 But now, at the finish line, the debtor says, we need
20 to pause this case because I need time to sell real estate to
21 try to fund this. It should have been done months, if not a
22 year ago, Your Honor. Yet now we're being blamed for that.

23 Your Honor, all of which is to say, you can tell that
24 both sides are tremendously frustrated. Both sides see the
25 world very differently. Unfortunately, I don't think, at this

1 point, we believe or would agree upon what the sky is. But
2 when I tell you, Your Honor, that we cannot disagree more with
3 the debtor's assertions and characterizations, that's probably
4 the understatement of the year.

5 Our clients have no desire to shut down the church.
6 Our clients have no desire to run out the clock. Our clients
7 are owed for horrific harm they suffered as children, from an
8  to protect them, an entity, ironically, that
9 protecting them, and they failed to.

10 And then you know what they did? They filed for
11 bankruptcy, and they cried poverty. So it should have come as
12 no surprise, Your Honor, when our client say, prove it; show me
13 your assets. Show me what you have and what you don't have,
14 because until you do, I don't believe you. And I don't think
15 there's anything wrong with that.

16 And this plan confirmation trial was going to be the
17 opportunity for us to prove to Your Honor that this billion-
18 dollar enterprise is paying a few dollars to survivors. I know
19 115- sounds like a lot. And the debtor compares it to other
20 cases. Your Honor, that's bogus. The analysis is what are
21 survivors being paid in this case, based upon the law in this
22 Court, the law in this circuit, with the assets of this debtor.
23 What another debtor got in another state, with different
24 statute of limitations, different claims, is of no moment.

25 So we want to go to trial, Your Honor, because only

1 then will the debtor stop behaving the way it is. If it's
2 given this four-month extension, it's going to be more of the
3 same. We want to get to the point. We want to end this
4 because we feel so confident we can. And then with the lift-
5 stay cases going forward, we'll see where this case goes.

6 Your Honor, I apologize for all the bravado, but as
7 you can tell, we take this very seriously. We take the
8 allegations very seriously, and are working day and night,
9 through the week, to protect our clients' rights. And the fact
10 that this hearing got started with us wearing the black hat is
11 absolutely astonishing to me. Thank you, Your Honor.

12 THE COURT: Hang on one second. Let me get my head
13 around the universe here a little bit, okay? Well, let me just
14 ask some questions. If you're not able to answer them, it's
15 okay. We'll figure out how we go forward without an answer.
16 Is it accurate that there has not been a demand from the
17 committee in the last ten months?

18 MR. WEISENBERG: Your Honor --

19 THE COURT: If you can't answer it -- if it's
20 complicated and sort of yes, sort of no, I understand.

21 MR. WEISENBERG: It's complicated. And frankly, Your
22 Honor, I don't think it's fair for the parties to be sharing
23 what they've said to one another in settlement discussions.
24 The sanctity of our settlement discussion should allow us to be
25 truthful with one another and sometimes overshare, right?

1 THE COURT: Um-hum.

2 MR. WEISENBERG: Let's be honest. Cases get settled
3 because people work with one another based on trust.

4 THE COURT: Well, can I make -- and I want you to
5 disagree with me right away if you do, okay? I don't want to
6 know any numbers. I do want to know where the process is. And
7 if you think I'm being simplistic about it, and those two
8 things are just joined at the hip and I shouldn't ask that
9 question, you're free to tell me that.

10 MR. WEISENBERG: Your Honor, I'm struggling. I really
11 would like to answer your question, and to give you as much
12 information as you'd like, but I'm just afraid it's going to --

13 THE COURT: No, I just --

14 MR. WEISENBERG: -- jeopardize --

15 THE COURT: The question that I'm asking is, is it
16 wrong for me to ask whether you've even made a demand?

17 MR. WEISENBERG: It depends on how you view your role,
18 Your Honor.

19 THE COURT: Okay.

20 MR. WEISENBERG: There are some courts that want to
21 become part of the process --

22 THE COURT: Um-hum.

23 MR. WEISENBERG: -- and help facilitate a resolution.

24 THE COURT: Well, the only question I would ask is,
25 people are telling me we're stuck. There's various things that

1 contribute to being stuck. And there are some things a
2 bankruptcy judge can do about it. There's a lot of things a
3 bankruptcy judge can't do about it. So that's what I'm
4 struggling with now is, is there something I can do?

5 And I will tell you, quite frankly, we're going to
6 hear a lot of great arguments about the motion for relief from
7 stay. One of the things that I have to think about is, is that
8 going to help us get unstuck? And I'm going to think about it
9 on many planes, but that's one of them. Okay? So that's why
10 I'm asking this question.

11 And let me just take the next question, okay? If the
12 answer is no, we haven't, is one of the reasons why -- if you
13 can answer this -- that until we have that better sense of what
14 we think the universe is of what they can pay, it's meaningless
15 for us to make the demand. If that's part of the answer, then
16 the next question is, okay, what's in front of me now, or going
17 to be in front of me, that's going to be presented to me, to
18 have me answer that question.

19 Now, obviously, at confirmation we're going to get
20 into that. I have disposed of some litigation vehicles the
21 committee has had to pursue certain assets that I disposed of
22 them. I don't think anybody appealed me, so they are where
23 they are.

24 We've got the 053 matter that we're going to talk
25 about today. We also have -- putting aside 053 for a moment,

1 okay, we have what I suspect is a very live 051 matter, where
2 we're going to try to answer what the heck is restricted and
3 what isn't. And that could be very complicated, but I assume
4 that was part of the confirmation process. Okay? What is
5 beyond those avenues, that I'm not thinking of, that is part of
6 your question of what are the assets of the estate?

7 MR. WEISENBERG: So to answer your question
8 succinctly --

9 THE COURT: I apologize for the question, because I
10 know it's kind of big and unanswerable, but I look forward to
11 your help.

12 MR. WEISENBERG: To answer your question succinctly,
13 what can drive this case to conclusion is keeping the plan
14 confirmation on track. We've said, many times in the past,
15 it's the courthouse steps that motivate settlement.

16 THE COURT: Okay.

17 MR. WEISENBERG: We're ready to walk up those
18 courthouse steps. And if we lose, that's a risk we're taking.

19 THE COURT: Okay.

20 MR. WEISENBERG: It's a monumental risk. At that
21 trial, you will be asked to determine whether thirty-eight
22 million dollars of assets is in fact restricted. You're also
23 going to be asked whether hundreds of millions of dollars of
24 real property is part of the debtor's estate that could be
25 payable to survivors.

1 THE COURT: Is that outside 053?

2 MR. WEISENBERG: Yes.

3 THE COURT: Okay.

4 MR. WEISENBERG: That's more of the First Amendment
5 issue, Your Honor.

6 THE COURT: Okay.

7 MR. WEISENBERG: You recall the discussions we had
8 about the liquidation analysis

9 THE COURT: Um-hum. Okay.

10 MR. WEISENBERG: Collectively, you can see, Your
11 Honor, there are hundreds of millions of dollars in dispute
12 about what can or can't be paid to survivors. And so, again,
13 we are prepared, in fact anxious, to have that --

14 THE COURT: Well --

15 MR. WEISENBERG: -- before Your Honor.

16 THE COURT: -- let me ask you a really dumb question.
17 If you and I can agree, admittedly, at a 30,000-foot level,
18 what's in play, and you may say this thirty-eight million is in
19 the pot and this real estate is in the pot, I mean, isn't there
20 a world in which you can make a demand and say, I think we've
21 got X chance of success on this, Y chance of success on the
22 other thing, here's our number?

23 And if the answer is you can't answer that question,
24 that's okay. I'm just trying to figure out, I mean, how are we
25 stuck, and why are we stuck, and what do we do about it?

1 That's all I'm asking, okay?

2 MR. WEISENBERG: Your Honor, Mr. Prol remind --

3 THE COURT: I've been in Fort Worth where that's
4 enough to get that phone confiscated.

5 MR. WEISENBERG: Your Honor, Mr. --

6 MS. UETZ: I hope my daughter doesn't call, because
7 she tends to do that in the afternoon.

8 THE COURT: That's okay. Yeah, go ahead.

9 MR. WEISENBERG: Mr. Prol reminded me that the
10 conversation we're having assumes that it's a simplistic
11 negotiation --

12 THE COURT: No, I understand.

13 MR. WEISENBERG: -- on a single issue.

14 THE COURT: I thoroughly accept that.

15 MR. WEISENBERG: And so there are a lot of moving
16 pieces.

17 THE COURT: I thoroughly accept that.

18 MR. WEISENBERG: And so where we believe we left it --

19 THE COURT: Yeah.

20 MR. WEISENBERG: Again, I don't like sharing this,
21 Your Honor, but --

22 THE COURT: No.

23 MR. WEISENBERG: -- you're asking me the questions,
24 and I'm willing to share.

25 THE COURT: Well, then, if you don't want to, stop.

1 It's okay. What I'm trying to figure out is can I articulate
2 here a broad picture of what's at stake? And if I do that,
3 does that lead to -- I mean, here's the punchline. If I'm
4 going to start figuring out how to get this thing unstuck,
5 okay, if one part of that is do we have a trial in a month-and-
6 a-half, or do we not have a trial in a month-and-a-half, I know
7 your position. I think I'm hearing Ms. Uetz. Okay.

8 Another part of that is what do we do to get ready for
9 it? One thing is, well, we pay lawyers, or we don't. Okay?
10 And that's sort of on today, but I'm not sure we're going to
11 resolve it today. We'll see. Okay? Another thing we do is we
12 figure out what's really at -- what are the big questions about
13 what's in the pot and what's not in the pot. That's going to
14 happen. Okay?

15 With all of that, is there a world in which I can say,
16 if I'm going to help get this unstuck, I'm going to do A, B, C,
17 and D. And one of those things is I'm going to tell the
18 committee to make a demand. Okay? Now, maybe you would tell
19 me I have no right to do that, I have no power to do, that's
20 the worst idea I've ever heard. But that's one of the things I
21 will think about today in getting this thing unstuck, okay?

22 Does that make sense? And if you tell me, Judge, you
23 can't do it, I mean, I've always respected you, and I'll
24 respect you still if you tell me that. I may not agree with
25 it, but I can imagine why you would say that's not in the

1 cards, Judge.

2 MR. WEISENBERG: Your Honor, we deeply appreciate you
3 trying to help. So absolutely not, there is nothing on this
4 side that we said --

5 THE COURT: Okay.

6 MR. WEISENBERG: -- no, you can't do that. We need
7 some creative thinking. But standing here today, there are so
8 many disputed issues within the plan, that we believe have a
9 silver bullet to just knock it out, that when you ask us to
10 make a demand, we're looking at this from very different
11 perspectives.

12 THE COURT: That's my point. That's why I asked all
13 the questions I did. Yeah, I get it, I get it. Okay.

14 All right. Well, let me tell you that I'm thinking --
15 I'm thinking about this in this way. What can a bankruptcy
16 judge do to help you guys get unstuck? And if that's one of
17 the things I can think about doing, I have it in mind.

18 Ms. Uetz, do you want to tell me something?

19 MS. UETZ: I'd like to answer your questions, Your
20 Honor, because I think you have every right to ask those
21 questions. And I'm not going to talk about settlement
22 negotiations, in terms of dollars, or material offers, or facts
23 like that.

24 THE COURT: Yeah.

25 MS. UETZ: But what happens in this case, and it's

1 happened twice, in a very big way, and it's happened again
2 today, is Mr. Weisenberger gets up and says something in court
3 that is just not true. And I know it's not true because, in a
4 confidential mediation, I'm presented with the opposite by him
5 and his experts. So to answer your questions, there has been
6 no demand --

7 THE COURT: Okay.

8 MS. UETZ: -- in ten months, in any way, shape, or
9 form.

10 THE COURT: Okay.

11 MS. UETZ: And the committee had previously tied its
12 adversary proceeding about restricted assets to plan
13 confirmation. When they wanted more time for the restricted
14 assets deep dive, they wanted more time for the plan
15 confirmation, they tied those two things together.

16 Now we're asking for more time for plan confirmation.
17 I didn't ask to stay the Chapter 11 case. We filed a motion
18 seeking more time for plan confirmation. I can't even talk to
19 the committee, because they won't talk to me about any
20 additional time that might answer some of those questions Your
21 Honor asked about restricted assets.

22 Mr. Weisenberg gets up and says he has not told the
23 debtor to close churches. Your Honor, that's just not true.
24 I'm going to stop right there, but it's not true. There are
25 documents that show that's not true. You don't get to say

1 things in court, and say anything you want, and then I don't
2 get to challenge it because there's a mediation privilege.
3 That's just wrong.

4 THE COURT: Okay. You know what? I appreciate your
5 passion, but let's stay respectful, okay?

6 MS. UETZ: It is wrong to stand up before Your Honor,
7 and make statements of fact, and then say that I can't counter
8 them --

9 THE COURT: Okay.

10 MS. UETZ: -- because of the mediation privilege.

11 THE COURT: Okay.

12 MS. UETZ: That is wrong.

13 THE COURT: Okay. I appreciate your position. Okay?

14 MS. UETZ: Thank you, Your Honor.

15 THE COURT: Okay. So given this jolly beginning,
16 there are some things on today that are, I think, slightly more
17 routine.

18 MS. UETZ: Maybe the insurance, but I'm not sure.

19 THE COURT: Okay. I mean, I would start with those.
20 I will tell you, I'm prepared to give you a decision on 053,
21 but it's going to take a little while because there's some --
22 I'm going to literally read it to you. So unless somebody has
23 a different idea, I would just as soon put that kind of towards
24 the end, if that's okay, because it's just going to take a few
25 minutes. Okay? But if there's some glimmer of hope that we

1 can fund an insurance policy, and do that without Defcon 1
2 being achieved --

3 MS. UETZ: That may be, Your Honor.

4 THE COURT: -- maybe that's something we do.

5 Go ahead.

6 MR. MOSES: Your Honor, perhaps we should have started
7 there. We have no objection to the insurance --

8 THE COURT: Well, come on up. Okay. Mr. Moses, come
9 on up. And I just have to contextualize this, because this is
10 essentially identical to something we saw a few months ago,
11 correct?

12 MR. MOSES: Almost exactly a year ago to the day --

13 THE COURT: Yes.

14 MR. MOSES: -- or to the week, anyway, Your Honor.

15 THE COURT: Yes.

16 MR. MOSES: And then almost exactly a year ago, before
17 that --

18 THE COURT: Yeah.

19 MR. MOSES: -- there had been -- the debtor's policies
20 run from July 1 --

21 THE COURT: And the terms are --

22 MR. MOSES: -- every year.

23 THE COURT: -- basically the same of the financing and
24 the request for bankruptcy accommodations, correct? I mean, I
25 looked at this quickly, but it looked to me quite similar to

1 something I know we had talked about before.

2 MR. MOSES: Exactly, Your Honor.

3 THE COURT: Okay.

4 MR. MOSES: There is a very slight difference in the
5 form, but functionally, in terms of its material terms, it is
6 exactly the same.

7 THE COURT: Right.

8 MR. MOSES: There's some slight change in the dollar
9 amounts, fortunately, because of some developments on ability
10 to get real property insurance.

11 THE COURT: Right.

12 MR. MOSES: The total number is a bit -- almost a
13 million dollars lower --

14 THE COURT: Okay.

15 MR. MOSES: -- this year than last year, which is
16 good --

17 THE COURT: Well --

18 MR. MOSES: -- especially in the current
19 circumstances.

20 THE COURT: Well, I will hopefully delight you here,
21 and I will not ask all the questions I did one or two times
22 ago, when I read this thing and thought this seems a little
23 overreaching. But it is what it is, right? The industry is
24 what the industry is, and these are the terms on which people
25 will do these things, and it's quite necessary, right?

1 MR. MOSES: That's right, Your Honor.

2 THE COURT: All right.

3 MR. MOSES: I would represent that this is, in my
4 experience, very much consistent with what these agreements
5 are.

6 THE COURT: Yeah. Okay. Well, I'm not trying to
7 short circuit this. If you had a wonderful twenty-minute
8 presentation, I don't want to cheat you out of that, but --

9 MR. MOSES: I will confess that I do not, Your Honor.

10 THE COURT: Okay.

11 MR. MOSES: I'm happy to answer any questions.

12 THE COURT: No, I mean, I did review it, admittedly
13 quickly, not having read every word the way I clearly did the
14 last time, when I was so concerned about a few things. But it
15 looks to me, if not identical, all but identical to the
16 mechanisms that have been used in the past and approved. And
17 unless the committee has an issue, or somebody else has an
18 issue, the U.S. Trustee, or anyone else among the luminaries
19 here, I'm prepared to approve it.

20 Okay. Hearing nothing, it's approved. Okay?

21 MR. MOSES: Thank you, Your Honor.

22 THE COURT: Thank you very much.

23 MR. MOSES: I'll submit the order.

24 THE COURT: Okay. Thank you. Okay. Have you
25 discussed among yourselves an appropriate order? Because

1 there's, sort of, issues on both sides here in which different
2 people are protagonists. So where do you guys want to start?

3 MR. WEISENBERG: I'd like to start with the stay
4 relief motion, Your Honor.

5 THE COURT: Okay.

6 MS. UETZ: Any order is fine, Your Honor. Thank you.

7 THE COURT: Come on up.

8 MR. WEISENBERG: Brent Weisenberg, of Lowenstein
9 Sandler, on behalf of the committee.

10 Your Honor, I've found that we've had or have made the
11 most progress when it feels like you and I are having a
12 conversation as opposed to me just presenting to you sometimes.

13 THE COURT: Um-hum.

14 MR. WEISENBERG: I feel like I'm touching on issues
15 that may not be what you're thinking about. And so I'd welcome
16 an opportunity to answer all of your questions or any of your
17 questions. Otherwise, I can go through what I had intended to.
18 But I really want to make sure we use our time wisely.

19 THE COURT: Well, I found the hearings a few months
20 ago very interesting, and I appreciated much of the
21 presentation, including, to be honest, state court counsel's
22 willingness to come up to the lectern and talk to me very
23 directly about where we were on various matters.

24 And at the time -- I mean, there is a bit of a paradox
25 there. At the time, when we were not yet under the shadow of

1 an impending plan confirmation hearing, my concern was totally
2 functional. It was not it would be a terrible thing if relief
3 from stay were granted or that it's -- I did not then accept
4 the arguments, that some made, that it was really contrary to
5 the purpose of the Bankruptcy Code, or the automatic stay, in
6 some meta sense, to consider allowing some of these things to
7 go forward.

8 I didn't think then that it was necessarily "an unfair
9 advantage", for a whole bunch of reasons, including that nobody
10 knows who the lucky folks will be yet, with maybe one
11 exception. I didn't find the fact that it was not yet
12 determined who those folks would be to be, necessarily, a
13 problem. That's up to somebody other than me. It's not my
14 job. And that person, I think, is now considerably more
15 seasoned in their role than they had been.

16 So none of those things, really, were all that
17 determinative to me. I only asked the functional question, if
18 we can't get these things -- if they're not scheduled to go to
19 trial at any time in the immediate future, sort of, what good
20 is it going to do? And what you might want to -- what I think
21 I got from the pleadings is a different version of what good
22 it's going to do, even as we're in the shadow of a confirmation
23 hearing. So that's where I think you're going to probably most
24 speak to my concerns on what I'm trying to figure out here.
25 Does that make sense?

1 MR. WEISENBERG: It does, Your Honor.

2 THE COURT: Okay.

3 MR. WEISENBERG: And that helps me focus.

4 THE COURT: Yeah. Right.

5 MR. WEISENBERG: Your Honor, ironically, the debtor's
6 request for a four-month adjournment, or standstill, invites
7 the relief the committee is seeking.

8 THE COURT: Um-hum. If I'm in my old mindset, yes,
9 definitely, right?

10 MR. WEISENBERG: And whether the plan is confirmed or
11 not, these cases will proceed.

12 THE COURT: Um-hum.

13 MR. WEISENBERG: If we don't allow them to go forward
14 now, they will never move forward. It's somewhat circular. We
15 have to get things started in order for them to get started.
16 And to sit here in stasis for four months, and potentially
17 ending up in a place where the case is dismissed, and failing
18 to use the time wisely, we think would be a grave mistake.

19 THE COURT: Well, can I -- I apologize, because I did
20 have a question in mind. It just went out of my head for a
21 moment. The debtor and/or the insurers, or maybe both of them,
22 make the point that, in a couple of instances, that may be
23 similar to this and maybe not, bankruptcy judges have not
24 authorized -- have not granted relief from the stay. One of
25 them is some time ago now, I think, in the New Orleans case,

1 Judge Grabill. But one of them is relatively recent with Judge
2 Poslusny.

3 MR. WEISENBERG: Judge --

4 THE COURT: So if you want to tell me why those are
5 not at all applicable here, that would be very helpful. Okay?

6 MR. WEISENBERG: Of course, Your Honor. Ironically,
7 we are counsel to the committee in the Camden Diocese case.

8 THE COURT: Yeah.

9 MR. WEISENBERG: And fortunately for us, the facts are
10 very different than they are here. In Camden, there's a
11 confirmed plan of reorganization. That plan is now currently
12 on appeal before the Third Circuit. The argument made by the
13 insurer --

14 THE COURT: I'm sorry. May I interrupt you? You went
15 directly there?

16 MR. WEISENBERG: Yes.

17 THE COURT: Okay.

18 MR. WEISENBERG: The argument made by the insurers in
19 Camden was that the bankruptcy court no longer had jurisdiction
20 to authorize a lifting of the stay, because that issue was
21 bound up in the plan, which itself was before the Third
22 Circuit.

23 And so the Court initially denied the application to
24 lift the automatic stay because it didn't have jurisdiction.
25 It did go further. And it said, even if I had jurisdiction, I

1 would deny the motion because the committee doesn't have
2 standing.

3 Your Honor, I think, in this jurisdiction, that's not
4 an issue. There has not been a single bankruptcy court in
5 California that has raised the issue of whether the committee
6 is the right party or not to be making this motion.

7 You'll hear otherwise. And our response is, of course
8 the committee has standing. We are not advocating for any one
9 survivor. We're advocating for a process. It's a process that
10 we believe benefits the entirety of the estate. That is well
11 within the kinds of issues that a committee could weigh in on.

12 And so Judge Poslusny is somewhat on an island there
13 regarding whether the committee has standing or not, again,
14 especially given where we are where. In the San Francisco
15 case, in Sacramento, I believe, there was a stipulation agreed
16 to by the debtor and the committee about lifting the stay.

17 That issue has never been confronted even -- Your
18 Honor, I don't want to put words in your mouth, but even in the
19 first round, that was not raised as an issue that would be a
20 fatal flaw in the request that the committee made, that being
21 that the committee didn't have standing to even raise the issue
22 before you.

23 THE COURT: Um-hum.

24 MR. WEISENBERG: So we have to get started. Again,
25 whether we get started and the plan is confirmed, or not, we

1 are going to move forward.

2 In the Franciscan Friars case, which Your Honor is
3 well aware of, we have trial dates for the cases that were
4 released. Or excuse me, the better way to say is the cases
5 that were allowed to proceed in state court. That will drive
6 settlement, undoubtedly.

7 I like the way Your Honor said it in the Friars case,
8 which is the automatic stay is a tool, and we should figure out
9 how to use that tool best in order to facilitate what the
10 Bankruptcy Code intends. Thus far, it's been used as a stop
11 sign, and it hasn't led to success. And what we're asking for
12 Your Honor to do is allow us to use that tool to put all of the
13 parties at risk of winning or of losing.

14 And Your Honor, it's always advertised to you that
15 it's a one-way street. That's not the case. There is the very
16 real possibility that, for whatever reason, a survivor's claim
17 may not be sustained. Or the damage may be something that we
18 all believe is de minimis. That is a risk we're willing to
19 take. But there's a risk on both sides. That's where people
20 settle.

21 It's telling, Your Honor, that none of these cases
22 have gone to trial yet. Since the opening of the window, not a
23 single diocese case has gone to trial. They've all settled.
24 Obviously, in a number of them, they also filed a bankruptcy.
25 But they tend not to go to trial.

1 And in clergy 3, there were seven cases that went to
2 trial. In turn, all fifty-four of the claimants against the
3 Oakland Diocese settled. Bellwethers work, Your Honor. There
4 is a reason why the state court entered an order setting forth
5 what the procedures would be for setting bellwether cases. And
6 it's been done both in the Northern District and the Southern
7 District. It's used frequently in this state to drive
8 settlement. It is a commonly recognized way in which mass tort
9 cases are resolved. So this is not some novel idea, Your
10 Honor, that we've cooked up. We're following a well-worn path
11 to help resolve this case.

12 One second, Your Honor. Thank you.

13 So we talked about Friars and the fact that those
14 cases have a trial date. I believe the trial date is sixty
15 days apart, beginning in March, running through April.

16 Had we lifted the stay previously, we would have been
17 well on our way to having those trials imminent. And we
18 appreciate and respect Your Honor's ruling. But now things are
19 different because, again, we can never get closer to the goal
20 line unless we start running. And now's the time. It's
21 absolutely vital for survivors, some of whom continue to pass
22 away -- we lose evidence. We need to drive this case to
23 conclusion, and we believe this is a meaningful way to do it.

24 And you know what, Your Honor? If ultimately it
25 doesn't succeed, and this case is dismissed, which is not a

1 result that we want, the cases will have been moving because
2 they'll be moving anyway post-dismissal.

3 To be clear, and I want to say it again, we are not
4 looking to drive this case into dismissal. But if it happened,
5 this is merely a head start. But again, even if the plan is
6 confirmed, it's a head start. So that's important.

7 I think Your Honor recognized that we come before you
8 with very different facts as well. We now have a state court
9 judge who has been there for, I believe, at least six months,
10 with no indication whatsoever that he is going anywhere. He
11 has indicated that he will move the trials expeditiously.
12 There has been some squabbling back and forth about what he
13 meant and whether we were citing that in isolation or not,
14 Your Honor.

15 THE COURT: Um-hum. Um-hum.

16 MR. WEISENBERG: Our reading of the transcript -- and
17 Mr. Simons (phonetic) was there -- it was in direct response to
18 a question about what would happen if the Oakland Diocese cases
19 were released for trial. And the response was, I would move
20 them expeditiously. That's all we can do, Your Honor, is ask
21 the question. And that was the response.

22 And if you like, Mr. Simons is here. We brought him
23 with us today, in the event that you have any questions. But
24 as we stand here, this is not where we were back in November.
25 These cases will move. These cases, now more than ever, need

1 to move.

2 While I look through my notes, if you have any other
3 questions, Your Honor, please.

4 THE COURT: Not at the moment.

5 MR. WEISENBERG: Your Honor, I've spoken thus far
6 about marching up the courthouse steps, but that's not entirely
7 true in the sense that there's actually an advantage even
8 earlier in the process. It's not just that trial is the
9 linchpin to settling. It's the long march. And so pre-trial
10 motions, having the opportunity to depose experts, that's when
11 people start changing opinions and start having to get real
12 about their case.

13 And so even getting that process started, we don't
14 have to have our eye on what we have to get to trial. No. We
15 can see the case develop. The other side can see the case
16 develop. People's opinions, and willingness to accept risk,
17 change as they learn more. And that's what's vital to this
18 process.

19 One more point, Your Honor. The insurers argue that
20 the relief we seek is meaningless because we're just going to
21 get it under the plan. We're barking up the wrong tree. Why
22 don't you just accept the litigation option that's granted to
23 survivors under the plan? Why do you need the relief now? And
24 the answer is because the two are not comparable.

25 As we've argued before, Your Honor, the litigation

1 option changes, dramatically, the state law rights of
2 survivors. It strips survivors of bad-faith rights. In turn,
3 an insurer could play with its insured's money and say, I'm not
4 going to settle, with no repercussions whatsoever. And as we
5 know, insurance companies have deep pockets. Survivors don't
6 have time on their side. And so, without that ability to hold
7 the insurers accountable, it's not a fair fight.

8 THE COURT: I probably shouldn't ask you this, but I
9 really can't resist. We had a fair amount of discussion, in
10 the context that I am never going to decide the issue, what the
11 effect of confirmation would be. And my recollection was there
12 was a robust disagreement about that. Are you telling me
13 there's no longer a robust disagreement, or are you just
14 saying, in the worst of all, in the nightmare scenario --

15 MR. WEISENBERG: Your Honor --

16 THE COURT: -- we lose these rights?

17 MR. WEISENBERG: -- there's still a vehement
18 disagreement about what the effect of confirmation of the plan
19 is.

20 THE COURT: Okay.

21 MR. WEISENBERG: If the insurers are right --

22 THE COURT: Yeah.

23 MR. WEISENBERG: -- then a survivor will not have the
24 ability --

25 THE COURT: Okay. I got it.

1 MR. WEISENBERG: -- to hold an insurer accountable for
2 failing to settle in their favor.

3 THE COURT: I got it, I got it, I got it, I got it.
4 Okay. Thanks.

5 MR. WEISENBERG: Compare that to allowing the lift
6 stay cases to go forward. In that instance, everyone's rights
7 stay the same. Good-faith rights, to the extent they exist,
8 remain the same. All the insurers' rights, defenses, and
9 claims stay the same. Same on the survivor side.

10 So you can see, Your Honor, it's not apples to apples.
11 There is a very big difference between allowing these cases to
12 go forward, under the litigation option under the plan, versus
13 lift stay. They are not the same. And that's why the insurers
14 are oh so comfortable saying, Your Honor, what's the problem?
15 We already gave it to them. It's in the plan. No, a very
16 different version of allowing the cases to proceed is in the
17 plan, one that we vehemently object to.

18 Last point. We have been accused of having failed to
19 lift -- or excuse me, having failed to name the cases that will
20 move forward. Obviously, Your Honor, that was on purpose
21 because, had we named the cases, the allegation would be that
22 we cherry picked the cases to benefit state court counsel and
23 certain survivors over others. And so, when we filed the first
24 lift stay motion before you, I recall, in our preliminary
25 statement, we said we are specifically not putting our hands on

1 the scale, because we do not want to be accused of trying to
2 cherry pick.

3 And so it's an impossibility that we can name the
4 cases. It is not our decision. The state court will decide
5 that under its order approving bellwether cases. So we were
6 damned if we do, damned if we don't. We opted for the better
7 sense of valor by saying we're not going to put our thumb on
8 the scale, no one's going to know what the cases are. We all
9 share in the risk that hopefully the state court gets it right.

10 THE COURT: Well, you can make arguments there, right?
11 I mean, whoever makes those arguments can make them, to Judge
12 Chatterjee, about what the right universe is.

13 MR. WEISENBERG: Exactly.

14 THE COURT: And that happens there. That is not my
15 affair; that's his and anybody who's arguing in front of him.
16 Got it. Okay. Thank you.

17 MR. WEISENBERG: Thank you, Your Honor.

18 THE COURT: Thank you very much. Okay.

19 The debtor and the insurers are both opposing, so who
20 wants to go first?

21 MR. MOSES: That would be me, Your Honor.

22 THE COURT: Okay.

23 MR. MOSES: For the record, Your Honor, Shane Moses
24 for the debtor.

25 Good afternoon. As the Court is well aware, and has

1 already been addressed, we were here before, some six months
2 ago, on the committee's first request for the exact same relief
3 that it's again requesting today. The Court denied the
4 committee's motion then. We believe you should deny it today.
5 We understand, certainly, that the prior decision was without
6 prejudice, and that the Court made it clear that the Court
7 would entertain --

8 THE COURT: Yeah.

9 MR. MOSES: -- a renewed motion if changed
10 circumstances merited it.

11 When we were here before, both parties, I think,
12 thoroughly briefed the specific legal issues, the Curtis
13 factors. I'm happy to address any questions that the Court has
14 about any of that. But I think a different focus makes sense
15 today. And I think that's reflected, honestly, in the briefing
16 on both sides on this.

17 Because of where we stand procedurally, I would
18 suggest the question for today is where -- and because that was
19 considered before, and because of the Court's prior ruling, I
20 think the question today is whether something has changed,
21 between six months ago and now, that would justify a different
22 approach than the Court took then. Unsurprisingly, I suppose,
23 we think the answer to that is no.

24 So to go through a little bit of where we are, where
25 we've been, and what the circumstances are, relative to where

1 they are, where they were then. When we were here before, we
2 were in the heat of litigation regarding the disclosure
3 statement. We heard similar arguments about how the debtor's
4 plan was dead on arrival and the disclosure statement could
5 never be approved.

6 But the disclosure statement was approved. It was
7 sent out for voting. As has been pointed out, based on the
8 committee's strong advocacy, perhaps, the survivor class voted
9 heavily against the plan. On the other hand -- so we know
10 that. But on the other hand, we also know that two other
11 classes voted in favor.

12 We're not here to argue plan confirmation. I think
13 that's one of the central points I want to make. But I do want
14 to note, the committee has pointed out that they believe that
15 there were flaws with the votes on those two classes. We'll
16 address that when we get to plan confirmation. But we are
17 confident that, in the end, the votes in the impaired Classes 3
18 and 6 satisfy the requirements of 1129(a)(10).

19 We've also been through extensive discovery on the
20 plan. And at this point, we've been through depositions.
21 We're getting ready -- we've had expert reports. We're
22 preparing rebuttal expert reports. We're preparing for
23 rebuttal expert depositions. So the focus of this case, for
24 the past several months, has been on the plan, on the debtor's
25 case for the plan, on the committee's opposition to the plan.

1 And now, six months after the committee last asked for
2 this relief, when we are headed directly toward plan
3 confirmation -- and we are on both sides, I think. You've
4 heard a lot of frustrations, but both sides, I think, still
5 recognize that the best outcome for this case, by far, is a
6 consensual resolution regarding the plan.

7 Now we're faced with, out of left field, an argument
8 that we should reopen this or lift the stay to allow these six
9 cases to move forward, and that that will somehow help the
10 plan. But nothing has changed that would make that more so the
11 case now than it was six months ago, when the Court heard this
12 before, and we were in the midst of active litigation about the
13 disclosure statement. We're still disputing the plan, but we
14 are that much closer. We've moved that much further forward.
15 We've had that much discovery. So changing the focus now,
16 based on that, does not make sense.

17 The other -- to move on from the plan, there's also --
18 we've heard about the state court litigation. The only thing
19 that's really changed in the state court litigation is that
20 Judge Chatterjee has been supervising it for several months
21 now, whereas he was new. I fail to see how that moves the
22 needle on this.

23 We argued six months ago that one of the principal
24 reasons to deny the motion was the reality that the state court
25 litigation -- that the cases that were selected would not move

1 forward to a point, not reach a point that would inform
2 anything in this case, within a time frame that was meaningful.
3 That hasn't changed, Your Honor, certainly.

4 And on that point, we've heard -- there were
5 presentations, from both Mr. Simons and Mr. Carlucci, before
6 that the Court heard. Today, the only evidence on that is the
7 uncontroverted declaration of Mr. Carlucci. I will get to that
8 issue.

9 But what is clear -- and I don't think it's disputed,
10 to be honest. The committee does not dispute, in its reply,
11 what's set forward in Mr. Carlucci's declaration that, as to at
12 least five of these cases, they have not -- they have barely
13 gotten out of the gate. The case was filed. A fact sheet was
14 exchanged. There's been no motion practice. There's been no
15 discovery. They are starting from square one.

16 And in that circumstance, we're at least a year. And
17 that's from the first trial, in one of those cases. And that's
18 a bare minimum. I mean, it's not realistic to expect that
19 those cases would be selected and that they would proceed to
20 trial in any time that's meaningful here.

21 And in reply and in their motion, the committee points
22 primarily at a single case, the case of Mr. Woodall. That case
23 is certainly, undisputably, further along than any other case.
24 But again, the reality is -- and again, as set forth in Mr.
25 Carlucci's declaration -- the notion that that's going to trial

1 in the next couple of months is just not right.

2 There's still expert discovery to be conducted there.
3 There's still expert reports to be exchanged. There's still
4 expert depositions. There's motion in limine issues. And it's
5 also just starting a case that's been paused for two years now.
6 It's going to be at least six months out to trial. And that's
7 not a time frame that moves the needle.

8 We just heard that the Court -- or, sorry, that the
9 committee -- we just heard a concern from the committee that
10 time and delay is highly prejudicial to the survivors. So it's
11 a little bit confusing to hear now, also, an argument that we
12 should be lifting the stay so that cases can proceed when the
13 first case is more than six months out and other cases are more
14 than a year out.

15 This case -- what's relevant here is this case. This
16 case does not have that kind of time. Yes, we've asked for --
17 since we filed our opposition, we've asked for an extension of
18 a couple of months on the confirmation hearing, but that
19 doesn't move the needle on this. It is necessary for all the
20 reasons we'll get to.

21 But even with the confirmation hearing starting a few
22 more months out, we're still not getting any information from
23 these state court cases. And I'll get to, in a moment, why we
24 don't think it would matter anyway. But if we took the
25 committee's position that somehow these cases moving forward

1 would inform the result in this case, or in settlement, we're
2 not getting there before we're in confirmation.

3 And I think we've been very clear with the committee,
4 and very clear with Your Honor, that we're either getting --
5 there are only three outcomes here, right? There's a
6 consensual resolution, which seems very far away right now, but
7 we all hope. There is a contested confirmation, when this
8 confirmation hearing does come up, assuming it does. Or
9 there's dismissal. And when we get to that point, we're not
10 going to have any information, if it would even help, from the
11 state court cases.

12 But that brings me really to the real question, I
13 think. The crux of this matter is whether lifting the stay,
14 and whatever happened there, would make a difference, would
15 actually inform what's happening here. And there's two ways
16 that it could do that. It could inform settlement negotiations
17 or it could inform the plan confirmation fight, right?

18 It's not going to help the moving toward settlement
19 because, beyond timing, where we're not going to get to a
20 result in a time that helps, a verdict -- in the Woodall case,
21 for example, a verdict tomorrow wouldn't help. It wouldn't
22 inform settlement.

23 RCBO is in bankruptcy because it can't afford to pay
24 the amounts that would likely result from jury verdicts in
25 these 300-plus cases. That's the reality. It doesn't matter

1 if a verdict was a million dollars, ten million dollars.

2 That's not what's driving the settlement, and it's not what's
3 driving the plan.

4 Bankruptcy allows an equitable resolution, it allows
5 an equitable distribution between the survivors, and it allows,
6 either through a plan confirmed over the committee's objection,
7 or through a settlement, it allows an agreement about what, in
8 the context of Chapter 11, is an appropriate amount to pay
9 survivors.

10 What a jury in California might award in a single
11 claim simply does not change that reality. It doesn't change
12 the ability to get to a result here, Your Honor. If there's
13 not a consensual result, it doesn't. That doesn't matter.
14 We've heard the committee bang the drum about value of claims
15 over and over again.

16 And I think we've been consistent in saying the value
17 of jury verdicts is not what drives this case. It's not going
18 to inform what's fair and equitable to pay in a bankruptcy case
19 because, frankly, that's not an argument we're making, that
20 we're paying as much as would be received by, or awarded by,
21 juries in all of these cases.

22 So we're a little confused, frankly, by that single-
23 minded focus. I mean, we heard Mr. Weisenberg say a minute
24 ago -- and I think I might paraphrase this; I hope I get it
25 fairly accurate -- that fairness in this case is based on the

1 law in the circuit, the law in this court, and the assets of
2 the debtor that are available.

3 The state court cases don't inform any of that, Your
4 Honor. So the question is then what are we actually getting?
5 We're told it will put pressure on the insurers, but the
6 insurers have already consented to a plan where the state
7 litigation, all the litigation, can move forward against them.
8 So I'm not sure that's it. I don't see how a single case, and
9 the potential of a single case, is then going to suddenly make
10 money -- make the insurers start writing checks.

11 And I guess there's also a lot of risk the other way.
12 If cases did get to trial, if there were a negative --
13 something happened that affected coverage in a case, what would
14 that do to the potential for settlement in this case? It
15 wouldn't be constructive.

16 So I think the reality here, Your Honor, is this case
17 has to come to a conclusion, right? And like I said earlier,
18 there's only three outcomes, really two, a confirmed plan or
19 dismissal. And a confirmed plan might be either consensual or
20 a cramdown over the objection of the committee.

21 We have to get to one of those two results soon. Yes,
22 a little bit later now than we were thinking a couple of weeks
23 ago, because we have to sell some real estate to fund this.
24 But regardless, in a short period of time, we have to get
25 there.

1 This isn't going to help us get there. This case
2 simply does not have time to wait for state court litigation
3 that's, at best, far out on the horizon and, at best, is not
4 going to provide results that inform settlement here or inform
5 what this Court would rule is fair and equitable or not fair
6 and equitable in a plan.

7 And I guess I finally want to note one thing before I
8 conclude. I'm going to also check in with my colleague. But
9 the issue did come up of whether or not Mr. Simons might
10 address the Court. And I want to make very clear, when these
11 cases will go to trial is a fact issue. We've submitted a
12 declaration on that. There were prior statements that the
13 Court has considered and I'm sure we'll consider again. But
14 that's a fact issue. If there's going to be testimony about
15 that, we need to set an evidentiary hearing to hear it, not
16 hear it today.

17 With that, I'm going to check in with my colleague if
18 the Court --

19 THE COURT: Sure.

20 MR. MOSES: -- doesn't mind. That's all, Your Honor.

21 THE COURT: Okay. Thank you. So some of the insurers
22 have filed pleadings. And why don't we begin with counsel
23 who's here today?

24 So Ms. Daniels, did you -- it's totally up to you. If
25 you want to defer, that's very elegant.

1 MS. DANIELS: I don't want to go until --

2 THE COURT: Okay. Well, then go ahead then. And then
3 let me see who among the insurers wants to go ahead and give me
4 their thoughts.

5 MR. JACOBS: Your Honor, if I might, for Westport.

6 THE COURT: Yeah. You actually filed an objection,
7 right?

8 MR. JACOBS: Yeah, we did.

9 THE COURT: Okay.

10 MR. JACOBS: Let me start with, you asked earlier --
11 and I think this is relevant to the lift stay motion -- what
12 the Court could do to help untangle this mess. And it's always
13 with some trepidation that I tell a judge what he or she can't
14 do.

15 THE COURT: Well, can I maybe take some of the
16 pressure off? I asked it initially as a philosophy question,
17 not what should I do, what can I do? Okay? So if you want to
18 start answering it in that guise, feel free. And then you can
19 tell me what I should do which is ordinarily what you're doing.
20 Okay.

21 MR. JACOBS: So what I can do -- thank you for that.
22 What I can do is tell you what some of the other judges in
23 diocese cases have done --

24 THE COURT: Sure.

25 MR. JACOBS: -- that I think has been effective. One

1 of the things you could do, and I think maybe you'd need to get
2 the consent of the parties, is ask the parties whether you can
3 speak directly with the mediators about what's going on. That
4 way it respects mediation privilege, and you can get the
5 mediator's direct take on what's going on.

6 Judge Littlefield is doing that right now in the
7 Albany case. I think he talked to the mediators once, and he's
8 going to do it again, if folks consent. And I don't have
9 authority to do that today for the client, but I would
10 certainly --

11 THE COURT: Okay.

12 MR. JACOBS: I would certainly talk to them, Your
13 Honor.

14 THE COURT: Okay.

15 MR. JACOBS: I think it's probably a pretty good idea.

16 THE COURT: Okay.

17 MR. JACOBS: So that's one thing. A step beyond that,
18 and I think I mentioned this when we did this six months ago,
19 Judge Warren, in the Rochester case, actually mediated with the
20 consent of the parties. I think he required folks to say that
21 they were not going to try and conflict him out before he did
22 it. But everyone agreed, and he came to the mediation. And
23 I'm not going to tell you what happened at the mediation, but I
24 thought it was really effective. And most of the insurers have
25 settled. There's one insurer that hasn't at this point.

1 So again, I don't have authority to do it today for
2 the client. But if Your Honor would consider mediating the
3 case, along with the mediators, or however you wanted to do it,
4 I think it's something to think about. I think folks would
5 have to consent to it. But in a sticky situation, it can -- I
6 thought it did work in Rochester. So I will throw that out to
7 you as an idea.

8 THE COURT: Okay.

9 MR. JACOBS: To the lift stay motion itself, so I want
10 to talk a little bit about the legal issues, but I think that
11 it's been pretty well briefed. And frankly, I don't think I
12 would do much better than Judge Poslusny did in his recent
13 ruling. We're counsel in the Camden case as well. Lowenstein
14 has the committee; we have one of the insurers. So I'm pretty
15 familiar with that.

16 Mr. Weisenberg is right that one of the reasons that
17 Judge Poslusny didn't lift the stay was because the case was on
18 appeal, and he thought that had divested him of jurisdiction.
19 But he went on to give a number of other alternative reasons
20 for the ruling. And I would encourage Your Honor to read that.

21 THE COURT: Yeah.

22 MR. JACOBS: I think he made at least three other
23 points on discrimination. I think Century put in a separate
24 brief here on discrimination. I won't do any better than what
25 they have in their brief or Judge Poslusny.

1 THE COURT: It's not as if I haven't read it. I was
2 inviting Mr. Weisenberg to tell me why this was different,
3 okay? I get it. You can go ahead.

4 MR. JACOBS: And then the committee lacks standing; I
5 think you already got that point.

6 And then we don't have any notice of which claims are
7 actually going to be released, which I think, sort of, as a
8 practical matter, makes a big difference, at least for the
9 insurers because, if they release four to six claims that
10 aren't in my clients' policy periods, like, we don't care.
11 That's somebody else's problem.

12 So you really need to know which cases are going out
13 and notice so that everyone has an opportunity to comment on
14 it, I think. And with all respect, I think that's actually
15 your role. And with all respect to Judge Chatterjee, that's
16 your job, Your Honor. I think that's what Judge Poslusny said.

17 On the timing issue, I think, well, the committee is
18 taking the position today that the confirmation trial ought to
19 go forward next month. If that's what the end result ends up
20 being, it seems to me that this is particularly badly timed
21 when everyone would be devoting their resources and time to a
22 confirmation trial. So I know Your Honor hasn't decided the
23 Diocese motion, but if you did go with the committee's position
24 here, I think that is a reason to deny their motion.

25 And the last thing I wanted to say, and really, the

1 thing -- I come to this last, but maybe to me, at least, the
2 most important thing that I think I could probably add to this
3 discussion is that a lot of the folks on this Zoom are in many
4 of these diocese cases, as are we. We're in virtually all of
5 them. And we have, on behalf of another client, actually
6 settled four of these cases, Your Honor.

7 I'm happy to report that the Diocese of Harrisburg,
8 Diocese of Rochester, Diocese of Rockville Center, and most
9 recently, Diocese of Syracuse, in front of Judge Kinsella,
10 settled recently. And in none of those cases was the stay
11 lifted so that test cases could go out against the Diocese. It
12 wasn't necessary.

13 I'm not going to talk about what goes on in the
14 mediation without getting authority. I think the mediation
15 privilege is important. But the absence of the lift stay, I
16 think, tells you a lot about whether it's a driver, or not, of
17 settlements. In some of the cases where the lift stay has
18 actually been granted, I'll tell you, they haven't settled.

19 And I'm not going to talk about them one by one,
20 because I think I'm going to get too close to violating the
21 mediation privilege. But I was working on one this morning, on
22 the East Coast, where there's a main mediation in the main
23 bankruptcy, and then there are test cases in the state court
24 that have been sent out.

25 And I'll just tell you, from personal experience, the

1 state court mediation -- we love the state court judge. He's
2 doing a great job. But it has become a total sideshow to the
3 main mediation. I think there is still some hope that the main
4 case is going to settle, but the lift stay in the state court
5 has, if anything, made it more difficult. And it has also
6 taken away time from the professionals who I think should be
7 working on a global resolution in the main case.

8 And I think, just as a practical matter, Your Honor,
9 the there's a lack of evidentiary basis for this notion that
10 sending out test cases is going to make any difference. I'll
11 tell you, so our some of our clients, they're large insurance
12 companies. We have a lot of data. We're in all of these
13 cases. Honestly, we don't need any more data from individual
14 cases to move these forward. That's not really what the issue
15 is in the mediations.

16 And I guess I will circle back and conclude with,
17 maybe this is why it might be a good a good opportunity or a
18 good idea for Your Honor to think about either talking to the
19 mediators, or mediating the case yourself, because I think
20 that's really the only way that you may actually see what the
21 problems are here and how to solve them. I think that's all I
22 have.

23 THE COURT: I appreciate it. Thank you very much as
24 always. Thanks a lot. Okay. Anybody --

25 MR. JACOBS: Thank you.

1 THE COURT: Other than counsel in the courtroom,
2 anybody else on the Zoom talking?

3 No? Okay. Come on up.

4 MS. DANIELS: Thank you. I want to focus --

5 THE COURT: You better remind everybody who you are.

6 MS. DANIELS: Justine Daniels for the Pacific
7 insurers. We're also called Century.

8 THE COURT: Okay. Thank you.

9 MS. DANIELS: Thank you, Your Honor.

10 Regardless of whether or not the confirmation hearing
11 goes forward at the end of August, or on the new date, the fact
12 remains that, even if the stay were lifted today, there is no
13 way the cases would be resolved by that time.

14 And let's say the bankruptcy continues after that.
15 What are we going to have? We're going to have six claimants
16 that are well advanced from all the other claimants. Those
17 people are going to have an opportunity to complete their
18 discovery, do their expert reports, and potentially go to trial
19 and have judgments in hand, judgments that they're not going to
20 liquidate, but they will still have those in hand.

21 You are the judge. I don't need to tell you what the
22 Bankruptcy Code says, but Section 1123(a)(4) provides that all
23 members of the same class should be treated in the same way.
24 Those six claimants, regardless of how they're chosen, are
25 going to be well advanced in front of everybody, in front of

1 all the others. That's not the equitable treatment that the
2 bankruptcy process envisions.

3 What's more, what's worse, if they have judge -- to
4 the extent that they secure judgments, how will that impact any
5 form of plan negotiation? Their cases have been tried. They
6 know what those cases are worth. That completely
7 disincentivizes them from participating in the negotiation of
8 the plan. And they're going to stick on insisting on getting
9 much more than the other cases are worth.

10 Your Honor, I understand that you may have questions
11 about the impact of the discrimination argument, and I'm happy
12 to answer to those today. But it is an issue that was
13 recognized in Camden, in New Orleans, and -- I'm going to mess
14 up the pronunciation of this -- Agana. And it is a very real
15 impact. And that happens regardless of how the cases are
16 selected or when they proceed. So I'm happy to answer any
17 questions you may have.

18 THE COURT: Help me out with 1123(a)(4), the argument
19 you want to make there, okay? That seems to restrict what,
20 theoretically, the proponent of a plan can do with respect to
21 treatment of claims, right? Is that relevant here?

22 MS. DANIELS: Yes, it is, because it is emblematic of
23 the ultimate purpose --

24 THE COURT: Well, let me stop you midway there, okay?
25 Is it, arguably, not emblematic? Because the point of this is

1 that committee is opposing this plan, and what they're saying
2 is we'd like relief from stay to sort of change the ground
3 under which we're arguing here. I mean, it's not really
4 1123(a)(4), is it? Because that would go to whether the plan
5 was proposing to do something different to different parties.
6 That's not what's happening here at all, right?

7 MS. DANIELS: Those other parties will enter into the
8 plan negotiation --

9 THE COURT: But isn't this about --

10 MS. DANIELS: -- with an advantage --

11 THE COURT: But isn't this about what the plan does,
12 what the plan may do, right?

13 MS. DANIELS: It is about what the plan may do --

14 THE COURT: And you're telling me --

15 MS. DANIELS: You're correct --

16 THE COURT: -- that there's a ripple of that, that
17 reaches somebody who is bitterly opposed to the plan and wants
18 to basically change the direction of the case, that 1123(a)(4)
19 should apply to that too?

20 MS. DANIELS: Correct.

21 THE COURT: Why?

22 MS. DANIELS: And that's what --

23 THE COURT: Why?

24 MS. DANIELS: That's what was found in Camden. That's
25 what was found in --

1 THE COURT: And I may not be agreeing with those
2 folks. So help me out with that. What's the connection
3 between 1123(a)(4) that says the proponent of a plan may craft
4 it in this way, but they may not do X? This is not the debtor
5 choosing whether to let people go forward and have relief from
6 stay or not, right? This is somebody who is bitterly opposed
7 to that plan. How can 1123(a)(4) govern that?

8 MS. DANIELS: Again, because it's emblematic of the
9 purpose of the Code.

10 THE COURT: That may be true, but I mean, this is a
11 fairly limited instance of that, isn't it? I mean, this is
12 telling the debtor or the plan proponent what they can do,
13 isn't it?

14 MS. DANIELS: You're specifically referring to the
15 Code section?

16 THE COURT: Yeah.

17 MS. DANIELS: Correct, sir.

18 THE COURT: Okay. So I'm right about that. So
19 1123(a)(4) is not a very good support for your argument, right?

20 MS. DANIELS: No, I disagree, Your Honor.

21 THE COURT: Okay. All right. We're going to disagree
22 about that. But I know you have a deeper sense that the Code
23 would frown on this, okay, I mean, putting aside 1123(a)(4).
24 Have at it on that one, okay?

25 MS. DANIELS: It's for the reasons I expressed. It

1 takes these six claimants and puts them well ahead. It puts
2 them well ahead of all the others. And again, that's going to
3 have even -- that's going to have an impact both on plan
4 negotiations as well as putting them out in advance of all the
5 other claimants.

6 THE COURT: Okay. Okay. Thank you very much.
7 Anything else you want to tell me?

8 MS. DANIELS: I think that's it for now.

9 THE COURT: Okay. Thank you very much.

10 MS. DANIELS: Thank you.

11 THE COURT: Okay. What I would like to do -- we've
12 been at this for a while. I'd like to let Mr. Weisenberg give
13 me his last thoughts, as the proponent here, and then take a
14 break and let me think for a minute. I mean, like, five
15 minutes, okay?

16 So is that acceptable to folks?

17 Okay. Come on up.

18 MR. WEISENBERG: Thank you, Your Honor. Brent
19 Weisenberg, of Lowenstein Sandler, on behalf of the committee.

20 The committee is not going to address the parade of
21 horrors marched out by the insurers. We've heard them on
22 countless occasions. And Your Honor has most recently heard
23 them in the Franciscan Friars case. The sky is not falling.

24 Why do we need bellwether trials? We need bellwether
25 trials, in addition to the reasons I've given you, to help

1 value claims. Even under the plan itself, Your Honor,
2 remember, we've had a lot of colloquy about what is a claim's
3 value and how can you determine if the treatment being provided
4 to survivors is fair and equitable unless we have a sense of
5 what the claims are worth, in the aggregate, under state law.

6 How else can you possibly determine if 115 million is
7 fair and equitable, if we don't know what the value of the
8 claim is? If the claims were worth 10 billion dollars and the
9 debtor was proposing to pay 115 million, that looks very
10 different than if the claims are worth 200 million. And so
11 these cases are important to that end, in and of itself, in
12 addition to all the other reasons we've shared with you.

13 Ironically, Your Honor -- and we put this in our
14 papers -- the Diocese participated in selecting and advancing
15 the cases in the state court through the bellwether process.
16 In fact, Mr. Woodall's case was selected by the debtor. So
17 this sudden notion that all of a sudden bellwethers are a
18 fool's errand and don't work is completely belied by the fact
19 that the debtor itself agreed to that process in the state
20 courts.

21 Your Honor, you've also addressed the notion that the
22 insurers are entitled to notice of particular cases in the
23 Friars case. Your Honor considered that, did not ultimately
24 rule on that issue, and again, we've very particularly chosen
25 not to pick the cases so as to avoid being tarred with

1 favoritism.

2 Your Honor, at the last hearing on the original
3 motion, you felt it helpful, or I believe you found it helpful
4 to hear from Mr. Simons. He was truthful, he was transparent,
5 and the Court found that everything he had to say was helpful,
6 even in the sense that you used that information to rule
7 against us. We would like, Mr. Simons just to come up to
8 provide some additional information about where things stand in
9 the state court. But obviously we leave it to you, Your Honor.

10 THE COURT: Okay.

11 MR. MOSES: Your Honor, I need to reiterate the
12 objection I made to that.

13 THE COURT: I appreciate that.

14 Let me ask a couple questions, okay, and then think
15 about Simons. I know it's very hard to, sort of, quantify
16 this, but one of your theses is we don't have to get to trial
17 resolutions to have this do some good, right? Give me the
18 sense of that again.

19 MR. WEISENBERG: Sure. Your Honor, our hypothesis has
20 been that the threat of trial forces people to get real about
21 the pros and cons of their lawsuit. It is not just being in
22 the physical courthouse when parties have to get real. It's
23 the process. It's the process of learning additional
24 information about your case and about the other side's case.
25 That process includes interviewing witnesses, having

1 depositions, having information shared through discovery. It
2 is through that process itself that parties have to look inward
3 and say what are the risks and rewards of trial? Because until
4 the parties are forced to think hard about that, we all have
5 bravado about our cases.

6 Everyone thinks they have a bulletproof case that
7 they're going to win. But once we're marching towards trial,
8 both sides will have to recognize that, if there are flaws in a
9 witness' testimony, or a particular priest cannot be placed in
10 a particular location, that's problematic. But right now, no
11 one has to worry about that because nothing has started.

12 And so it is not just the trial itself which is the
13 springboard from which settlements arise; it's marching down
14 that path where people start to get real. And until we focus
15 the parties on getting real, neither the debtor nor the
16 insurers have any reason to be realistic about claim value.

17 The insurers say they have plenty of information from
18 across the country about claim value. I don't know if that
19 necessarily includes California. I know that it doesn't
20 include an Alameda County jury recently in an Oakland Diocese
21 case. I think that's more indicative of what value is.

22 And so the parties can have all of the data in the
23 world, but what matters is what's going to take place in the
24 context of the Oakland Diocese state court actions. And like
25 we said, Your Honor, last time, fortuitously, allowing just

1 seven cases to go forward helped resolve fifty-four.

2 THE COURT: One last question, are you agreeing with
3 me on 1123(a)(4), that that goes to what a plan can say, as
4 opposed to what you can say to try to change the dynamic here?

5 MR. WEISENBERG: Your Honor, that's exactly right.
6 And that's why we began with not trying to shoot at straw men.
7 We were very specific in the relief we requested.

8 THE COURT: Yeah.

9 MR. WEISENBERG: Nobody is seeking to classify these
10 claims under a plan. That is a question for another day.
11 These claims --

12 THE COURT: Well, and to -- sorry to interrupt you,
13 but if you think about the stay as something both larger, and
14 the whole point of it is it's malleable, that's the point of
15 this stay. I mean, it begins with sort of a ham fisted, thou
16 shalt not do all these things.

17 But I mean, I said this in another context once,
18 Congress used four verbs in telling me what I can do with the
19 stay, right? The whole point is it's malleable. And the whole
20 point of that is that, were I to grant some version of relief
21 here, we're just now in a different world. And maybe there
22 will be a different plan. Who knows?

23 MR. WEISENBERG: Exactly right.

24 THE COURT: That's why 1123(a)(4), to me, just is --
25 it's a very important issue. It's just a different one, in my

1 view.

2 MR. WEISENBERG: Agreed, Your Honor.

3 THE COURT: All right. Well, I -- okay. Anything
4 else?

5 MR. WEISENBERG: Just whether Your Honor would find it
6 helpful for Mr. Simons --

7 THE COURT: I want to think a little bit, and I'll
8 come back and address that, too. Okay?

9 MR. WEISENBERG: Okay. All right. Thank you, Your
10 Honor.

11 THE COURT: Thank you very much. I'm thinking no more
12 than ten minutes, folks. Is that okay?

13 MR. JACOBS: Your Honor, might I have thirty seconds?

14 THE COURT: I don't have a problem.

15 Mr. Weisenberg, are you okay with that?

16 Okay. We'll be counting, though. Okay. So --

17 MR. JACOBS: Your Honor, I just want to respond to the
18 argument that the threat of trial, the threat of moving things
19 forward, will motivate people. The last thing that settlement
20 in this case needs is for the committee to be saying we need to
21 wait for a settlement to happen in another case. Thank you,
22 Your Honor.

23 THE COURT: Okay. Appreciate it.

24 All right. Thanks. See you in a few minutes.

25 (Recess from 2:42 p.m., until 2:53 p.m.)

1 THE COURT: Okay. I know there was there was a
2 pending request re: Mr. Simons. I don't think I need to hear
3 it, okay? So I'm ready to give you guys my thoughts. Is
4 anybody not here who needed to return? I guess maybe not.

5 Okay. I'm going to line. And here's my thinking about
6 the concerns and issues that were raised by the debtor and by
7 the insurers. And by the way, thanks to all of you for your
8 very good arguments here.

9 First of all, going back to something that's very
10 fundamental here, the function of the automatic stay in a
11 bankruptcy. It is obviously a fairly bedrock concept in a
12 bankruptcy, and it's meant to facilitate, at the outset, in the
13 broadest possible way, all the opportunities to reach either a
14 fair liquidation or a feasible reorganization. And it does cut
15 pretty broadly.

16 In cases recently, it has been stretched even more
17 broadly. I'm not one of the judges who easily has granted
18 those kinds of requests, but I'm certainly aware that, in many
19 cases, the automatic stay has been stretched, or something like
20 it has been stretched, to have a lot of other ripple effects in
21 cases involving one debtor and possibly more than one liable
22 party. But put that aside for a second.

23 The whole point of the stay, to me, is that it is a
24 tool, and it is malleable, and it has different relevance at
25 different times of the case. And that's particularly important

1 because, when you think about why a bankruptcy is different
2 from your everyday litigation, it's different in a lot of ways
3 that really inform the flexibility that I think you have to
4 bring to these questions.

5 When we're talking about litigation, we're talking
6 about a vehicle through which, in the simplest terms, a
7 plaintiff brings an action about a subject matter against a
8 defendant and asks for relief. Now, there may be amendments,
9 and there may be some complications, and things may shift a
10 little bit, but you begin that exercise with a pretty good idea
11 of what the parameters are. And they're defined by the
12 plaintiff, as the protagonist, at the outset of the case. And
13 one works one's way through, typically on a bunch of historical
14 questions, what are the facts, what are the theories of
15 liability, whether the theories satisfied or not? What's the
16 outcome? What's the remedy?

17 Bankruptcy is entirely different in all kinds of
18 glorious ways, the first of which is it begins with a request
19 for relief that's a petition. And the things that define the
20 problem, initially, are the pleadings that the debtor puts
21 forth that indicate who's owed money, who has an interest in
22 the case, what are the assets of the debtor? What can we do
23 about this is sort of implicit in all that.

24 We define the issues as we go in a bankruptcy. That's
25 the whole point of Chapter 11, is that we begin with a rough

1 idea of what the landscape is and what the dynamic is, but we
2 shape that as we go to get to the end of a fair liquidation or
3 a feasible reorganization. The stay helps that by allowing
4 that to happen as much as is feasible. There are times when
5 annulling or modifying or terminating or restricting the stay
6 helps that.

7 So we have to think about the stay, in my view, as
8 something that is malleable. And the whole point is that it's
9 malleable and flexible, and it's a tool to help us get to this
10 end of a feasible reorganization, if we can have it. For that
11 reason, I simply -- I don't believe that the standing argument
12 really is much of a prohibition here, because I think the
13 consideration of how the stay plays out is not just a
14 particular question of whether this creditor can do a certain
15 thing.

16 It's also necessarily a much broader question of what
17 ought to happen in different places and how can the ability to
18 go forward in other places, and have other courts do other
19 things, how will that inform our process here? And I think
20 that is a question that can certainly be brought by a committee
21 whose purpose is to try, among other things, to regulate the
22 process whereby we're going to get to a solution.

23 So I don't think, to the extent that standing would be
24 an impediment here, because you would expect a particular party
25 to ask for relief from stay -- they may. But the fact that it

1 is a more general and generic request by somebody who is
2 looking at a case, and has a different theory on how it ought
3 to progress, I think is not a standing problem for me. So I'm
4 not going to deny this on standing grounds.

5 I'm also not going to deny it on what I'll just say,
6 generically, are 1123(a)(4) grounds. The whole point of the
7 motion for relief from stay is that we need to have a slightly
8 different dynamic here. We need information, and we need to
9 have people realize what some risks are that they're not
10 realizing right now. I think that's quite true.

11 1123(a)(4) absolutely is indicative of a bankruptcy
12 purpose that, when we start classifying claims, and we start
13 telling people how we're going to treat them, and as we put
14 that on the old plan of reorganization express, we end up in a
15 fair place.

16 The question of relief from stay is a different
17 question, because implicit in that is maybe we have to do this
18 a little bit differently. Maybe there's another plan, or maybe
19 there's something else we have to think about. And the
20 committee is not a plan proponent. So to the extent 1123(a)(4)
21 is restrictive, it's really most obviously restrictive on plan
22 proponents.

23 And we don't know where this is going to end up.
24 That's the whole point. We don't know where this is going to
25 end up, and we don't know how much granting relief from stay is

1 going to help here. I tend to think it will be significantly
2 helpful, and I'll get to that in just a second. So for all of
3 those reasons, those objections are not objections that I think
4 are showstoppers here.

5 I also don't think, at the end of the day, that there
6 is enough of a discriminatory factor, generally, here to be a
7 showstopper. What we would be allowing to have happen is the
8 people who will be making decisions about what goes forward,
9 and when it goes forward, and how it goes forward, were there
10 no bankruptcy, are going to be doing that. And they know how
11 to do it.

12 And Judge Chatterjee now has been on the job for six
13 months, and I think I have no reason not to trust his judgment,
14 and even more profoundly, not to trust all of you who would be
15 in front of him telling him how he should be weighing and
16 balancing all these factors as he makes whatever wise judgment
17 he's going to make. You're all going to have that opportunity.
18 And I think that is very much his bailiwick and not mine.

19 I also think that whether you actually get to actual
20 judgments, between now and the time when a plan otherwise would
21 be confirmed, maybe that's unlikely. Maybe it's only likely if
22 things were to settle. And things settle because people want
23 them to settle. So for all of those reasons, the anti-
24 discrimination issues, I think I -- it's not that I don't take
25 them seriously. I don't think they're terribly implicated

1 here, for all of those reasons.

2 And then lastly, is there cause? I think there is.
3 It may seem paradoxical that I'm more likely to find that now
4 than I was six or seven months ago, but six or seven months ago
5 we were in the somewhat less defined place of there's a plan
6 out there, people are talking, there's objections, maybe we end
7 up with something resolved, maybe we don't.

8 And my instinct, at the time, was to be much more
9 mindful of how quickly relief from stay was going to turn into
10 something like a trial and a verdict and a judgment or an
11 actual determination. I'm not so stuck on those premises now.
12 It's absolutely clear to me that other good things could come
13 from the ability to advance some aspects of the litigation
14 here, that if it does happen that something is tried relatively
15 quickly, I think it can only help.

16 I think it is also not inconsistent with the plan, the
17 ultimate purpose of which is to say, if you don't like the
18 resolutions you can get consensually, you can go ahead and
19 liquidate your claim. All this is doing really is doing that
20 without some of the restrictions that the plan would put on
21 that process. And in my mind, there's no reason not to begin
22 that process, even if humbly and small and modestly now. I
23 think it's a good idea.

24 And I also think -- and again, this is not something
25 one can easily quantify -- that it's one thing to look at that

1 process in the context of a plan, the confirmation of which is
2 not certain and the outcome of which is considerably down the
3 road. I don't think that that process necessarily focuses the
4 attention of all of the parties the same way that allowing
5 something to begin right now will have.

6 And I believe that allowing someone to begin right now
7 will have a great effect and a great help in focusing people on
8 the need to come together as much as they can, to express what
9 their differences are, and to try to get a resolution here that
10 might even be consensual. There's an old saying that nothing
11 focuses attention like a firing squad. And to some extent, to
12 the extent we're headed toward a plan confirmation hearing so
13 far, still at the end of August, I realize this is going to
14 create additional pressures on everybody. I realize that
15 you're already probably straining to do your jobs well, as I
16 know you always do. But I think that adding this factor, in my
17 mind, can only help, whether it's information to be had,
18 whether it's resolutions by settlement, or whether it's just
19 that sense that we all need to be worried about the uncertain
20 outcomes here.

21 All of those reasons suggest to me that those are good
22 cause reasons to lift the stay. And that's what I'm going to
23 do for the reasons stated on the record. Okay? Don't try to
24 encapsulate everything I just said. But I firmly believe
25 that's the right answer here. All right?

1 Okay. Thank you very much. And thank you all for
2 your good arguments. All right. And I don't know if there's
3 anything in the order that needs to address when people go see
4 Judge Chatterjee. I mean, I leave that to you folks to work
5 through logistics.

6 Okay. What should we do next? What's next on the
7 agenda?

8 MR. PROL: Judge, I think the two remaining things are
9 the motion with regard to the payment to the Cathedral Corp.
10 and the fee issue. I think I prefer to address the Cathedral
11 motion first. I think they're kind of --

12 THE COURT: I'm sorry. Which motion?

13 MR. PROL: The motion regarding the payment to the
14 Cathedral.

15 THE COURT: Okay. Is that you?

16 MR. PROL: That's me, Your Honor.

17 THE COURT: Okay. Come on up.

18 MR. PROL: Before I address that, Your Honor -- Jeff
19 Prol, Lowenstein Sandler, on behalf of the committee -- Your
20 Honor asked Mr. Weisenberg a question, at the inception of the
21 hearing, about whether or not the committee had made a demand.
22 And if I could just backtrack and address that very, very
23 briefly.

24 Without violating the mediation privilege, I can say
25 that there was some back and forth in mediation. We made a

1 demand, there was a counter, I think we came back and
2 countered, and the debtors clearly made the last offer. The
3 committee has not moved from the demand that it put on the
4 table, which probably was ten months ago or so when the
5 mediation broke down.

6 And the reason for that, Your Honor, is, based upon
7 the law and the facts as we understand them, we don't believe
8 that we should move. And it kind of underscores the ruling
9 that Your Honor just made with regard to stay relief and the
10 reason we're opposing an adjournment of the confirmation trial.
11 Litigation prompts parties to move.

12 The debtor apparently shares the same position because
13 they haven't moved in almost the same amount of time. And all
14 of a sudden now we're feeling -- we're both feeling the
15 pressure of an upcoming trial. And Your Honor --

16 THE COURT: Are you standing up to object to
17 something, Ms. Uetz, or --

18 MS. UETZ: I'm just confused if we're talking about
19 mediation or not talking about what we said in mediation. I'm
20 confused about the mediation privilege and what we're sharing
21 with Your Honor. So if we're sharing mediation privileged
22 information with Your Honor, I'm happy to address that as well.
23 That's my point.

24 THE COURT: Well, in your mind -- look, I asked the
25 question whether the committee had -- whether your statement

1 that they hadn't made an offer in ten months were true. I got
2 a quasi answer to that. I'm getting a contextualized answer to
3 it now. I can cut this off for now.

4 Why don't we just jump to the fee issue for now, Mr.
5 Prol, okay? We can come back to this if we need to.

6 MR. PROL: Sure. So Your Honor, as I said -- this is
7 not the fee motion, Your Honor. It's the motion where we
8 object to the payment by the debtor --

9 THE COURT: Yeah, go ahead.

10 MR. PROL: -- of approximately three quarters of a
11 million dollars.

12 THE COURT: Go ahead. Yeah.

13 MR. PROL: And these two motions really go to the
14 heart of our concerns with where we are with regard to the
15 status of this case. The debtor is pleading poverty, claiming
16 that they're initially insolvent. And they've taken two steps
17 recently that address this.

18 One is they're proposing to pay approximately 725,000
19 dollars to CCCEB, which is the owner of the Cathedral property.
20 And they claim that it's rent or use and occupancy charges for
21 the next quarter. They have not produced a written lease. And
22 they've acknowledged in their papers, again, that they simply
23 can't find it.

24 Over the past two years, they've paid 7.56 million
25 dollars to CCCEB for the use of these premises. But that

1 occurred during a period where we were working together towards
2 a consensual plan of reorganization. We did have concerns, and
3 you can see, from the debtor's pleadings, that we asked
4 questions, chose not to object in the spirit of working towards
5 a consensual resolution of this case.

6 But the case has now changed dramatically. The debtor
7 decided to attempt to cram down a plan over survivor
8 objections. That plan is on the ropes. We believe we have
9 strong arguments why that plan should not be approved. And as
10 I said, we look forward to that trial where Your Honor will
11 call balls and strikes. We may win some. We may lose some.
12 They'll win some. They'll lose some.

13 Coming out of that trial, we'll have more clarity in
14 terms of our positions. But under the circumstances now, it's
15 fundamentally unfair for this debtor, who claims it doesn't
16 have sufficient assets to pay administrative claims -- it
17 recently filed, and Your Honor approved a motion, that we
18 settled, to modify the administrative fee order, so that the
19 professionals in the case are taking additional risk in
20 financing this case. But yet the debtor wants to continue to
21 pay an affiliate who owes forty-one million dollars under a
22 defaulted loan. So with interest, I don't know what that real
23 number is.

24 But CCCEB owes over forty-one million dollars to this
25 estate. And yet here they stand saying let us pay them three-

1 quarters of a million dollars to pay the rent for the next
2 quarter, with no evidence before the Court in terms of what
3 that rent is, where that money's going.

4 We argue in our papers that this is not an ordinary-
5 course transaction. There's no written agreement. It's a
6 transaction involving an insider and an affiliate, and that
7 transaction requires heightened scrutiny. But even if it is
8 ordinary course and the business judgment standard applies, we
9 think Your Honor should interject yourself here. Again, it's
10 simply not fair that an affiliate with an administrative claim
11 is getting paid when other administrative creditors are being
12 told there's no more money, we need to slow down payments.

13 As Mr. Weisenberg said in his opening remarks, we
14 predicted this. We did not want to go down this road of this
15 contested confirmation. We were aware, we were concerned that
16 the fees would escalate. They always do when you face trial,
17 especially on an expedited schedule.

18 The debtor responds, basically, complaining that the
19 committee has been aware of this for two years and hasn't
20 objected previously. I explained why we didn't object
21 previously. But we think this issue is ripe to be addressed
22 now.

23 They also criticized the committee for filing this
24 motion and not attempting to work it out with them. But as you
25 can see from both their papers and our papers, we did write to

1 them, before the motion was filed, asking them to commit to not
2 paying this until it was addressed by the Court. And implicit
3 in that, I think, was a willingness to talk. We've always been
4 willing to talk. We got no response. That was the reason the
5 motion was filed.

6 They also argue that the Cathedral, CCCEB, has no
7 resources to pay the loan. But again, as Mr. Weisenberg
8 pointed out, back in November of 2024, when the debtor was
9 complaining that it didn't have sufficient resources to
10 continue to fund this case, CCCEB came up with four million
11 dollars, or so, to pay.

12 And this is part of the problem in the case. The
13 debtor here claims that all the entities are separate and
14 distinct, but when money needs to move, it seems to find a way
15 to move. I'd also reference the transactions prior to the
16 petition, where the debtor transferred -- and we had a debate
17 about what that transfer looked like -- funds to the OPF and
18 then the loan was made back. We essentially see this, Judge,
19 as a crisis of their own making.

20 CCCEB also -- they also complained that, if this rent
21 payment is not made, CCCEB won't be able to make payment of its
22 various expenses. And again, that's an unfortunate
23 circumstance of a Chapter 11 case. We've urged the debtor to
24 use this Chapter 11 case not only to seek to discharge survivor
25 claims but also to commit to a financial restructuring. If the

1 debtor can't afford to drive a Cadillac, it's got to stop
2 driving the Cadillac.

3 And finally, Your Honor, there's simply no reason why,
4 if the debtor is under financial constraints, that it should be
5 paying expenses a full quarter in advance. If Your Honor is
6 inclined to allow these expenses to be paid, we would request
7 that Your Honor carefully scour the expenses that are supposed
8 to be paid, to make sure that they're absolutely necessary and
9 required and perhaps dole them out on a monthly basis or even
10 on an as-needed basis so that the payments are made, not a full
11 quarter in advance, but as they absolutely have to be made.

12 THE COURT: Okay.

13 MR. PROL: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Who wants to address this? Okay.

16 MR. MOSES: Your Honor, Shane Moses, Foley & Lardner,
17 for the debtor.

18 THE COURT: By the way, can I just say for the record,
19 everybody is in agreement that we should talk about this now.
20 It was brought up somewhat precipitously, and nobody's
21 sandbagged. Everybody okay?

22 MR. MOSES: I assume, from Mr. Prol's statements, that
23 he's okay.

24 THE COURT: Okay.

25 MR. MOSES: From the debtor's point of view, we're

1 fine. If there's some need to have a --

2 THE COURT: No.

3 MR. MOSES: -- continued discussion, we can have that
4 but --

5 THE COURT: And there may be.

6 MR. MOSES: But I think it makes sense to go ahead and
7 address --

8 THE COURT: Okay. I don't want to.

9 MR. MOSES: -- now.

10 THE COURT: Okay. I appreciate that. Thank you.

11 MR. MOSES: So I want to address a few things here,
12 Your Honor, on this. First of all, I think there's a lack of
13 context here. We've been hearing about, oh, well, this is an
14 affiliate. It's receiving money. It owes the debtor a ton of
15 money. Why isn't this all set in --

16 THE COURT: Actually, can I ask you -- can I ask you a
17 question at the beginning?

18 MR. MOSES: Sure.

19 THE COURT: And this may be totally out of context.
20 In what sense is this really a loan? I mean, they're
21 describing a loan of forty-million dollars from the debtor to
22 this CCCEB entity. Is it really a loan? And is it treated
23 that way? Is it that way on the books?

24 MR. MOSES: It's that way on the books, Your Honor.
25 It's treated that way.

1 THE COURT: Okay.

2 MR. MOSES: It originates with the construction of the
3 cathedral.

4 THE COURT: Yeah. Well, then --

5 MR. MOSES: And the way that project was structured,
6 title to the cathedral is held by CCCEB.

7 THE COURT: Um-hum.

8 MR. MOSES: A great deal -- a substantial part of the
9 funding for construction came from the debtor. And that was
10 structured in the form of a loan, which is where the forty-one
11 million --

12 THE COURT: Well, so it's called that. And I'm not
13 trying to take issue, but just from my real-world perspective,
14 is there a reasonable explanation on any theory that's going to
15 get paid back someday, and if so how? I mean, is CCEB going to
16 generate revenue? It's going to pay that loan back?

17 MR. MOSES: Well, not to get too far into the plan,
18 Your Honor, but the answer to that, and this is discussed at
19 some length in the disclosure statement, is no.

20 THE COURT: Yeah. That's what I thought.

21 MR. MOSES: It doesn't have a source of revenue.

22 THE COURT: That's why I'm asking. Okay. Yeah.

23 MR. MOSES: That's the reason why -- we've heard a lot
24 about why isn't this loan monetized somehow. The reason is
25 because --

1 THE COURT: That's what I thought. Okay. Thank you
2 for confirming what I thought.

3 MR. MOSES: The debtor's option to monetize it would
4 be to foreclose.

5 THE COURT: All right. Thank you. I'm sorry for the
6 interruption. Go ahead.

7 MR. MOSES: Yeah. Oh, yeah. No, I want to continue
8 that thought because --

9 THE COURT: Yeah.

10 MR. MOSES: -- the debtor's only option to recover on
11 that loan would be to foreclose on the cathedral.

12 THE COURT: Right. Right.

13 MR. MOSES: That's why we propose --

14 THE COURT: Right.

15 MR. MOSES: -- the clean version of that in the plan.

16 THE COURT: Right.

17 MR. MOSES: It's also why -- it ties to why we can't
18 just -- the debtor can't just offset --

19 THE COURT: Yeah.

20 MR. MOSES: -- this, this payment, this funding,
21 against the debt that's owed on the loan --

22 THE COURT: Right.

23 MR. MOSES: -- because -- and this is tied directly to
24 the fundamental issue. I heard Mr. Prol say, well, it's an
25 unfortunate circumstance when another party can't pay its bills

1 because the debtor's in bankruptcy. The issue, and we've made
2 this clear and the committee has known this since 2023. These
3 payments are -- they're not just a sort of a rent payment that
4 goes off somewhere to BCCCEB's profit. They are how the
5 security company, the engineering company, the utilities for
6 the cathedral complex, which is not just the cathedral but also
7 the debtor's chancery offices, how the bills to keep all those
8 things operating are paid.

9 So the alternative, Your Honor, if -- there's only a
10 couple of alternatives. If the debtor can't fund these
11 payments, the alternatives are -- to CCCEB, the alternatives
12 are that the debtor pays those expenses to the vendors directly
13 or that there's no security, no engineering, no utilities --

14 THE COURT: Oh, okay.

15 MR. MOSES: -- at the debtor's offices in the
16 cathedral.

17 THE COURT: So is it accurate that if there was an
18 agreement that's like an admin support agreement or whatever
19 one would call it, that's not --

20 MR. MOSES: Yeah.

21 THE COURT: -- currently available or --

22 MR. MOSES: And ;I mean, two years ago, the debtor
23 searched high and low for a written copy of their written
24 agreement.

25 THE COURT: Okay.

1 MR. MOSES: We couldn't find it. That's been
2 communicated to the debtor's professional -- or sorry, to the
3 committee's professionals on multiple occasions.

4 THE COURT: For how many years has the debtor made
5 this infusion?

6 MR. MOSES: I would frankly have to ask my client to
7 confirm that, but my understanding is it's the --

8 THE COURT: You want to take a minute? You want to
9 take a minute to do that now?

10 MR. MOSES: Sure.

11 THE COURT: Yeah. Go ahead.

12 MR. MOSES: It's since the cathedral was opened, Your
13 Honor, which is --

14 THE COURT: Okay.

15 MR. MOSES: I should know the exact date. I don't
16 have that on my head, but it's at least ten years.

17 THE COURT: Okay.

18 MR. MOSES: So and this has been consistently -- these
19 payments have been made consistently quarterly.

20 THE COURT: Um-hum.

21 MR. MOSES: The record shows that I believe that the
22 amount changes slightly.

23 THE COURT: Um-hum.

24 MR. MOSES: 725 this time. It was a little more the
25 last time.

1 THE COURT: Yeah.

2 MR. MOSES: The reason for that is because CBRE, which
3 operates the building, calculates each quarter how much money
4 it needs to pay the expenses. Then it allocates that amount
5 among the users of the cathedral, which include the debtor, and
6 each user pays their share.

7 THE COURT: Okay.

8 MR. MOSES: So the debtor's paying its share.

9 THE COURT: So there is a document that's been shared
10 with the committee that shows that breakdown?

11 MR. MOSES: There is a breakdown. I don't know the
12 degree to which the committee's ever asked for it.

13 THE COURT: Okay. But it's producible?

14 MR. MOSES: I imagine so.

15 THE COURT: Is it confidential or not something --

16 MR. MOSES: I mean, I don't think there is a higher
17 level. It's confidential in the general sense of a lot of
18 documents that we --

19 THE COURT: Sure.

20 MR. MOSES: -- produced to the committee.

21 THE COURT: Okay. Ms. Uetz wants to help me out here.

22 MR. MOSES: Yes.

23 MS. UETZ: Or help Mr. Moses out, Your Honor, if it
24 please the Court.

25 THE COURT: Yeah.

1 MS. UETZ: We did have a meeting literally two years
2 ago with the committee, where we --

3 THE COURT: Uh-huh.

4 MS. UETZ: -- walked through all of the details
5 attendant to this payment.

6 THE COURT: Okay.

7 MS. UETZ: We're happy to do it again.

8 THE COURT: Okay.

9 MS. UETZ: And we're happy to provide documentation
10 related to it.

11 THE COURT: Okay. I appreciate it.

12 MS. UETZ: It was an extensive meet and confer at the
13 outset.

14 THE COURT: That doesn't surprise me at all. Thank
15 you very much.

16 Okay. Go ahead, Mr. Moses. I interrupted you.

17 MR. MOSES: Thank you, and I appreciate --

18 THE COURT: Yeah. Okay.

19 MR. MOSES: -- that reminder. So yes, I mean, if it's
20 necessary --

21 THE COURT: Okay.

22 MR. MOSES: -- we can go through that. But I think
23 the essential issues here are set out in Mr. Bardos'
24 declaration, which that and --

25 THE COURT: Um-hum.

1 MR. MOSES: -- a couple of emails introducing in Mr.
2 Lee's declaration are the only evidence that's in front of the
3 Court on this right now.

4 THE COURT: Yeah.

5 MR. MOSES: And it's quite clear on the basic facts
6 I've told Your Court. I mean, I'm looking at paragraph 5 of
7 Mr. Bardos' declaration.

8 THE COURT: Um-hum.

9 MR. MOSES: The CCC has no other material assets.

10 THE COURT: Um-hum.

11 MR. MOSES: Has no income, other than these user fees,
12 which are substantially all devoted to operation and
13 maintenance. It has no -- and Your Honor's question, it's in
14 Mr. Bardos' declaration that CCCEB is therefore unable to
15 service the CCCEB note and has no foreseeable means to repay.

16 THE COURT: That's what I thought. Okay.

17 MR. MOSES: So I could address perhaps the broader
18 issues about payments to nondebtor entities and so forth, but I
19 think really this is fundamentally it's a very practical issue.
20 This is a --

21 THE COURT: Okay.

22 MR. MOSES: -- matter of the debtor paying its
23 essential operating expenses to keep the lights on in its
24 offices and its cathedral.

25 THE COURT: Okay. And then I think you can address

1 what I heard as maybe the last element of the objection by Mr.
2 Prol, that it's just fundamentally unfair to pay some expenses
3 and not others. And the others here happen to be -- the ones
4 most on his mind are legal fees, so give me a context for that.

5 MR. MOSES: Certainly, Your Honor. I guess a couple
6 of contexts there. Administrative expenses have to be paid in
7 a bankruptcy. Those include legal fees. We've expressed
8 concerns in a number of ways and brought motions before Your
9 Honor regarding hold backs and so forth to control cash flow.
10 I don't think that's exactly connected to the issues of whether
11 or not legal fees that have been objected to under the
12 procedures of the interim compensation order are paid or not.
13 That's governed by the interim compensation order.

14 And I also think, as a practical matter, that while
15 administrative expenses all have the same standing in a
16 bankruptcy case, it always is the reality that they are treated
17 a little bit -- professional fees are treated a little bit
18 differently during the pendency of the case.

19 THE COURT: Well, they normally accrue.

20 MR. MOSES: They normally accrue. Exactly.

21 THE COURT: Except for Knudsen, goodness.

22 MR. MOSES: And the Knudsen process is an
23 accommodation.

24 THE COURT: Yep, I understand.

25 MR. MOSES: Whereas Chapter 11 operating debtors

1 generally have to pay their light bills --

2 THE COURT: Yeah.

3 MR. MOSES: -- on a month-to-month basis.

4 THE COURT: Right.

5 MR. MOSES: And I also wanted to mention, just to
6 respond because it has come up a couple of times, the
7 substantial lump sum payment that was made on the CCCEB loan in
8 November of 2024.

9 THE COURT: Um-hum.

10 MR. MOSES: Because it was brought up as an argument
11 of, oh, well, in the past, suddenly CCCEB came up with some
12 money. I described a little bit the structure that this was
13 kind of a complicated structure, and it was created with a
14 title in CCCEB. And this has all been fully disclosed,
15 including in the disclosure statement. There was a related
16 entity, CCTL, Cathedral of Christ the Light, that held some of
17 the money that was used in the development of the cathedral.
18 It was continuing to hold this remaining sum of money.

19 At last year, when you know money was running out and
20 the debtor was digging under rocks to find money, this came up.
21 And so those remaining funds, which represent all the remaining
22 funds available, were paid as a payment on the debt to the
23 debtor. So there's no more there. That's all been fully
24 disclosed. There's not another four-and-a-half-million dollars
25 sitting out there waiting to be needed.

1 THE COURT: Okay.

2 MR. MOSES: And to clarify, based on that, I don't
3 think it's relevant, but because of that, the balance is not
4 41.7 million. It's closer to thirty-seven million currently.

5 THE COURT: Okay.

6 MR. MOSES: I don't think that's probably relevant to
7 this motion.

8 THE COURT: Okay. Anything else?

9 MR. MOSES: No, Your Honor.

10 THE COURT: Okay. Thank you.

11 MR. MOSES: Thank you.

12 THE COURT: The committee wants to have -- this is
13 your motion, right?

14 MR. PROL: (Indiscernible).

15 THE COURT: Yeah. Go ahead.

16 MR. PROL: For the record, Jeff Prol on behalf of the
17 committee. Your Honor, as we've stated previously during the
18 course of this hearing, it's not the committee's desire to burn
19 the church down and force them to shut down the cathedral. The
20 point here that we're trying to make is that the way the debtor
21 has structured itself, when the cathedral was built, CCEB took
22 title to the property, and the debtor assumed all of the debt
23 for the property. Okay. It's not the way parties deal at
24 arm's length with each other.

25 Secondly, point again that I tried to make in the

1 opening, I'll make it again briefly here, is that the debtor
2 needs to consider restructuring its business operations. Yes,
3 we understand you need to keep the lights on. You need to pay
4 for security. But where is the belt tightening? They can't
5 afford to pay survivors what survivors are due. They can't
6 afford to pay the professional fees. The administrative costs
7 of the case. But we haven't heard a single thing about any
8 willingness to tighten the belt and to cut expenses like
9 Chapter 111 debtors do.

10 THE COURT: Okay. Thank you very much.

11 MR. PROL: Thank you.

12 THE COURT: Is this submitted?

13 Okay. I'm going to deny the motion, but a couple of
14 comments. And some of them are very short-term and some of
15 them longer term. Okay.

16 In the short-term, if the debtor has not already
17 supplied to the committee whatever itemized statement there is
18 for what is, I think, an estimate, right? Is it an estimate or
19 is it -- or is it something more precise than an estimate?

20 MR. MOSES: I believe it's funded based on an
21 estimate, and then --

22 THE COURT: Okay.

23 MR. MOSES: -- whatever however that shakes out is
24 (indiscernible) than that so --

25 THE COURT: It trued up at the end of a quarter or if

1 it's trued up, when is it trued up, at the end of the quarter?

2 MR. MOSES: I believe it would be at the end of the
3 quarter. So it would be --

4 THE COURT: Okay.

5 MR. MOSES: -- for example, the estimate was too high,
6 there'd be a little money left over.

7 THE COURT: Yeah. That's what I'm saying. Okay.

8 MR. MOSES: So the requirement to pay the next quarter
9 would (indiscernible) --

10 THE COURT: What you have now is something that's an
11 estimate and there's an allocation and there's a portion of
12 that allocation that has been sent to the debtor, right?

13 MR. MOSES: That's correct, Your Honor.

14 THE COURT: And how detailed is that?

15 MR. MOSES: Your Honor, I don't know that I can
16 (indiscernible) --

17 THE COURT: Well, to whatever extent it is detailed, I
18 think unless there's some confidentiality reason, I think that
19 should be supplied to the committee. Is that in existence now?
20 You have an actual document now, or were you just given a
21 number?

22 MR. MOSES: There is an actual document, Your Honor.

23 THE COURT: Any reason why that can't be shared with
24 the committee?

25 MR. MOSES: Under the general confidentiality

1 agreement, I believe, yes, Your Honor.

2 THE COURT: No, that's fine. I mean, unless somebody
3 else has a problem with that, I think that's a good idea.
4 Okay. And this is not a critique. I am mindful of the fact
5 that, one, this is a long standing practice that the debtor has
6 paid a share of these expenses, and that's been going on for a
7 very long time. It was not a creation of the bankruptcy. It
8 has been going on in the bankruptcy. It has a regularity, and
9 it has a centralized purpose that, to me, if it is an ordinary
10 course, that's about as close as you're going to get for this
11 entity. And I think this entity can be looked at a little bit
12 differently on an ordinary course axes, let's say. Okay.

13 I think that whether you want to critique the
14 structure from several years ago or otherwise complain that it
15 looks weirdly advantageous to one party here who isn't a
16 debtor, I can hear all that. But it has been going on for some
17 time, and it doesn't seem to be -- nothing in the creation of
18 this seems to have been nefarious, from what I can tell. And I
19 think, also, it may be somewhat illusory to call this a loan.
20 But it's not as if that -- none of those facts are being hidden
21 from anybody. Everybody knows that there's no forty-million
22 dollars in CCEB's bank account that it's going to use at any
23 point in time to pay the -- to pay the diocese. Everybody
24 knows that.

25 So to me, those factors, although they might be

1 difficult for some constituencies here, they are not reason for
2 me to cast any doubt on the general bona fides of this. So
3 with all that, I'm going to deny the motion but require you
4 promptly to transfer whatever document you have that reflects
5 whatever detail there is about the estimate and the allocation.

6 Having said all that, I hear loud and clear the
7 committee's other point, which is just not one that I can
8 resolve today, which is, is there going to come a time here
9 when we have to consider either your plan or some other vehicle
10 what the reasonable expectations are for a debtor in a
11 reorganization of this type, and even though it's a church.
12 And I think that's an issue that certainly is front and center
13 in confirmation. And if it comes up before then, we'll see how
14 it plays out.

15 But I am not at all rejecting their argument that part
16 of what ought to be going on here is maybe a rethinking of some
17 of the business issues. Maybe not particularly this one, but
18 certainly, I'm sympathetic to the committee's arguments that
19 the reorganization here might ought to be broader than just how
20 much of a check can we write to the abuse victims on what we
21 think are our assets now. So take that as simply a caveat that
22 it is not a -- I'm not resolving this issue against the
23 committee. I'm just saying it's not for today. Understood?
24 Okay. So you can just -- again, get the prevailing party for
25 the reasons stated on the record. Okay.

1 MR. MOSES: Yes, Your Honor (indiscernible).

2 THE COURT: All right. Thank you very -- and don't
3 try to catch all my meanderings. That'll be somebody else's
4 problem.

5 Okay. Fee motion?

6 MS. UETZ: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. WEISENBERG: Brent Weisenberg of Lowenstein
9 Sandler on behalf of the committee.

10 THE COURT: Yeah. Uh-huh.

11 MR. WEISENBERG: Your Honor, if you would allow me to
12 go on a thirty-second detour. As we walk through this life,
13 all we have is our good name. And the notion that I would ever
14 stand here before this Court and lie, I can't accept. I would
15 never do that.

16 I will chalk up today to misunderstandings. I don't
17 think the debtor's lying. And I don't believe the debtor
18 really thinks we're lying. They are misunderstandings. I have
19 the utmost confidence in Foley and in the debtor that they
20 would never mislead this Court, and I hope and trust they feel
21 the same about us.

22 But I felt the need to say that, Your Honor, because
23 the notion that I would ever seek to mislead or be untruthful
24 to this Court is not something I can countenance.

25 THE COURT: Okay. And when I take Jacob's suggestion

1 with all of your agreement that I just mediate this whole
2 thing, I'll find all that out, right?

3 MS. UETZ: Yes, Your Honor. You will.

4 MR. WEISENBERG: Your Honor.

5 THE COURT: I'm saying that partly in jest. I'm
6 tabling his suggestion for now. But if anyone wants to address
7 it in any fashion, including it's the worst idea we ever heard,
8 Judge, between now and the end of the hearing, for my purposes,
9 it's on the table. Okay.

10 MR. WEISENBERG: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. WEISENBERG: And to that end, the committee has
13 expressed what it believes is the best way to resolve this is
14 Your Honor calling balls and strikes. Only by you setting the
15 table is what's going to change people's positions. That's
16 really hard to do in mediation. And so we've expressed to you
17 our feelings about that.

18 I'd like to jump into the compensation motion.

19 THE COURT: Yeah.

20 MR. WEISENBERG: The debtor's objection, Your Honor,
21 reads almost like an objection to our motion to shorten time,
22 which was granted. As I just said, we have tremendous respect
23 for Foley and the debtor. But the notion in their papers that
24 they complied with the literal terms of the interim
25 compensation order and the spirit is just not true, Your Honor,

1 and here's why.

2 Unfortunately, we learned the hard way in the Camden
3 diocese case about what a bare-bones interim compensation order
4 might lead to. And it led to wholesale objections to our fees
5 on essentially a monthly basis when the committee was adverse
6 to the debtor. And the objection said, I object to the
7 debtor's -- excuse me, to the committee's fees, all of them,
8 meaning the committee's professionals provided no benefit
9 whatsoever to the estate. The onus was then on the committee
10 to resolve that.

11 And so when it came time to agree to this order, we
12 were very specific about making sure we did not have to live
13 through that again. We took great pains to negotiate the
14 language that we agreed to. The language we agreed to was
15 intended to avoid us ever having to stand here before you and
16 say, we don't understand what their objection to, other than
17 the fees are too high. We've explained to you why the fees are
18 high, Your Honor. It's unfortunate. We wish they weren't that
19 high. But we've said ad nauseam today, this is a crisis of the
20 debtor's own making, and we will not back down in representing
21 our clients, no matter what it takes.

22 And so when it came time to negotiate the order, we
23 said, any objection to a monthly fee statement shall
24 specifically state which fees and costs are the subject of the
25 objection, the amount objected to, and the basis of the

1 objection. Now, here's the even more important point. For the
2 avoidance of doubt, any objection shall identify the specific
3 time entry or entries which it objects to and the basis upon
4 which it objects to the allowance of the fees associated with
5 the time spent. Any specific time entry that is not objected
6 to will be subject to payment in accordance with this order.

7 That is not -- that language is not happenstance, Your
8 Honor. Again, we specifically negotiated for it because we did
9 not ever want to have to confront an objection that says, the
10 committee's fees in connection with the plan were too high. We
11 want them reduced by fifty percent. No. That's not what the
12 interim compensation order requires the objector to do.

13 The objector has to set forth in detail where our time
14 entries problematic. Are they problematic because of the
15 amount of time spent? Are they problematic because arguably
16 the efforts were not benefited to the -- or for the benefit of
17 the estate? We didn't want to be left with conjecture. And
18 here we are. And so we come before you, Your Honor, asking you
19 to enforce the interim compensation order.

20 THE COURT: Well, can I just -- I don't mean to split
21 hairs procedurally. I mean, is this basically a request that I
22 strike their objection, or is it something else?

23 MR. WEISENBERG: No. It is, Your Honor.

24 THE COURT: Is that what it is?

25 MR. WEISENBERG: Well, that would be -- that would be

1 the -- if you enforce the interim compensation order and you
2 find that objection does not comply, then yes, the objection
3 falls by the wayside. But what --

4 THE COURT: The alternative is they amend it, right?

5 MR. WEISENBERG: If they're allowed to, and I don't
6 believe the interim compensation order allows them to.

7 THE COURT: Well, that's why I'm asking, so okay.

8 MR. WEISENBERG: The interim compensation order
9 doesn't provide that. But Your Honor, here's, to your end, and
10 we appreciate this.

11 THE COURT: Yeah.

12 MR. WEISENBERG: This is not a last bite at the apple.
13 This is a monthly fee statement.

14 THE COURT: Um-hum.

15 MR. WEISENBERG: All of our fees are subject to
16 challenge at a final. And also, all of our fees are subject at
17 an interim. We also have a fee examiner in this case. So by
18 the time our fees are allowed, they've gone through a number of
19 different hurdles. And so by paying us this month, we're not
20 being unfairly advantaged. In fact, you know that now we're
21 agreeable to a thirty-percent holdback. That is a material and
22 meaningful amount of money, which puts the debtor at almost no
23 risk that we will ever have to disgorge fees.

24 THE COURT: So can I ask you a math question?

25 MR. WEISENBERG: I'm not very good at math, but I'll

1 do my best.

2 THE COURT: Oh, no, no. Well, luckily, it's your
3 math, not mine. There was a reference in your papers, I think,
4 to the amount at stake here in some 712,000 dollars or
5 something. Is that net of a thirty percent?

6 MR. WEISENBERG: That's gross, Your Honor.

7 THE COURT: Oh, that's gross? So there would be a
8 thirty-percent holdback in any event, right?

9 MR. WEISENBERG: Correct.

10 THE COURT: So we're talking about twenty percent is
11 the difference here?

12 MR. WEISENBERG: I'm going to trust your math, Your
13 Honor.

14 THE COURT: No, I mean that the idea? I mean, if
15 they're objecting, it's not that you're not going to get 712.
16 You're expecting you're not going to get 280 or something.

17 MR. WEISENBERG: Well, Your Honor, if the objection is
18 permitted and we are unable to agree, that 712,000 will not be
19 paid to us . Obviously we're all entitled to seventy percent of
20 that 700,000 dollars under the interim compensation order.

21 THE COURT: Right.

22 MR. WEISENBERG: But from our perspective, Your Honor,
23 again, it is a wholesale objection based upon the notion
24 that --

25 THE COURT: That's actually a better way of putting it

1 than I was putting it. Thank you. I appreciate that. Okay.
2 Thanks.

3 MR. WEISENBERG: So we think it's important, Your
4 Honor, to make clear that no one is saying the debtor cannot
5 object to our fees. They have that right. Period. But if
6 they're going to exercise it, they need to do it in conformance
7 with a court order, specifically a court order that we
8 specifically negotiated to avoid this point. And they flat out
9 blew it.

10 But their rights aren't waived. They can come back
11 later on. But now, especially, Your Honor, I hope you respect
12 and appreciate that it seems to us that the timing of this
13 game -- of this objection is pure gamesmanship. It has been
14 twenty-three monthly fee statements that we've filed. Not one
15 has led to an objection. And now, on the precipice of plan
16 confirmation, the debtor's objecting on the heels of having
17 forced a holdback of thirty percent. This seems to us to be a
18 game in which the debtor can seek to put the committee further
19 in a corner by restraining its ability to fight back.

20 As we've said, it won't work because we will do our
21 job regardless. But I hope you could understand that the
22 timing of this is odd. I think nothing speaks to that more
23 than the challenge to our rates. When we came before Your
24 Honor two years ago, we set forth what our hourly rates were.
25 The debtor didn't object. And for twenty-three monthly fee

1 statements, they sat silent. And now, on the 24th, they take
2 issue with our rates. That seems odd to me, Your Honor. I
3 hope you can respect the fact that that we find the timing
4 ironic.

5 And so what we ask is you enforce the order and
6 require the parties to abide by it. No parties' rights are
7 changed. Nobody's getting overpaid. And frankly, Your Honor,
8 we stopped the gamesmanship. We have disagreements,
9 fundamental disagreements about very important issues, but
10 let's just have Your Honor call balls and strikes based upon
11 the facts and law and not have all this satellite litigation
12 nitpicking each other about fees.

13 Yes, fees are a lot of money. And it's unfortunate.
14 And we've spoken all about that today. But Your Honor, we ask
15 you to enforce the interim compensation order. In turn, it
16 ends the gamesmanship and allows us all to focus on what's
17 important, which is putting the facts and law before you
18 without fear that our fees are going to be picked at.

19 THE COURT: Thank you.

20 MR. WEISENBERG: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. MOSES: Your Honor, once again, Shane Moses for
23 the debtor. I want to start first by just noting, given the
24 accelerated time, we did file a response, but it was filed this
25 morning.

1 THE COURT: I read it.

2 MR. MOSES: You read it? Okay. I was fairly certain
3 that would be the case, but I wanted to confirm before I read
4 it to you or the equivalent.

5 So we've heard a number of times from Mr. Weisenberg
6 that the committee just wants to enforce the interim
7 compensation order. We also would like to enforce the interim
8 compensation order, Your Honor. The interim compensation order
9 provides a process. The point is to provide a process that
10 governs how and when fee statements will be filed. How and
11 when interim applications for compensation will be filed. How
12 and when objections to those things will be filed. And if they
13 are filed, how they'll be dealt with.

14 Now, as was noted a little earlier in a prior motion,
15 the Knudsen process is an accommodation, but we have that
16 accommodation in this court under an order from this Court that
17 governs that process. And to read specifically from the
18 section of the order that governs objections, which Mr.
19 Weisenberg read part of, starting after the part he read, it
20 continues. "Thereafter, if the parties are unable to reach a
21 resolution within fourteen days after service of the objection,
22 the affected professional may either file a response to the
23 objection and request for payment of the Court, which may be
24 set for hearing on at least fourteen days' notice, or forego
25 payment." That, obviously is not the choice the committee has

1 taken. And in that context, forego payment is on the monthly
2 fee statement. All of this process is, of course, without
3 prejudice as to what happens on an interim fee application.

4 The committee is -- or I shouldn't say the committee.
5 Committee counsel is unhappy with the structure and the nature
6 of the debtor's objection to their fees. That's fine. That's
7 a discussion we can have. The point of the process that's laid
8 out in the interim fee order, in part, is that there is a
9 requirement for a fourteen-day meet-and-confer time period so
10 that the parties can discuss the issues and try to reach a
11 resolution before someone puts it before this Court.

12 And I think that's important for a lot of reasons. I
13 mean, the objection that the debtor served -- in our response,
14 we made the point. It does identify the time entries that we
15 are objecting to. It's not a oh, well, this was block billing.
16 So this .3 should be disallowed or whatever. It's not that
17 because that's not the nature of the debtor's concern here.
18 Although, I will note there are objections that are -- or time
19 entries that are ten hours for draft outline for fact witness
20 deposition without even identifying the witness. Where there's
21 also one hundred hours spent on preparing an outline for the
22 bishop's deposition.

23 I grant that's an important deposition, but still, we
24 have a hard time seeing how a hundred hours isn't excessive for
25 preparing a fact witness deposition outline. So and that's on

1 top of, as I said, the entries were what witness it related to
2 wasn't even identified. The point of the fourteen-day meet-
3 and-confer process is to allow some granularity into digging
4 into these things and trying to reach some kind of a
5 resolution. But the committee simply short-circuited that by
6 immediately ignoring those provisions of the process and coming
7 into the court and demanding that this be immediately addressed
8 by this Court.

9 Otherwise, I want to respond to the notion of that
10 this is for leverage and it hasn't ever happened before and
11 suddenly it's happening right before we're approaching plan
12 confirmation. We made this point in our response, but I think
13 it's worth reiterating. It's true, we haven't objected before.
14 We, the debtor, has exercised restraint. Perhaps restraint
15 that's similar to the committee not objecting to the CCEB
16 payments before. But the debtor has exercised restraint in not
17 previously objecting.

18 But also, the fees weren't 1.6-million dollars from a
19 single firm for a single month before. The prior month was, I
20 think, the only month that the fees approached 1 million
21 dollars from any single firm, and then they escalated quickly
22 to 1.6. And we certainly understand we're headed toward plan.
23 We're in litigation. We're having depositions. It's going to
24 be more expensive. But we think there's more expensive, and
25 then there's this.

1 But it's not a matter of seeking leverage in some way.
2 The committee counsel see this. They are going to zealously
3 advocate for their client. They're going to zealously advocate
4 for their client, regardless of what is currently happening,
5 with objections under the process provided to compensation.

6 So I don't think it's -- and we have no illusions that
7 somehow, we're depriving the committee of counsel, which is not
8 something we would be seeking to do. We have concerns about
9 the bills and the time entries for specific work that was done
10 in this case in the month of May by the firm. We followed the
11 process. We served an objection. And the process should still
12 be followed. The order should be enforced. And we should be
13 directed to spend the two weeks. And then if we don't get a
14 resolution, it should be noticed for hearing on two weeks'
15 notice, as the order provides.

16 THE COURT: They clearly take the position that your
17 objection didn't have the required specificity, and your
18 position is that further specificity wasn't possible right now
19 or something else?

20 MR. MOSES: I mean, if we were to -- say, for example,
21 we've objected to certain rates that were charged for discovery
22 work. If we were to --

23 THE COURT: Um-hum.

24 MR. MOSES: -- we've said we object to every time
25 entry by this associate for this work at that rate, we could

1 have attached, I suppose, a chart that listed --

2 THE COURT: Um-hum.

3 MR. MOSES: -- every time entry and restated the
4 objection. I don't think that's either necessary or productive
5 to anyone.

6 THE COURT: Okay. Anything else?

7 MR. MOSES: Thank you, Your Honor.

8 THE COURT: What do you guys think my ability is to --
9 now that I know there's a dispute about this. I mean, look,
10 Knudsen orders are not found in nature. Right. We sort of
11 make them up, and they're an accommodation to everybody. And
12 we do our best to come up with something that is going to
13 really sort of change the normal reality of 11s where
14 professional fees accrue. And sometimes they accrue for a long
15 time.

16 But with the debtor -- with a case as complicated as
17 this, with high-level counsel, we want to make sure those
18 counsel are able to do their jobs without hindrance or concern
19 about things like getting paid. We come up with this Knudsen
20 order, and we try to build into it something that makes it more
21 or less self-executing. What's my ability to look at this and
22 say, we just have to deal with this differently? In the case
23 of the Knudsen order, what's my ability to do that, other than
24 being fair to you guys?

25 MR. MOSES: The Code provides for interim fee

1 applications, as Your Honor --

2 THE COURT: Yeah.

3 MR. MOSES: -- pointed out. The Knudsen decision
4 recognized, and I think every other circuit has recognized the
5 court's authority to set up --

6 THE COURT: Right.

7 MR. MOSES: -- a process like this. I think inherent
8 in that authority is the authority to modify it.

9 THE COURT: Or to consider the exigencies of the
10 moment. Let's put it that way. Right. Make sense? Okay.
11 Appreciate it. Thanks.

12 MR. MOSES: Your Honor, I think it's important to hear
13 from Mr. Kaplan, who is on the line. It's Mr. Kaplan who leads
14 the litigation team.

15 THE COURT: Um-hum.

16 MR. MOSES: And this might surprise you. He has a
17 very different take on the work we've been doing and just how
18 vital it is. So if I might, could I allow Mr. Kaplan to speak?

19 THE COURT: It's fine with me. Anybody have an
20 objection?

21 MR. MOSES: Thank you, Your Honor.

22 THE COURT: No? Okay.

23 MR. KAPLAN: Good afternoon, Your Honor. And my
24 apologies for not making the trip this week. I don't want to
25 go through in great detail. And one thing I can be certain of

1 is it's impossible for me to reveal anything from mediation
2 because I wasn't there for any of them. So there's nothing I'm
3 saying which is even possibly subject to mediation privilege
4 but --

5 THE COURT: Or it would be a hearsay objection. One
6 or the other. Right. Okay.

7 MR. KAPLAN: Or something like that, Your Honor.

8 THE COURT: Okay.

9 MR. KAPLAN: But Mr. Moses makes reference to some of
10 our preparation otherwise. And I just want to give the Court
11 some context as to the work we've been doing and the work.
12 Also, this is -- nothing I'm saying is a subject the Foley team
13 hasn't.

14 But in connection with plan confirmation, Your Honor,
15 and these are the hard numbers, we received 40,171 documents.
16 That is on top of the 62,000 documents we received prior to.
17 That's 232,000 pages of documents. Some of those, we received
18 five to seven days before the depositions in question. And so
19 part of the issue with the rates, and I respect the Foley
20 firm's objection thereto, is, is given the time frame we are
21 under, Your Honor, we do not have the flexibility to
22 necessarily be as rate-specific as we might otherwise want to
23 be about who is doing certain tasks because the tasks have to
24 get done, the deposition has to happen, the exhibits get
25 printed, and we have to move forward.

1 We took nine fact depositions, Your Honor. It's nine,
2 and I'm counting this just so everyone is transparent because
3 Mr. Bardos, who's in the courtroom SAT as the corporate
4 designee for OPF, for Aventis, for the debtor, and then
5 individually as himself. And so that is, in essence, four
6 separate depositions from one individual. The bishop's
7 deposition, I took it, and I respect Mr. Moses' opinion on it.
8 But we had a wide range of subjects that we could have asked
9 him about, and his knowledge was what it was. And I'll leave
10 that question for another day.

11 But beyond that, Your Honor, we've really done a
12 painstaking review, to be careful. For instance, and I think
13 the debtor will tell you, our review of the documents has
14 identified to them where we found various instances where
15 privileged documents were inadvertently produced, and we were
16 the ones who identified it for a clawback. We have done
17 subpoenas to third parties. We have been actively working on
18 the voting tabulation now, Your Honor, and have uncovered, for
19 instance, that the bishop cast a vote in favor of the plan for
20 his 300-dollar claim.

21 So there's a lot of work we're doing on a very
22 detailed and granular level, Your Honor. And yes, the fees are
23 expensive. And I will tell you right now that I am the person
24 who is ultimately responsible for every act of the litigation
25 team. And every act we are doing, Your Honor, is necessary in

1 furtherance of our wide ranging objection to various aspects of
2 the plan. I recognize that it is costing a lot of money to do
3 so.

4 But we're doing so on an extremely condensed
5 timetable. We have worked operatively, and I thank the debtor
6 for their cooperation as we continue to work through deadlines.
7 But some deadlines are just very condensed. And that
8 condensation, Your Honor, does not give us the flexibility.
9 For instance, have the time to allow the lowest-level biller to
10 complete a sense of work, whereas, for instance, Your Honor,
11 I've had to review some documents myself because the documents
12 just have to get reviewed before the deposition. And I
13 certainly understand the fee examiner's algorithm is going to
14 go crazy when they see a partner rate for looking at documents
15 and otherwise. But it's just the time we're under.

16 And so we're not doing anything, Your Honor, to run up
17 the fees or anything like that. We're simply doing our jobs to
18 be ready. On the schedule, we have met every single court
19 deadline. Where we are unable to meet deadlines or deadlines
20 can't be met, we have worked cooperatively with the debtor.
21 But what we are doing, Your Honor, is somewhat based on the
22 timetable we're under and the fact that there's a lot of work.
23 I mean, 232,000 pages of documents just in plain confirmation
24 discovery, it's a lot of work, sir.

25 THE COURT: Well, I'm not saying any of that is

1 implausible. Is that the question in front of me now? Is the
2 question in front of me now the merits of the objection or
3 whether the objection was properly raised or both?

4 MR. WEISENBERG: No, Your Honor, the only thing before
5 you today is whether the objection was properly raised. And we
6 raised the issue because we believe it was not. And so the
7 notion that we should ignore ourselves of the fourteen-day
8 period to meet-and-confer, in our mind, is inoperative because
9 they didn't file the proper objection. The fourteen-day period
10 was intended to help resolve discrete issues between the
11 parties. But how can we resolve our issues when we don't
12 understand what they're opposing? The objection --

13 THE COURT: Well, can I throw something else in there
14 too? And you can both give me your thoughts about this. You
15 guys who deal with Knudsen orders and the fallout of
16 disagreements under Knudsen orders more regularly than I do.
17 There are some things that just have got to be seasoned a bit.
18 And the question of whether an hourly rate for an associate is
19 a little too high is of a different order to me than it looks
20 like twenty people attended this hearing.

21 And there are some things that I think are resolvable
22 at fee app time or final fee app time that just are not as
23 easily resolvable in this compressed, fairly shortened, and
24 simplified process for objecting to a billing statement, which
25 cuts two ways. It suggests that there's only so much detail

1 the debtor can give you, and there's only so much they should
2 really be able to keep you from being paid, as opposed to
3 hearing at a fee app, when we have one, or at the end of the
4 case, when that happens, that on a policy matter, this was just
5 not done correctly.

6 So I guess that -- I mean, I guess that's a challenge
7 to each of you to help me think about how to think about this
8 Knudsen issue. Did I make myself clear or --

9 MR. WEISENBERG: I think so, Your Honor.

10 THE COURT: Okay.

11 MR. WEISENBERG: The question that you asked before
12 that I'd like to answer is what is your ability to
13 contextualize a Knudsen order. Of course, Your Honor retains
14 complete ability to modify an order of Your Court, an order
15 issued by you.

16 THE COURT: Right.

17 MR. WEISENBERG: In this case --

18 THE COURT: So when am I being unfair to you guys if I
19 do that? And that's the only question to me. That's the first
20 question. When am I putting you guys in a position you
21 shouldn't be in if I'm going to insert myself in this now?

22 MR. WEISENBERG: Certainly, Your Honor, any order that
23 you enter, forward looking and not backward looking, such that
24 up until the point that your order is entered, the interim
25 compensation order as modified governs the payment of

1 professionals.

2 THE COURT: Okay.

3 MR. WEISENBERG: If ultimately you conclude that it's
4 not working for any reason --

5 THE COURT: Um-hum.

6 MR. WEISENBERG: -- it is well within your
7 jurisdiction and ability to change that.

8 THE COURT: Okay. Okay. Appreciate it. Anything
9 else?

10 MR. WEISENBERG: No, Your Honor.

11 THE COURT: Okay. Somebody remind me where I can find
12 the objection. Is that attached to --

13 MR. WEISENBERG: Your Honor, it's attached to --

14 THE COURT: Your order shortening time?

15 MR. WEISENBERG: Correct.

16 THE COURT: Okay.

17 MR. WEISENBERG: Not to the motion to shorten time.
18 To the motion to enforce the interim compensation order.

19 THE COURT: Okay. Then there's something wrong with
20 me because I didn't see -- I looked for it there. Didn't see
21 it there.

22 MR. WEISENBERG: Okay.

23 THE COURT: So I was wondering if maybe -- it's not
24 attached to the order shortening time, yeah, right? It's
25 attached to the motion?

1 MR. WEISENBERG: Should not be. We will double check
2 this minute and let you know, Your Honor.

3 THE COURT: Okay. Then I missed it, if it's there.
4 But I'll go back and check.

5 MR. MOSES: I may be able to help you out.

6 THE COURT: Okay.

7 MR. MOSES: It is attached as exhibit B to docket
8 2132.

9 THE COURT: 2132? Okay. All right. Is this
10 submitted, guys?

11 MR. WEISENBERG: Committee is, Your Honor.

12 THE COURT: Okay. I want to just take a look at the
13 objection and give a little bit of thought to what really is in
14 front of me and what I can do about it. I mean, I'm kind of --
15 I don't want to put you guys into arguing the merits of this
16 one way or the other on two days' notice. That's not a good
17 proceeding. But if I have something -- if I want to suggest
18 that we go forward in some other way, I will get back to you
19 and suggest that if I'm --

20 Otherwise, what the committee is basically asking me
21 to do is to strike the objection, and I will have to take a
22 closer look at the objection than I've had a chance to do so
23 far to make a ruling on that. Okay. But I promise to do it
24 promptly and to try to get back to you, if not before the end
25 of the week, certainly before the end of next week. Okay.

1 Thank you.

2 Anything other than 53? Can we take a minute for a
3 convenience break before we've been going another hour and a
4 half here? All right. Come back on --

5 Sorry?

6 MR. PROL: Sounds like a great plan.

7 THE COURT: Okay. Thank you.

8 (Recess from 3:59 p.m., until 4:08 p.m.)

9 THE COURT: Okay. Please be seated. We're going to
10 turn to the 053 adversary proceeding, and I intend to give you
11 an oral ruling, although it's a relatively lengthy one because
12 it's -- although I'm calling it an oral ruling, it's scripted,
13 let's say. So this is in the adversarial proceeding number 24-
14 04053. And I intend to give you here my oral findings of fact
15 and conclusions of law pursuant to FRCP 7052.

16 So before the Court are two motions to dismiss the
17 first amended adversary complaint, which I'll refer to as the
18 amended complaint, of the official committee of unsecured
19 creditors, the Roman Catholic Bishop of Oakland. The committee
20 seeks in the amended complaints, one, substantive consolidation
21 of the debtor and the Roman Catholic Welfare Corporation of
22 Oakland, substantive consolidation of the debtor and the Roman
23 Catholic Cemeteries of the Diocese of Oakland, substantive
24 consolidation of the debtor and Adventus, and a judicial
25 determination that the school funds are property of the

1 debtor's bankruptcy estate under Section 541 of Chapter 11 and
2 Title 11 United States Code, which is the Bankruptcy Code.

3 On May 23, 2025, the debtor filed a motion to dismiss
4 the amended complaint pursuant to Federal Rule of Civil
5 Procedure 12(b)(6). The same day, RCWC, RCC, and Adventus,
6 collectively the nondebtor entities, submitted a motion to
7 dismiss the amended complaint pursuant to FRCP 12(6), as
8 incorporated in the Bankruptcy Rules. For the reasons
9 discussed below, I'm going to grant both motions to dismiss.

10 As background, the committee asserts that these
11 matters are core under 28 U.S.C. 157(b)(2)(A) and (O), and I
12 will note that those are generally the most -- those are the
13 most generic invocations of core and therefore my judicial
14 power. But nobody has raised an issue with that, so I don't
15 think it's something we need to spend a whole lot of time on.
16 An introduction and a little bit of context.

17 On December 11th, 2024, the committee filed an
18 adversary complaint, the original complaint against the debtor
19 and the affiliated nondebtor entities. The committee alleged
20 that the diocese exercised such control over the nondebtor
21 entities that any distinction among them served only to shield
22 assets from the estate and its creditors. Count I of the
23 original adversary complaint sought declaratory judgment that
24 the debtor owned all legal and equitable interests in the
25 nondebtor entities' assets, while Count II sought to

1 substantively consolidate the debtor and the nondebtor entities
2 based on their alleged entanglement. The debtor and the
3 nondebtor entities each moved to dismiss the original complaint
4 under Federal Rule of Civil Procedure 12(b)(6), arguing that
5 the relief sought was either unauthorized under Section 105 of
6 the Code or was insufficiently pled.

7 Upon review, the Court concluded at the time that
8 while consolidation may be available where supported by
9 applicable nonbankruptcy law, Count II as pled failed to
10 articulate a clear legal theory, such as alter ego, that could
11 justify consolidation without contravening Section 303(a) of
12 the Bankruptcy Code, which prohibits involuntary relief against
13 nonprofits. The Court recognized that the case of *Law v.*
14 *Siegel*, 571 U.S. 415 (2014), doesn't foreclose equitable relief
15 grounded in state law, provided that such relief does not
16 override explicit statutory prohibitions in the Bankruptcy
17 Code.

18 However, because the committee's complaint did not
19 sufficiently frame its claim under cognizable nonbankruptcy
20 doctrine, the Court declined to assess the adequacy of the
21 underlying factual allegations at that time. Accordingly, the
22 Court granted the motion to dismiss Count II the original
23 complaint with leave to amend so that the committee could more
24 precisely set forth the legal basis for the relief that it
25 sought.

On May 6th, 2025, the committee submitted an amended adversary complaint, again, seeking substantive consolidation of the debtor in each of the three nondefendant, nondebtor entities. The committee asserts that it has adequately stated a claim for substantive consolidation under the case In re: Bonham, which is 229 F.3d 750, 756, Ninth Circuit case from 2000, by pleading facts which satisfy, one, the entanglement test through a state law supported alter ego theory of liability, and two, the creditor expectation test, i.e. the creditors reasonably relied on the combined credit of the debtor and the nondebtor entities. In addition to the three counts for substantive consolidation, the committee seeks a declaration that certain school funds are property of the bankruptcy estate pursuant to Section 541 of the Bankruptcy Code.

In its motion to dismiss the amended complaint pursuant to Rule 12(b)(6), the debtor argues that the committee's claims in Counts I through III fail as a matter of law. The motion to dismiss posits that articulation of an alter ego theory is insufficient -- I'm sorry, the committee's articulation of an alter ego theory is insufficient to support substantive consolidation, as the amended complaint does not plead facts that establish the degree of unity of interest and resulting injustice required to show entanglement and pierce the corporate veil, and the two, reliance on the creditor

1 expectations test to support substantive consolidation is
2 similarly inappropriate and runs afoul of Law v. Siegel, as
3 previously cited in this Court's prior ruling, as the test is
4 "a creature of Section 105 of the Bankruptcy Code", unlike the
5 state law alter ego theory.

6 Now, here I'm going to pause for a second. And I'm
7 not trying to be confusing because I think there are two things
8 going on at the same time here. The debtor and the nondebtor
9 entities both basically argued that the committee's approach in
10 basically relying on some aspect of substantive consolidation
11 and tests applicable thereto ran afoul of the Court's prior
12 order. I think there are some respects in which that's true.
13 I was concerned about the normal articulation of substantive
14 consolidation, that it was not going to be feasible as usually
15 presented in light of the Law v. Siegel issues that have to do
16 with the inability to force a nonprofit into a bankruptcy.

17 Having said that, all of this is a little bit loosey
18 goosey because the ultimate remedy, one way or the other, is
19 recognized and is called substantive consolidation. So much
20 was made from the podium by the debtor's counsel to the effect
21 that the committee was really arguing issues that have already
22 been decided. There's an element of that that I think is
23 correct. But the parties, notwithstanding that, argued their
24 way through the basic test, the creditor expectation test, and
25 the entanglement test. And because the parties spent a lot of

1 their time doing that, I intend to structure this description
2 of my ruling with reference to those doctrines and the way the
3 parties approached it, alongside the idea that some of this was
4 simply foreclosed by the prior ruling.

5 So turning to Count IV, the debtor maintains that the
6 committee's request for declaratory relief concerning the
7 school funds likewise fails to state a claim and warrants
8 dismissal under Rule 12(b)(6). The debtor characterizes the
9 request as a thinly veiled attempt at substantive consolidation
10 through declaratory judgment, relying solely on generalized
11 assertions of control over the school funds without any
12 supporting facts. The nondebtors' motion to dismiss similarly
13 asserts that the committee has failed adequately to allege the
14 requirements of alter ego, one, the requisite entanglement of
15 the debtor and nondebtor entities, and two, the creditors
16 treated the defendants as a single economic unit, or three, any
17 resulting fraud or injustice, which are referred to, again,
18 colloquially, as the Bonham factors, which again is part of our
19 confusion here, I think. The motion also contends that
20 allegations contained in Count IV arrest on conclusory
21 assertions of control over school funds without actual support
22 of a cognizable claim for relief.

23 So turning to the legal standard under 12(b)(6),
24 failure to state a claim. Under Federal Rule of Civil
25 Procedure 12(b)(6), as incorporated in the Federal Rules of

1 Bankruptcy Procedure at 7012(b)(6), a complaint must be
2 dismissed if it fails to state a claim upon which relief can be
3 granted. The test is whether a complaint contains sufficient
4 factual matter to state a claim for relief that is plausible on
5 its face, and that's obviously *Ashcroft v. Iqbal*, 556 U.S. 662
6 (2009).

7 The claim is plausible when the plaintiff pleads
8 factual content that allows the court to draw a reasonable
9 inference that the defendant is liable for the unlawful acts
10 alleged. Conclusory statements without factual support are
11 insufficient to meet the plausibility standard. When a
12 defendant has moved to dismiss, the court must take all of the
13 plaintiff's allegations as true and draw a reasonable
14 inferences in its favor. That's *Miller Yacht Sales, Inc. v.*
15 *Sandy Lane Hotel Company Limited*, 496 F.3d 93 (9th Cir. 2004).

16 Substantive consolidation. Substantive consolidation
17 is a remedy generally within a bankruptcy court's equitable
18 powers under Section 105 of the Bankruptcy Code. Substantive
19 consolidation is not provided for specifically in the
20 Bankruptcy Code. Rather, it's a creation of state law. While
21 there are accordingly no express statutory requirements for the
22 imposition of substantive consolidation case law, as generally
23 stated, the court should consider whether, one, there is a
24 disregard for corporate formalities and commingling of assets
25 between the subject entities and two, what are the benefits of

1 substantive consolidation outweigh its costs. Courts ought to
2 make this decision on a case-by-case basis, with the
3 overarching goal of ensuring fairness to all creditors. And
4 again, that's the Bonham case.

5 Substantive consolidation requires the creditors of
6 one entity to share equally with the creditors of a potentially
7 less solvent entity, therefore possibly unfairly disadvantaging
8 some creditors' recovery. Therefore, there's also broad
9 consensus that substantive consolidation is an extraordinary
10 remedy to be invoked sparingly. That's *In re: Archdiocese of*
11 *Saint Paul and Minneapolis*, 888 F.3d 944, and that's Eighth
12 Circuit, 2018.

13 Circuits differ somewhat as to the precise test to
14 determine the appropriateness of substantive consolidation, but
15 there's an agreement that the determination must be made on a
16 case-by-case basis, since the bar for granting the remedy is
17 fairly high. *In re: Giller*, which is a case 962 F.2d 796 (8th
18 Cir. 1992). The United States Court of Appeals affirmed the
19 bankruptcy court's decision to substantively consolidate six
20 Chapter 11 debtors, all of which shared a common sole or
21 majority shareholder because it found the equitable remedy of
22 substantive consolidation to be the only hope of recovery for
23 unsecured creditors.

24 Further, *In re: Bonham*, the U.S. Court of Appeals
25 allowed the substantive consolidation of debtor and nondebtor

1 entities after finding the debtor commingled personal assets
2 with those of nondebtor entities and failed to maintain
3 corporate distinctions between the debtor and the nondebtor
4 entities.

5 The primary purpose of substantive consolidation is to
6 ensure the equitable treatment of all creditors, and that's In
7 re: Central European Industrial Development Company, LLC, 288
8 B.R. 572. And that's a bankruptcy case from N.D. Cal.

9 Substantive consolidation does not require a finding of alter
10 ego per se on its own under 105, as it is a separate doctrine
11 that focuses on the equitable treatment of creditors and the
12 practical realities of the entity's operations. And that's In
13 re: Parkway Calabasas Limited, 89 B.R. 832. And that's a
14 bankruptcy case from C.D. Cal.

15 Having said that, it's absolutely clear that under Law
16 v. Siegel and I think the prohibitions on using a bankruptcy
17 doctrine to contravene a bankruptcy statute. And in fact, you
18 really need to have more than simply the normal substantive
19 consolidation showing, which is why we had a discussion last
20 time we were here about putting this through the alter ego
21 prism, and that's really going to be the way that I look at
22 this.

23 Having said that, the entanglement test. Number one,
24 the entanglement test examines whether the affairs of the
25 debtor are so entangled that consolidation will benefit all

creditors. And that's In re: Owner Management Service, LLC Trustee Corps, 530 B.R. 711. This test is satisfied at the time and expense necessary to unscramble the debtor's affairs are so substantial that they threaten the realization of any net assets for all creditors or if no accurate identification and allocation of assets is possible. Entanglement typically involves cases where there has been a commingling of assets between entities.

Alter ego. The alter ego doctrine is a state law remedy that is certainly viable under California law and that allows courts to pierce the corporate veil and hold the parent entity liable for the actions of its subsidiary. To demonstrate that the parent and subsidiary are not really separate entities and therefore satisfy the alter ego standard, a plaintiff must make out a prima facie case, one, that there is no such -- I'm sorry, that there is such unity of interest in ownership that the separate personalities of the two entities no longer exist, and two, that failure to disregard their separate identities would result in fraud or injustice. And that's Doe v. Unocal Corp., 248 F.3d 915, Ninth Circuit case 2001.

Unity of interests is suggested by the commingling of funds and other assets, the holding up by one entity that is liable for the debts of the other, identical equitable ownership of the entities, use of the same offices and

1 employees, the use of one of these a mere shell or conduit for
2 the affairs of the other, and that's Roman Catholic Archbishop
3 v. Superior Court, 15 Cal.App.3d 405 (Cal. Ct. App. 1971).
4 This doctrine can be applied to nonprofit religious entities if
5 there is evidence of control and domination by the parent
6 organization and if the separate corporate existence is used to
7 perpetuate fraud or injustice. And that's Prompt Staffing,
8 Inc. v. United States, 321 F.Supp.3d 1157 (C.D. Cal. 2018).

9 The creditor expectations test considers whether
10 creditors dealt with the entities as a single economic unit and
11 did not rely on their separate identity in extending credit,
12 and that's out of the Bonham case. The test is based on the
13 notion that lenders structured their loans according to their
14 expectations regarding the borrower and do not ordinarily
15 anticipate having the assets of a more sound company available
16 in case of insolvency or having the creditors of a less sound
17 debtor compete for the borrower's assets.

18 So putting all this through the alter ego machine and
19 substantive consolidation machine, if you will, the analysis,
20 the committee argues that it's adequately stated a claim for
21 substantive consolidation by asserting facts that support, one,
22 an alter ego theory to satisfy the entanglement prong of the
23 test, and two, a claim that creditors reasonably relied on the
24 combined credit of the debtor and nondebtor entities to satisfy
25 the creditor expectation test. And again, that's a reference

1 to Bonham.

2 The debtor responds that the facts do not establish
3 either the alter -- either the degree of overlap and control
4 necessary to satisfy the alter ego entanglement prong, nor to
5 satisfy the creditor expectation test. In addition to the
6 alleged inadequacy of the facts provided, the debtor further
7 argues that the committee cannot rely on the creditor
8 expectation test to support its claims because the test is a
9 creature of Section 105 of the Bankruptcy Code. So my prior
10 comments stand. Unlike the state alter ego theory and reliance
11 on it contravenes Law v. Siegel and this Court's prior ruling
12 regarding substantive consolidation of a nonprofit, nondebtor
13 entity under Section 105.

14 So diving a bit into the alter ego test and whether
15 it's satisfied here, while the committee presents considerable
16 evidence of operational and structural overlap between the
17 debtor and nondebtor entities, even taken together in a light
18 most favorable to the committee, in the Court's view, such
19 facts simply fail to satisfy the high standard required to
20 establish alter ego liability. To pierce the corporate veil
21 under an alter ego theory, the claimant must, again,
22 demonstrate a unity of interest and ownership, such that
23 separate personalities of the entities no longer exist, and
24 two, that the failure to disregard the corporate form would
25 result in fraud or injustice. Again, Doe v. Unocal. The Court

1 agrees with the debtor and the nondebtor entities that no such
2 demonstration -- no such adequate demonstration has been made
3 here.

4 The committee cites seven factors to support its claim
5 that the defendants operated as a single enterprise. Factors
6 are a failure to maintain arm's length relationships among the
7 related entities, shared officers and directors, shared
8 business offices and addresses, shared employees, comingling of
9 funds or other assets, one entity holding out that it's liable
10 for the debts of the other, and treatment by one entity of the
11 other's assets as its own. While such factors may be relevant
12 to the unity of interest prong, courts in the Ninth Circuit
13 require more than organizational similarity or interrelated
14 operations.

15 The facts must be, as taken together, cumulatively
16 show that the parent controls a subsidiary with such
17 consistency and severity that the latter is rendered a mere
18 instrumentality of the former. And that's *Ranza v. Nike, Inc.*
19 793 F.3d 1059, Ninth Circuit case from 2015. Plaintiff must
20 show "a total domination of finances, policy, and business
21 practices", such that the subsidiary has "no separate mind,
22 will, or existence of its own". And that's the *Unocal* case,
23 again 248 F.3d.

24 Here, the facts provided do not allege that level of
25 pervasive day-to-day control required to show that the

1 nondebtor entities functioned as a mere instrumentality of the
2 debtor. The committee fails to plead nonconclusory facts,
3 showing that the debtor exercised such consistent and total
4 control over the nondebtor entities that they lack separate
5 corporate existence. Even accepting the committee's
6 allegations as true, the assertion that the debtor and the
7 nondebtor entities share a business address, office space, and
8 certain officers, directors, and employees does not, as a
9 matter of law, establish the level of domination or control
10 required to support an alter ego theory. Again, under Unocal.
11 While the committee alleges that the bishop had authority to
12 approve certain expenditures and appoint staff, it does not
13 plead that this authority was actually and regularly exercised
14 in a way that would justify piercing the corporate veil.

15 The committee's allegations regarding financial
16 overlap between the debtor and nondebtor entities similarly
17 fail to plausibly establish the requisite unity of interest and
18 ownership necessary to pierce the corporate veil under an alter
19 ego theory. The fact that the entities served as guarantors
20 for one another in loan and bond obligations without more
21 reflects ordinary commercial conduct, not patent abuse or
22 disregard of corporate formalities. Such arrangements do not,
23 standing alone, demonstrate that the debtor and nondebtor
24 entities lack separate personalities or that their operations
25 were so entangled as to effectively merge them into a single

1 enterprise. That's Bank of Montreal v. SK Foods LLC, 476 B.R.
2 588, Eastern District of California -- sorry, Bankruptcy Court
3 Eastern District of California (2012).

4 Finding that the capitalization of a guarantor LLC for
5 another corporate debtor's credit obligations was insufficient
6 to support an alter ego claim. While the committee points to
7 certain facts suggesting informal practices or share financial
8 responsibilities, those allegations, again in the Court's mind,
9 do not rise to the level of pervasive control, pervasive
10 commingling, or disregard for corporate formalities sufficient
11 to support alter ego liability.

12 Secondly, I think the amended complaint fails to show
13 a resulting injustice from a failure to disregard the
14 defendant's corporate form. The committee's assertion that
15 survivors will receive lower compensation absent consolidation,
16 while it may be true, does not satisfy the second prong of the
17 alter ego test, which requires a showing that maintaining
18 corporate separateness would sanction fraud or promote
19 injustice. Again, Doe v. Unocal.

20 The committee contends that an unjust outcome will
21 result if the nondebtor entities' assets are not consolidated
22 into the estate, thereby limiting the funds available to
23 survivors. However, courts have consistently held that the
24 inability to collect a judgment or access additional funds,
25 even if inequitable, does not by itself rise to the level of

1 injustice required to pierce the corporate veil. Again, Roman
2 Catholic Archbishop v. Superior Court.

3 California courts have historically held that in order
4 to rely on alter ego theories, it must be alleged that the
5 entities are the business conduits of one another and that to
6 recognize their separateness would aid in the consummation of a
7 wrong. Meadows v. Emmett & Chandler, 99 Cal.App.2d 496. The
8 amended complaint, in the Court's view, fails to allege that
9 the debtor structured its financial relationship with the
10 nondebtor entities to aid in perpetrating fraud, deceiving
11 creditors, or otherwise abusing the corporate form.

12 At most, the committee alleges an unfortunate
13 consequence of preexisting lawful business arrangements.
14 Without more, the committee has not shown that respecting the
15 defendant's corporate separateness and the nondebtor separate
16 entities, would result in the type of fraud or injustice
17 necessary to satisfy the second prong of the alter ego
18 standard.

19 While alter ego liability is generally a highly
20 factual inquiry, it is not necessarily a matter that must be
21 fully tried. Motul S.A. v. USA Wholesale Lubricant, Inc., 686
22 F.Supp.3d 900. And that's an N.D. Cal. case from 2003. "The
23 court concludes" -- quoting from that case, "The court
24 concludes that Motul has not alleged sufficient facts to
25 support its assertion that Mr. Fateh, USA Auto and the other

1 corporate defendants are each other's alter egos and has failed
2 to satisfy the first prong of the alter ego test." So
3 therefore it's possible to dispose of these matters at the
4 pleading stage, although it may be less commonly done.

5 The amended complaint fails to allege facts
6 demonstrating the kind of sustained and systemic entanglement
7 through a unity of interest in ownership or otherwise, between
8 the debtor and the nondebtor entity, such that the alter ego
9 doctrine is -- that the alter ego doctrine is designed to
10 address. It likewise fails to show that maintaining their
11 separate corporate forms would result in fraud or injustice.

12 The facts presented are essentially identical to the
13 committee's prior attempt to invoke substantive consolidation
14 through Section 105(a). If anything, the alter ego standard is
15 frankly more demanding, requiring a more systemic and pervasive
16 melding of interest the Court doesn't believe are found here.
17 Accordingly, the committee has not alleged sufficient facts to
18 meet the requirements for piercing the corporate veil under an
19 alter ego theory and thus fails to satisfy the entanglement
20 prong of the substantive consolidation standard under
21 nonbankruptcy law.

22 Creditor expectation test. In the motion to dismiss,
23 the debtor argues that the committee cannot rely on the
24 creditor expectation test and notwithstanding, fails to plead
25 sufficient facts to satisfy the test. Citing a couple of cases

1 from the Southern District of New York. In re: Republic
2 Airways Holdings Inc., which is at 565 B.R. 710 (Bankr.
3 S.D.N.Y.), and Official Committee Of Unsecured Creditors of
4 Verestar, Inc. v. American Tower Corp., 343 B.R. 444 (Bankr.
5 S.D.N.Y 2016).

6 The debtor claims that the inquiry as to whether
7 creditors treated the debtor and other entities as one requires
8 reference to specific creditors that treated the entities as
9 one, which the committee has not demonstrated here. The debtor
10 cites the committee's own use of the 2000 A series bond
11 documents in the 2017 credit agreement, not as evidence of
12 supposed entanglement, but as evidence that creditors and
13 lenders understood and recognized the separate nature of the
14 entities and requiring separate guarantees and separate
15 financial disclosures.

16 The debtor further argues that the committee may not
17 rely on the creditor expectation test, as it is grounded in the
18 bankruptcy court's equitable powers under Section 105 of the
19 Bankruptcy Code, and such reliance would run afoul of Section
20 303(a) and the Court's previous ruling on this issue.

21 The bottom line is I don't think that, even were I to
22 take the creditor expectation test as relevant here and
23 available after my prior ruling, I don't think the committee
24 has alleged facts that would implicate that test.

25 So lastly, the declaratory relief under Section 541,

1 finally, the debtor argues that the requested declaratory
2 relief does not adequately state a claim, as 541 does not
3 create a separate cause of action, and this request is simply a
4 backdoor attempt to solve some consolidation. The Court
5 agrees. A complaint must set forth sufficient facts accepted
6 true to state a plausible legal basis for the relief sought.
7 While the amended complaint does provide some factual
8 allegations in support of its position, it fails to articulate
9 any cognizable legal theory or doctrinal framework under which
10 the property at issue could be deemed to be property of the
11 debtor's estate under 541 where invocation of declaratory
12 relief is insufficient absent supporting legal grounds that
13 would bring the disputed assets within the scope of estate
14 property. As such, the claim for declaratory relief as pled
15 does not meet the pleading standard required to survive
16 dismissal under Rule 12(b)(6).

17 So I know that's a lengthy ruling, but I wanted to
18 give you guys the benefit of it. Obviously, there's a
19 transcript available.

20 Mr. Manns, I see, is here, and I know Mr. Moses is
21 here. If you folks want to prepare an order granting both
22 motions to dismiss and just for the reasons stated on the
23 record and indicate that the Court read an oral ruling into the
24 record, you can do so.

25 MR. MOSES: Yes, Your Honor. I do need to clarify.

1 Is this with prejudice?

2 THE COURT: I believe it is. My sense of the --
3 including the dialog that we had last time with the committee
4 is that they were prepared to provide everything that they had
5 by way of factual background and support in this complaint, and
6 I'm going to take them at their word. So they can certainly
7 challenge that on appeal, that it was wrongful to do this with
8 prejudice, but my sense is that we have exhausted -- we've
9 exhausted this vehicle, in my view, so it's with prejudice.
10 Okay.

11 MR. MOSES: Just for the reasons on the record. Thank
12 you.

13 THE COURT: Okay. No, thank you very much.
14 You guys have any more patience to talk?

15 MS. UETZ: I have one more matter, Your Honor, if you
16 have --

17 THE COURT: Oh, okay. Because I was going to -- I
18 looked at the objection in the meantime, and I wanted to talk
19 with you about it. So but raise the last matter.

20 MS. UETZ: Thanks, Your Honor. Uetz of Foley for the
21 debtor. We filed this morning a motion for an extension of the
22 confirmation scheduling order. We would request --

23 THE COURT: I will admit, I haven't read it yet.

24 MS. UETZ: Of course.

25 THE COURT: Okay.

1 MS. UETZ: We would request that the Court hear that
2 on the soonest time. I know I'm informed from Mr. Moses the
3 Court may be available tomorrow and Friday and may be available
4 next Thursday and Friday.

5 THE COURT: I've got a settlement conference all day
6 tomorrow. Friday might be a little fast.

7 MS. UETZ: I'll let Mr. Prol address the Court
8 regarding it because he spoke with me on the break, and then
9 I'll readdress the Court --

10 THE COURT: Okay. That's fine.

11 MS. UETZ: -- in light of what he suggests.

12 THE COURT: Okay.

13 MS. UETZ: Thank you.

14 THE COURT: Mr. Prol, come on up.

15 MR. PROL: Jeff Prol on behalf of the committee. Your
16 Honor, I think, during the oral argument today, both the
17 openings and the argument on all of the motions --

18 THE COURT: Yeah.

19 MR. PROL: -- we probably pretty much said as much as
20 we have to say in response to the request for an extension.

21 THE COURT: Okay.

22 MR. PROL: I know Your Honor hasn't read the briefing,
23 so you may have some additional questions. We had suggested to
24 Ms. Uetz, if the debtor was amenable, that we would consider
25 agreeing that matter to have been submitted. But given that

1 Your Honor hasn't read it, I'd be a little concerned. Your
2 Honor may have some questions for us.

3 THE COURT: Well, so you would not -- you would not be
4 filing something? And you don't think it's necessary? Okay.

5 MR. PROL: We would be happy to file a brief, Your
6 Honor. But again, I don't think --

7 THE COURT: Okay.

8 MR. PROL: -- we're going to say anything more than
9 what we've already said today, although it may be a little
10 disjointed how we said it today.

11 THE COURT: Yeah. By the way, you're not all coming
12 to the Ninth Circuit Conference next week, right, so we can't
13 just convene in Monterey?

14 MS. UETZ: Can we have our next hearing in this case
15 in Monterey, please?

16 THE COURT: Okay.

17 MS. UETZ: Beautiful town.

18 THE COURT: I'm sorry?

19 MS. UETZ: Beautiful town.

20 THE COURT: Yeah.

21 MR. PROL: I think the point is, Your Honor, there's
22 an awful lot of work that's going to be done --

23 THE COURT: So we don't need a hearing on this, in
24 your view.

25 MR. PROL: Unless Your Honor has questions, which

1 then --

2 THE COURT: Well, Ms. Uetz may tell me she wants to
3 have a hearing in any event.

4 MS. UETZ: I was going to say exactly what Mr. Prol
5 says, Your Honor (indiscernible) --

6 THE COURT: Well, so is it smartest -- sorry. Go
7 ahead. Yeah.

8 MS. UETZ: We don't need a hearing, unless the Court
9 has questions. I think I want to --

10 THE COURT: Okay.

11 MS. UETZ: -- impress what Mr. Prol was starting to
12 impress. So it's a miracle that we may agree on something
13 today. But we would like the Court's decision on the extension
14 motion soonest because --

15 THE COURT: Yeah.

16 MS. UETZ: -- depending on what the Court does, it's
17 really going to inform what the professionals are doing and
18 the --

19 THE COURT: Yeah.

20 MS. UETZ: -- administrative expense of the estate --

21 THE COURT: Yeah.

22 MS. UETZ: -- in the meantime.

23 THE COURT: Okay. Obviously, well, if I read it and
24 have questions, we could theoretically -- could we convene next
25 Thursday or Friday?

1 MS. UETZ: Your Honor, I was going to suggest, and
2 you've done this before, but I don't know your schedule.

3 THE COURT: Yeah.

4 MS. UETZ: So I'll just say this. You've done this
5 before, where we put, like, a placeholder --

6 THE COURT: Yeah.

7 MS. UETZ: -- on the calendar so if you have
8 questions. The thing is, if you don't decide it till the end
9 of next week, the clock is going to run overtime between now
10 and then, including this weekend because of expert rebuttal
11 reports and --

12 THE COURT: Okay.

13 MS. UETZ: -- expert depositions. And so the soonest
14 the Court could do it is what we're requesting, and we'll just
15 defer to the Court.

16 THE COURT: Well, I've got a hearing Friday morning
17 that's going to go all morning on might be the end of a case in
18 the guise of a cash collateral motion. But it's got a lot of
19 DEFCON 1 to it. So Friday morning --

20 MS. UETZ: More than today?

21 THE COURT: -- is not going to -- sorry?

22 MS. UETZ: More than today?

23 THE COURT: Fewer people. Maybe even louder voices.
24 Who knows?

25 MS. UETZ: It's good I'm getting my sense of humor

1 back, I think.

2 THE COURT: Okay. I'm glad.

3 All right. I could consider something after about 2
4 o'clock or 2:15 on Friday afternoon. I realize, for those of
5 you on more East Coast time frames, that's very inconvenient if
6 you have other recreational things in mind. But that would be
7 my schedule. Okay.

8 MS. UETZ: We would appreciate that, Your Honor.

9 And --

10 THE COURT: Okay.

11 MS. UETZ: -- depending on the outcome, it could open
12 up some weekends.

13 THE COURT: Okay. Then why don't we do this? Why
14 don't we -- 2:30? We reserve that? That's okay?

15 MS. UETZ: And then should we call your clerk to see,
16 like, if we should appear, or how would we proceed should we --

17 THE COURT: It's unlikely I'm not going to have any
18 questions.

19 MS. UETZ: Okay.

20 THE COURT: So I think we probably -- it may be -- it
21 may be that it's five minutes. I have a question you can
22 answer, and I just, that's the end of it. Okay. But it's
23 highly unlikely that I won't have a question or two,
24 notwithstanding the wonderful presentations today.

25 MS. UETZ: Thank you.

1 THE COURT: So okay. Anything else for the good of
2 the order?

3 I had a couple of thoughts about the objection. Do
4 you guys have the patience to talk about that still?

5 The reason why I was asking earlier about what's my
6 power in this context is one reaction to the objection would be
7 that under Roman III, parts A and B are fairly generic. Now,
8 it may be that you would tell me it would be challenging to be
9 more specific than we think that this overpays by fifty
10 percent.

11 Let me tell you. Let me suggest this to you. Okay.
12 Were I to rule on this on the merits right now and short-
13 circuit everything, my reaction would be these objections are
14 brought, and something this broad-based is part of a fee
15 application objection, where there's more time to get into
16 this. And I don't think -- I'm not trying to be cynical. I
17 don't think that fourteen days for you guys to talk about
18 whether fifty percent overstated or not is going to be very
19 helpful. It's just not going to get anywhere is my take.

20 So were I to -- were I to have a completely open
21 playing field, I would tell you that I think this objection,
22 and it may ultimately be well taken, really should appear in
23 the context of an objection to a fee app or end of the case
24 kind of determination. That would be my -- that's the way I
25 would rule on it, if we could compress everything and have me

1 rule on it now. And I would not -- I would not have this hold
2 up the payment under the Knudsen order, I mean, such as -- I
3 mean, such as it's been modified down to a thirty-percent
4 holdback. Right. Correct?

5 Similarly, while I think that the objections under
6 excessive associate rates may well be well taken to the extent
7 that they're -- the primary basis for objection here is
8 comparison with the Foley rates. I don't think that's
9 necessarily the basis for me to make a decision like this. I
10 would, again -- I'd be willing to allow you to reserve this to
11 fee app time, certainly, and/or the end of the case.

12 But I think at this point, if I have the power to sort
13 of compress things and just give you a ruling by ruling would
14 be, these objections, they may be very well taken. I don't
15 think they fit well, in my view, under the Knudsen order. So I
16 would be inclined to say, for now, go ahead, and we'll treat
17 this as if it's simply reserving something we're going to argue
18 about at a later date. But it would not be a basis to withhold
19 payment now.

20 Anybody want to -- if anybody thinks I'm jumping the
21 gun here or sandbagging, you guys tell me, and we'll talk about
22 something else.

23 MS. UETZ: Your Honor, with that, I expect we'll be
24 able to talk with counsel for the committee, and --

25 THE COURT: Okay.

1 MS. UETZ: -- get something to the Court with respect
2 to both of the objections that were filed with respect to
3 professional fees.

4 THE COURT: I appreciate it. Okay. So I'm not
5 horribly overstepping my bounds here.

6 MS. UETZ: I don't know whether you are or you're not,
7 Your Honor.

8 THE COURT: Okay.

9 MS. UETZ: But we will talk with the committee.

10 THE COURT: All right.

11 MS. UETZ: And that, I expect, we'll be submitting
12 something.

13 THE COURT: Okay. Committee.

14 MR. PROL: That's fine, Your Honor.

15 THE COURT: Okay. All right. Thank you very much.
16 That concludes the calendar?

17 UNIDENTIFIED SPEAKER: Yes, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. MOSES: Thank you, Your Honor.

20 THE COURT: Thank you for your wonderful arguments
21 today, as always. And I will look forward to talking to you
22 guys on Friday. Okay.

23 (Whereupon these proceedings were concluded at 4:43 PM)
24
25

I N D E X

RULINGS:

PAGE LINE

Debtor's third motion for order approving
insurance premium finance and security
agreement is approved.

40 20

Motion for relief from stay is granted.

77 15

Committee's motion enforcing interim
compensation order is denied.

103 8

Debtor's motions to dismiss amended
complaints in adversary proceeding 24-04053
are granted, with prejudice.

129 5

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

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

/s/ SHARONA SHAPIRO, CET-492

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Date: July 21, 2025

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